



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1910/2009

Views adopted by the Committee at its 109th session (14 October – 1 November 2013)

<i>Submitted by:</i>	Svetlana Zhuk (represented by counsel Raman Kisliak)
<i>Alleged victim:</i>	Andrei Zhuk (son of the author)
<i>State party:</i>	Belarus
<i>Date of communication:</i>	27 October 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and 97 decision, transmitted to the State party on 30 October 2009 (not issued in a document form)
<i>Date of adoption of Views:</i>	30 October 2013
<i>Subject matter:</i>	Imposition of a death sentence after unfair trial
<i>Procedural issues:</i>	State party's failure to cooperate and non-respect of the Committee's request for interim measures; abuse of the right to submission, insufficient substantiation of claims; non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary deprivation of life; torture and ill-treatment; arbitrary deprivation of liberty; right to be brought promptly before a judge; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of his defence and to communicate with his counsel; right not to be compelled to testify against himself or to confess guilt; interim measures to avoid irreparable damage to the alleged victim; violation of obligations under the Optional Protocol

Articles of the Covenant:

Article 6, paragraphs 1 and 2; article 7; article 9, paragraph 3; article 14, paragraphs 1, 2, 3(b), (d) and (g)

Articles of the Optional Protocol:

1, 2, 3 and 5, paragraph 2 (b)

[Annex]

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 (109th session)

concerning

Communication No. 1910/2009*

Submitted by: Svetlana Zhuk (represented by counsel, Raman Kisliak)

Alleged victim: Andrei Zhuk (son of the author)

State party: Belarus

Date of communication: 27 October 2009 (initial submission)

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

Meeting on 30 October 2013,

Having concluded its consideration of communication No. 1910/2009, submitted to the Human Rights Committee by Mrs Svetlana Zhuk on behalf of her son, Mr. Andrei Zhuk, 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 author of the communication and the State party,

Adopts the following:

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

1.1 The author of the communication is Mrs. Svetlana Zhuk. She submits the communication on behalf of her son, Mr. Andrei Zhuk, a Belarus national born in 1983, who at the time of the submission of the communication was detained on death row in Minsk, after being sentenced to death by the Judicial College for Criminal Cases of the Minsk Regional Court on 17 July 2009. The author claims that her son is a victim of violations by Belarus of his rights under article 6, paragraphs 1 and 2, article 7, article 9, paragraph 3, and article 14, paragraphs 1, 2, 3(b), (d) and (g), of the International Covenant on Civil and Political Rights.¹ The author is represented by counsel, Mr. Raman Kisliak.

* The following Committee members participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Ahmad Amin Fathalla, Mr. Khesoe Parsad Matadeen, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Mr. Lazhari Bouzid, Mr. Walter Kaelin, Mr. Cornelis Flinterman, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Victor Manuel Rodríguez-Rescia, Ms. Anja Seibert-Fohr and Ms. Margo Waterval.

¹ The Optional Protocol entered into force for the State party on 30 December 1992.

1.2 When registering the communication on 30 October 2009, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to carry out Mr. Zhuk's death sentence while his case was under examination by the Committee. On 7 December 2009, the Committee reiterated its request.

1.3 On 23 March 2010, the Committee received information that the author's son had been executed despite the interim measures request. On the same date, the Committee requested the State party for urgent clarification of the matter, drawing the State party's attention to the fact that non-respect of interim measures constitutes a violation by States parties of their obligations to cooperate in good faith under the Optional Protocol to the Covenant. No response was received within the deadline. On 30 March 2010, the Committee issued a press release, deploring the execution.

The facts as presented by the author

2.1 The author submits that, at around 8 p.m. on 1 March 2009, her son was arrested in one of the cafe-bars of Soligorsk by officers of the Ministry of Internal Affairs on the suspicion of having assaulted and killed, on 27 February 2009, a man and a woman who were carrying money to pay the salaries of employees at the company they worked for. At the time of the arrest he was under the influence of a narcotic substance. At 9.30 p.m. on the same day, he was escorted to the District Department of Internal Affairs, where he immediately requested a lawyer. The author's son was allowed to see a lawyer for five minutes only (from 10.02 to 10.07 p.m.) at the beginning of the first interrogation that lasted until 00.37 a.m. on 2 March 2009. The author claims: that her son was not in a condition to understand the seriousness of the proceedings; that he was ill-treated and forced to confess that he owned the weapon of the crime as well as to participate in a reconstruction of the crime scene and incriminate himself. She also alleges that he was deprived of legal representation while the above actions took place, despite the fact that he requested to have a lawyer.

2.2 The author's son was arrested on 1 March 2009, but his detention on remand was ordered by a prosecutor only on 10 March 2009. The prosecutor ordered the detention without even meeting with the detainee. Mr. Zhuk was not brought before a judge for a review of his detention until 6 June 2009, three months and five days after his arrest. The author maintains that the above violates the domestic criminal procedure laws² and her son's rights under article 9, paragraph 3 of the Covenant, and refers to the jurisprudence of the Committee.³

2.3 On 17 July 2009, the author's son was found guilty under article 139, paragraphs 1, 12 and 15; article 205, part 2; article 207, part 3; article 294, part 3; and article 328, part 1, of the Criminal Code by the Judicial College for Criminal Cases of the Minsk Regional Court and sentenced to death and confiscation of property. The author submits that her son's right to presumption of innocence was violated, because he was placed in a cage and handcuffed in a court room for the whole duration of the examination of his criminal case by the first instance court. In the author's opinion, it shows that her son was treated as a dangerous criminal even before the verdict was handed down. In addition, state-run mass media, including the main "ONT" TV channel, were referring to the author's son as a 'criminal' from the very start of the investigation. The author specifically mentions an

² The author maintains that her son's detention was in violation of articles 107, paragraph 1, 108, paragraphs 1 and 3, 111, 119, paragraph 2 and 126, paragraph 4 of the domestic Criminal Procedure Code.

³ The author refers to the Committee's Views in communications 852/1999, 521/1992, and to General Comment No8, para 16.

interview with the Minister of Internal Affairs, Mr. Naumov, of 2 March 2009, in which he called her son and his accomplices "criminals" before they had been convicted.

2.4 The author also submits that the first instance court was prejudiced against her son, under the influence of the media and high public officials, who had already declared him guilty. She submits that while the prosecution had charged her son with having intent to commit armed robbery, the court convicted him of premeditated murder, which is a heavier crime and an accusation against which he did not have the possibility to prepare a defence.

2.5 On 21 October 2009, a lawyer representing the author's son before the Judicial College for Criminal Cases of the Supreme Court requested SIZO No.1 of the Ministry of Internal Affairs to provide him a copy of his client's medical records, from the moment of his transfer for placement in custody to prison No. 8 in Zhodino. On 26 October 2009, the lawyer received a copy of a medical certificate, from which it transpires that during a medical examination, on 16 March 2009, injuries were identified on the body of the author's son (dark blue bruises on the body). The lawyer presented the medical certificate to the cassation court together with a complaint that he was ill-treated in custody on 1 March 2009 while in pre-trial detention. In that complaint the author submits that the issues of violations of her son's rights under article 7 and 14, paragraph 3 (g) of the Covenant were raised. The Supreme Court rejected this complaint.

2.6 On 27 October 2009, the Judicial College for Criminal Cases of the Supreme Court rejected the author's son's appeal on cassation and upheld his death sentence. The author submits that in the cassation appeal her son raised the issues of violations of his rights under articles 6, 9, paragraph 3 and 14 of the Covenant. The author maintains that in that manner all domestic remedies had been exhausted.

The complaint

3. The author submits that her son's rights under article 6, paragraphs 1 and 2, article 7, article 9, paragraph 3, article 14, paragraphs 1, 2, 3(b), (d) and (g), of the Covenant, were violated by the State party, because he was subjected to an arbitrary arrest, ill-treatment after his arrest and was sentenced to death after an unfair trial.

State party's observations on admissibility and interim measures

4.1 On 1 December 2009, the State party submits that it considers the review of the author's case by the Committee unacceptable, since the initiation of a procedure before the Committee "lacks basic legal ground" under articles 2 and 5, paragraph 2(b) of the Optional Protocol, namely the author's son failed to exhaust the domestic legal remedies in that he did not submit an application for a supervisory review by the Supreme Court. The State party submits that the submission of the author constitutes an abuse of the right to submission under article 3 of the Optional Protocol because her son has failed to submit a request for a supervisory review to the Supreme Court.

4.2 The State party further submits that the alleged violations of the author's son's rights are not supported by evidence and do not correspond to the reality. It maintains that his guilt was proven beyond doubt in accordance with the domestic criminal and criminal-procedure legislation. It maintains that the author's allegations under article 6 of the Covenant are unfounded, since article 6 of the Covenant permits the death penalty, with the limitation that the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. The State party submits that its legislation limits the use of the death penalty further than the Covenant, since it can only be imposed for the heaviest crime- murder with aggravated circumstances- and it cannot be imposed on women, minors and men older than 65 years of age. It maintains that in convicting the author's son, the court took into consideration his

personality and the cruelty of the murders and of the other dangerous crimes committed by him.

4.3 The State party also submits that every death penalty case is additionally reviewed by the Presidential Commission on the issues of pardon and then by the President himself.

4.4 On 21 April 2010, in response to the 30 March 2010 press release of the Committee, the State party submits that the Committee made public information regarding the case in contradiction with article 5, paragraph 3 of the Optional Protocol. The State party submits that it did not breach its commitments under the Covenant and its Optional protocol since the capital punishment is not prohibited by the international law and that it is not a party to the Second Optional Protocol. It further notes that it had recognised the competence of the Committee under article 1 of the Optional Protocol, but that the Committee's "attempts to pass its rules of procedure off as the international commitments of State parties [...] are absolutely inadmissible". It reiterated that it had not violated the Optional Protocol since: article 1 recognises the competence of the Committee to receive and consider communications directly from individuals who claim to be victims of a right, but not from a third party; it had cooperated with the Committee in the spirit of good will and provided it with all the relevant information on the case. It further submits that the domestic legislation obliges the State party's courts to implement immediately verdicts that had entered into force and that the Optional Protocol does not contain provisions obliging the States parties to stop the implementation of the death penalty until the review of the convict's complaints by the Committee is completed. It maintains that the position of the Committee that the executions should be halted in such cases is not mandatory and has the "character of a recommendation". It submits that the above issue can be resolved by amending the Optional Protocol. It further submits that the State party imposes and implements the capital punishment in extremely rare cases and that the issue is currently being debated in its Parliament.

Author's comments on the State party's observations

5.1 On 11 July 2012, the author submits that neither an application for presidential pardon, nor the supervisory review procedure before the Supreme Court in Belarus can be considered an effective domestic remedy under the Optional Protocol. As to the presidential pardon, the author maintains that it does not represent an effective domestic remedy that needs to be exhausted before applying to the Human Rights Committee, because it is a measure of a humanitarian character and not a legal remedy.⁴ The author further submits that according to the Committee's established jurisprudence, supervisory review procedure is not an effective domestic remedy that has to be exhausted, as required under the Optional Protocol and adds that an appeal submitted under that procedure would not automatically result in the consideration of its substance. Instead a public official, usually the Chair of a court, would consider the issue unilaterally and may reject the request. The author submits that such unilateral review, which does not include a public hearing, does not allow treating the supervisory review procedure as a remedy.

5.2 The author further submits that although the legislation provides for the possibility to file applications for supervisory review and presidential pardon, it does not regulate the length of such proceedings, nor provide for a procedure to inform the applicant about their outcome. In practice, in death penalty cases the applicant is informed that his applications had been rejected only several minutes before his execution. The outcome of such applications is also kept secret from the lawyers and families of the convicts. The author

⁴ The author refers to the Committee's jurisprudence in communications 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, at para 6.4, 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, at para 6.3.

also submits that the death penalty in Belarus is administered secretly, and neither the convict, nor his lawyers or family are informed beforehand of the date of the execution. Accordingly, a person sentenced to death has no real possibility to submit a communication to the Committee after his/her applications for a supervisory review and presidential pardon have been rejected.

5.3 The author submits that her son had submitted an application for presidential pardon on 13 November 2009. She submits that this application was most probably rejected and describes in detail the numerous unsuccessful attempts she made to obtain information regarding her son's whereabouts and whether he had been executed, starting on 19 March 2010. She submits that the execution of her son was acknowledged by the Minister of Internal Affairs in his media statement of 2 April 2010.

5.4 The author further submits that the State party's submission was only made *in abstracto* and that it did not challenge the substance of the majority of the author's claims. As to the State party's argument that the author's invocation of an alleged violation of article 6 of the Covenant was unfounded, the author recalls that, according to the Committee's jurisprudence, the imposition of a death sentence upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes an arbitrary deprivation of life. The author notes that the State party does not contest the author's claims under article 9, paragraph 3, article 7 and article 14 of the Covenant.

5.5 The author also submits copies of interviews with the former head of the First Investigation Detention Centre (SIZO-1), providing a detailed description of how death penalties are executed; with the Minister of Internal Affairs, who states *inter alia* that the domestic legislation has priority over "norms imported from elsewhere"; and with a former judge of the Minsk Regional Court, who took part in the examination of her son's case, and who describes the dependency of the judiciary on the orders received from the Office of the President.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures

6.1 The Committee notes the State party's submission: that there are no legal grounds for the consideration of the present communication insofar as it is registered in violation of articles 2 and 5, paragraph 2 (b) of the Optional Protocol, because the alleged victim did not present the communication himself and has failed to exhaust domestic remedies; that it has no obligations regarding the recognition of the Committee's rules of procedure and its interpretation of the Protocol's provisions; and that it has no obligation to respect the Committee's requests for interim measures.

6.2 The Committee recalls that article 39, paragraph 2 of the International Covenant on Civil and Political Rights authorizes it to establish its own rules of procedure, which the States parties have agreed to recognize. The Committee further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction claiming to be victims of violations of any of the rights set forth in the Covenant⁵. Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual concerned.⁶ It is incompatible with the obligations under article 1 of the Optional

⁵ Preamble and article 1 of the Optional Protocol.

⁶ Article 5, paras. 1 and 4 of the Optional Protocol.

Protocol for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.⁷

6.3 In the present case, the Committee observes that, when submitting the communication on 27 October 2009, the author informed the Committee that at that point her son was on death row. On 30 October 2009, the Committee transmitted to the State party a request not to carry out his execution while his case was under examination by the Committee. On 7 December 2009, the Committee reiterated its request. On 23 March 2010, the Committee received information that the author's son had been executed despite the interim measures request. The Committee observes that it is uncontested that the execution in question took place despite the fact that a request for interim measures of protection had been duly addressed to the State party and reiterated.

6.4 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views concerning the implementation of the State party's obligations under the Covenant nugatory and futile.⁸ In the present case, the author alleges that her son was denied his rights under various articles of the Covenant. Having been notified of the communication and the Committee's request for interim measures, the State party breached its obligations under the Protocol by executing the alleged victim before the Committee concluded its consideration of the communication.

6.5 The Committee further recalls that interim measures under rule 92 of its rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol in order to avoid irreparable damage to the victim of the alleged violation. Flouting of the rule, especially by irreversible measures such as, as in the present case, the execution of Mr. Zhuk, undermines the protection of Covenant rights through the Optional Protocol.⁹

6.6 The Committee notes the State party's submission that the Committee made public information regarding the case in contradiction with article 5, paragraph 3 of the Optional Protocol through its press release of 30 March 2010 in which it deplores the execution of the victim despite its interim measures request. The Committee notes that the above paragraph states that Committee shall hold closed meetings when examining communications. The paragraph does not prevent the Committee from making public information regarding failure of the State parties to cooperate with it in the implementation of the Optional Protocol.

⁷ See, *inter alia*, communications No 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1, and No.1461, 1462, 1476& 1477/2006, *Maksudov, Rakhimov, Tashbaev, Pirmatov v. Kirghizstan*, Views adopted on 16 July 2008, paragraphs 10.1-10.3.

⁸ See, *inter alia*, communication No. 1276/2004, *Idieva v. Tajikistan*, Views adopted on 31 March 2009, para 7.3, No 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para 9.4 .

⁹ See, *inter alia*, communications No. 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004, para. 4.4; No.1280/2004, *Tolipkhuzhaev v. Uzbekistan*, Views adopted on 22 July 2009, para. 6.4; No 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para 9.5.

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee takes note of the State party's argument that the communication is inadmissible since it was submitted to the Committee by third parties and not by the alleged victim himself. In this respect, the Committee recalls that rule 96 (b) of its rules of procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative, but that a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally.¹⁰ In the present case, the Committee notes that the alleged victim at the time of the submission was detained on death row; that the communication was submitted on behalf of the alleged victim by his mother and a counsel, who have presented duly signed letter of authorisation and a power of attorney for the counsel by the alleged victim to represent him before the Committee. Accordingly, the Committee is not precluded by article 1 of the Optional Protocol from examining the communication.

7.4 The State party argues that, by submitting a communication to the Committee before her son had submitted to the Supreme Court a request for a supervisory review, the author has abused her right of submission. Given the circumstances of the present case and the subsequent execution of the victim the Committee does not see how the communication constitutes an abuse of the right of submission. The Committee further notes that this argument relates rather to the requirements of article 5, paragraph 2 (b), of the Optional Protocol. In the absence of any valid reason offered as to why the present communication constitutes an abuse of the right of submission, the Committee is of the view that the case is not inadmissible on this ground.

7.5 The Committee takes note of the State party's argument that Mr. Zhuk had not exhausted all domestic remedies at the time of submission of the communication in view of the fact that he had not submitted an application for a supervisory review. In this regard, the Committee reiterates its previous jurisprudence, according to which the State party's supervisory review is a discretionary review process¹¹ and as such does not constitute an effective remedy for the purposes of article 5, paragraph 2 (b), of the Optional Protocol. Therefore, the Committee is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from considering the communication.

7.6 The Committee considers that the author's allegations under article 6, paragraphs 1 and 2, article 7, article 9, paragraph 3, article 14, paragraphs 1, 2, 3(b), (d) and (g), of the Covenant in respect of her son, have been sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

¹⁰ See *inter alia*, communication No. 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para 10.2 .

¹¹ See for example, communications No 1812/2008, *Levinov v. Belarus*, Views adopted on 26 July 2011, para 7.3; No. 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para 10.4.

Consideration of the merits

8.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the author's claims under articles 7 and 14, paragraph 3 (g), of the Covenant that Mr. Zhuk was subjected to physical and psychological pressure with the purpose of eliciting a confession of guilt and that his confession served as a basis for his conviction. The Committee also notes that these allegations were not refuted by the State party. In this regard, the Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.¹² It further recalls that the safeguard laid down in article 14, paragraph 3 (g), of the Covenant must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.¹³ The Committee notes that despite the medical certificate, evidencing injuries on the body of the author's son, which was submitted by the defence lawyers during the cassation proceedings, the State party has not presented any information to demonstrate that it had conducted any investigation into the ill-treatment allegations. In these circumstances, due weight must be given to the author's claims and the Committee concludes that the facts before it disclose a violation of Mr. Zhuk's rights under articles 7 and 14, paragraph 3 (g), of the Covenant.¹⁴

8.3 As to the author's claim that Mr. Zhuk was arrested on 1 March 2009, but was not brought before a judge for a review of his detention until 6 June 2009, three months and five days after his arrest, the Committee notes that the State party failed to address these allegations. While the meaning of the term "promptly" in article 9, paragraph 3, must be determined on a case-by-case basis, the Committee recalls its general comment No. 8 (1982) on the right to liberty and security of persons¹⁵ and its jurisprudence,¹⁶ pursuant to which delays should not exceed a few days. The Committee further recalls that it has recommended on numerous occasions, in the context of consideration of the States parties' reports submitted under article 40 of the Covenant, that the period of police custody before a detained person is brought before a judge should not exceed 48 hours.¹⁷ Any longer

¹² See the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 14.

¹³ See, for example, the Committee's general comment No. 32, para. 41; communications No. 330/1988, *Berry v. Jamaica*, Views adopted on 4 July 1994, para. 11.7; No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 7.4; No. 1769/2008, *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.6.

¹⁴ See, for example, the Committee's general comment No. 32, para. 60; communications No. 1401/2005, *Kirpo v. Tajikistan*, Views adopted on 27 October 2009, para. 6.3; No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.2.

¹⁵ *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, para. 2.

¹⁶ The Committee found that, in the absence of any explanations by the State party, a delay of three days in bringing a person before a judge did not meet the requirement of promptness within the meaning of article 9, paragraph 3 (see communication No. 852/1999, *Borisenko v. Hungary*, Views adopted on 14 October 2002, para. 7.4). See also communications No. 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para. 11.3. No. 1787/2008, *Kovsh v. Belarus*, Views adopted on 27 March 2013, at paras 7.3-7.5.

¹⁷ See, for example, concluding observations on Kuwait, CCPR/CO/69/KWT, para. 21; concluding observations on Zimbabwe, CCPR/C/79/Add.89, para. 17; concluding observations on El Salvador, CPR/C/SLV/CO/6, para. 14; concluding observations on Gabon, CCPR/CO/70/GAB, para. 13.

period of delay would require special justification to be compatible with article 9, paragraph 3, of the Covenant.¹⁸ The Committee therefore considers the delay of more than three months before bringing Mr. Zhuk before a judge to be incompatible with the requirement of promptness set forth in article 9, paragraph 3 of the Covenant and thus constitutes a violation of Mr. Zhuk's rights under this provision.

8.4 The Committee further notes the author's allegations that the principle of presumption of innocence was not respected, because several State officials made public statements about her son's guilt before his conviction by the court and also because mass media made materials of the preliminary investigation available to the public at large before the consideration of his case by the court. Moreover, he was kept in a metal cage throughout the court proceedings and the photographs of him behind metal bars in the court room were published in local media. The Committee also notes that these allegations were not refuted by the State party. In this respect, the Committee recalls its jurisprudence¹⁹ as reflected in its general comment No. 32, according to which "the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle".²⁰ The same general comment refers to the duty of all public authorities to refrain from prejudging the outcome of a trial, including by abstaining from making public statements affirming the guilt of the accused;²¹ it further states that defendants should normally not be shackled or kept in cages during trial or otherwise presented to the court in a manner indicating that they may be dangerous criminals and that the media should avoid news coverage undermining the presumption of innocence. On the basis of the information before it and in the absence of any response from the State party, the Committee considers that the presumption of innocence of Mr. Zhuk guaranteed under article 14, paragraph 2 of the Covenant has been violated.

8.5 The Committee further notes the author's allegations that her son has only been allowed to see a lawyer for five minutes and has effectively been deprived of legal assistance during the initial phases of the investigative proceedings and that he was forced to participate in investigative actions without legal advice, despite his requests for a lawyer, in violation of the domestic criminal proceedings. The Committee also notes that these allegations were not refuted by the State party. The Committee recalls that subparagraph 3 (b) of article 14 provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms²². It further recalls that the right of all accused of a criminal charge to defend themselves in person or through legal counsel of their own choosing, or to have legal assistance assigned to them free of charge whenever the interests of justice so

¹⁸ See *Borisenko v. Hungary*, footnote 1 above, para. 7.4. See also, Basic Principles on the Role of Lawyers, *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana 27 August–7 September 1990: Report Prepared by the Secretariat*, A/CONF.144/28/Rev.1 (1990), principle 7.

¹⁹ See, for example, communications No. 770/1997, *Gridin v. Russian Federation*, Views adopted on 20 July 2000, para. 8.3; No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.5.

²⁰ See Committee's general comment No. 32, para. 30.

²¹ *Ibid.*, para. 30.

²² Human Rights Committee General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (article 14), U.N. Doc. CCPR/C/GC/32 (2007), paragraph 32.

require, is provided for by article 14, paragraph 3 (d).²³ In the absence of any observations from the State party on the facts presented by the author, the Committee concludes that the denial of access to a lawyer of choice during the initial crucial stage of the pre-trial proceedings constitutes a violation of Mr. Zhuk's rights under article 14, paragraph 3 (b) and (d), of the Covenant.

8.6 The Committee notes the author's allegations, that her son's rights under article 14, paragraph 1 were violated. The Committee also notes that these allegations were not refuted by the State party. In the light of the Committee's findings that the State party failed to comply with the guarantees of a fair trial under article 14, paragraphs 2, 3 (b), (d) and (g), of the Covenant, the Committee is of the view that Mr. Zhuk's trial suffered from irregularities which, taken as a whole, amount to a violation of article 14, paragraph 1, of the Covenant.

8.7 The author further claims a violation of Mr. Zhuk's right to life under article 6 of the Covenant, since he was sentenced to death after an unfair trial. The Committee notes that the State party has argued, with reference to article 6, paragraph 2, of the Covenant, that Mr. Zhuk was sentenced to death following the judgment handed down by the courts, in accordance with the Constitution, the Criminal Code and the Criminal Procedure Code of Belarus, and that the imposed death penalty was not contrary to the international instruments to which Belarus is a State party. In this respect, the Committee recalls its general comment No. 6 (1982) on the right to life, where it noted that the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant, implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal".²⁴ In the same context, the Committee reiterates its jurisprudence that the imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant.²⁵ In the light of the Committee's findings of a violation of article 14, paragraphs 1, 2, 3 (b) (d) and (g), of the Covenant, it concludes that the final sentence of death and the execution of Mr. Zhuk were passed without having met the requirements of article 14, and that as a result his right to life under article 6 of the Covenant have been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of Mr. Zhuk's rights under articles 6; 7; 9, paragraph 3; and 14, paragraphs 1, 2, 3 (b), (d) and (g) of the Covenant. The State party also breached its obligations under article 1 of the Optional Protocol to the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide an adequate compensation to the author, including reimbursement of the legal costs incurred. The State party is also under the obligation to

²³ See also communication No. 1769/2008, *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, at para. 7.4.

²⁴ *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, para. 7; see also communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.14.

²⁵ See the Committee's general comment No. 32, para. 59; communications No. 719/1996, *Levy v. Jamaica*, Views adopted on 3 November 1998, para. 7.3; No. 1096/2002, *Kurbanov v. Tajikistan*, Views adopted on 6 November 2003, para. 7.7; No. 1044/2002, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006, para. 8.6; No. 1276/2004, *Idieva v. Tajikistan*, Views adopted on 31 March 2009, para. 9.7; No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011, para. 9.11; No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.5.

prevent similar violations in the future and, in light of the State party's obligations under the Optional Protocol, to cooperate in good faith with the Committee particularly by complying with the Committee's requests for interim measures.

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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case that 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. In addition, it requests the State party 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]
