



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2840/2016*, **

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| <i>Communication submitted by:</i> | Tamara Selyun (represented by counsel, Andrei Paluda) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Belarus |
| <i>Date of communication:</i> | 11 August 2016 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 25 October 2016 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 4 March 2022 |
| <i>Subject matter:</i> | Inhuman and degrading treatment; fair trial |
| <i>Procedural issue:</i> | Non-exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Cruel, inhuman or degrading treatment or punishment; fair trial |
| <i>Articles of the Covenant:</i> | 7 and 14 (1), in conjunction with 2 (2) |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (2) (b) |

1. The author is Tamara Selyun, a citizen of Belarus born in 1953. She claims to be a victim of a violation by the State party of her rights under articles 7 and 14 (1), read in conjunction with article 2 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Andrei Paluda.

The facts as submitted by the author

2.1 The author's son, Pavel Selyun, was sentenced to death in 2013 on a conviction extracted by torture.¹ He was executed on 17 April 2014. On 18 April 2014, when Mr. Selyun's lawyer attempted to visit him in prison, she was informed that Mr. Selyun had been

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Héléne Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

¹ See *Selyun v. Belarus* (CCPR/C/115/D/2289/2013).



“moved in accordance with the verdict”. No information was provided as to his whereabouts. For a month the author did not receive any information about her son’s whereabouts, despite numerous appeals to the Ministry of Internal Affairs, the State Penitentiary Department and the Supreme Court. On 16 May 2014, the author finally received a letter from the Grodno Regional Court informing her that her son’s court sentence had been carried out on 18 April 2014. The letter also stated that in accordance with article 175 of the Criminal Executive Code, his body could not be returned and the location of his burial would not be communicated to her.²

2.2 On an unspecified date, the author received a package from the State Penitentiary Department, which contained the prison clothes and shoes that her son wore during his stay on death row. The robe had letters on its back showing that the owner was a death row inmate. The author had seen her son in those clothes several times when she visited him before his execution. Seeing the clothes from death row caused the author a psychological shock. In a state of shock, the author cut the clothes and shoes with an axe into pieces and burned them near her house. After many years, she still experiences severe psychological suffering when she recalls this situation.

2.3 On 22 February 2015, the author filed a lawsuit before the Leninsky District Court in Grodno, asking that the refusal of the Grodno Regional Court to inform her of the time of her son’s death and the location of his burial be declared unlawful and that it constituted cruel and inhuman treatment. She also asked that the actions of the State Penitentiary Department, which sent her the death row clothes of her son, be found unlawful and constituting cruel and inhuman treatment. Finally, she asked the court to find article 175 of the Criminal Executive Code unconstitutional due to its contradiction of article 25 (3) of the Constitution³ and article 7 of the Covenant.

2.4 On 5 March 2015, the Leninsky District Court rejected the author’s claims for lack of jurisdiction. The court held that as a civil court, it lacked jurisdictional competence over the subject matter of the author’s claim against the refusal of the Grodno Regional Court to provide information about the time of her son’s death and where he was buried. With regard to the claim against the State Penitentiary Department, the court ruled that it did not have the territorial jurisdiction to adjudicate the author’s claim, since the Department was located in Minsk and any claim against it should be submitted to an appropriate district court in Minsk. It also held that since it had rejected the author’s first two claims, there were no further grounds to proceed with the author’s last claim concerning article 175 of the Criminal Executive Code or to refer it to the Supreme Court to decide on its constitutionality.

2.5 On 12 March 2015, the author appealed the decision to the Supreme Court. On an unspecified date, the Supreme Court transferred the appeal to the Grodno Regional Court. On 15 April 2015, the Grodno Regional Court upheld the decision of the Leninsky District Court.

2.6 On 10 May 2015, the author submitted a request for a supervisory review to the Chair of the Supreme Court. On 11 June 2015, the Deputy Chair of the Supreme Court denied her request.

2.7 In June 2015, the author petitioned the Prosecutor of the Grodno region to submit an appeal against the decision of the Grodno Regional Court dated 15 April 2015. On 7 July 2015, the Prosecutor sent a letter to the author informing her that he agreed with the decision of the Grodno Regional Court.

2.8 In parallel to her appeals to the domestic courts, the author submitted additional complaints and petitions to the Constitutional Court, the parliament, the Office of the President and the Cabinet of Ministers, requesting that a review of the constitutionality of

² Article 175 (5) of the Criminal Executive Code states that the prison administration must notify the sentencing court when the verdict is carried out. The sentencing court must then notify a close relative. The body cannot be handed over to relatives for burial, nor can they be informed of the place of burial.

³ Articles 25 (3) of the Constitution states that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, or be subjected to medical or other experiments without his or her consent.

article 175 of the Criminal Executive Code be initiated. However, all of her requests were denied or ignored.

2.9 The author submits that she has exhausted all effective domestic remedies.

Complaint

3.1 The author claims that the refusal to provide information about her son's time of death and the location of his grave, as well as receiving his prison clothes by mail has inflicted and continues to inflict on her mental suffering and stress. She considers that the secrecy around her son's execution and the refusal to hand over his body constitutes an intimidation and punishment of his family because it intentionally leaves them in a state of uncertainty, suffering and mental stress, and, therefore, violates her rights under article 7 of the Covenant.

3.2 The author also claims that the lack of any effective remedies allowing her to request information from the domestic courts about the time of her son's execution and the location of his grave constitutes a violation of article 14 (1), read in conjunction with article 2 (2) of the Covenant. The author considers that she was denied a fair and public hearing by a competent, independent and impartial tribunal in the determination of her rights under article 7 of the Covenant.

State party's observations on admissibility and the merits

4.1 By note verbale of 27 December 2016, the State party submitted its observations on the admissibility and merits of the communication. It notes that on 5 March 2015, the Leninsky District Court in Grodno rejected the author's lawsuit for lack of jurisdiction. It also notes that the order of conducting an execution is regulated by article 175 of the Criminal Executive Code and is under the exclusive competency of the body entrusted with carrying out the death penalty. The State party asserts that since executions are regulated by imperative norms of the Criminal Executive Code, the domestic courts were correct in rejecting the author's civil lawsuit. In accordance with article 175 of the Criminal Executive Code, the prison administration responsible for the execution must notify the sentencing court when the verdict is carried out and the latter must notify a close relative. The body cannot be handed over to relatives, nor can they be informed where it is buried.

4.2 The State party notes that the Grodno Regional Court informed the author about her son's execution on 8 May 2014. It submits that in accordance with article 18 of the Criminal Executive Code, courts only oversee the execution of verdicts and do not receive information about the location of burials. It also notes that the Supreme Court does not consider the prohibition concerning release of a body for burial or release of information about the time of execution and the burial site to be a violation within the meaning of article 7 of the Covenant.

4.3 The State party argues that the author's right to a fair and public trial by a competent, independent and impartial court established by law was fully ensured, as well as the review of its decision by a higher tribunal. The State party therefore considers that she has failed to substantiate her claim under article 14 (1) of the Covenant.

4.4 The State party further notes that article 439 of the Civil Procedure Code of Belarus allows for submission of a request for a supervisory review to the Chair of the Supreme Court and the Prosecutor General and their deputies. Since the author has failed to submit the necessary requests, the State party considers that her communication to the Committee should be found inadmissible for failure to exhaust all available domestic legal remedies.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 31 January 2021, the author submitted her comments on the State party's observations. The author rejects the State party's assertion that she has failed to exhaust all domestic legal remedies because she failed to request the Chair of the Supreme Court and the Prosecutor General to initiate a supervisory review of the decisions of the domestic courts. She submits that requests for a supervisory review to the Chair of a court or a prosecutor that is directed against court decisions that have entered into force and that depend on the discretionary power of a judge or a prosecutor 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.

5.2 The author notes that the domestic law provides only for initiation of the supervisory procedure. However, the law does not regulate when and how the procedure must come to an end. In practice this means that a person who is on death row usually finds out about the refusal to grant his or her supervisory appeal only minutes before he or she is executed. Counsel and family members are also not informed of the outcome of the supervisory appeal until after the execution. The death penalty is carried out in complete secrecy and no one, including the death row inmate him- or herself, knows the execution date in advance.

5.3 Finally, the author draws the attention of the Committee to the fact that despite its previous decisions finding violations of article 7 in similar cases,⁴ the State party has not changed its legislation or practice with regard to the executions of death row inmates and treatment of their family members.

5.4 The author reiterates that she has exhausted all available and effective domestic remedies. She asserts that there are no judicial remedies available to her to request information about the exact time of her son's execution and the location of his grave. She submits that she continues to suffer from cruel and inhuman treatment and considers that the right to access a court as entrenched in article 14 (1) of the Covenant should apply to proceedings related to article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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 The Committee takes note of the State party's argument that the author has failed to exhaust all domestic remedies. The Committee notes the authors' assertion that all available and effective domestic remedies have been exhausted and that supervisory review proceedings are not considered by the Committee as constituting an effective remedy. The Committee notes that on 10 May 2015, the author submitted a request for a supervisory review to the Chair of the Supreme Court, which was denied on 11 June 2015. In that context, the Committee recalls its jurisprudence, according to which filing requests for a supervisory review to the Chair of a court directed against court decisions that 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.⁵ In the absence of any such evidence presented by the State party, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 At the same time, the Committee observes that the author's lawsuit was submitted to the Leninsky District Court against different State authorities, including the State Penitentiary Department, which had sent her by post her son's death row clothes and shoes and thus allegedly contributed to her suffering and mental stress. This part of the author's lawsuit was rejected due to the lack of territorial jurisdiction and there is no information in the case file on whether the author has tried to submit a separate lawsuit against the State

⁴ See, for example, *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011); and *Staselovich v. Belarus* (CCPR/C/77/D/887/1999).

⁵ See *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *Taysumov and others v. Russian Federation* (CCPR/C/128/D/2339/2014), para. 8.5; and *Insenova v. Kazakhstan* (CCPR/C/126/D/2542/2015-CCPR/C/126/D/2543/2015), para. 8.3.

Penitentiary Department through a different court. The Committee therefore considers that this part of the author's claim under article 7 is inadmissible for failure to exhaust domestic remedies.

6.5 The Committee takes note of the author's submission that the State party violated her rights under article 2 (2), read in conjunction with article 14 (1), of the Covenant. The Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.⁶ The Committee notes, however, that the author has already alleged a violation of her rights under article 14 (1), resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider the examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with article 14 (1), of the Covenant to be distinct from examination of the violation of the author's rights under article 14 (1) of the Covenant. It therefore considers that this part of the author's communication is incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.6 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, her remaining claims concerning the secrecy around her son's time of execution and the location of his grave, raising issues under articles 7 and 14 (1) of the Covenant. The Committee therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that she is a victim of a violation of article 7 of the Covenant due to suffering and mental stress arising from the refusal of the authorities to provide information about her son's time of death and where he is buried. The Committee also notes the State party's submission that the law in force prescribes that the family of an individual under sentence of death is not informed in advance of the date of the execution, the body is not handed over to them and the location of the grave of the executed prisoner is not disclosed.

7.3 The Committee recalls that, according to its general comment No. 36 (2018), failure to provide relatives with information about the circumstances of the death of an individual may violate their rights under article 7 of the Covenant, as could failure to inform them of the location of the body and, where the death penalty is applied, of the date on which it is anticipated that the death penalty will be carried out. Relatives of individuals deprived of their life by the State must be able to receive the remains, if they so wish.⁷ 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 surrounding his execution, as well as the location of his grave. The Committee considers that the complete secrecy surrounding the date of the execution and the location of his grave, as well as the refusal to hand over the body for burial have the effect of intimidating or punishing the family by intentionally leaving them in a state of uncertainty and mental distress.⁸ The Committee therefore concludes that these elements amount to inhuman treatment of the author, in violation of article 7 of the Covenant.

7.4 The Committee also notes the author's claim that the lack of any effective remedies allowing her to request information from domestic courts about the time of her son's execution and the location of his grave constitutes a violation of article 14 (1) of the Covenant.

⁶ *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

⁷ General comment No. 36 (2018), para. 56.

⁸ *Kovaleva and Kozyar v. Belarus*, para. 11.10.

The Committee also takes note of the State party's argument that the author's right to a fair and public trial by a competent, independent and impartial court established by law was fully ensured. The Committee, however, observes that the author's civil lawsuit was rejected by the Leninsky District Court for lack of jurisdiction. At the same time, the State party did not provide any information in response to the author's claim on any other effective judicial remedy that would have been available to the author. The Committee recalls that, in accordance with the provisions of its general comment No. 32 (2007), the failure of a State party to establish a competent tribunal to determine rights and obligations in a suit at law or to allow access to such a tribunal in specific cases would amount to a violation of article 14. That is, if such limitations are not based on domestic legislation, are not necessary to pursue legitimate aims, such as the proper administration of justice, or are based on exceptions from jurisdiction deriving from international law such, for example, as immunities, or if the access left to an individual would be limited to an extent that would undermine the very essence of the right.⁹ In the absence of the State party's explanation in this regard, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 14 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under articles 7 and 14 (1) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, *inter alia*, (a) to provide adequate compensation to the author for the violations suffered; (b) to release information about the burial site of her son; and (c) to hand over her son's remains. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by amending the Criminal Executive Code with a view to bringing it into line with the State party's obligations under article 7 of the Covenant.¹⁰

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 and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, 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 present Views and to have them widely disseminated in the official language of the State party.

⁹ General comment No. 32 (2007), para. 18.

¹⁰ The Committee recommended the amendment of article 175 of this Code in its concluding observations adopted in 2018 (CCPR/C/BLR/CO/5, para. 28).