

HUMAN RIGHTS COMMITTEE

Banderenko v. Belarus

Communication No. 886/1999

3 April 2003

CCPR/C/77/D/886/1999

VIEWS

Submitted by: Natalia Schedko (represented by counsel, Mrs. Tatiana Protko)

Alleged victim: The author and her son Anton Bondarenko (deceased)

State party: Belarus

Date of communication: 11 January 1999

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. 886/1999, submitted to the Human Rights Committee on behalf of Mrs. Natalia Schedko and Mr. Anton Bondarenko 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 Ms. Natalia Schedko, a Belarusian national. She acts on behalf of herself and of her deceased son, Anton Bondarenko, also a Belarusian national, who at the time of

submission of the communication, 11 January 1999, was detained on death row, having been convicted of murder and sentenced to death. She claims that her deceased son is a victim by the Republic of Belarus 1/ of violations of articles 6 and 14 of the International Covenant on Civil and Political Rights. From her submissions, it transpires that the communication also raises issues under article 7 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. Bondarenko, pending the determination of the case by the Committee. As it transpired from the State party's submission of 12 January 2000 that Mr. Bondarenko's death sentence had been executed on an unspecified previous date, the Committee addressed specific questions both to the author and to the State party. 2/ From the answers, it transpired that Mr. Bondarenko was executed in July 1999, 3/ 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 Mr. Bondarenko was accused of murder and several other crimes, found guilty as charged and sentenced by the Minsk Regional Court on 22 June 1998 to death by firing squad. The decision was confirmed by the Supreme Court on 21 August 1998. According to the courts' assessment of the facts, Mr. Bondarenko broke into a private house on 25 July 1997, in the company of a minor named Voskoboynikov, and forced the owners at knifepoint to open their safe. After having taken the valuables out of the safe, Mr. Voskoboynikov had warned Mr. Bondarenko that one of the house occupants, Mr. Kourilenkov, would report them, and suggested that Mr. Bondarenko kill him. Bondarenko had stabbed Mr. Kourilenkov twice in the neck with a pocket knife and then stopped. Mr. Voskoboynikov had continued stabbing Mr. Kourilenkov in the neck and body with his own knife. Kourilenkov's grandmother, Mrs. Martinenko was also killed when she opened the front door; she was pushed down the cellar staircase by Mr. Voskoboynikov, and then stabbed several times.

2.2 According to the author, forensic evidence concluded that Kourilenkov died of multiple wounds to the neck and body, with damage to the left jugular vein and the larynx, complicated by massive external bleeding and acute traumatic shock. In the author's opinion, the trial proved that Mr. Bondarenko had stabbed Mr. Kourilenkov only twice, which in the author's view could not have caused his death. With regard to the homicide of Mrs. Martinenko, the author considers that there was irrefutable evidence that Mr. Bondarenko was not guilty. Mr. Voskoboynikov allegedly had confessed, on 24 August 1998, that he lied during the investigation and in court, falsely accusing Bondarenko. He had earlier refused to reveal the whereabouts of the murder weapon - his knife, with which he had committed both murders - but now pointed out where it was hidden so that the case could be reopened and a further inquiry initiated.

2.3 The author states that the President of the Supreme Court refused even to add the knife to the case file, holding it did not constitute sufficient evidence in support of the claim that Mr. Bondarenko had not been involved in the murders. Thus the Court is said to have refused to place on file evidence in defence of the author's son which would mitigate his guilt and prove that he had not been actively involved in the murders.

The complaint

3.1 The author claims that the domestic courts did not have clear and unambiguous evidence that would have proven that her son was guilty of the murders. In her opinion, the President of the Supreme Court ignored the testimony of her son's co-defendant (given after the trial) and refused to include evidence that would have mitigated the guilt of her son. That is said to underline the preconceived attitude of the court with regard to her son, and such a court cannot be considered to be independent and impartial. In her opinion this constitutes a violation of articles 6 and 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 denial of information 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 the author's 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, recalling that Mr. Bondarenko was tried and found guilty by the Minsk Regional Court on 22 June 1998 of all crimes specified under articles 89, 90, 96 and 100 of the Criminal Code of the Republic of Belarus. 4/ He was sentenced to death and confiscation of his property. In the same judgement, Mr. Voskoboynikov was sentenced on the same charges to 10 years' imprisonment and confiscation of property. 5/

4.2 To the State party, the evidence in the case clearly demonstrated that Mr. Bondarenko and Mr. Voskoboynikov were guilty of armed assault against and aggravated homicide of Mrs. Martinenko and Mr. Kourilenkov.

4.3 According to the State party, although Mr. Voskoboynikov had denied involvement in the murders, the evidence proved his guilt. The investigation and the courts were satisfied that Mr. Bondarenko and Mr. Voskoboynikov had jointly perpetrated the murders of Mrs. Martinenko and Mr. Kourilenkov, and that they had both stabbed them. Thus Mr. Voskoboynikov's statement that he had lied during the investigation and the trial and falsely accused Bondarenko is without foundation.

4.4 The State party asserts that the courts' evaluation of Mr. Bondarenko's and Mr. Voskoboynikov's

actions was correct. Having considered the nature of the crimes committed by Mr. Bondarenko, the great danger they represented to the public, and his motives and methods, as well as previous information that reflected negatively on the accused's personality, the court came to the conclusion that Mr. Bondarenko constituted a particular menace to society and imposed the death penalty.

4.5 According to the State party, all aspects of the case were thoroughly considered during the preliminary investigation and the court proceedings. Accordingly, there are no grounds for challenging the judgements.

4.6 The State party closes with the information that Mr. Bondarenko's sentence has been carried out, but provides no date.

Author's comments

5.1 In her comments of 29 January 2001, counsel refers to the State party's contentions that the courts had correctly characterized Mr. Bondarenko's and Mr. Voskoboynikov's actions and that the investigation and the courts had established that they had jointly murdered Mrs. Martinenko and Mr. Kourilenkov. Counsel points out, however, that forensic evidence concluded that Mr. Kourilenkov had died of multiple wounds to the neck and to the body, the left cheek and the larynx, combined with massive haemorrhage and acute traumatic shock. The courts had concluded that Mr. Bondarenko had stabbed Mr. Kourilenkov twice, which in counsel's opinion did not and could not have been the cause of death.

5.2 Counsel recalls that Mr. Voskoboynikov had admitted that he had acted alone in killing Mrs. Martinenko. The knife used to commit the murders had not been included in the file.

5.3 Counsel therefore concludes that the death sentence imposed on Mr. Bondarenko was in violation of article 6 of Covenant. In any event, the sentence was carried out.

Additional observations from the author and the State party

6.1 After the Committee had sent a letter to the parties on 11 July 2002 with a request to provide information on the execution of the death sentence, 6/ counsel submitted the following observations on 24 July 2002. She states that according to the author, the latter obtained a death certificate dated 26 July 1999, stating that her son was executed on 24 July 1999. 7/ 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 B (8). 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.

6.2 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.

6.3 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 the name of the prisoner or the exact location of his burial site.

6.4 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.

6.5 Counsel asserts, without giving any further detail, that Mrs. Schedko 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.

7.1 On 12 September 2002 the State party replied to the Committee's request 9/ 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 asserts that Mr. Bondarenko was executed on 16 July 1999, further to the decision of the Minsk Regional Court of 22 June 1998. 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 three months before the State party was informed about the registration of the communication under the Optional Protocol.

7.2 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

8.1 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 apprised of the registration of the author's communication under the optional protocol by Note Verbale of 28 October 1999, i.e., three months after the execution. In its earlier case law the Committee had addressed the issue of a State party acting in breach of the 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 10/ was decided and published subsequent to the execution of Mr. Bondarenko, the Committee cannot hold the State party responsible for a breach of the Optional Protocol due to the execution of Mr. Bondarenko after the submission of the communication, but prior to its registration.

Determination of admissibility

9.1 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.

9.2 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.

9.3 The Committee has noted the author's allegations that the courts did not have clear, convincing and unambiguous evidence, proving her son's guilt of the murders, and that the President of the Supreme Court ignored the testimony of her son's co-defendant given after the trial and refused to include evidence which could have mitigated her son's guilt. In the author's opinion, this shows conclusively that the court had a preordained attitude as far as her son's guilt was concerned, and displays the lack of independence and impartiality of the courts, in violation of articles 6 and 14 of the Covenant. These allegations therefore challenge 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 Regional 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.

9.4 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.

9.5 The Committee thus declares the communication admissible to the extent outlined in paragraph 9.4 above and proceeds to the examination on the merits of this claim.

Consideration on the merits

10.1 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.

10.2 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 a 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.

11. 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.

12. 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.

13. 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/ According to the author, her son was executed on 24 July 1999; the State party gives the date 16 July 1999.

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

5/ The Court took into account the fact that Mr. Voskoboynikov was a minor at the moment of the crime.

6/ See endnote n ° 2

7/ See endnote n ° 3.

8/ 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.

9/ See endnote n ° 2.

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