

HUMAN RIGHTS COMMITTEE

Lyashkevich v. Belarus

Communication No. 887/1999 *

3 April 2003

CCPR/C/77/D/887/1999

VIEWS

Submitted by: Mariya Staselovich (represented by counsel, Mrs. Tatiana Protko)

Alleged victim: The author and her son Igor Lyashkevich, (deceased)

State party: Belarus

Date of communication: 26 November 1998

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

Meeting on 3 April 2003,

Having concluded its consideration of communication No. 887/1999, submitted to the Human Rights Committee on behalf of Mrs. Mariya Staselovich and Mr. Igor Lyashkevich 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. Mariya Staselovich, a Belarusian national. She acts on behalf of herself and of her son, Mr. Igor Lyashkevich, also of Belarusian nationality, who at the time of

submission of the communication, 26 November 1998, was detained on death row, having been convicted of murder and sentenced to death. She claims that her son is a victim of a violation of article 6 of the International Covenant on Civil and Political Rights by the Republic of Belarus. 1/ From her submissions, it transpires that the communication also raises issues under article 7 and 14 of the Covenant. The author is represented by counsel.

1.2 On 28 October 1999, in accordance with rule 86 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on New Communications, requested the State party not to execute the death sentence against Mr. Lyashkevich, pending the determination of the case by the Committee. As it transpired from the State party's submission of 12 January 2000 that Mr. Lyashkevich's death sentence had been executed on an unspecified date, the Committee addressed specific questions to the author and to the State party. 2/ From the answers, it appeared that Mr. Lyashkevich was executed on 15 March 1999, i.e. prior to the date of registration of the communication by the Committee.

1.3 The Committee notes with regret that, by the time it was in a position to submit its Rule 86 request, the death sentence had already been carried out. The Committee understands and will ensure that cases susceptible of being subject of Rule 86 requests will be processed with the expedition necessary to enable its requests to be complied with.

The facts as submitted by the author

2.1 The author states that Mr. Lyashkevich was on 15 July 1997 sentenced by the Minsk City Court to death by firing squad. He was found guilty, with four other co-defendants, of illegally depriving one Mr. A. Vassiliev of his liberty, causing him physical suffering, and thereafter intentionally killing him on 25 June 1996. The Supreme Court upheld the judgment on 15 November 1997. 3/

2.2 The Minsk City Court found that a co-defendant of Mr. Lyashkevich, Mr. Alchevskiy, had decided to take revenge on Mr. Vassiliev, and that as the latter was being beaten, another of the accused, Mr. Dudkevich, poured petrol over him and Mr. Lyashkevich set fire to him. The author claims that Mr. Lyashkevich told her that he had had neither motive nor reason to do so, that he had neither stabbed Mr. Vassiliev nor set fire to him, and that his actions could not have been the cause of the victim's death. The author considers that there was no evidence that her son stabbed Mr. Vassiliev in the neck or strangled him. In her view, it was clear from the court file that her son was not directly involved in the murder.

2.3 The author then refers to the statements made by the other co-defendants and reiterates that there is no evidence that her son was actively involved in the crime. She contends that her son did not organize, and *could* not have organized the crime, a belief shared by the inhabitants of her village, who sent a letter to that effect to the President of the Republic, to no avail. She states that her son never admitted guilt and that he hoped to the end that the miscarriage of justice would be remedied, despite the fact that all judicial remedies had been exhausted.

The complaint

3.1 The author argues that the death sentence against her son was passed on the basis of purely circumstantial evidence. The Court had no clear and unambiguous proof that her son was guilty of the murder. In her opinion, this constitutes a violation of article 6 of the Covenant, but the context of her submission indicates that this allegation must be read in conjunction with article 14 of the Covenant.

3.2 From the file, and although the author has not directly invoked these provisions, it also transpires that the communication may raise issues under article 7 of the Covenant, in relation to the lack of information provided to the author concerning the date of her son's execution and the place of his burial.

3.3 Finally, the communication appears to raise issues relating to the respect by the State party of its obligations under the Optional Protocol to the Covenant, as it is alleged that the State party executed her son prior to the registration of the communication by the Committee, but after she informed the lawyer, the penitentiary administration and the Supreme Court of the submission of the communication.

The State party's observations

4.1 By note of 12 January 2000, the State party submitted its observations stating that Mr. Lyashkevich was tried and found guilty by the Minsk City Court on 15 July 1997 of all the crimes specified in articles 124 and 100 of the Criminal Code of the Republic of Belarus, 4/ and sentenced to death. The Court found four co-defendants guilty and sentenced three of them to 15 years' imprisonment. 5/

4.2 Recapitulating the facts, the State party states that following a fight at around midnight on 25 June 1996, Mr. Lyashkevich and the four others abducted Mr. Vassiliev, a former official in the militia, and took him to a place near the Braslav lakes to kill him, using extreme violence in the process. Mr. Lyashkevich's guilt had been proven: he admitted that he had beaten Mr. Vassiliev together with the other accused. He had held him by the neck and, after he had been doused with petrol and set alight, had fed the fire with wood.

4.3 The State party refers to evidence presented on trial by the co-accused concerning the sequence of events on the night of the crime: how Mr. Vassiliev had been beaten and then taken to be thrown in the lake, and how, when that had proven to be impossible, they had further beaten him and then set him on fire.

4.4 The State party adds that Mr. Lyashkevich's guilt was also proven by the conclusions of forensic experts derived from the multiple injuries and internal and external damage to Mr. Vassiliev's body.

4.5 According to the State party, the Court considered all aspects of the case and reviewed them objectively. The conclusion that Mr. Lyashkevich was guilty was justified and his actions were correctly subsumed under the relevant articles of the Criminal Code. His punishment had been determined having regard to the actions committed and the negative information concerning his personality, as well as to the aggravating circumstances in which the crime was committed. The Supreme Court of the Republic of Belarus upheld the Minsk City Court's judgement on 14 November 1997. For the State party, there is no reason to question these judgments.

Author's comments

5.1 Although the State party's observations were duly transmitted to her and followed by several subsequent reminders, the author did not comment on the State party's submission. After another specific request to provide information on the execution of the death sentence was sent on 11 July 2002, the author's counsel made the following observations on 24 July 2002. Counsel states that author's son was executed on 15 March 1999, according to the death certificate the author obtained on 5 May 1999. Counsel further declares that the death sentences are executed in secret in Belarus. Neither the condemned prisoner nor his family are informed of the date of the execution. 6/ All those sentenced to capital punishment are transferred to the Minsk Detention Centre No 1 (SIZO - 1), where they are confined to separate "death cells" and are given (striped) clothes, different from other detainees.

5.2 Counsel notes that executions take place in a special area by soldiers chosen from the "Committee for the execution of sentences". The method of execution is by firing with the executioner using a pistol. The pistol is handed by the chief of the Centre to the executioner. After the execution, a medical doctor establishes a record, certifying the death, in presence of a procurator and a representative of the prison administration.

5.3 Counsel further notes that the body of the executed prisoner is transferred at nighttime to one of the Minsk cemeteries and buried there by soldiers, without leaving any recognizable sign of name of the prisoner nor the exact location of his burial site.

5.4 Counsel states that once the Court which pronounced the death sentence is informed of the execution, that Court then informs a member of the family of the executed prisoner. The family is thereafter issued a death certificate by the municipal civil status service, where the Court decision is referred to as the cause of death.

5.5 Counsel asserts, without giving any further detail, that Mrs. Staselovich had informed her son's lawyer, the Supreme Court and the prison authorities that she had submitted a communication to the Human Rights Committee before her son's actual execution.

Additional observations from the State party

6.1 On 12 September 2002 the State party replied to the Committee's request 7/ concerning the date of the execution of author's son, and the exact moment from which the State party was aware of the existence of the communication. It reiterates that Mr. Lyashkevich was executed on 15 March 1999, further to the decision of the Minsk City Court of 15 July 1997. It underlines that the Note of the Office of the UN High Commissioner for Human Rights concerning the registration of the communication was dated 28 October 1999, i.e. that the execution took place several months 8/ before the State party was informed about the registration of the communication under the Optional Protocol.

6.2 The State party has not offered further observations on the author's allegations.

Issues and proceedings before the Committee

Alleged breach of the Optional Protocol

7.1 The author has alleged that the State party breached its obligations under the Optional Protocol by executing her son despite the fact that a communication had been sent to the Committee and the author had informed her son's lawyer, the prison authorities and the Supreme Court of this measure, prior to her son's execution and the formal registration of her communication under the Optional Protocol. The State party does not explicitly refute the author's claim, stating that rather that it was appraised of the registration of the author's communication under the optional protocol by Note Verbale of 28 October 1999, i.e., seven months after the execution. In its earlier case law the Committee had addressed the issue of a State party acting in breach of its obligations under the Optional Protocol by executing a person who has submitted a communication to the Committee, not only from the perspective whether the Committee had explicitly requested interim measures of protection but also on the basis of the irreversible nature of capital punishment. However, in the circumstances of the current communication and in light of the fact that the first case in which the Committee established a breach of the Optional Protocol for the execution of a person whose case was pending before the Committee 9/ was decided and published subsequent to the execution of Mr. Lyashkevich, the Committee cannot hold the State party responsible for a breach of the Optional Protocol due to the execution of Mr. Lyashkevich after the submission of the communication, but prior to its registration.

Determination of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. The conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are therefore satisfied.

8.3 The Committee has noted the author's allegation that the fact that her son's conviction and death sentence was based purely on circumstantial evidence, and that the Court had no clear evidence that her son was guilty of murder, amounts to a violation of article 14 of the Covenant, read in conjunction with article 6. This allegation challenges the evaluation of facts and evidence by the State party's courts. The Committee recalls that it is generally for the courts of States parties to the Covenant to review facts and evidence in a particular case, unless it can be shown that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality. The information before the Committee does not provide substantiation for a claim that the decisions of the Minsk City Court and the Supreme Court suffered from such defects, even for purposes of admissibility. This part of the communication is accordingly inadmissible pursuant to article 2 of the Optional Protocol.

8.4 The Committee considers that the author's remaining allegation, namely that the authorities' failure to inform, either through the condemned prisoner or directly, his family of the date of execution, as well as the authorities' failure to inform her of the exact location of the burial site of her son, amounts to a violation of the Covenant, is admissible in so far as it appears to raise an issue under article 7 of the Covenant.

8.5 The Committee thus declares the communication admissible to the extent outlined in paragraph 8. 4 above and proceeds to the examination on the merits of this claim.

Consideration on the merits.

9.1 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.

9.2 The Committee notes that that the author's claim that her family was informed of neither the date, nor the hour, nor the place of her son's execution, nor of the exact place of her son's subsequent burial, has remained unchallenged. In the absence of any challenge to this claim by the State party, and any other pertinent information from the State party on the practice of execution of capital sentences, due weight must be given to the author's allegation. The Committee understands the continued anguish and mental stress caused to the author, as the mother of the condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. The Committee considers that complete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7 of the International Covenant on Civil and Political Rights.

11. 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, including information on the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future.

12. 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 a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's

Views. The State party is also requested to publish the Committee's Views.

[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.]

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Walter K. Lin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

1/ The International Covenant on Civil and Political Rights entered into force for the State party on 23 March 1976 and the Optional Protocol on 30 December 1992.

2/ The Committee requested on 11 July 2002 the following information:

a) from the State party:

1. "When exactly the execution took place, and
2. At what time did the State party learn about the existence of the communication

b) from the author:

1. "On what date the death sentence was carried out, and
2. Did you inform the State party of the submission of the communication to the Human Rights Committee before the registration of the case?"

3/ Further, following an extraordinary procedure, a request to the President of the Supreme Court to initiate a review was denied on 15 January 1998.

4/ The State party did not, however, provide the text of the articles in question.

5/ Proceedings against one of the accused were dropped as a result of his death.

6/ The author submits a copy of article 175 of the Belarusian Criminal Execution Code. It provides in particular that death sentences are executed by shooting. During the execution a procurator, a

representative of the prison where the execution takes place and a medical doctor are present. In exceptional cases, with the procurator's permission, the presence of other persons can be admitted. The medical doctor certifies the death, and a record is established to that effect. The prison administration is obliged to inform the Court which passed the sentence, and that Court informs one of the relatives of the executed. The body of the executed is not released for burial, and the place of the burial is not communicated to the family or the relatives.

7/ See endnote n ° 2.

8/ "Six months", according the State party's own submission.

9/ Communication No. 869/1999, Piandiong et al v. The Philippines