



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. 2789/2016*, **

<i>Communication submitted by:</i>	Gennady Yakovitsky and Aleksandra Yakovitskaya (represented by counsel, Andrei Paluda)
<i>Alleged victim:</i>	Gennady Yakovitsky (deceased) and Aleksandra Yakovitskaya
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 July 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 19 July 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	12 March 2020
<i>Subject matter:</i>	Imposition of a death sentence after an unfair trial
<i>Procedural issues:</i>	Failure of the State party to cooperate; non-respect of the Committee's request for interim measures; non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary deprivation of life; habeas corpus; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent
<i>Articles of the Covenant:</i>	6 (1) and (2), 9 (1)–(4) and 14 (1), (2) and (3) (a), (b) and (d)
<i>Articles of the Optional Protocol:</i>	1, 2 and 5 (2) (b)

1.1 The author of the communication is Aleksandra Yakovitskaya, a national of Belarus born in 1989. She has submitted the communication on behalf of her father, Gennady Yakovitsky, a national of Belarus, born in 1967, who was at the material time detained on death row awaiting execution, following the imposition of a death sentence by a court. The author claims that the State party has violated her father's rights under articles 6 (1) and (2),

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



9 (1)–(4) and 14 (1), (2) and (3) (a), (b) and (d) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel.

1.2 On 19 July 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to grant interim measures under rule 92 of its rules of procedure (now rule 94) and requested the State party not to carry out the death sentence of Mr. Yakovitsky while his case was under examination by the Committee.

1.3 On 29 November 2016, the Committee received information that the author's father had been executed despite the request for interim measures. On the same date, the Committee requested urgent clarification of the matter from the State party, drawing the State party's attention to the fact that failure to respect interim measures constituted a violation by States parties of their obligations to cooperate in good faith under the Optional Protocol. No response has been received to date from the State party.

The facts as presented by the author

2.1 On 28 July 2015, the author's father killed T.A. The crime was committed after the author's father had consumed alcohol, and was motivated by jealousy. During a quarrel between the two, the author's father beat T.A. severely, and inflicted with considerable force 46 blows on vital organs of her body.¹ When he woke up, he found himself next to a dead body and called the police.

2.2 On the same day, the author's father was arrested on suspicion of murder and detained in the Vileika internal affairs office. Two days later, the author's father was officially placed in pretrial detention by the order of a prosecutor. He received the order of the prosecutor only on 31 July 2015. He was not brought before a judge or other officer authorized by law to exercise judicial power, on either 28 July or 31 July 2015. He was brought before a judge for the first time only in December 2015, as part of his criminal trial.

2.3 On 5 January 2016, the Minsk Regional Court found the author's father guilty of intentional deprivation of life of another person committed with extreme cruelty, noting that he had already committed a murder and had evaded paying alimony, and sentenced him to death. On 19 January 2016, a cassation appeal was filed with the Supreme Court against the verdict of the Minsk Regional Court; on 8 February 2016, the appeal was amended. On 8 April 2016, the Supreme Court dismissed the appeal and upheld the lower court's judgment of 5 January 2016. The author submits that the Regional Court's judgment entered into force immediately after that.

2.4 In April 2016, the author's father submitted a request for a pardon from the President of Belarus² and appealed to the Prosecutor General within the supervisory review procedure. However, his application was dismissed on 25 June 2016.

2.5 On 7 July 2016, the author's father also appealed through the supervisory review procedure before the Deputy Chair of the Supreme Court. He did not receive a decision, but he noted that according to the Committee's well-established jurisprudence, the remedy might not be considered to be effective. Moreover, the decision would not be communicated to the convicted person, his lawyers and his relatives until the execution. The author claims that her father exhausted all the available domestic remedies.

2.6 The author also contended at the time of submission that her father could be executed at any time as his sentence had entered into force. She therefore requested the granting of interim measures, namely suspension of the execution of the death penalty, pending the consideration of the communication. Despite the decision of the Committee to grant the request for interim measures, the execution was carried out in November 2016.

The complaint

3.1 The author claims that the State party violated her father's rights under articles 6 (1) and (2), 9 (1)–(4) and 14 (1), (2) and 3 (a), (b) and (d) of the Covenant. In particular, the State party violated her father's right to life under article 6 of the Covenant. She claims that

¹ The author's father partially recognized his guilt.

² It appears he never received an answer.

his trial, which lacked due process guarantees and resulted in a death sentence, itself violated her father's rights under article 6 (1) and (2) of the Covenant.

3.2 The author further claims that her father's rights under article 9 (1)–(4) were violated, as during his apprehension he was not brought promptly before a judge after his initial arrest. Her father saw a judge for the first time in December 2015 as part of his criminal trial, more than 150 days after his arrest. Such a delay violated his rights under article 9 (3) of the Covenant.

3.3 The author claims a violation of her father's rights under article 14 (1) of the Covenant. She claims that during the court proceedings the court was biased and failed to maintain objectivity. She submits that during the appeal trial the court was also biased, as it tolerated the prosecutor's personal opinion expressed in relation to the case and in relation to the author's father's personality.

3.4 The author also claims that her father was placed on death row even before the court sentence had acquired the force of *res judicata*. Both before the trial court and the Supreme Court, her father was handcuffed and placed in a cage. The first-instance hearings were held in public in Vileika town and the way he was presented could lead the public to see him as a dangerous criminal. During the court hearing, the judge spoke out in a way that allowed observers to conclude that he was not impartial. During his cassation appeal, the author's father had to wear special clothing for persons sentenced to death, marked with Russian letters indicating his sentence.³ In addition, he was brought to the court hearings by a convoy of six guards in the "head to knees" position,⁴ which caused him suffering, increased blood pressure, dizziness and headaches. State media disregarded the presumption of innocence and disseminated distorted information against the author's father. The media expressed a categorical opinion about the guilt of the author's father before the court sentence had acquired the force of *res judicata*. The author claims, in addition, that after the first instance court handed down its decision, the attitude of the personnel of Detention Centre No. 1, where her father had been placed, towards her father became humiliating. He was subjected to verbal mockery and psychological pressure. The author claims that this violated her father's right to be presumed innocent under article 14 (2) of the Covenant.

3.5 The author also claims a violation of her father's rights under article 14 (3) (a) of the Covenant, as he was not informed promptly of the nature and cause of the charges against him. The author submits that her father was detained on 28 July 2015 at 8.35 p.m., while the investigator drew up a detention record after 2.45 a.m. (29 July), that is, more than six hours after the arrest. Moreover, the record did not indicate when her father was informed about its contents.

3.6 Further, the author claims that her father was not offered sufficient time to prepare his defence, and that his access to his lawyer was limited, in violation of his rights under article 14 (3) (b) and (d) of the Covenant. He was not informed promptly after his arrest about his rights, including about his right to counsel. He was provided with an *ex officio* counsel only at 2.05 a.m., 29 July 2015, nearly six hours after the arrest.⁵ In the meantime, several procedural steps had already been taken. He had been interrogated and subjected to psychological pressure and attempts to persuade him to confess.⁶ The author's father did not feel well during the interrogation since he was not yet sober, and he was not able to understand what was going on. Moreover, he was not provided time to meet his attorney in private. At the cassation appeal stage, the author's father was also not able to meet his counsel under conditions of confidentiality, as the prison administration was always present. As a result, he was not able to add additional information to his cassation appeal. In addition, the power of attorney he sent authorizing his representation before the Committee

³ The letters were an abbreviation for "exceptional measure of punishment".

⁴ A position in which the person's head is placed below the level of the thighs.

⁵ Counsel chosen by the author's father was hired only at the cassation appeal stage.

⁶ The author claims that the record of the interrogation conducted on 29 July 2015 reflects only two hours of inquiry actions, which indicates that some of the procedures were conducted after his arrest during the night.

never reached his daughter and advocate. Thus, he was not able to effectively exercise his right to defence.⁷

State party's observations on admissibility and the merits

4.1 In a note verbale dated 19 September 2016, the State party presented its observations on admissibility and the merits. It contends that the communication is inadmissible because the author's father failed to exhaust all domestic remedies available to him, notably, he did not file a supervisory review request with the Prosecutor General and the Chair of the Supreme Court. His defence counsel, Mr. Kremko, filed such requests with the Deputy Prosecutor General and the Deputy Chair of the Supreme Court in April 2016 and on 7 July 2016, which were rejected. Pursuant to articles 175 and 175 (1) of the Criminal Procedure Code, the submission of a supervisory review request suspends the execution of the death penalty for the time of the consideration of the request.

4.2 The State party submits that the author's father also applied for a pardon from the President, and that the application was still pending at the time of the submission of the communication. In accordance with article 175 of the Criminal Code, the execution of the sentence against a person sentenced to death is to be suspended while the request for pardon is examined.

4.3 As to the merits, the State party explains that on 5 January 2016, the Minsk Regional Court found the author's father guilty and convicted him of violations of articles 139 (2) (6) and (16) and 174 (3) of the Criminal Code. The trial court sentenced him to death by shooting. On 8 April 2016, the Supreme Court upheld the decision of the Minsk Regional Court and dismissed the cassation appeals filed by the author's father and by his counsel, Mr. Lapitsky.

4.4 The State party maintains that the guilt of the author's father was proven and corroborated by the totality of the evidence examined and evaluated by the court. The State party asserts that the court examined in a comprehensive, complete and objective manner the circumstances of the case, which indicated the particular danger that the author's father constituted for society. Therefore, the death penalty imposed on him was reasonable and fair. The allegations stated in the communication submitted on behalf of the author's father on the violation of articles 6, 9 and 14 of the Covenant are not based on the materials of the criminal case. The criminal case was considered by a competent, independent and impartial court. No requests for recusal of judges were made by the parties during the trial. The author's father had legal assistance assigned to him throughout the proceedings.

4.5 As to the alleged violations under article 9 of the Covenant, the State party clarifies that the author's father had been arrested on suspicion of murder in accordance with the provisions of the Criminal Procedure Code. He was informed about his rights and obligations as a suspect as well as about the possibility to challenge his detention.

4.6 The State party further maintains that the author's father did not file any complaints about violations of his right to communicate confidentially with his counsels, about unlawful methods of inquiry or about any other violations of his rights.

4.7 The State party invites the Committee to take into account article 6 (2) of the Covenant, which states that in countries that have not abolished the death penalty, it may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the Covenant, and states that this case is not contrary to the provisions.

4.8 The State party submits that the communication should be found inadmissible pursuant to article 3 of the Optional Protocol, as it should be considered as an abuse of the right of submission.

Author's comments on the State party's observations

5.1 In a submission dated 20 November 2016, the author notes that authors who bring a complaint before the Committee do not need to exhaust all available domestic remedies, only those that can be considered effective. The author notes that the Committee has long-

⁷ The claim lacks further information on this point.

standing jurisprudence in which the supervisory review procedure is deemed ineffective.⁸ The author also reiterates that her father's counsel filed a supervisory review request, which was rejected by the Deputy Prosecutor General and the Deputy Chair of the Supreme Court. Moreover, the submission of such a request can only delay the execution of the death penalty, since it suspends the execution of the death penalty during the consideration of the request, but does not constitute an effective remedy in other respects.

5.2 The author notes that, pursuant to article 5 (2) (b) of the Optional Protocol, the Committee does not consider communications until it ascertains that the author has exhausted all available domestic remedies. However, the Committee's jurisprudence indicates that the rule of exhaustion applies only if legal protection is effective and available. The author recalls the Committee's jurisprudence that the supervisory review procedure concerning court decisions that have entered into force constitutes an extraordinary remedy of a discretionary nature, which is limited to legal matters and therefore is not an effective remedy for the purposes of article 5 (2) (b) of the Optional Protocol.⁹ The author further recalls that a system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14 (5), regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor.¹⁰

5.3 The author states that a person sentenced to death in Belarus usually learns about the refusal to grant a supervisory review request a few minutes before the execution. She claims that the death penalty in Belarus is carried out in conditions of secrecy. Before the execution, the convicted person, his or her lawyer and his or her family are not informed about the outcome of the request. Therefore, the person sentenced to a death penalty has no time to appeal to the Human Rights Committee upon rejection of the internal appeals.

5.4 As to the State party's argument that the procedure of applying for a pardon from the President of Belarus has not been exhausted as an available domestic remedy, the author points out that it is not a procedure that must be exhausted before applying to the Committee and that it constitutes a legal procedure of a humanitarian nature and not a legal remedy for the violation of rights. The author recalls that according to the Committee's well-established jurisprudence, this procedure does not constitute an effective domestic remedy for purposes of exhaustion.¹¹ The author states that according to the regulations on the procedure of implementation in Belarus of pardons of convicted persons,¹² the execution of a sentence against a person sentenced to death is to be suspended during the consideration and until the refusal of a request for pardon. The author states that a person sentenced to death in Belarus usually learns about the refusal to grant a pardon a few minutes before the execution.

Lack of cooperation by the State party

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

6.2 The Committee recalls that under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which the 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 (Optional Protocol, preamble and art.

⁸ See, among others, *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002).

⁹ See, for example, *Torres Ramirez v. Uruguay*, communication No. 4/1977; *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998); *Bandajevsky v. Belarus*; *Korolko v. Russian Federation* (CCPR/C/100/D/1344/2005); *Umarov v. Uzbekistan* (CCPR/C/100/D/1449/2006); *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006); *P.L. v. Belarus* (CCPR/C/102/D/1814/2008); and *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

¹⁰ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 50.

¹¹ See, for example, *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001) and *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002).

¹² Approved by a decree of the President of Belarus dated 3 December 1994.

1). Implicit in the adherence of a State to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and to the individual concerned (art. 5 (1) and (4)). 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.¹³

6.3 In the present case, the Committee observes that, when the author submitted the communication, on 15 July 2016, she informed the Committee that her father had been sentenced to death and that the sentence could be carried out at any time. On 19 July 2016, 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. In November 2016, the Committee received information that Mr. Yakovitsky had been executed, despite the request for interim measures of protection. The Committee observes that it is uncontested that the execution in question took place, in total disregard of the request for interim measures of protection addressed to the State party.

6.4 The Committee reiterates that, apart from any violation of the Covenant found against a State party in a communication, a State party commits serious violations 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 futile.¹⁴ In the present case, the author alleged that her father's 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 violation of its obligations under the Optional Protocol by executing the alleged victim before the Committee had concluded its consideration of the present communication.

6.5 The Committee recalls that interim measures under rule 94 of its rules of procedure, adopted in accordance with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol, in order to avoid irreparable damage to the victim of an alleged violation. Violation of that rule, especially by irreversible measures, such as, in the present case, the execution of Mr. Yakovitsky, undermines the protection of Covenant rights through the Optional Protocol.¹⁵

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 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.

7.3 The Committee notes the State party's contention that the author's father failed to exhaust all domestic remedies available to him by not filing himself a supervisory review request with the Prosecutor General and the Supreme Court. The Committee observes that his counsel, Mr. Kremko, filed such a request, which was rejected through decisions signed by the Deputy General Prosecutor and the Deputy Chair of the Supreme Court. The Committee recalls its jurisprudence according to which a petition for supervisory review to

¹³ See, inter alia, *Piandiong v. Philippines* (CCPR/C/70/D/869/1999 and Corr.1), para. 5.1; *Maksudov v. Kyrgyzstan* (CCPR/C/93/D/1461, 1462, 1476 and 1477/2006), paras. 10.1–10.3; and *Yuzepchuk v. Belarus* (CCPR/C/112/D/1906/2009), para. 6.2.

¹⁴ See, inter alia, *Idieva v. Tajikistan* (CCPR/C/95/D/1276/2004), para. 7.3, and *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011), para. 9.4.

¹⁵ See, inter alia, *Saidova v. Tajikistan* (CCPR/C/81/D/964/2001), para. 4.4; *Tolipkhuzhaev v. Uzbekistan* (CCPR/C/96/D/1280/2004), para. 6.4; and *Kovaleva and Kozyar v. Belarus*, para. 9.5.

a prosecutor's office against a judgment having the force of *res judicata* does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹⁶ It also considers that filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes 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.¹⁷ The State party has not shown, however, whether and in how many cases the petition to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning the right to a fair trial. In such circumstances the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.¹⁸

7.4 With regard to the requirements laid down in article 5 (2) (b) of the Optional Protocol, the Committee also takes note of the State party's argument that Mr. Yakovitsky had not exhausted all domestic remedies at the time of submission of the 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 Mr. Yakovitsky, the Committee reiterates its previous jurisprudence, according to which the presidential pardon is an extraordinary and extrajudicial remedy,¹⁹ 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.

7.5 The Committee further takes note of the author's allegation that the presence of investigators or prison authorities did not allow for confidential attorney-client meetings to take place between her father and his counsels. In this regard, the Committee notes the State party's objection that the author's father did not file any complaint about violations of his right to communicate confidentially with his counsels. In the absence of further information, the Committee is unable to establish whether domestic remedies have been exhausted with regard to this particular claim under article 14 (3) (b) and (d) of the Covenant, and considers that it is precluded by article 5 (2) (b) of the Optional Protocol from considering this part of the communication.

7.6 The Committee takes note of the allegations that the rights of the author's father under article 9 (1), (2) and (4) and article 14 (1) and (2), in relation to the special clothing for persons sentenced to death, and article 14 (3) (a), (b) and (d) of the Covenant were violated. It notes that the State party has stated that the author did not file any complaint about other violations of his rights. In the absence of further information, the Committee is unable to establish whether domestic remedies have been exhausted with regard to the claims under article 9 (1), (2) and (4) and article 14 (1) and (2) in relation to the special clothing for persons sentenced to death, and article 14 (3) (a), (b) and (d) of the Covenant and considers that it is precluded by article 5 (2) (b) of the Optional Protocol from considering this part of the communication.

7.7 The Committee considers that the author's remaining claims, raising issues under articles 6 (1) and (2), 9 (3) and 14 (2) of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

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

¹⁶ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para 8.4.

¹⁷ *Gelazauskas v. Lithuania*, para 7.4; *Sekerko v. Belarus* (CCPR/C/109/DR/1851/2008), para. 8.3; *Protosko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *P.L. v. Belarus*, para. 6.2.

¹⁸ See, among others, *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

¹⁹ *Singarasa v. Sri Lanka*, para. 6.4; *Chisanga v. Zambia*, para. 6.3; *Kovaleva and Kozyar v. Belarus*, para. 10.4; and *Selyun v. Belarus* (CCPR/C/115/D/2289/2013), para. 6.3.

8.2 Regarding the claims that the author's father was not afforded his rights under article 9 (3) of the Covenant, the Committee recalls that, in accordance with article 9 (3), anyone arrested or detained on a criminal charge must 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.²⁰ The Committee takes note of Mr. Yakovitsky's unchallenged allegations that he was apprehended on 28 July 2015 and that he was officially notified of his placement in pretrial detention by a prosecutor on 31 July 2015, but was not brought before a judge until December 2015. The Committee recalls that, in its general comment No. 35 (2014) on liberty and security of person, it stated that it was inherent to the proper exercise of judicial power that such power should be exercised by an authority that was independent, 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).²¹ In these circumstances, the Committee considers that the facts before it show that the author's father was not brought promptly before a judge or other officer authorized by law to exercise judicial power, as required under article 9 (3) of the Covenant. Accordingly, the Committee concludes that the above-mentioned facts reveal a violation of Mr. Yakovitsky's rights under article 9 (3) of the Covenant.

8.3 The Committee also notes the allegations that the principle of presumption of innocence was not respected in the author's father's case, because he was handcuffed and kept in a cage during the court hearings, before the sentence had entered into force. In this respect, the Committee recalls its jurisprudence, as also reflected in paragraph 30 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, 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 that principle. In the same general comment, the Committee also 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 media should avoid news coverage undermining the presumption of innocence.²² On the basis of the information before it and in the absence of any other pertinent information or argumentation from the State party concerning the prevalence of the practice of handcuffing and keeping in cages defendants charged with criminal offences and its application in the present case, including the need to keep the author's father handcuffed and in a cage throughout the court trial, the Committee considers that the facts as presented demonstrate that the right of the author's father to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, was violated.

8.4 The Committee notes the statement by the State party that the death penalty is not prohibited when imposed for the most serious crimes (see para. 4.7 above). This is provided for in article 6 (2) of the Covenant. The Committee recalls its general comment No. 36 (2018) on the right to life, in which the Committee states that the term "most serious crimes" refers to intentional killing. The author's father was sentenced to death after a conviction for murder, which qualifies as one of the most serious crimes. However, the Covenant also provides that stringent fair trial requirements must be met before the death penalty may be imposed, to comply with article 6 of the Covenant.²³

8.5 The author claims that her father's right to life under article 6 of the Covenant was violated, since he was sentenced to death after an unfair trial. In that respect, the Committee recalls 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

²⁰ See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 33.

²¹ *Ibid.*, para. 32.

²² See also *Pustovoit v. Ukraine* (CCPR/C/110/D/1405/2005), para. 9.2.

²³ General comment No. 36, paras. 35 and 41.

constitutes a violation of article 6 of the Covenant.²⁴ Referring to its general comment No. 32, the Committee recalls that in cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important.²⁵ In addition, in its general comment No. 36, the Committee also noted that violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. Such violations might involve failure to respect the presumption of innocence, which may manifest itself in the accused being placed in a cage or handcuffed during the trial.²⁶ In the light of the Committee's findings of a violation of article 14 (2) of the Covenant, with respect to failure to respect the presumption of innocence, the Committee concludes that the final sentence of death and the subsequent execution of Mr. Yakovitsky did not meet the requirements of article 14 and that, as a result, his right to life under article 6 of the Covenant was also violated.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of the author's father under articles 6, 9 (3) and 14 (2) of the Covenant. The Committee also concludes that by not respecting its request for interim measures, the State party violated its obligations under article 1 of the Optional Protocol.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. The State party is also obligated, inter alia, to take all steps necessary to prevent similar violations from occurring in the future.

11. 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 languages of the State party.

²⁴ General comment No. 32, para. 59. See also *Levy v. Jamaica* (CCPR/C/64/D/719/1996), para. 7.3; *Kurbanov v. Tajikistan* (CCPR/C/79/D/1096/2002), para. 7.7; *Shukurova v. Tajikistan* (CCPR/C/86/D/1044/2002), para. 8.6; *Idieva v. Tajikistan*, para. 9.7; *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004), para. 9.11; *Gunan v. Kyrgyzstan* (CCPR/C/102/D/1545/2007), para. 6.5; and *Grunov and Grunova v. Belarus* (CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015), para. 8.6.

²⁵ General comment No. 32, para. 59.

²⁶ General comment No. 36, para. 41.