



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**  
Ninety-eighth session  
8 to 26 March 2010

**Views**

**Communication No. 1552/2007**

<u>Submitted by:</u>	Ms. Tatiana Lyashkevich (not represented by counsel)
<u>Alleged victim:</u>	Mr. Andrei Lyashkevich, the author's son
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	4 October 2005 (initial submission)
<u>Document references:</u>	- Special Rapporteur's rule 97 decision, transmitted to the State party on 4 April 2007 (not issued in document form); - CCPR/C/92/D/1552/2007 - decision on admissibility adopted on 13 March 2008.
<u>Date of adoption of Views:</u>	23 March 2010

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Unfair trial, use of torture during preliminary investigation, ill-treatment
<i>Substantive issues:</i>	Arbitrary detention, torture, unfair trial, conditions of detention, habeas corpus
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claim.
<i>Articles of the Covenant:</i>	2, 7, 9, 10, 14
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b)

On 23 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1552/2007.

[ANNEX]

## 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 (Ninety-eighth session)**

concerning

**Communication No. 1552/2007\*\***

Submitted by: Mrs. Tatiana Lyashkevich (not represented by counsel)

Alleged victims: Mr. Andrei Lyashkevich, the author's son

State party: Uzbekistan

Date of the communication: 4 October 2005 (initial submission)

Date of Admissibility decision: 13 March 2008

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

Meeting on 23 March 2010,

Having concluded its consideration of communication No. 1552/2007, submitted to the Human Rights Committee on behalf of Mr. Andrei 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 authors of the communication, and the State party,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Ms. Tatiana Lyashkevich, a Russian national born in 1948 and currently residing in Uzbekistan. She submits the communication on behalf of her son, Mr. Andrei Lyashkevich, a Russian national born in 1977 and also residing in Uzbekistan, who, at the time the communication was submitted, was serving a 20-year prison sentence following his conviction by the Tashkent City Court on 2 March 2004 in a case of murder and robbery. The author claims that her son is the victim of a violation by Uzbekistan of his rights under articles 2, 7, 9, 10 and 14 of the Covenant. The author is unrepresented.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

**Factual background**

2.1 On 2 March 2004, the Tashkent City Court found the author's son guilty of murder with aggravating circumstances and robbery with violence, and sentenced him to 20 years' imprisonment. According to the court, the author's son killed Mr. A. Sayfutdinov in the author's apartment on 6 August 2003 in order to seize a sum of money belonging to the victim. To conceal the murder, the author's son took Mr. Sayfutdinov's body to the cellar of the building, cut it up into pieces and put it into bags. He threw the bags into the Salar canal in Tashkent during the night of 7 August 2003.

2.2 The case was heard on appeal on 13 April 2004 by the Appeal Division of the Tashkent City Court, which applied a presidential amnesty and reduced the sentence of the author's son by four years, while upholding his conviction. The case was also brought to the attention of the Supreme Court on various occasions through applications for judicial review. On an unspecified date, the Criminal Chamber of the Supreme Court examined the case and upheld Mr. Lyashkevich's conviction.<sup>1</sup>

2.3 The author claims that her son is innocent. She had authorized him to sell certain family valuables and this is how he came to know Mr. Sayfutdinov, who purchased some of these items. A meeting was held in the author's apartment on 6 August 2003, in her absence. Her son presented Mr. Sayfutdinov to another person, Sergei, who sold objects and who he had met by chance. After examining the items concerned, Mr. Sayfutdinov became suspicious about their quality and had an argument with Sergei on the matter. Sergei took out a knife and stabbed Mr. Sayfutdinov in the chest, killing him. Sergei dragged the body to the basement of the building and put it in a bag. He left the premises saying that he would be back. He told the author's son that he admitted his responsibility. Later on, the author's son borrowed a friend's car and drove to a canal, where he threw the bag into the canal.

2.4 On 7 August, on returning to work, the author found two policemen waiting for her who showed her a photograph. She recognized an individual who had been looking for her son a few days before; she was informed that it was Mr. Anvar Sayfutdinov. At the time, the author's son was at her sister's house.

2.5 On the morning of 8 August 2003, the author was asked to present herself at the Yakkasarsky district police station. There, she states, she was questioned by several policemen between 10 a.m. and 1 p.m. and invited to give explanations on the events of 6 August. She was threatened by the deputy chief of the police station with being put in jail if she made a false statement. She was also accused of murdering Mr. Sayfutdinov together with her son. The author asserts that she knew nothing of the events of 6 August. When she asked to be treated more decently, she was struck on the hand.<sup>2</sup>

2.6 Later the same day, Mr. Radjabov, chief of the investigating unit, asked the author to bring her son to the police station. He promised that her son would not be subjected to physical coercion and would be freed after giving explanations. After her son arrived at the

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<sup>1</sup> The author provides copies of 13 replies received from the Supreme Court. Two of them, dated 14 January 2005 and 8 November 2004, signed by Mr. Khasanov, Vice-President of the Court's Criminal Chamber, and Mr. Tursunbaev, President of the Criminal Chamber, informed the author and the lawyer that, following their complaints, the son's case had been examined under the judicial review procedures by the Criminal Chamber of the Supreme Court. The Court found that there was no reason to refer the case for additional investigation and upheld the sentence. Another letter, dated 30 December 2004, also refers to a judicial review of the case by the Criminal Chamber of the Supreme Court, again upholding the sentence. The other replies of the Supreme Court, signed by its President or Vice-Presidents, reject the author's complaints and refuse to initiate a judicial review by the Court.

<sup>2</sup> The author claims that she had bruises for a week.

police station, she was taken back to her apartment, which the police proceeded to search. According to the author, the police had no search warrant. She did not receive a report on the search, even though this is required by law.

2.7 The author states that she took her son to the police at 2 p.m. She was not released until about midnight, despite the fact that Uzbek law prohibits any investigative procedure between 10 p.m. and 6 a.m. She asserts that she was not informed of her rights and obligations as a witness and that she was compelled to testify against her son, without going into greater detail.

2.8 The author returned to the police station on 9 August in search of her son, but was sent to the procurator's office, where she was invited to go and look for him in the Tashkent Department of Internal Affairs. Failing to find him there, she returned to the police station, where she was threatened with being locked up.

2.9 On 10 August, the author received a further visit from the police and a procurator for an in situ investigation. Her son was also present. He was handcuffed and, according to the author, answered questions only by "yes" and "no", while the policemen explained to him how the crime had been committed. Her son confessed to murdering Mr. Sayfutdinov, without giving any details of the sequence of events. The police filmed everything. On this occasion too, according to the author, she was not shown either a warrant to search at her home or a report on the investigation acts conducted.

2.10 In view of her son's condition, the author tried to find a lawyer. On 11 August, accompanied by a lawyer, she went to the police station, and subsequently to the procurator's office, to look for her son. She met with the deputy district procurator and the inspector in charge of the investigation. The inspector informed them that no investigative acts in the case were scheduled for that day. The lawyer was invited to present himself the following day, in order to attend an interrogation. It later transpired that, on 11 August, the author's son had been interrogated and participated in confrontations, without a lawyer being present.

2.11 The author notes that the documents relating to the preliminary investigation refer to the presence of a court-appointed lawyer, Mr. Burkhanov. According to her, the investigator sent a letter on 10 August to the Tashkent Bar Association requesting that a lawyer be appointed for Mr. Lyashkevich; on the same day, the Bar Association sent Mr. Burkhanov to act as defence counsel for the author's son.

2.12 The author states that, on 12 August, she received a further visit from the investigators, accompanied by her son. The officers again searched the apartment. She was not shown any warrant and did not receive a copy of the report.

2.13 The author asserts that, following the proceedings in first and second instance, her son's new lawyer sought clarification from the Tashkent Bar Association on Mr. Burkhanov's authorization to represent Mr. Lyashkevich. The Bar Association replied that the authorizations log for the period August 2003 to August 2004 did not confirm that Mr. Burkhanov had received such an authorization. According to the author, this means that the copy of the authorization to act attached to her son's file by the investigators was a forgery.<sup>3</sup> She notes that Mr. Burkhanov's signature appears on three reports in the file: the report relating to her son's interrogation as a suspect, the report on his confrontation with a

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<sup>3</sup> The author adds that subsequently, in 2004, Mr. Burkhanov was sentenced to 11 years' imprisonment for fraud.

certain Mr. Kladov,<sup>4</sup> and the report concerning his indictment and interrogation as a defendant. All these procedures took place on 11 August 2003.

2.14 According to the author, the foregoing demonstrates the existence of numerous procedural irregularities and confirms her son's statements that, during his arrest and the preliminary inquiries, he was denied his rights of defence.<sup>5</sup> She says that, by judgement of 24 September 2004, the Supreme Court ruled that statements obtained from a suspect in the absence of a lawyer have no legal force and cannot serve as a basis for charges. Article 51 of the Code of Criminal Procedure stipulates that the presence of a lawyer is obligatory if the accused is liable to the death penalty.

2.15 With reference to article 7 of the Covenant, the author states that during the preliminary investigation and before the court, her son explained that he had been beaten and tortured during his interrogations on 8, 9 and 10 August 2003 and that he had confessed under duress to killing the victim. He reportedly told the court that he had been advised by the lawyer to so inform the investigator immediately, but had been unable to speak to the latter until 30 October 2003, during an interrogation. Mr. Lyashkevich stated to the court that, on 9 August 2003, on the third floor of the Yakksarsky district police station, he had been beaten by a policeman who had struck him on the head and told him to confess to the murder. He also stated that he had been beaten in turn by seven or eight other individuals in the same police station. When the court questioned the chief of the criminal investigation department of the Department of Internal Affairs of the Yakksarsky district, he denied these allegations. The author's son further stated that the chief had also struck him, on 8, 9 and 10 August 2003.

2.16 With reference to article 9 of the Covenant, the author states that she brought her son to the police on 8 August 2003, after having received guarantees that he would only be interrogated and then released. However, this was not the case, and she was informed only on 11 August 2003, that her son was arrested for murder. She affirms that during the preliminary investigation, Mr. Lyashkevich furnished written explanations on 8 August, confirming that he knew the victim and had met him on 6 August; this document was not dated. On 9 August he provided further written explanations. Neither document mentioned the murder. On 10 August, under duress, the author's son produced written explanations stating that he had killed Mr. Sayfutdinov. According to the author, the investigators detained her son illegally for three days, and only after the desired confessions were obtained was her son officially charged. The author therefore considers that her son's detention between 8 and 10 August 2003 was illegal. She adds that, while her son still had the status of witness, he was questioned as a suspect, with fewer procedural guarantees.

2.17 The author invokes article 10 of the Covenant, and claims that, after being convicted, her son was imprisoned at Andijan from May 2004 to February 2005. She sent her son various documents to enable him to prepare appeals to the Supreme Court and other institutions. She says that no appeal from her son was received by those institutions. In January 2005, the author requested the Penal Correction Department to transfer her son to the Tashkent region.<sup>6</sup> This request was rejected. In March 2005, her son was transferred to Karchi prison.

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<sup>4</sup> Mr. Kladov was also tried under the same case for failing to inform the authorities about the murder, despite knowing about it.

<sup>5</sup> On this point, the author refers to a Supreme Court decision, various provisions of which deal with the application of a number of legal guarantees in respect to the rights of suspects and accused persons.

<sup>6</sup> The author justified her request by the fact that she lives on her own, is handicapped and has only a moderate income. She also pointed out that her son had suffered from hepatitis on two occasions prior

2.18 Mr. Lyashkevich also complained that, during an illness, he had received no medical assistance. The author says she requested the prison administration to provide her son with the necessary care. When she visited the prison on 5 July 2005, her son had a temperature of over 39 degrees. He had had a high temperature for several days and was coughing, without receiving any care. The author requested the chief of the prison administration to provide her son with care, and she supplied medicine.

2.19 On 8 July 2005, the prison administration contacted the author to inform her that her son had been transferred urgently to the Tashkent prison hospital. After one week, she was informed by doctors at the hospital that, on arrival, her son had had a temperature of 39-40 degrees and had been in a very weakened state, and that medical analyses had established that he was suffering from tuberculosis.

2.20 The author further contends that in violation of article 14, paragraphs 1, 2, 3 (b) and (g), of the Covenant, her son's case was not examined objectively, in violation of the principles governing the administration of justice. The evidence adduced against him was based on forced confessions, mere suppositions by investigators, various conflicting testimony and expert findings lacking evidentiary value. According to the author, the court sided openly with the prosecution while ignoring all her son's explanations, and the judgement merely reproduced the indictment. The court ignored the discrepancies in the various written explanations provided by her son between 8 and 10 August 2003, and disregarded those explanations. The author argues that the court assessed the evidence incorrectly and makes a detailed rebuttal of various findings of the court based on its examination of the facts and the evidence.<sup>7</sup> She also rejects as unfounded the court's conclusion that her son acted out of self-interest, and that he was systematically taking drugs at the time.

### **The complaint**

3. The author therefore claims that the facts as presented demonstrate that her son was the victim of a violation by Uzbekistan of his rights under articles 2, 7, 9, 10 and 14 of the Covenant.

### **State party's observations on admissibility**

4. By Note verbales dated 6 June and 31 July 2007, the State party challenged the admissibility of the communication on the grounds that the author had not exhausted all available domestic remedies. It noted that, on 2 March 2004, Mr. Lyashkevich was sentenced by the Tashkent City Court to 20 years' imprisonment for murder and robbery. His case was examined by the Supreme Court (Criminal Chamber) on 29 June 2004. Nevertheless, the Uzbek Courts Act provided that, aside from the hearing of cases on judicial (supervisory) review by the Criminal Chamber of the Supreme Court, its Presidium and its Plenum also have the right to examine cases.

### **Decision on admissibility**

5.1 During its ninety-second session, on 13 March 2008, the Committee examined the admissibility of the communication. It noted the State party's challenge to admissibility on the grounds that the case had not been examined by the Plenum or Presidium of the Supreme Court of Uzbekistan under the supervisory review procedure. The Committee observed that the State party provided no explanation as to the effectiveness of these

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to his conviction and thus had liver problems, that he had a heart condition, suffered from rheumatism, etc.

<sup>7</sup> Such as testimony, expert findings, various depositions, etc.

proceedings but limited itself to noting that they were provided for by law. The Committee considered that even if such remedies may be *effective* in certain situations, such reviews were possible only with the express consent of the President or Vice-Presidents of the Supreme Court, who therefore have discretionary power to refer or not to refer a case to the Court, whereas a convicted person claiming that his or her rights have been violated could not initiate such a review directly.

5.2 The Committee noted that, in the present case, the author provided copies of eleven rejections of her applications for a judicial review, signed by the President or the Vice-Presidents of the Supreme Court; thus, the fact that the case of the author's son had not been examined by the Plenum or the Presidium of the Supreme Court could in no way be attributed to the author. The Committee also noted that the State party's Courts Act indicated that, apart from reviews conducted by the Chambers of the Supreme Court, the Presidium or the Plenum of the Supreme Court *may* also examine such cases. In the Committee's view, this showed that the remedies concerned are not generally applicable but remain discretionary and exceptional. Accordingly, the Committee considered that it was not barred from examining the present communication by article 5, paragraph 2 (b), of the Optional Protocol.

5.3 The Committee further noted the author's claim that her son's rights under article 2 of the Covenant have been violated, without providing any information in support of the claim. It recalled that the provisions of article 2 of the Covenant, which lay down general obligations for State parties, could not, in isolation, give rise to a claim in a communication under the Optional Protocol.<sup>8</sup> The Committee considered that the author's contentions in this regard were inadmissible under article 2 of the Optional Protocol.

5.4 The Committee also noted the author's claim that her son's rights under article 9 of the Covenant had been violated (see paragraph 2.16 above). In the absence of any further detailed and documented information in support of these allegations, the Committee considered that this part of the communication was insufficiently substantiated, for purposes of admissibility, and was therefore inadmissible under article 2 of the Optional Protocol.

5.5 The author had also claimed that her son's right under article 10 of the Covenant have been violated (see paragraphs 2.17 – 2.20 above). In the absence of any other pertinent information, the Committee decided that this part of the communication was insufficiently substantiated, and thus inadmissible under article 2, of the Optional Protocol.

5.6 The Committee considered that the facts as submitted by the author appeared to raise issues under articles 7 and 14 of the Covenant, and that the authors' claims in respect of these provisions should be examined by the Committee on their merits.

#### **State party's observations on the merits**

6.1 The State party presented its observations on the merits by Note Verbale of 6 May 2009. It recalls the facts of the case: on 2 March 2004, the Tashkent City Court found Mr. Lyashkevich guilty of murder and robbery and sentenced him to 20 years prison term. On 29 June 2004, this decision was confirmed, on appeal, by the Supreme Court. In virtue of a general amnesty act of 1 December 2003, Mr. Lyashkevich's sentence was reduced by one fifth (4 years).

6.2 According to the State party, Mr. Lyashkevich's guilt was established not only on the basis of his confession made during the preliminary investigation, but also on the basis

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<sup>8</sup> See, inter alia, C.E.A. v. Finland, Case No. 316/1988, decision of 10 July 1991, para. 6.2.



of a multitude of corroborating evidence, such as witnesses testimonies, depositions of several individuals in court, records on the search of Mr. Lyashkevich's home, including its basement, records on the search and seizure of evidence found in the car used to transport the body, the records on the verification of Mr. Layshkevich's confessions at the crime scene, etc.

6.3 According to the criminal case file, Mr. Lyashkevich was arrested and interrogated as a suspect, on 10 August 2003, in the presence of a lawyer, Mr. D. Bukhranov. The case file contained an official document, dated 10 August 2003, by which this lawyer is authorised to represent the alleged victim, and the lawyer's presence was confirmed by the latter's signatures on this date on the official documents regarding the interrogation. A cross-examination between Mr. Lashkevich and Mr. Kladov, carried on 11 August 2003, also took place in the lawyer's presence.

6.4 Mr. Lyashkevich was placed in pre-trial detention on 11 August 2003, and the same day he was appointed another lawyer, Mr. Agakhaniants. On 12 August 2003, in the presence of the new lawyer, the investigators conducted a verification of Mr. Layshkevich's confessions at the crime scene. According to the State party, Mr. Lyashkevich's interrogation as a suspect permitted to disclose the location of the body of the murdered Mr. Sayfutdinov, and to understand the exact circumstances of the crime.

6.5 According to the State party, all investigation acts in respect to Mr. Lyashkevich were conducted in the presence of a lawyer. During his interrogations, Mr. Lyashkevich confirmed that he had confessed guilt voluntarily, and he had not been subjected to unlawful methods of investigation. The court interrogated the investigator and other police officials, and all denied having used unlawful methods of investigation.

6.6 In addition, a verification was carried out at the pre-investigation stages, which did not reveal any use of psychological or physical pressure against the alleged victim or the author of the communication. During the pre-trial investigation, a prosecutor also provided a legal qualification of the acts of the police officers who did apprehend Mr. Lyashkevich; according to the prosecutor, no unlawful acts were committed by the police officers.

6.7 The State party recalled that the author's son affirmation in court that the murder was in fact committed by an individual named "Sergei". It affirmed that this was verified by the court and was found to be groundless, as it contradicted the rest of the evidence. Thus, Mr. Lyashkevich's guilt was duly established by the court, his acts were qualified correctly, and his penalty was proportionate to the crime committed.

#### **Author's comments**

7.1 On 13 July 2009, the author reiterated her previous allegations and commented on the State party's observations. First, she contested the State party's affirmation that the lawyer Mr. Burkhanov was officially authorised to represent her son on 10 August 2003. She claimed that this lawyer was assigned ex-officio by an investigator, without consulting her. In addition, her son had affirmed in court that this lawyer was not present during his initial interrogations<sup>9</sup>. In the morning of 11 August 2003 (a Monday), the author met with the investigator and presented him the lawyer (Mrs. Agakhyants) she had privately hired to represent her son. The investigator explained that no investigation acts would be carried out on that day and invited the new lawyer to come the next day. As it turned out later however,

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<sup>9</sup> The author adds that at a later stage, in November 2004, the privately hired lawyer of Mr. Lyashkevich has requested the Tashkent College of Lawyers No. 2 about clarifications, and it was confirmed that Mr. Burkhanov was never issued an official authorisation to represent Mr. Lasyhkevich between August 2003 and August 2004.

on 11 August 2003, Mr. Lyashkevich was interrogated and investigation acts were carried, including a cross-examination with Mr. Kladov, in the absence of his privately hired lawyer. According to the author, at no point of time was her son informed of his right to be represented by a lawyer.

7.2 The author reiterated that her son had only confessed guilt on 10 August 2003, i.e. on the third day after his actual detention. In his interrogation as a witness on 8 and 9 August 2003, he only confirmed that he met with Mr. Sayfutdinov on 6 August 2003, without referring to the murder. This showed, according to the author, that her son confessed guilt under psychological and physical pressure, including through blackmail, threats, beatings, and torture.

#### **Additional observations by the State party**

8.1 The State party presented additional information by Note Verbale of 25 September 2009. It recalled the facts of the case, and reiterated that the guilt of Mr. Lyashkevich was duly established, on the basis of a multitude of corroborating evidence. Mr. Lyashkevich was officially arrested on 10 August 2003, was assigned an ex-officio lawyer, and was interrogated as a suspect. On 11 August 2003, he was cross-examined with Mr. Kladov, and was interrogated as an accused person, in the presence of the lawyer.

8.2 On 11 August 2003, Mr. Lyashkevich was officially placed on pre-trial detention and his family hired a lawyer privately. On 12 August 2003, in presence of this lawyer, Mr. Lyashkevich's confessions were verified at the crime scene. During his interrogations as a suspect and accused, Mr. Lyashkevich explained in detail when and how he committed the murder, how he dismembered Mr. Sayfutdinov's body, and how and where he threw the parts of the body into the river. His confession permitted to locate these parts, what allowed for their further identification by Mr. Sayfutdinov's relatives.

8.3 The State party contended that all investigation acts in respect to Mr. Lyashkevich were conducted in the presence of a lawyer. In addition, when Mr. Lyashkevich met with a prosecutor, he confirmed that he had confessed guilt freely and that he was not subjected to unlawful methods of investigation. The outcome of the verification on the use of unlawful methods against the alleged victim, as a result of Mrs. Lyashkevich's allegations, established that these allegations were groundless.

#### **Consideration on the merits**

9.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's allegations that her son was subjected to psychological and physical pressure and torture to the point that he confessed guilt (see paragraph 2.15 above). In substantiation, the author affirms that her son was beaten at the early stages of the investigation, by several officials. However, the author provides no detailed information on the alleged beatings and, in particular, on the nature of the alleged torture, and fails to explain whether she, her son, or his privately hired lawyer have ever made any attempt to complain about these issues prior to the court trial. The Committee further notes the State party's contention that Mr. Lyashkevich did confess guilt voluntarily, which he confirmed to his privately hired lawyer and specifically to a prosecutor. It also notes that the State party did affirm that the courts have examined these allegations and have found them to be groundless. In the circumstances, and on the basis of the information before it, the Committee concludes that the facts before it do not reveal a violation of the author son's rights under articles 7 and 14, paragraph 3 (g) of the Covenant.

9.3 The Committee further notes that the author has invoked a violation of her son's rights under article 14, paragraphs 1 and 2 of the Covenant (see paragraphs 2.20 above), and notes that the State party has not refuted these allegations specifically. In the absence of any additional information by the parties, however, it considers that the facts as presented do not provide the basis for a finding of a violation of Mr. Lyashkevich's rights under these provisions of the Covenant.

9.4 The Committee further notes the author's allegation that her son's right to defence was violated, in particular because the lawyer she had hired privately on 11 August 2003 was prevented from defending her son on that day, notwithstanding the fact that important investigation acts were conducted at this moment precisely. The Committee notes that the State party has only affirmed that all investigation acts in Mr. Lyashkevich's respect were conducted in the presence of a lawyer, without specifically addressing the issue of Mr. Lyashkevich's access to his privately hired lawyer. In the circumstances, and in the absence of any other information by the parties, the Committee concludes that denying the author son's access to the legal counsel of his choice for one day and interrogating him and conducting other investigation acts with him during that time constitutes a violation of Mr. Lyashkevich's rights under article 14, paragraph 3 (b)<sup>10</sup>.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of Mr. Lyashkevich's rights under article 14, paragraph 3 (b) of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Lyashkevich with an effective remedy, in the form of an appropriate compensation. 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 180 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.]

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<sup>10</sup> See, for example, Paul Anthony Kelly v. Jamaica, Communication No. 537/1993, Views adopted on 15 February 1993, paragraph 9.2, and Dimitry Gridin v. the Russian Federation, Communication No. 770/1997, Views adopted on 20 July 2000, paragraph 8.5.