



International Covenant on Civil and Political Rights

Distr.: General
17 November 2014

Original: English

Human Rights Committee

Communication No. 1906/2009

Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Vasily Yuzepchuk (represented by counsel, Roman Kislyak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	2 October 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 12 October 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2014
<i>Subject matter:</i>	Torture; imposition of a death sentence after unfair trial
<i>Substantive issues:</i>	Torture and ill-treatment; detention; arbitrary deprivation of life; 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 not to be compelled to testify against himself or to confess guilt; right to equal protection of the law without discrimination
<i>Procedural issues:</i>	Failure of the State party to cooperate, non- respect of the Committee's request for interim measures, insufficient substantiation of claims, non-exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	6, para. 1; 7; 9, para. 3; 14, paras. 1, 2, 3 (e) and (g); and 26
<i>Articles of the Optional Protocol:</i>	2 and 5, para. 2 (b)

GE.14-22107 (E)



* 1 4 2 2 1 0 7 *

Please recycle 



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 (112th session)

concerning

Communication No. 1906/2009*

Submitted by: Vasily Yuzepchuk (represented by counsel,
Roman Kislyak)

Alleged victim: The author

State party: Belarus

Date of communication: 2 October 2009 (initial submission)

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

Meeting on 24 October 2014,

Having concluded its consideration of communication No. 1906/2009, submitted to the Human Rights Committee by Vasily Yuzepchuk 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 Vasily Yuzepchuk, a Belarus national born in 1975, who at the time of the submission of the communication was detained on death row in Minsk, after being sentenced to death by the Brest Regional Court on 29 June 2009. The author claims to be a victim of violations of his rights under article 6, paragraphs 1 and 2, article 7, article 9, paragraph 3, article 14, paragraphs 1, 2, 3 (e) and (g), and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Roman Kislyak.

1.2 When registering the communication on 12 October 2009, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

communications and interim measures, requested the State party not to carry out the death sentence imposed on Mr. Yuzepchuk while his case was under examination by the Committee. On 13 November 2009, the Committee reiterated its request.

1.3 On 23 March 2010, the Committee received information that the author had been executed, despite its request for interim measures of protection. On the same date, the Committee sought urgent clarification 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 to the Covenant. No response was received. On 30 March 2010, the Committee issued a press release condemning the execution.

The facts as submitted by the author

2.1 On 9 January 2008, the author was detained and held in police custody in the Drogichinsky district police station. On 19 January 2008, he was placed in custody pending his trial. He was charged with the murder of four women and thefts in the Drogichinsky district and with robbery in the Grodno region. The author submits that he was then ordered by the Prosecutor to be detained until 8 April 2009, when he was brought before a judge for the first time, nearly one year and three months after his initial arrest. The author submits that he should have been brought before a judge “promptly”,¹ which did not happen in his case.

2.2 The author submits that during his pretrial detention, he was tortured by police officers in order to force him to confess to the murders, thefts and robbery. He was kept in solitary confinement for prolonged periods of time and was denied food. He also claims that police officers fed him some unknown pills and alcohol, which affected his ability to think clearly. Police officers also threatened to incarcerate his close relatives.

2.3 He further submits that the facts of torture and ill-treatment were confirmed by a medical expert, who concluded that the injuries could have been caused in the manner they were described by the author.² After his complaint to the Prosecutor’s Office, the investigation concluded that the author’s injuries were self-inflicted, and were not caused by police officers.

2.4 The author claims that an investigation was eventually carried out, but it was not effective as the prosecutor’s office failed to question witnesses or even order a medical examination. The investigation also failed to obtain copies of the footage of the video surveillance of his cell and did not examine entries in the medical journal of the medical unit of the detention centre.

2.5 The author further submits that during the pretrial investigation, his brother, S.L., testified against him. S.L. told the police officers, inter alia, that the author had admitted to him that he had strangled an old woman and that the author had shown him some US dollars and Belarus roubles that were allegedly taken from the woman. The police officers failed to tell the author’s brother that he had a right not to testify against his sibling. Furthermore, the court did not grant the author’s motion to call S.L. to testify during the court hearings. Overall, more than 30 witnesses failed to appear at the court hearings, both for the defence and the prosecution. Those witnesses presented various reasons for failing to appear, such as health problems, transportation issues, etc. The author submits that such reasons should not have been considered as valid, because of the seriousness of the charges

¹ The author refers to communication No. 521/1992, *Kulomin v. Hungary*, Views adopted on 22 March 1996.

² The author does not provide a copy of the medical report.

against him. The author claims, for example, that he was not able to call witnesses who would prove his alibi.³

2.6 The author submits that the verdict against him was mostly based on the testimony of one S.F., who in turn claimed that he was tortured to elicit incriminating evidence against himself and the author. The author submits that such evidence should not have been considered by the court, as it was obtained under duress. The court also disregarded the author's claims that he was tortured and was forced to confess his guilt.

2.7 On 29 June 2009, the Brest Regional Court found the author guilty of all four murders, as well as thefts and robbery, sentenced him to death and ordered that his property be confiscated. On 7 and 10 July 2009, the author, acting through his lawyer, filed two cassation appeals and, on 23 September 2009, he filed an addendum to his appeal, with new arguments, including his references to articles of the Covenant. On 27 September 2009, one more cassation appeal was filed by his lawyer, asking the court to reconsider the death sentence.⁴ On 2 October 2009, the Supreme Court of Belarus rejected all appeals filed by the author and his lawyers. The Court stated that the author's conviction was fully supported by the evidence. The Supreme Court also ignored the author's complaints that he was forced to confess his guilt. The author therefore contends that he has exhausted all available domestic remedies.

2.8 The author submits that overall, he was discriminated against, tortured and subjected to ill-treatment and an unfair trial because of his Roma ethnicity. The author also submits that because of his ethnicity, he was presumed guilty from the very beginning of the proceedings against him. Moreover, the author is illiterate, he cannot read or write. He also submits that he cannot remember times and dates very well.

The complaint

3. The author claims that his rights under articles 6, paragraphs 1 and 2; 7; 9, paragraph 3; 14, paragraphs 1, 2, 3 (e) and (g); and 26 of the Covenant were violated by the State party, because he was subjected to arbitrary arrest, torture and 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 9 November 2009, the State party submitted that it considered 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 that the author had failed to exhaust the domestic legal remedies, in that he had not submitted an application for a supervisory review by the Supreme Court. The State party also contends that the submission of the communication by the author constitutes an abuse of the right to submission under article 3 of the Optional Protocol, because the author failed to submit a request for a supervisory review to the Supreme Court. The State party also submits that at the time of writing the author had appealed to the President of Belarus for a pardon.

4.2 The State party further submits that the alleged violations of the author's rights are not supported by evidence and do not correspond to reality. It maintains that the author's guilt in "cruel murdering of old and single women" and other serious crimes was proven beyond doubt, in accordance with the domestic criminal and criminal procedure legislation. It also maintains that the author's allegations under article 6 of the Covenant are unfounded,

³ The author does not specify which particular witness would prove his alibi, if summoned to court.

⁴ The author does not explain why he and his lawyers filed multiple appeals.

since that article permits the death penalty, with the limitation that the sentence of death shall not be imposed for crimes committed by persons under 18 years of age and shall not be carried out on pregnant women. The State party submits that its legislation places further limits on the use of the death penalty than the Covenant does, since it can only be imposed for the most serious crime – murder with aggravated circumstances – and it cannot be imposed on women, minors or men older than 65 years of age. It maintains that, in convicting the author, the court took into consideration his personality and the cruelty of the murders and of the other grave crimes committed by him.

4.3 The State party also submits that every case involving the death penalty is additionally reviewed by the Presidential Pardons Commission and then by the President himself.

4.4 On 21 April 2010, in response to the press release issued by the Committee on 30 March 2010, the State party submitted that the Committee had made public information regarding the case, in contradiction of article 5, paragraph 3, of the Optional Protocol. The State party submits that it did not breach its commitments under the Covenant or the Optional Protocol thereto, since capital punishment is not prohibited by international law and it is not a party to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. It further notes that it recognizes 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 States parties ... are absolutely inadmissible". It reiterates that it has not violated the Optional Protocol since it recognizes the competence of the Committee to receive and consider communications submitted directly by individuals who claim to be victims of a violation of a right, but not from a third party, and that it has cooperated with the Committee in a spirit of goodwill and provided it with all the relevant information on the case. It further submits that domestic legislation obliges its courts to implement immediately verdicts that have entered into force and that the Optional Protocol does not contain provisions obliging States parties to stop the execution of a death sentence until a review of the convict's complaints by the Committee is completed. It maintains that the position of the Committee that executions should be halted in such cases is not binding and has only "recommendative" in nature. It submits that the issue could be resolved by amending the Optional Protocol. It further submits that the State party imposes and carries out 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 14 March 2012, counsel, on behalf of the author, submitted that neither an application for presidential pardon, nor the supervisory review procedure before the Supreme Court in Belarus could be considered an effective domestic remedy for the purposes of the Optional Protocol. As to the presidential pardon, counsel for 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 nature and not a legal remedy.⁵ He further submits that, according to the established jurisprudence of the Committee, the supervisory review procedure is not an effective domestic remedy that has to be exhausted, and adds that an appeal submitted under that procedure would not automatically result in the consideration of the substance of the case. Instead, a public official, usually the Chair of a court, would consider the issue unilaterally and might reject the request. The counsel for the author submits that this unilateral review,

⁵ The author refers to the Committee's jurisprudence in communications No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 6.4, and No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 6.3.

which does not include a public hearing, does not permit the supervisory review procedure to be treated as an effective remedy.

5.2 The counsel for the author further submits that, although the legislation provides for the possibility of filing applications for a supervisory review and a presidential pardon, it does not regulate the length of such proceedings, nor provide for a procedure to inform the applicant of their outcome. In practice, in death penalty cases, the applicant is informed that his appeals have been rejected only minutes before execution. The outcome of such applications is also kept secret from the lawyers and families of those convicted. The counsel for the author 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 of submitting a communication to the Committee after his applications for a supervisory review and a presidential pardon have been rejected.

5.3 The counsel for the author submits that the author submitted an application for a presidential pardon on 16 October 2009 with the assistance of his lawyer. On 23 March 2010, his lawyer, acting on the author's behalf, appealed to the Chair of the Supreme Court of Belarus for a supervisory review, which was rejected on 26 April 2010.

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 submission of the State Party that there are no legal grounds for 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 rules of procedure of the Committee and 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 article 39, paragraph 2, of the International Covenant on Civil and Political Rights authorizes it 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 subject to its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Covenant.⁶ 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, to forward its Views to the State party and to the individual concerned.⁷ It is incompatible with its obligations under article 1 of the Optional 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.⁸

6.3 In the present case, the Committee observes that, when submitting the communication on 2 October 2009, the author informed the Committee that he had been

⁶ Preamble and art. 1 of the Optional Protocol.

⁷ Art. 5, paras. 1 and 4, of the Optional Protocol.

⁸ See, inter alia, communications No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1; and 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.

sentenced to death and that the sentence could be carried out at any time. On 12 October 2009, 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 13 November 2009, the Committee reiterated its request. On 23 March 2010, 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 a request for interim measures of protection had been duly addressed to the State party and that it was subsequently 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 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.⁹ In the present case, the author alleges that his rights under various articles of the Covenant have been violated. Having been notified of the communication and the request by the Committee for interim measures, the State party breached 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. Yuzepchuk, undermines the protection of Covenant rights through the Optional Protocol.¹⁰

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

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.

⁹ 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.

¹⁰ 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.

7.3 The Committee takes note of the argument of the State party that the communication is inadmissible since it was submitted to the Committee by third parties 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, 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.¹¹ In the present case, the 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.

7.4 The Committee takes note of the argument of the State party that Mr. Yuzepchuk 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 by the Supreme Court. The State party also argued that this constituted an abuse of the right of submission of a communication. The Committee considers that filing requests for a supervisory review to the President of a court against court decisions which have entered into force and depend on the discretionary power of a judge, constitute an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.¹² The State party has not shown, however, whether and in how many cases the petition to the President of the Supreme Court for supervisory review procedures have been applied successfully in cases concerning the right to a fair trial. Moreover, on 23 March 2010, the author's lawyer, acting on his behalf, appealed to the President of the Supreme Court of Belarus for a supervisory review, but the request was rejected on 26 April 2010. In such circumstances, the Committee finds that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering the present communication.

7.5 The Committee takes notes of the author's allegations that he was discriminated against, based on his Roma ethnicity, in violation of his rights under articles 14, paragraph 2, and 26 of the Covenant. However, in the absence of further explanations or evidence in support of those claims, 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, paragraphs 1 and 2; 7; 9, paragraph 3; and 14, paragraphs 1, and 3 (e) 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, paragraph 1, of the Optional Protocol.

¹¹ See, inter alia, *Kovaleva and Kozyar v. Belarus*, para. 10.2.

¹² See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; No. 1919-1920/2009, *Alexander Protosko and Andrei Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5, No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

8.2 The Committee notes the author's claims under articles 7 and 14, paragraph 3 (g), of the Covenant that he was subjected to physical and psychological pressure to force him to confess his guilt and that his confession served subsequently as a basis for his conviction. 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.¹³ It further recalls that the safeguard set out 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.¹⁴ The Committee notes that, despite numerous claims by the author that he was denied food, kept in solitary confinement for prolonged periods of time and fed unknown pills and alcohol, the State party has not presented any information to demonstrate that it has conducted an effective investigation into those specific allegations. In those circumstances, 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, paragraph 3 (g), of the Covenant.¹⁵

8.3 As to the author's claim that he was arrested on 9 January 2008, but was not brought before a judge for a review of his detention until 8 April 2009, nearly one year and three months after his arrest, the Committee notes that the State party has failed to address that allegation. 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 persons and its jurisprudence, pursuant to which such delays should not exceed a few days.¹⁶ The Committee further recalls that it has recommended on numerous occasions, in the context of consideration of the reports of States parties submitted under article 40 of the Covenant, that the period of detention before a person is brought before a judge should not exceed 48 hours.¹⁷ Any longer 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 nearly one year and three months before bringing the author before a judge to be incompatible with the requirement of promptness set forth in article 9, paragraph 3, of the Covenant. Accordingly, the author's rights under article 9, paragraph 3, have been violated.

¹³ See the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 14.

¹⁴ 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.

¹⁵ 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.

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 *Kovaleva and Kozyar v. Belarus*, para. 11.3; and communication No. 1787/2008, *Kovsh v. Belarus*, Views adopted on 27 March 2013, paras. 7.3–7.5.

¹⁷ See, for example, CCPR/CO/69/KWT, para. 12; CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13.

¹⁸ See *Borisenko v. Hungary*, para. 7.4. See also Basic Principles on the Role of Lawyers, adopted at the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, principle 7.

8.4 The Committee further notes the author's allegations that he was not able to cross-examine a key witnesses during the court hearings and that, overall, about 30 witnesses failed to appear and testify, both for the prosecution and the defence. The author further claims that he was not able to question his brother, S.L., who was interrogated during the pretrial investigation, but failed to appear in court. The author was therefore unable to cross-examine that witness too. The author further submits that one of the witnesses might have presented, if questioned, exculpatory evidence. In that connection, the Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, according to which, the right to obtain the attendance of the witnesses by the accused or their counsel is not unlimited, but that there should be a "proper opportunity to question and challenge witnesses against them at some stage of proceedings". The Committee considers that the failure to make a key witness, S.L., available for cross-examination, as well as the absence of 30 additional witnesses during the court hearings affected the fairness of the author's trial. In those circumstances and in the absence of any response from the State party, the Committee finds that the facts before it disclose a violation of article 14, paragraph 3 (e), of the Covenant.

8.5 The Committee notes the author's allegation that his rights under article 14, paragraph 1, were violated. It also notes that this allegation has not been 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, paragraph 3 (e) and (g), of the Covenant, the Committee is of the view that Mr. Yuzepchuk's trial suffered from irregularities which, taken as a whole, amount to a violation of article 14, paragraph 1, 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 notes that the State party has argued, with reference to article 6, paragraph 2, of the Covenant, that Mr. Yuzepchuk was sentenced to death for having committed serious crimes following the judgement handed down by the courts, in accordance with the Constitution, the Criminal Code and the Code of Criminal Procedure of Belarus, and that the imposition of the death penalty was not contrary to the Covenant. 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".¹⁹ 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.²⁰ In the light of the Committee's findings of a violation of article 14, paragraphs 1 and 3 (e) and (g), of the Covenant, it concludes that the final sentence of death and subsequent execution of Mr. Yuzepchuk did not meet the requirements of article 14 and that, as a result, his right to life under article 6 of the Covenant has 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

¹⁹ See also communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.14.

²⁰ 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.

Mr. Yuzepchuk's rights under article 6, article 7, article 9, paragraph 3, and article 14, paragraphs 1 and 3 (e) and (g), 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, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide adequate monetary compensation to the author's family for the loss of his life, including 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. 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 cases where 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 Views of the Committee. 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.
