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Communication No. 2017/2010

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	Andrei Burdyko (represented by counsel, Roman Kislyak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 December 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 17 December 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	15 July 2015
<i>Subject matter:</i>	Imposition of a death sentence after unfair trial, on the basis of confessions obtained under duress
<i>Procedural issues:</i>	Exhaustion of domestic remedies; failure of the State party to cooperate; non-respect of the Committee's request for interim measures
<i>Substantive issues:</i>	Death penalty, torture and ill-treatment; habeas corpus; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent; right not to be compelled to testify against oneself or to confess guilt
<i>Articles of the Covenant:</i>	6 (1) and (2); 7; 9 (1) and (3); and 14 (1), (2) and (3) (b), (d) and (g)
<i>Articles of the Optional Protocol:</i>	1, 2, 5 (2) (b)

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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 (114th session)

concerning

Communication No. 2017/2010*

Submitted by: Andrei Burdyko (represented by counsel,
Roman Kislyak)

Alleged victim: The author

State party: Belarus

Date of communication: 17 December 2010 (initial submission)

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

Meeting on 15 July 2015,

Having concluded its consideration of communication No. 2017/2010, submitted to the Human Rights Committee by Andrei Burdyko 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 Andrei Burdyko, a Belarus national born in 1981 who, at the time of the submission of the communication, was being detained on death row in Minsk after being sentenced to death by the Grodno Regional Court on 14 May 2010. The author claimed to be a victim of violation by Belarus of his rights under articles 6 (1) and (2); 7; 9 (1) and (3); and 14 (1), (2) and (3) (b), (d) and (g) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

1.2 When registering the communication on 17 December 2010, 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 the death

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

sentence of Mr. Burdyko while his case was under examination by the Committee. On 14 April 2011, the Committee reiterated its request.

1.3 On 20 July 2011, the Committee received information that the author's death sentence had been carried out, despite its request for interim measures of protection. On 21 July 2011, the Committee sought clarifications from the State party, drawing its 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. No response was received. On 27 July 2011, the Committee issued a press release deploring the situation and condemning the execution.

The facts as submitted by the author

2.1 On 14 October 2009, the author was arrested and brought to the Oktyabrsk district police station in the city of Grodno. He underwent a medical examination, which showed that he was intoxicated. He was subsequently charged with the murder of three persons, kidnapping, theft and arson.¹ On 21 October 2009, on the basis of an order of a prosecutor from the Grodno Regional Prosecutor's Office, the author was formally placed in detention in prison No. 1 of the city of Grodno. Counsel submits that the author's apprehension amounted to arbitrary arrest and detention, in violation of article 9 (1) of the Covenant.²

2.2 Counsel further submits that, in violation of article 9 (3) of the Covenant, the author was never "brought promptly before a judge" to review the validity of his detention. The author only saw a judge at the beginning of the trial on 30 March 2010, that is, more than five months after his actual apprehension. In addition, his arrest was ordered by a prosecutor, as required by the Criminal Procedure Code of Belarus. This procedure, according to counsel, violates the author's rights under the Covenant. In this connection, counsel refers to the Committee's long-standing jurisprudence in *Kulomin v. Hungary*, among other cases.³ Furthermore, the authorities failed to inform the author of his right to complain against his arrest, as required by article 119, paragraph 3, of the Criminal Procedure Code.

2.3 Counsel also submits that, when the author was brought to the police station on 14 October 2009, the police officers told him "to admit his guilt in murders". The author insisted that a lawyer be present before he responded to any questions. The police officers started beating him. At that time, he was on the floor face down and handcuffed. The author was forced to wear a gas mask, and the police officers would periodically block the gas mask hose to suffocate him. As a result, the author lost consciousness. When he came to his senses, he agreed to admit his guilt and wrote a confession. The police officers gave him alcohol to encourage his "confession".

¹ It is alleged that the author and his friends kidnapped and killed three members of the same family and subsequently set the family's apartment on fire in an attempt to conceal the crimes.

² The author cites excerpts of article 41 of the Criminal Procedure Code, according to which a suspect must be informed of his rights to have family members or close relatives informed about his/her whereabouts; to be questioned within 24 hours of detention, in the presence of a lawyer; and to have a right to remain silent.

³ See communication No. 521/1992, Views adopted on 22 March 1996; the Committee concluded that "it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the instant case, the Committee is not satisfied that the public prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an 'officer authorized to exercise judicial power' within the meaning of article 9 (3)" (para. 11.3).

2.4 Counsel further submits that, after the author's initial apprehension, he was prevented from contacting his mother, and the police officers did not notify his family of his whereabouts. Counsel also submits that, during the initial interrogation, the police officers did not provide the author with a lawyer. Later, when he finally met with a lawyer, the author did not insist on counsel's presence, because he could not meet with him privately; he was heavily intoxicated with alcohol and had already been subjected to torture.

2.5 Counsel further submits that, during the pretrial investigation, almost all actions taken by investigators were carried out without the presence of the author's lawyer. Counsel submits that, under article 45 of the Criminal Procedure Code, the author was suspected of having committed very serious crimes that could result in the imposition of the death penalty, so he should have had a lawyer assigned and present while signing various documents related to the pretrial investigation. Furthermore, the psychological and psychiatric assessment of the author did not take into account many aspects of his life. The author stated that he had been "out of control and extremely unbalanced" during the commission of the crime, but his statements were ignored. The investigators refused his request to carry out another expert's examination.

2.6 Counsel submits that, during the trial, the court clearly showed its bias against the author, in violation of article 14 (1) of the Covenant. Regarding the presumption of innocence, enshrined in article 14 (2) of the Covenant, the court disregarded several discrepancies in the author's statements to the police and during the court hearings. According to the Committee's general comment No. 32, defendants normally should not be handcuffed or kept in cages. Despite these requirements, the author was kept in a metal cage during the court hearings, and the photo of him in the cage was published in the mass media. After the verdict was announced, the author was forced to wear a special robe with an acronym that indicated that he had been sentenced to death, even though the verdict was not in force yet.

2.7 Counsel submits that the author was sentenced to the death penalty on the basis of his forced confession obtained under torture and ill-treatment; such evidence should not have been retained by the court. Counsel claims that the author's co-defendant, who testified against him, was also tortured by the police. In addition, the court disregarded ample evidence that the author had been tortured to force him to confess his guilt. After the verdict was announced, the author did not receive a copy of the verdict, in violation of article 308, paragraph 7, of the Criminal Procedure Code.

2.8 On 14 May 2010, the Grodno Regional Court found the author guilty of three murders, kidnapping, theft and arson. In May and June 2010, the author, acting through his lawyer, filed cassation appeals to the Supreme Court of Belarus, claiming, inter alia, that his rights under several articles of the Covenant were violated. On 17 September 2010, the Supreme Court of Belarus rejected the appeal, finding that the author's conviction was fully supported by the evidence on file. The Supreme Court also ignored the author's complaints that he had been forced to confess his guilt. Counsel therefore contends that all available domestic remedies have been exhausted.

The complaint

3. Counsel claims that the author's rights under articles 6; 7; 9 (1) and (3); and 14 (1), (2) and (3) (b), (d) and (g) of the Covenant were violated by the State party, because he had been subjected to arbitrary arrest, torture and ill-treatment after his arrest, and had been sentenced to death after an unfair trial and found guilty of serious crimes on the basis of his forced confessions.

State party's observations on admissibility and interim measures

4.1 In a note verbale dated 6 January 2011 and 22 April 2011, the State party conveyed, with regard to the present communication and several other communications before the Committee, its concern about unjustified registration of communications submitted by individuals under its jurisdiction who, it considers, have not exhausted all available domestic remedies in the State party, including appealing to the Prosecutor's Office for supervisory review of a judgement having the force of *res judicata*, in violation of article 2 of the Optional Protocol. The State party claims that registration of communications submitted by a third party, such as advocates, lawyers or other persons, on behalf of an individual claiming violation of his or her rights is an abuse of the Committee's mandate and of the right to submit communications, and is in violation of article 3 of the Optional Protocol. It submits that, as a party to the Optional Protocol, it recognizes the competence of the Committee under article 1, but it did not consent to the extension of the Committee's mandate, in particular regarding the Committee's interpretation of the provisions of the Convention and of the Optional Protocol (preamble and art. 1), and notes that such interpretation should be undertaken strictly in accordance with articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties. It submits that the present communication and several other communications were registered in violation of the provisions of the Optional Protocol; that there are no legal grounds for the State party to consider those communications; and that any decision taken by the Committee on such communications will be considered legally invalid. It further states that any references in that connection to the Committee's long-standing practice are not legally binding on it.

4.2 In a note verbale dated 25 January 2012, the State party added that, upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee 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 rights protected by the Covenant. It notes, however, that this recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, States parties have no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in accordance with the Vienna Convention on the Law of Treaties. It submits that, in relation to the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law are not subjects of the Optional Protocol. It also submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications will be considered by its authorities as "invalid". The State party considers that the present communication as well as several other communications before the Committee were registered in violation of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 1 November 2012 and 19 April 2013, counsel, on behalf of the author, submits that, by ratifying the Optional Protocol, the State parties recognize the Committee's competence "to receive and consider" "communications from individuals claiming to be victims of violations" of their rights. The rules of procedure of the Committee and the Optional Protocol include no procedure for the State party to dispute the registration of the communication. If the State party wants to challenge the admissibility of the communication, it should do so within the existing procedures. According to counsel, by

rejecting the right of the Committee to register new communications, the State party violates its obligations under article 1 of the Optional Protocol.

5.2 Regarding the submission of new communications by “third parties”, counsel, on behalf of the author, submits that, at the time of the registration of the communication, Mr. Burdyko was being held on death row in Minsk. Therefore, he hired a legal counsel to represent him, in accordance with the power of attorney submitted with the initial communication to the Committee. The State party’s concern regarding some “third party” is thus baseless. Counsel believes that the present communication is admissible and should be considered by the Committee on its merits.

5.3 Regarding the failure of the State party to comply with the Committee’s request for interim measures of protection, counsel considers that it constitutes a flagrant violation of the State party’s obligations under the Optional Protocol. Counsel invites the Committee to recommend amendments in the Belarusian legislation, so that the State party respects the Committee’s requests for interim measures.

Issues and proceedings before the Committee

The State party’s lack of cooperation and failure to respect the Committee’s request for interim measures

6.1 The Committee notes the State party’s objection that there are no legal grounds for consideration of the present communication insofar that the State party has no obligations regarding the recognition of the rules of procedure of the Committee or its interpretation of the provisions of the Optional Protocol, and that it has no obligation to respect the request by the Committee for interim measures.

6.2 The Committee recalls that, under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which 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 claiming to be victims of a violation of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in the adherence of a State 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 thereof, to forward its Views to the State party and to the individual concerned (art. 5, paras. 1 and 4). It is incompatible with those obligations 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.⁴

6.3 In the present case, the Committee observes that, when submitting the communication on 17 December 2010, the author informed the Committee that he had been sentenced to death and that the sentence could be carried out at any time. On the same date, the Committee transmitted to the State party a request not to carry out the death sentence while the case was under examination by the Committee. On 14 April 2011, the Committee reiterated its request. On 20 July 2011, the Committee received information that the author had been executed, despite its request for interim measures of protection. The Committee observes that it is uncontested that the execution in question took place, despite the fact that

⁴ See, inter alia, communications No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1; Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al. v. Kyrgyzstan*, Views adopted on 16 July 2008, paras. 10.1-10.3; and No. 1906/2009, *Yuzepchuk v. Belarus*, Views adopted on 24 October 2014, para. 6.2.

a request for interim measures of protection had been duly addressed to the State party and that it was subsequently reiterated.

6.4 The Committee reiterates that, apart from any violation of the Covenant found against a State party in a communication, a State party commits serious breaches of its obligations under the Optional Protocol if it acts to prevent or 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 obligations of the State party under the Covenant nugatory and futile.⁵ In the present case, the author alleges that his rights under various provisions of the Covenant have been violated in a manner that directly reflects on the legality of his death sentence. Having been notified of the communication and the request by the Committee for interim measures of protection, the State party committed a serious breach of its obligations under the Optional Protocol by executing the alleged victim before the Committee had 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 accordance with article 39 of the Covenant, are essential to its role under the Optional Protocol, in order to avoid irreparable damage to the victim of the alleged violation. Flouting of that rule, especially by irreversible measures, such as in the present case the execution of Mr. Burdyko, undermines the protection of Covenant rights through the Optional Protocol.⁶

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 (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 notes that the State party has challenged the admissibility of the communication, arguing that the author has not applied for the supervisory review to the Prosecutor's Office. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, allowing to review court decisions that have taken effect, does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁷ Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

7.4 The Committee further takes note of the argument of the State party that the communication is inadmissible since it was submitted to the Committee by a third party and not by the alleged victim himself. In that respect, the Committee recalls that rule 96 (b) of its rules of procedure states that a communication should normally be submitted by the individual personally or by a representative of that individual. In the present case, the

⁵ See, inter alia, communications No. 1276/2004, *Idieva v. Tajikistan*, Views adopted on 31 March 2009, para. 7.3; and No. 2120/2011, *Kovaleva and Kozyar v. Belarus*, Views adopted on 29 October 2012, para. 9.4.

⁶ 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; and *Kovaleva and Kozyar v. Belarus*, para. 9.5.

⁷ See communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, at para. 8.4.

Committee notes that the alleged victim was detained on death row at the time of the submission and that the communication was submitted on behalf of the alleged victim by his counsel, who presented a duly signed power of attorney to represent him before the Committee. Accordingly, the Committee is not precluded by article 1 of the Optional Protocol from examining the communication.

7.5 The Committee takes note of the author's allegations that his rights under article 14 (1) of the Covenant were violated. However, in the absence of further detailed information, explanations or evidence in support of those claims on file, the Committee finds them insufficiently substantiated for purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the author's remaining claims, raising issues under articles 6; 7; 9 (1) and 3; and 14 (2) and (3) (b), (d) and (g), of the Covenant, have been sufficiently substantiated for purposes of admissibility and proceeds to their examination on the merits.

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 (1) of the Optional Protocol.

8.2 The Committee notes the author's claims under articles 7 and 14 (3) (g) of the Covenant that he was subjected to physical and psychological pressure to force him to confess guilt in a number of crimes and that his forced confessions served subsequently as a basis for the establishment of his guilt and his conviction by the courts. The Committee also notes that those allegations have not been refuted by the State party. In that 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.⁸ It further recalls that the safeguard set out in article 14 (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.⁹ The Committee notes that, despite clear signs that the author was tortured¹⁰ and complaints by his mother and the author himself in this connection, the State party has not presented any information to demonstrate that its authorities have conducted an effective investigation into those specific allegations. In the circumstances, the Committee decides that due weight must be given to the author's allegations. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under articles 7 and 14 (3) (g) of the Covenant.¹¹

8.3 The Committee recalls that, in accordance with article 9 (3), any person arrested or detained on a criminal charge "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power". The Committee also recalls that "while the exact meaning of 'promptly' may vary depending on objective circumstances, delays

⁸ See general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 14.

⁹ See, for example, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41; and 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; and No. 1769/2008, *Ismailov v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.6.

¹⁰ See para. 2.3.

¹¹ See, for example, general comment No. 32, para. 60; and communications No. 1401/2005, *Kirpo v. Tajikistan*, Views adopted on 27 October 2009, para. 6.3; and No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.2.

should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances”.¹² The Committee notes the author’s unchallenged allegations that he was apprehended on 14 October 2009, was officially placed in pretrial detention by the decision of a prosecutor on 21 October 2009 and was not brought before a judge until the beginning of the court trial on 30 March 2010. The Committee thus considers that author was not brought promptly before the judge or other officer authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that, in its general comment No. 35, it stated that it is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with, and that a public prosecutor cannot be considered as an officer authorized to exercise judicial power within the meaning of article 9 (3). Accordingly, the Committee concludes that the above-mentioned facts reveal a violation of the author’s rights under article 9 (3) of the Covenant. In the light of this finding, the Committee decides not to examine separately the author’s claims raising issues under article 9 (1) of the Covenant.

8.4 The Committee further notes the author’s allegations that the principle of presumption of innocence was not respected in his case, because he was shackled and kept in a metal cage during the court hearings. Moreover, the photographs of him behind metal bars in the court room were published in the mass media. In this respect, the Committee recalls its jurisprudence,¹³ as also 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”.¹⁴ The same general comment 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.¹⁵ On the basis of the information before it, and in the absence of any other pertinent information or argumentation from the State party as to the need to keep the author in a metal cage during his trial in court, the Committee considers that the facts as presented demonstrate that the right to be presumed innocent of Mr. Burdyko, as guaranteed under article 14 (2) of the Covenant, has been violated.

8.5 The Committee, next, notes the author’s allegation that, during the pretrial investigation stage, he was not afforded effective and continuous assistance of a lawyer, in violation of his rights under article 14 (3) (d). The Committee, for example, notes that, during the five-month pretrial detention, the author did not have effective access to legal assistance, while during this period of time he confessed guilt under duress, and that he was not allowed to meet with his lawyer privately. The Committee also notes that these allegations have not been refuted by the State party. Referring to its general comment No. 32 (2007), the Committee recalls its jurisprudence that “in cases involving capital

¹² See general comment No. 35 (2014), para. 33.

¹³ See, for example, communications No. 770/1997, *Gridin v. Russian Federation*, Views adopted on 20 July 2000, para. 8.3; and No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.5.

¹⁴ See general comment No. 32, para. 30.

¹⁵ See communication No. 1405/2005, *Pustovoit v. Ukraine*, Views adopted on 20 March 2013, para. 9.2.

punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings”. In these circumstances, the Committee concludes that the facts as submitted by the author reveal a violation of his rights under article 14 (3) (d) of the Covenant. In the light of this finding, the Committee decides not to examine separately the author’s claims under article 14 (3) (b) of the Covenant.

8.6 The author further claims a violation of his right to life under article 6 of the Covenant, since he was sentenced to death after an unfair trial. The Committee observes that these allegations have not been refuted by the State party. In that respect, the Committee recalls its general comment No. 6 (1982) on the right to life, in which 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”.¹⁶ 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.¹⁷ In the light of the Committee’s findings of a violation of article 14 (d) and (g) of the Covenant, especially in the light of the author’s unrefuted allegations of torture and ill-treatment to force him confess guilt, what served as a basis for his conviction, it concludes that the final sentence of death and the subsequent execution of Mr. Burdyko did not meet the requirements of article 14 and that, as a result, his right to life under article 6 of the Covenant has also been violated.

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

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide an effective remedy, including an impartial, effective and thorough investigation into the torture claims, prosecution of those responsible and effective reparation to the author’s family, to include an adequate monetary compensation for the loss of the author’s life and the reimbursement of the legal costs incurred. The State party is also under an obligation to prevent similar violations in the future and, in the light of its obligations under the Optional Protocol, to cooperate in good faith with the Committee, particularly by complying with the requests of the Committee for interim measures.

11. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. 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 cases where a violation has been established. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the Views of the Committee.

¹⁶ See also communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.14.

¹⁷ See general comment No. 32, para. 59; and 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; and No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.5.

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.
