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Human Rights Committee

Communication No. 2289/2013

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

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| <i>Submitted by:</i> | Pavel Selyun (represented by counsel, Andrei Paluda) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Belarus |
| <i>Date of communication:</i> | 27 September 2013 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 2 October 2013 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 6 November 2015 |
| <i>Subject matter:</i> | Imposition of a death sentence after unfair trial, based on confessions obtained under duress |
| <i>Procedural issues:</i> | Failure of the State party to cooperate, non-respect of the Committee's request for interim measures, level of substantiation of claims |
| <i>Substantive issues:</i> | Arbitrary deprivation of life; 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)-(4) and 14 (1), (2) and (3) (b), (d) and (g) |
| <i>Articles of the Optional Protocol:</i> | 1, 2 and 5 (2) (b) |



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2289/2013*

Submitted by: Pavel Selyun (represented by counsel,
Andrei Paluda)

Alleged victim: The author

State party: Belarus

Date of communication: 27 September 2013 (initial submission)

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

Meeting on 6 November 2015,

Having concluded its consideration of communication No. 2289/2013, submitted to it by Pavel Selyun 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 (4) of the Optional Protocol

1.1 The author of the communication is Pavel Selyun, a Belarus national born in 1990, who at the time of the submission of the communication was detained on death row in Minsk, after having been sentenced to death by the Grodno Regional Court on 12 June 2013. The author claimed to be a victim of violation, by Belarus, of his rights under article 6 (1) and (2), article 7, article 9 (1)-(4) and article 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 2 October 2013, 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 consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

sentence of Mr. Selyun while his case was under examination by the Committee. On 19 December 2013, the Committee reiterated its request.

1.3 On 22 May 2014, the Committee received information from counsel to the effect that the author's death sentence had been carried out on 17 April 2014.¹

The facts as submitted by the author

2.1 On 7 August 2012, the author was arrested and brought to the police station of the Oktyabrsk district in the city of Grodno. He was subsequently charged with the murder of two persons, theft, stealing someone's passport or other important documents, and mutilation of a dead body. On 16 August 2012, based on the order of a prosecutor of the Grodno Regional Prosecutor's Office, he was formally placed in detention in prison No. 1 in Grodno.²

2.2 Counsel submits that the author was never brought promptly before a judge to review the lawfulness of his detention. The author saw a judge for the first time at the beginning of the trial, on 25 February 2013,³ i.e. more than six months after his apprehension. In addition, his arrest was ordered by a prosecutor, as required by the Criminal Procedure Code of Belarus. Since this order should have been issued by a judicial officer, as required by the Covenant, this procedure, according to counsel, violated the author's rights under the Covenant.

2.3 Counsel also submits that, when the author was brought to the police station on 7 August 2012, he was put on the floor and beaten by several police officers. He was then interrogated and told that, if he cooperated, it would help his case and he would only get 10 years of imprisonment. The police officers also threatened that, if he did not confess, he would be subjected to sexual violence by other inmates. Officers also threatened to charge his brother with crimes. The author complained about this physical and psychological abuse during the trial, but the court considered that no violations against the author had taken place.

2.4 Counsel submits that the author also complained during the trial about the conditions of detention: that he was placed in solitary confinement, that he was stripped of his clothes and left in only his underwear, and that he was not given food, water or access to sanitary facilities. The author complained in court that the confessions that he had signed had been extracted under torture, and should not be retained as evidence. All these complaints were ignored by court.

2.5 Counsel further submits that, during the initial interrogation on 7 August 2012, the police officers did not provide the author with a lawyer. He met with a first lawyer, who had been appointed ex officio, on 7 August 2012, but only after the initial interrogation. That lawyer was subsequently replaced by another State-appointed lawyer for reasons unknown to the author. The author was finally able to hire a private lawyer when he was preparing an addendum to his cassation appeal.⁴ Counsel further submits that, during the pretrial investigation, almost all of the actions taken by investigators were carried out

¹ Counsel submits a copy of the author's death certificate.

² Counsel 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 or her whereabouts; to be questioned within 24 hours of detention in the presence of a lawyer; and to remain silent.

³ It is not clear whether, at this hearing at the beginning of his trial, the author raised the issue of the arbitrariness of his detention.

⁴ Counsel provides no further details regarding those lawyers.

without the presence of the author's lawyer. Counsel submits that, under article 45 of the Criminal Procedure Code, the author was considered a suspect in the commission of very serious crimes, which could possibly 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.

2.6 Counsel further submits that the psychological and psychiatric assessment of the author did not take into account many aspects of his life, and thus the psychiatric condition of the author was ignored.⁵

2.7 On 12 June 2013, the Grodno Regional Court found the author guilty of two murders, theft and the mutilation of a dead body. The author was sentenced to death. Counsel submits that during the trial the court clearly showed its bias against the author.⁶ Regarding the presumption of innocence, enshrined in article 14 (2) of the Covenant, the court disregarded several discrepancies between the statements the author made to the police and those he made during the court hearings.⁷ According to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, defendants normally should not be handcuffed or kept in cages. Despite these requirements, the author was kept in a metal cage throughout the court hearings. A convoy of four officers forced the author to walk with his head bent down close to his knees, a special treatment for persons facing the death penalty. After the verdict was announced, the author was forced to wear a special robe with an acronym which indicated that he had been sentenced to death, even though the verdict was not yet in force. His case was widely publicized in State-owned media even before the beginning of the court trial, and a popular television channel in Belarus described him as a "criminal".

2.8 Counsel submits that the author was sentenced to death based on his forced confession obtained under torture and ill-treatment, evidence that should not have been considered by the court. During these court hearings, the author clearly stated that he had been tortured to force him to confess, and that the police officers had threatened his relatives. The court disregarded this testimony from the author. 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.

2.9 On 19 June 2013 and 11 September 2013, the author, acting through his lawyer, filed cassation appeals with the Supreme Court of Belarus, claiming, *inter alia*, that his rights under several articles of the Covenant had been violated. On 17 September 2013, the Supreme Court 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 guilt.

2.10 Counsel contends that all available domestic remedies have been exhausted.

The complaint

3. Counsel claims that the author's rights under article 6 (1) and (2), article 7, article 9 (1)-(4), and article 14 (1), (2) and (3) (b), (d) and (g) 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 found guilty of serious crimes and sentenced to death after an unfair trial, based on his forced confessions.

⁵ Counsel provides no further information on this.

⁶ Counsel submits that the representatives of victims of the alleged crimes "were very aggressive" towards the author, without providing further details.

⁷ No further information is provided.

State party's observations on admissibility

4. In a note verbale dated 2 December 2013, the State party conveyed its concern about unjustified registration of the communication submitted by Mr. Selyun, whom it considered as not having exhausted all available domestic remedies in the State party, without providing any further details. The State party also indicated that the author had submitted an application for a pardon by the President of Belarus.⁸

Issues and proceedings before the Committee

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

5.1 The Committee notes that the State party failed to respect the Committee's request for interim measures by executing the author before the Committee had concluded its consideration of the communication.

5.2 The Committee recalls that article 39 (2) of the Covenant 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 Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Covenant.⁹ 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.¹⁰ 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 communications and in the expression of its Views.¹¹

5.3 In the present case, the Committee observes that, when he submitted the communication on 27 September 2013, the author informed the Committee that he had been sentenced to death and that the sentence could be carried out at any time. On 2 October 2013, 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 19 December 2013, the Committee reiterated its request. On 22 May 2014, 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 this request had subsequently been reiterated.

5.4 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

⁸ The State party provides no further information about the outcome of this pardon request.

⁹ Preamble and art. 1 of the Optional Protocol.

¹⁰ Art. 5 (1) and (4) of the Optional Protocol.

¹¹ 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.

futile.¹² In the present case, the author alleged that his rights under various provisions of the Covenant had been violated in a manner that directly reflected 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.

5.5 The Committee 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 an alleged violation. Flouting of that rule, especially by irreversible measures, such as, in the present case, the execution of Mr. Selyun, undermines the protection of Covenant rights through the Optional Protocol.¹³

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the 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.

6.2 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.

6.3 With regard to the requirement laid down in article 5 (2) (b) of the Optional Protocol, the Committee takes note of the State party's argument that Mr. Selyun had not exhausted all domestic remedies at the time of submission of his communication, in particular in view of the fact that his application for a presidential pardon was still pending. In this regard, and in the light of the information regarding the execution of the author, the Committee reiterates its previous jurisprudence, according to which the presidential pardon is an extraordinary remedy¹⁴ and as such does not constitute an effective remedy for the purposes of article 5 (2) (b) of the Optional Protocol. Furthermore, in the present case the pardon could not on its own have constituted a sufficient remedy for the violations alleged. Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 The Committee takes note of the author's allegations that his rights under article 9 (1) and (2) and article 14 (1) of the Covenant were violated. It notes that the State party has not refuted those allegations. However, in the absence of further detailed information, explanations or evidence in support of those claims on file, the Committee finds these allegations insufficiently substantiated for the purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining claims, raising issues under article 6 (1) and (2), article 7, article 9 (3) and (4) and article 14 (2) and (3) (b), (d) and (g)

¹² 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.

¹³ 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.

¹⁴ See communications No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 6.4; No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 6.3; and *Kovaleva and Kozyar v. Belarus*, para. 10.4.

of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Committee has considered this communication in the light of the information received, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the claims under article 7 of the Covenant that the author was beaten by several police officers and subjected to physical and psychological pressure to force him to confess guilt in a number of crimes.¹⁵ The Committee observes that those allegations have not been refuted by the State party. The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate the complaint promptly and impartially.¹⁶ The Committee notes that, despite indications that the author was tortured and complaints by the author in this connection, the State party has not presented any information to demonstrate that its authorities have conducted any 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 article 7 of the Covenant.

7.3 The Committee further notes the claims that the author was subjected to torture and forced to confess guilt in a number of crimes, and that this confession was used by the courts to convict him, despite requests by the author that such evidence should be suppressed. The Committee 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.¹⁷ Information obtained as a result of torture must be excluded from the evidence.¹⁸ In the absence of any information from the State party in this regard, the Committee concludes that the facts before it disclose a separate violation of the author's rights under article 14 (3) (g) of the Covenant.

7.4 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 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.¹⁹ The Committee takes note of the author's unchallenged allegations that he was apprehended on 7 August 2012, and was officially placed in pretrial detention by the order of a prosecutor on 16 August 2012, and was not brought before a judge until the beginning of the court trial, on 25 February 2013. The Committee recalls that, in its general comment No. 35, it stated that it was inherent to the proper exercise of judicial power that such power should be exercised by an authority which was independent,

¹⁵ See paragraph 2.3 above.

¹⁶ See general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, para. 14.

¹⁷ See, for example, general comment No. 32, para. 41; and communications No. 330/1988, *Berry v. Jamaica*, Views adopted on 7 April 1994, para. 11.7; *Singarasa v. Sri Lanka*, para. 7.4; and No. 1769/2008, *Ismailov v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.6.

¹⁸ See general comment No. 32, para. 41.

¹⁹ See general comment No. 35 (2014) on liberty and security of person, para. 33.

objective and impartial in relation to the issues dealt with, and that a public prosecutor could not be considered as an officer authorized to exercise judicial power within the meaning of article 9 (3). In these circumstances, the Committee considers that the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power as required by article 9 (3) of the Covenant. 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 claims raising issues under article 9 (4) of the Covenant.

7.5 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, and was forced to walk with his head close to his knees. In this respect, the Committee recalls its jurisprudence, 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.²⁰ In the same general comment, the Committee 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 that undermines the presumption of innocence.²¹ 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 throughout the court trial, the Committee considers that the facts as presented demonstrate that the right of Mr Selyun to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, has been violated.

7.6 The Committee further notes the author's allegation that, during the pretrial investigation stage, he was not afforded the effective and continued assistance of a lawyer, and that he was able to hire a privately retained lawyer only in the framework of the preparation of his cassation appeal. In this context, the Committee notes, for example, that, during more than six months of pretrial detention, the author did not have effective and continued access to his lawyers, and that the majority of the investigative actions, such as cross-examinations and interrogations, took place in the absence of a lawyer. The Committee also notes that these allegations have not been refuted by the State party. Accordingly, it considers that due weight must be given to the author's allegations. Referring to its general comment No. 32, the Committee recalls that in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.²² In these circumstances, the Committee concludes that the facts as submitted by the author reveal a violation of his rights under article 14 (3) (b) and (d) of the Covenant.

7.7 Counsel further claims that the author's right to life under article 6 of the covenant was violated, since the author 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

²⁰ See general comment No. 32, para. 30.

²¹ Ibid. See also communication No. 1405/2005, *Pustovoit v. Ukraine*, Views adopted on 20 March 2014, para. 9.2.

²² See general comment No. 32, para. 38.

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.²³ In the same context, the Committee reiterates its jurisprudence that the imposition of a sentence of death upon the 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.²⁴ In the light of the Committee's findings of a violation of article 7 and article 14 (2) and (3) (d) and (g) of the Covenant, especially in the light of the author's unrefuted allegations of torture and ill-treatment to force him to confess guilt, which served as a basis for his conviction, it concludes that the final sentence of death and the subsequent execution of Mr. Selyun 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.

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

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to conduct an impartial, effective and thorough investigation into the torture claims, to prosecute those responsible and to provide 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 its requests for interim measures.

10. 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 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 in which 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.

²³ See also communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.14.

²⁴ 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; *Idieva v. Tajikistan*, 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.