Facts

The author, Svetlana Zhuk, submitted the communication on behalf of her son, Andrei Zhuk, a Belarus national on death row at the time of the submission. Despite multiple requests made by the Committee to postpone the execution while the communication was under reviewed, the Andrei Zhuk was executed on March 23rd, 2010.

On March 1st 2009, officers of the Belarus Ministry of Internal Affairs arrested Andrei Zhuk in Soligorsk on suspicion of having killed two people. On the night of his arrest, he was only allowed five minutes with a lawyer and he was ill-treated, according to a medical report. Mr. Zhuk did not see the prosecutor and his detention on remand was ordered only nine days after his arrest. Furthermore, he was only brought in front of a judge more than three months after his arrest. He was declared guilty in July of 2009.

The author claimed that presumption of innocence was not respected in the case of her son. The Minister of Internal Affairs called her son a criminal before he was convicted and many medias presented him as a criminal before the end of the judicial proceedings. Moreover, he was presented in court as a dangerous criminal in a metal cage and handcuffed. Finally, the author considered that supervisory review by the Supreme Court and Presidential pardon are not effective remedy since their analysis is kept secret from the applicant and they do not automatically analyze the substance of the case.

The State party argued that the execution was carried out according to the law, and that the interim measures requested by the Committee to delay the execution had the ‘character of a recommendation.’ It also recalled that it did not sign the Second Protocol, which aimed at abolishing the death penalty. It added that the communication was inadmissible for non-exhaustion of domestic remedies and also because a third party had submitted the communication. In fact, in its view, the communication was an abuse of rights. Finally, it argued that the Committee violated article 5 § 3 of the Optional Protocol by making public information regarding the case.

Consideration of admissibility

The Committee remarked that a communication should normally be submitted by the individual suffering a violation of its Covenant rights, except when he/she is apparently unable to do so, which was the case in this situation (article 96 (b) of its Rules of procedure). As for the supervisory review and the Presidential pardon, the Committee did not consider them as effective remedies. In the absence of any convincing reasons offered by the State party as to why the communication would have been an abuse of right, the Committee concluded that the communication was admissible.

Key words

- Right to life
- Death Penalty
- Torture
- Ill-treatment
- Right of detainees
- Fair hearing
- Presumption of innocence
- Preparation of defence
- Right to defence
- Self-incrimination

Relevant Provisions

- Art. 6 § 1
- Art. 6 § 2
- Art. 7
- Art. 9 § 3
- Art. 14 § 1
- Art. 14 § 2
- Art. 14 § 3 (b), (d) & (g)

Violated Provisions

- Art. 6
- Art. 7
- Art. 9 § 3
- Art. 14 § 1
- Art. 14 § 2
- Art. 14 § 3 (b), (d) & (g)
Consideration of merits

Article 7 & 14 § 3 (g): The Committee noted that the State party did not present any arguments refuting the violations of those articles. It recalled that any complaint of ill-treatment (art. 7) and of physical or psychological pressure put on the accused in order to obtain confession of guilt (art. 14 § 3 (g)) must be promptly and impartially investigated. In the absence of any proof of such investigations, due weight must be given to the allegations made by the author (No. 1401/2005, Kirpo v. Tadjikistan, 2009). The Committee consequently found that the State party violated those two articles.

Article 9 § 3: As for the delay in presenting the author’s son to a judge, the Committee recalled that the term promptly used in this article should be determined on a case-by-case basis, but the delay should not exceed a few days. This view was based on the General Comment No. 8 and Committee’s jurisprudence (No. 852/1999, Borisenko v. Hungary, 2002; No. 2120/2011, Kovaleva and Kozyar v. Belarus, 2012; No. 1787/2008, Kovsh v. Belarus, 2013). In the current, the Committee considered that the delay of three months was incompatible with the requirement set for in article 9 § 3.

Article 14 § 1, 14 § 2, 14 § 3 (b) & 14 § 3 (d): The Committee considered that the trial failed to respect the basic guarantees of a fair trial set for in those articles. Firstly, the presumption of innocence was not respected as reflected by General Comment No. 32 since public authorities prejudged the author’s son. This same General Comment ‘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 undermining the presumption of innocence’. The author’s was also not allowed sufficient time with its lawyer (art. 14 § 3 (b) & (d)). Finally, in the light of its preceding findings, the Committee considered that article 14 § 1 was also violated.

Article 6: The Committee noted that, according to its General Comment No. 6 on the right to life, death penalty could only be imposed in accordance with national law and the provisions of the Covenant. In the current case, the violation of procedural guarantees written in article 14 led the Committee to consider that the State party had violated its obligation under article 6 of the Covenant.

Conclusions

The Committee consequently found a violation of articles 6, 7, 9 § 3, 14 § 1, 14 § 2, 14 § 3 (b), (d) and (g). It also considered that the State party violated article 1 of the Optional Protocol since it did not act in good faith by disrespecting the Committee’s demands to postpone the execution. Consequently, the State party should provide adequate compensation to the author; take measures to ensure that such violations do not happen again; and disseminate widely the Views of the Committee in Belarusian and Russian. The Committee wished to receive news of the application of its Views by the State party within 180 days violation of articles 6 § 1 and 7, read in conjunction with article 2 § 3.