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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2792/2016*, **

Communication submitted by:	Sergey Khmelevsky (deceased) (represented by counsel, Andrei Poluda)
Alleged victim:	The author
State party:	Belarus
Date of communication:	27 July 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 3 August 2016 (not issued in document form)
Date of adoption of Views:	12 October 2023
Subject matter:	Imposition of the death penalty after an unfair trial; coercion to confess under torture; conditions of detention on death row
Procedural issues:	Failure of the State party to cooperate; non-respect of the Committee's request for interim measures; exhaustion of domestic remedies; lack of substantiation
Substantive issues:	Right to life; prohibition of torture and other forms of ill-treatment; right to fair trial; presumption of innocence; adequate time to prepare defence; right to obtain the attendance and examination of witnesses
Articles of the Covenant:	6 (1) and (2), 7, 9 (1)–(4) and 14 (1), (2), (3) (a), (b), (d), (e) and (g) and (5)
Articles of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

1.1 The author of the communication is Sergey Khmelevsky, a national of Belarus born in 1984. He claims that the State party has violated his rights under articles 6 (1) and (2), 7, 9 (1)–(4) and 14 (1), (2), (3) (a), (b), (d), (e) and (g) and (5) of the Covenant. The Optional

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

1.2 The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State party continues to be subject to the application of the Optional Protocol in respect of the present communication.[1]

1.3 On 3 August 2016, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party not to carry out the death sentence on the author while his case was under consideration by the Committee. Following the publication of media reports about the author's execution on 29 November 2016, the Committee invited the State party to provide it with urgent clarifications about the situation of the author. On 1 December 2016, the author's counsel confirmed to the Committee that the author had been executed. No response to the Committee's communication of 29 November 2016 has been received to date from the State party.[2]

Factual background

2.1 On 7 November 2014, the author was arrested and brought to Machulischansky Police Department. He claims that police officers subjected him to physical and psychological ill-treatment, prompting him to plead guilty of the murder of Mr. E.E. which he had not committed. He submits that he later continued to plead guilty and did not complain about his ill-treatment because he did not believe anything could be proven and was afraid of being beaten again.

2.2 On 19 August 2015, Minsk Regional Court convicted the author and sentenced him to life imprisonment. On 27 November 2015, the Supreme Court quashed this verdict on the grounds of excessive leniency of the punishment and transferred the case to a new trial.[3] According to the author, the judgment of the Supreme Court (not included in the communication) read that "should Khmelevsky's guilt of the crimes under article 139 (2) paragraphs 1 and 5 of the Criminal Code of the Republic of Belarus[4] be proven, the selected punishment in the form of life imprisonment would clearly be unjust because of its leniency".

2.3 On 15 February 2016, Minsk Regional Court's judicial panel on criminal affairs found the author guilty of intentional repeated theft of property; intentional breach of preventive supervision measures; the intentional murder of Mr. B.P. and Ms. T.S., with particular cruelty; the intentional murder of E.E.; and attempted intentional large-scale destruction of property, endangering the public (setting a house on fire), with the purpose of destroying evidence of murders. The author was sentenced to execution by shooting.

2.4 In the courtroom, the author pleaded innocent to the murder of E.E., declaring that he had been coerced into confessing guilt for this crime by police officers. He acknowledged, fully or partially, his guilt on the other charges. However, the court considered the author's guilt for the murder of E.E. to be established, for the following reasons. It observed that, after having pleaded guilty, allegedly under coercion, at his first interrogation on 7 November 2014, the author again stated, in the presence of a lawyer and attesting witnesses, that he had thrown a man into a pit, during the confirmation of the testimony relating to the crime scene, which took place later on the same day. The author demonstrated in front of a camera the way in which he had thrown E.E. into the pit. When reviewing that video in the courtroom, the author confirmed that he had provided all explanations regarding the place where he had

[1] See, for example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; and *Shchiryakova et al. v. Belarus* (CCPR/C/137/D/2911/2016, 3081/2017, 3137/2018 and 3150/2018).

[2] On 5 December 2016, the Committee condemned the disregarding of the interim measures in a press release, available at https://www.ohchr.org/en/press-releases/2016/12/belarus-executions-flagrant-disregard-international-human-rights-law-un.

[3] No supporting documents are provided in relation to this set of proceedings.

[4] Intentional murder of two or more persons with endangerment to the public.

met E.E. and the way he had thrown him into the pit without instruction from anyone. During subsequent interrogations on 10 November 2014, 13 November 2014, 4 February 2015, 3 March 2015 and 6 April 2015, the author again pleaded guilty. During his interrogation on 3 March 2015, he showed a photo of the place from which he had thrown E.E. into the pit, and provided a written confession. On 4 February 2015, he indicated that because his hands had been covered in B.P.'s blood, it may have dirtied E.E.'s hat. On 3 May 2015, during his first trial, the author submitted a written motion to the court acknowledging his acts towards E.E. but requesting their reclassification. On 8 June 2015, he again pleaded guilty in the courtroom. Relying on material evidence, the court considered that E.E. could not have accidentally fallen into the pit, but had instead been thrown into it by the author, because E.E.'s hat, covered in B.P.'s blood, and one of his trainers, had been discovered near the pit, not far from each other. In addition, a plastic bag covered in B.P.'s blood was discovered in the pit. In the court's opinion, tears on E.E.'s clothes were consistent with the author's description of having grabbed E.E. by his clothes before throwing him into the pit.

2.5 The court rejected the author's allegations of having pleaded guilty under coercion. It observed that neither during the pretrial detention nor at the beginning of his first trial did the author claim to have been subjected to illegal means of interrogation. His subsequent declarations of ill-treatment during the trial were investigated by the Minsk regional department of the Investigative Committee, which, on 22 July 2015, refused to initiate criminal proceedings under article 426 of the Criminal Code,[5] citing an absence of corpus delicti. A police officer, D.B., who according to the author had witnessed his torture, testified in court that neither he nor other police officers had subjected the author to violence after his apprehension. Another police officer, D.Z., who apprehended the author together with the officer S.T., stated that, as noted in the formal records, physical force and handcuffs had been used for the author's arrest. The court observed that according to the forensic medical report of 11 November 2014, the author explained during the examination that the injuries identified on his body were due to him having fallen in a street on 6 November 2014. At his interrogation on 4 February 2015, he stated that he may have received the injuries during his apprehension. The court concluded that the author had received the injuries prior to his apprehension. The court also found improbable the author's allegations that he had been coerced into pleading guilty to E.E.'s murder at the first interrogation on 7 November 2011, because, at that time, no criminal investigation had yet been initiated in relation to E.E.'s death.

2.6 On 27 February 2016, the author challenged his sentence by lodging a cassation appeal with the Supreme Court's judicial panel on criminal affairs. He denied being guilty of the intentional murder of E.E., acknowledged his guilt for the intentional murders of B.P. and T.S. but rejected the designation "with particular cruelty", acknowledged being guilty of the theft and the attempted destruction of property, and partially acknowledged his guilt in the breaching of preventive supervision measures. He claimed that his second trial had not been impartial because his sentence of life imprisonment had previously been quashed on the grounds of its excessive leniency, because the same public prosecutor had taken part in both trials and because the second trial had been presided over by a judge who had ordered the death penalty in another case a month earlier. In April 2016, the author submitted a supplement to his cassation appeal, claiming violation of his right to life, of procedural guarantees upon arrest, of his right to fair trial and of the prohibition of torture, citing provisions of domestic legislation and articles 6, 7, 9 (3) and 14 (1), (2) and (3) of the Covenant.

2.7 On 6 May 2016, the author's cassation appeal was rejected. The Supreme Court determined that the author was guilty of the murder of E.E. on the same grounds as the court of first instance, noting, in addition, that the author had drawn a map to indicate the place where he had met the victim and thrown him into a pit. Regarding the author's claims of confession under torture, the Court stated that these had been examined by the Minsk regional department of the Investigative Committee and its decision not to initiate criminal proceedings had been approved by the Public Prosecutor's Office of the Minsk Region. The Court examined witness statements by several police officers, who claimed that physical

[5] On abuse of power or abuse of official authority.

force against the author had only been used once, at the moment of his apprehension, when D.Z. applied a relaxing stroke, which may have caused the author to hit a fence.

2.8 In June 2016, the author lodged a supervisory review appeal against his sentence with the Prosecutor General of Belarus. Denial of this appeal was notified to him on 12 July 2016. The author also claims that he submitted a supervisory review appeal with the Deputy Chair of the Supreme Court, on 21 July 2016, and a request for a pardon to the President of Belarus. He states that he cannot wait for decisions on these requests before he submits his communication to the Committee because, as per established practice, he will not be notified of these decisions until moments before his execution.

Complaint

3.1 The author claims a violation of his right to life, under article 6 (1) and (2) of the Covenant, because he was convicted and sentenced to the death penalty following an unfair trial.

3.2 He argues that, in violation of article 7 of the Covenant, he was subjected to physical and psychological ill-treatment, with the purpose of coercing him into pleading guilty, at his first interrogation, on 7 November 2014. His conviction for the murder of E.E. was based on this confession obtained under torture. As proof, he refers to a forensic report dated 11 November 2014 that was issued following a medical examination on 7 November 2014, which identified abrasions and bruises to his head and shin, resulting from at least five traumatic injuries inflicted with a hard blunt object one day prior to the examination. The report also referred to other bodily injuries, suffered three to five days earlier. The author claims that the report is biased and incomplete, because other injuries can be seen on his face in a video recorded on 7 November 2014 during the confirmation of the testimony relating to the crime scene.[6] The author affirms that he did not receive any injuries at the moment of his apprehension because he did not oppose his arrest. He complains about the court's failure to summon the police officer S.T., who apprehended him, in order to clarify the circumstances of the arrest. An inquiry was opened by the Prosecutor's Office of the Minsk Region into the author allegedly being subjected to illegal methods of interrogation, but it resulted in a decision to refuse to initiate criminal proceedings. The author's attempts to challenge that decision were unsuccessful.

3.3 The author also claims a violation of article 7 of the Covenant because of the severe fear and mental suffering he has been experiencing on a daily basis following his death sentence. His suffering has been exacerbated by the fact that after his conviction at first instance, he was put in a cell for convicts on death row together with another convict, S.I., whose verdict had already come into force. The depressive state of S.I., who had lost all hope of living, deprived the author of any hope of a change, despite his pending cassation appeal before the Supreme Court. The author's co-detainee was taken away on the night of 17 to 18 April 2016 and the author never saw him again. When the author's cassation appeal was examined in the Supreme Court on 6 May 2016, he explained to the court that he had stayed awake throughout that night, hoping that his co-detainee had not been executed. However, in the morning, penitentiary authorities asked the author to gather up all of S.I.'s belongings, remarking that S.I. would no longer need them.

3.4 Claiming violations of article 9 (1), (2), (3) and (4) of the Covenant, the author submits that his arrest was recorded several hours after his apprehension and that he was not promptly brought before a judge after his arrest and after his placement in pretrial detention on 7 and 14 November 2014 respectively. He appeared in court for the first time in May 2015 for his trial. The author recalls the Committee's jurisprudence according to which the period of police custody before a detained person is brought before a judge should not exceed 48 hours.[7] His placement in pretrial detention was ordered by a public prosecutor, who cannot

[6] The forensic report is not included in the communication, but its conclusions are cited in the verdict of 15 February 2016 of Minsk Regional Court. The video recording has not been provided.

[7] *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), para. 7.4; and *Pichugina v. Belarus* (CCPR/C/108/D/1592/2007), para. 7.4.

be characterized as having the institutional objectivity and impartiality to be considered as an "officer authorized to exercise judicial power" within the meaning of article 9 (3).[8]

3.5 The author claims that his second trial was not impartial, in violation of article 14 (1) of the Covenant. The judgment adopted on 27 November 2015 by the Supreme Court, which determined that the initial punishment of life imprisonment had been excessively lenient, should be interpreted as a direct order to sentence the author to the death penalty at the second trial, given that the author's guilt under paragraphs 1 and 5 of article 139 (2) of the Criminal Code (murder of two or more persons with endangerment to the public) had already been established at the first trial. The second trial also lacked impartiality due to the participation in it of the same public prosecutor whose cassation appeal in the first trial had resulted in the Supreme Court quashing the verdict of 19 August 2015 due to its excessive leniency. The author requested recusal of the public prosecutor, but his motion was rejected. Furthermore, the second trial was presided over by a judge who, a month earlier, had prescribed the death penalty in another case, which means that that judge hesitated less than any other judge in sentencing the author to the death penalty. The author felt that the court rushed through the second trial without taking time to examine the new circumstances of him pleading not guilty of E.E.'s murder. The court repeatedly demonstrated its bias against the author by tolerating aggressive statements and false accusations made by victims. Ms. G.E. accused the author of the death of her son, whereas Ms. A.D. accused him of illegal violent acts against the victims T.S. and B.P. These accusations are not corroborated by evidence. A.D. shouted that the author was a murderer and had to be executed.

3.6 The author claims a violation of his right to the presumption of innocence under article 14 (2) of the Covenant. During his second trial, he was placed in a metal cage and was handcuffed. Following his conviction at first instance, he had to wear prisoner's clothes with the letters "EMP" on the back ("Exceptional Measure of Punishment"). Both in the detention centre and during his transfer to his cassation appeal hearing at the Supreme Court on 6 May 2016, he was convoyed by four officers, as is the practice for those sentenced to the death penalty, in the "head to knees" posture, with his head hanging below the level of his hips. This posture caused him raised blood pressure, dizziness and headaches. Before his verdict became final, several media outlets published articles accusing him of triple murder. One of those articles, titled "Machulischansky murderer is sane and awaiting trial", appeared on 29 April 2015 in the State-owned newspaper *Prystalichcha*, referring to statements by a representative of the Investigative Committee in Minsk. The author believes that these publications affected public opinion, resulting, among other things, in aggression in the street against his sister by a man who shouted that the author was a murderer and their whole family should be imprisoned and shot dead. The author believes that during his trial, the court was under public pressure because of these publications.

3.7 The author claims violations of article 14 (3) (a), (b) and (d) of the Covenant during the investigation. The arrest record was not drawn up immediately upon his arrest. He was apprehended at 12.40 a.m. on 7 November 2014, whereas the arrest was recorded at 2.16 a.m. on the same day. Therefore, he was not informed of the nature of and the reason for the charges against him and of his right to counsel immediately upon his apprehension. Under article 45 of the Criminal Procedure Code, the participation of a counsel in criminal proceedings related to particularly grave crimes is obligatory from the moment of apprehension. The author was provided with a counsel only at his first interrogation, at 10.29 a.m. on 7 November 2014. This delay made it possible for police officers to subject him to violence, coercing him into pleading guilty to the murder of E.E. Furthermore, during his first interrogation, the author was not allowed confidential communication with his counsel. Because the author's physical and psychological state was affected by depression, his ill-treatment and intoxication by alcohol, he was not aware of when he could request a lawyer, and was not capable of reading his testimony written down by the investigator, as attested to by a note on the arrest record that it was read to him. During the pretrial investigation, two of the author's lawyers from Minsk were replaced for reasons unconnected

[8] *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.3; and *Smantser v. Belarus* (CCPR/C/94/D/1178/2003), para. 10.2.

to him. During his interrogation on 10 January 2015, the investigator illegally accepted the author's refusal to use the appointed counsel.

3.8 Citing violations of article 14 (3) (b) and (d) of the Covenant, the author submits that he was not allowed adequate time to examine his criminal case file and, therefore, to defend himself effectively. At the beginning of the second trial, the court satisfied the author's motion to be allowed to examine the case file but provided only an hour for him to study it and to agree on the defence strategy with his counsel. The case file included complex and voluminous expert assessments, which served as a basis for the author's conviction. According to the records, on 6 April 2015 the author examined 32 expert assessments between 4.34 p.m. and 5.22 p.m., and 24 other expert assessments and three interrogations of experts between 5.22 p.m. and 5.55 p.m. The allocated time was clearly insufficient.

3.9 The author claims a violation of his right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under article 14 (3) (e) of the Covenant because the police officer S.T., who apprehended him, was not interrogated in court. S.T. could have provided important information in his defence, confirming his allegations of torture. Even though the court satisfied the author's motion to summon S.T., S.T. did not come to the hearing for valid reasons related to his health. The court rejected the author's second motion to summon S.T.

3.10 The author claims that his conviction for the murder of E.E. is based on a confession obtained under torture, in violation of article 14 (3) (g) of the Covenant.

3.11 Finally, the author claims a violation of his right to his conviction and sentence being reviewed by a higher tribunal according to law under article 14 (5) of the Covenant. He submits that by quashing the verdict of life imprisonment handed down in the first trial due to its excessive leniency, the Supreme Court prejudged the outcome of the second trial and made the appeal process at the second trial void of sense.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 24 July 2018, the State party provided the following observations on admissibility and the merits.

4.2 On 15 February 2016, Minsk Regional Court's judicial panel on criminal affairs sentenced the author to the death penalty, with the absorption of less severe penalties by more severe penalties in accordance with article 72 (4) of the Criminal Code. It was established that the author's acts amounted to dangerous recidivism under article 43 (2) (2) of the Criminal Code. On 6 May 2016, the Supreme Court's judicial panel on criminal affairs upheld the verdict.

4.3 Under the appeal procedure provided for by article 371 (1) (2) of the Criminal Procedure Code, the author challenged the verdict at the Supreme Court. In addition, articles 404 to 417 of the Criminal Procedure Code allow for supervisory review appeals against verdicts that have come into force, before the Chair of the Supreme Court, the Prosecutor General and their deputies. On 30 June and 21 July 2016, the author and his lawyer submitted supervisory review appeals against the verdict of 15 February 2016 and the appellate judgment of the Supreme Court of 6 May 2016 to the Deputy Chair of the Supreme Court. The author and his lawyer were informed of the rejection of these appeals on 26 July 2016.

4.4 When sentencing the author to the death penalty, the court took into account his prior criminal record. On 4 August 1999, the author was convicted, under article 205 (2) of the Criminal Code, to a suspended prison sentence of three years with a probation period of two years. On 11 April 2002, he was convicted, under article 205 (2) of the Criminal Code, to three years and three months of imprisonment. On 7 June 2001, two months and 12 days prior to the end of his sentence, he was released on parole. On 5 December 2001, he was convicted under article 339 (2) of the Criminal Code and sentenced to two years and three months in prison. Under the law of 15 July 2002 on amnesty for certain categories of criminals, his sentence was reduced by a year. On 23 December 2002, by a court order, he was released two months and 12 days prior to the end of his sentence. On 15 July 2003, he was convicted, under articles 149 (2), 172 (1) and 207 (3) of the Criminal Code, to eight years and two months of imprisonment and confiscation of property. On 20 February 2009, the remaining

sentence (of one year, nine months and 24 days) was substituted by a more lenient punishment of restriction of freedom, without placement in a correctional centre, for two years, three months and 11 days. On 22 February 2010, he was convicted under articles 206 (2), 339 (3) and 415 of the Criminal Code and sentenced to five years and three months of imprisonment. On 18 October 2012, on the basis of article 8 of the law of 9 July 2012 on amnesty for certain categories of persons who have committed crimes, the author's sentence was reduced by one year. He was released from prison on 21 December 2013. On 16 April 2014, Minsk District Court imposed preventive supervision on him for a period of six months. On 10 October 2014, the court extended that measure by six months.

4.5 In its verdict of 15 February 2016, Minsk Regional Court found the author guilty of a number of offences, as follows: More than twice within the space of a year, he violated preventive supervision measures. On 11 October 2014, in a state of alcoholic intoxication, he left his house after 10 p.m. and stole 1,189,300 Belarusian roubles from a house in Machilischi. On 1 November 2014, in a state of alcoholic intoxication, he failed to report to Minsk district police office between 9 a.m. and 6 p.m. On the same day, between 8 and 10 p.m., in a state of alcoholic intoxication, he inflicted at least three blows with an unidentified hard object on the head of B.P and at least five stabs with a knife on B.P.'s neck, causing his death. The author then inflicted at least one blow with an unidentified hard object on the head of T.S. and at least 11 knife stabs on her neck. The author acted intentionally, with particular cruelty, aware that he was causing severe pain and suffering to the victims. In order to conceal evidence of these crimes, he set fire to the house and to the property contained therein, with an overall value of 92,019,850 roubles. When leaving, the author ran into E.E., who was about to enter the house. Intending to commit another murder in order to conceal the evidence of the previous crimes, the author threw E.E. head first into a pit 2.1 meters deep. E.E. suffered serious bodily injuries resulting in his death.

4.6 The State denies the author's claims of a violation of article 6 of the Covenant. Article 24 (3) of the Constitution provides that the death penalty, until its abolition, can only be carried out according to law as an exceptional measure of punishment for the gravest crimes and only following a judicial decision. Article 59 (2) of the Criminal Code allows for the death penalty by shooting as an exceptional punishment for particularly grave crimes involving intentional deprivation of life with aggravating circumstances. When choosing the author's punishment, the court observed the requirements of article 62 of the Criminal Code and the principle of individualized punishment – taking into account the nature and the degree of danger to the public of the crimes committed by the author, the motives and objectives behind them, their consequences, the personality of the accused, and the circumstances attenuating and aggravating his responsibility, such as his prior criminal record and his commission of crimes under alcoholic intoxication. The court concluded that the accused presented an exceptional danger to society, and imposed on him the justified, exceptional punishment of the death penalty.

4.7 Rejecting the author's claims under article 7 of the Covenant, the State party submits that his allegations of being subjected to violence by police officers were carefully examined by the court and were rejected with a reasoned explanation provided. The court examined documentation pertaining to inquiries conducted by the Minsk regional department of the Investigative Committee and the Public Prosecutor's Office of the Minsk Region, as well as the forensic medical report, and concluded that the mild injuries identified on the author's body had appeared prior to his apprehension.

4.8 With regard to the author's claims under article 9 of the Covenant, the State party submits that his arrest and placement in pretrial detention were compliant with the Criminal Procedure Code. He was informed of his right to challenge in court his arrest, his placement in custody and the length of his detention, and of the procedure to follow. However, he did not exercise this right. All necessary procedural documents were issued, and his right to defence was ensured to him. The author and his lawyer have not complained against actions by the criminal investigation authorities.

4.9 The State party argues that in compliance with the criminal procedure legislation, it has fulfilled the author's right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and his right for his conviction and sentence to be reviewed by a higher tribunal according to law. The legal guarantees, including the author's

right to defence, were explained to him and were duly ensured. Nothing indicates that the trial had an accusatory bias or that the author's rights to the presumption of innocence and to defence were violated. During the investigation and the trial, the author was provided with a counsel, with whom he could communicate and agree on the defence strategy. In accordance with the Criminal Procedure Code, the court exhaustively examined the evidence submitted by the prosecution and the defence and gave its assessment thereof in the verdict. The author's guilt was established on the basis of the evidence collected. In compliance with articles 18 (2) and 24 (5) of the Criminal Procedure Code, the court ensured the rights of the prosecution and the defence.

4.10 The State party concludes that the author's claims of violations of articles 6 (1) and (2), 7, 9 (1)–(4), 14 (1), (2), (3) (a), (b), (e) and (g) and (5) are unsubstantiated.

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

5.1 On 14 July 2022, the author's counsel provided the following comments on the State party's observations on the admissibility and the merits of the communication.

5.2 As previously established by the Committee, supervisory review appeals are not an effective remedy within the meaning of article 5 (2) (b) of the Optional Protocol[9] and do not meet the requirements of article 14 (5) of the Covenant.[10] A supervisory review appeal does not automatically entail its examination, but consists only in a petition for the competent public official (the Chair of a court) to issue a protest against a judgment. If the Chair chooses to issue the protest, the supervisory review procedure is then initiated and the protest is examined by a collegial body, a court's presidium. A supervisory review appeal is examined by the public official alone, without a public hearing. In addition, domestic legislation does not regulate the completion of the supervisory review procedure and the notification of the decision to the applicant. In practice, persons sentenced to the death penalty learn about the rejection of their supervisory review appeals several minutes before their execution. Until the execution, the Supreme Court also conceals the outcome of the supervisory review appeal from the convict's lawyer and family. The death penalty is carried out in secret. Neither the convict nor his or her counsel or relatives are informed about the date and hour of the execution. The convict does not have any possibility to complain to the Committee in the minutes following the information being received from the firing squad about the rejection of the supervisory review appeal. In his communication, the author stated that on 21 July 2016, his lawyer had submitted a supervisory review appeal to the Deputy Chair of the Supreme Court. The author could not wait for the decision on this appeal before submitting his communication, because the domestic criminal procedure legislation does not allow for the possibility of referring the matter to the Committee after the rejection of the supervisory review appeal.

5.3 As regards the author's petition for a pardon from the President, this is a humanitarian procedure and not an effective legal remedy to be exhausted under article 5 (2) (b) of the Optional Protocol.[11] The domestic legislation does not regulate the completion of this procedure or the notification of the decision to the petitioner. In practice, decisions to deny a pardon are concealed from convicts, their lawyers and their family members until the moment of execution.

5.4 In violation of the interim measures adopted by the Committee, on 29 November 2016 the author's family learned about his execution. This practice is of a systemic nature. Human rights defenders are not aware of a single case where the State party would have respected the Committee's requests for interim measures.

[9] Reference is made, inter alia, to *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006) and *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

[10] See the Committee's general comment No. 32 (2007), para. 50.

[11] *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 6.4; and *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002), para. 6.3.

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 before the Committee had concluded its consideration of the communication.

6.2 In the present case, the Committee observes that on 3 August 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. On 1 December 2016, the author's counsel informed the Committee that the author had been executed. 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.

6.3 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 (see the Optional Protocol, preamble and art. 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 (see the Optional Protocol, 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.[12]

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.[13] In the present case, the author alleged that his 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 the author, undermines the protection of Covenant rights through the Optional Protocol.[14]

[12] See, inter alia, *Piandiong v. Philippines* (CCPR/C/70/D/869/1999), para. 5.1; *Maksudov et al. v. Kyrgyzstan* (CCPR/C/93/D/1461/2006, 1462/2006, 1476/2006 and 1477/2006), paras. 10.1–10.3; *Yuzepchuk v. Belarus* (CCPR/C/112/D/1906/2009), para. 6.2; *Yakovitsky and Yakovitskaya v. Belarus* (CCPR/C/128/D/2789/2016), para. 6.2; and *Mikhalenya v. Belarus* (CCPR/C/132/D/3105/2018), para. 6.2.

[13] See, inter alia, *Idieva v. Tajikistan* (CCPR/C/95/D/1276/2004), para. 7.3; *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011), para. 9.4; *Yakovitsky and Yakovitskaya v. Belarus*, para. 6.4; and *Mikhalenya v. Belarus*, para. 6.4.

[14] 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; *Kovaleva and Kozyar v. Belarus*, para. 9.5; *Yakovitsky and* Yakovitskaya *v. Belarus*, para. 6.5; and *Mikhalenya v. Belarus*, para. 6.5.

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 rule 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 acknowledges information received from the State party about the availability in its domestic legislation of multiple procedures for supervisory review of judicial decisions that have come into force. The Committee recalls its jurisprudence according to which filing requests for supervisory reviews 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 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. A petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[15] In the present case, the author lodged supervisory review appeals against his sentence with the Prosecutor General of Belarus and later with the Deputy Chair of the Supreme Court, both of which were rejected. The State party does not provide any information or arguments to demonstrate that further supervisory review appeals would have constituted an effective domestic remedy in the circumstances of the case. Therefore, the Committee is not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the present communication due to the author's failure to further avail himself of the supervisory review procedures.

7.4 The Committee takes note of the author's claim, under article 7 of the Covenant, that he was ill-treated during his first interrogation on 7 November 2014. According to the material before the Committee, these allegations were verified by the Minsk regional department of the Investigative Committee, which adopted a decision refusing to initiate criminal proceedings. This decision was upheld by the Public Prosecutor's Office of the Minsk Region. Although the author mentions that he attempted to challenge the decision of the Public Prosecutor's Office, he does not provide any further information and supporting documents to demonstrate the exhaustion of domestic remedies. Therefore, the Committee concludes that it is precluded by articles 2 and 5 (2) (b) of the Optional Protocol from considering that part of the communication.

7.5 The Committee observes that the author claims a violation of article 7 of the Covenant because of mental suffering experienced by him after being sentenced to the death penalty in the first instance, exacerbated by being placed a cell for convicts on death row alongside another convict whose sentence had already become final. The Committee recalls its jurisprudence according to which detention on death row does not per se amount to treatment contrary to article 7 of the Covenant.[16] Even though conditions of detention on the death row may, under certain circumstances, entail violations of this provision,[17] the Committee is of the view that in the present case, the author has failed to substantiate his claim that the conditions of his detention were such that they could result in a separate violation of article 7. Therefore, the Committee considers this part of the communication inadmissible under article 3 of the Optional Protocol.

[15] *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3; *Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; and *Belenky v. Belarus* (CCPR/C/135/D/2860/2016), para. 8.3.

[16] *Johnson v. Jamaica* (CCPR/C/56/D/588/1994), paras. 8.2–8.4.

[17] *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 15.3; and see the Committee's general comment No. 36 (2018), para. 40.

7.6 With regard to the author's connected claims, made with a reference to articles 7 and 14 (3) (g) of the Covenant, about his conviction for the murder of E.E. on the basis of a confession obtained under torture, the Committee observes that it appears from the judicial decisions set out in the communication that the author's conviction for this crime was based on a series of coherent and detailed confessions, made both during the investigation and the trial, without alleged coercion, as well as on multiple pieces of material evidence. The court rejected the author's allegations that his confession on 7 November 2014 was the result of him being tortured, inter alia by referring to the findings of the inquiry conducted by the Minsk regional department of the Investigative Committee as well as to a forensic medical report. As stated above, the Committee has been unable to establish whether the author attempted to exhaust domestic remedies in order to challenge the findings of that inquiry. In the light thereof, the Committee concludes that the author's claims under articles 7 and 14 (3) (g) of the Covenant about him having been convicted on the basis of evidence obtained under torture lack sufficient substantiation and are inadmissible under article 3 of the Optional Protocol.

7.7 The Committee takes note of the author's complaints in relation to the investigation phase, under article 9 (1)–(4) and article 14 (3) (a), (b) and (d) of the Covenant, about his arbitrary detention, the denial of prompt access to a judge and to a lawyer, and the failure of the law enforcement authorities to record his detention and to explain him his rights immediately upon his apprehension. The Committee takes note of the State party's objections that the author was duly provided with explanations about the procedure to follow to challenge the legality and the length of his arrest and of his placement in custody but chose not to exercise that right. The State party insists that all requirements of the criminal procedure law were observed upon the author's arrest and that the author has not attempted to complain against acts by the investigative authorities at the domestic level. Given these objections and in the absence of any further clarifications from the author and his counsel, the Committee is unable to establish whether domestic remedies have been exhausted with regard to these particular claims and is therefore precluded by articles 2 and 5 (2) (b) of the Optional Protocol from considering this part of the communication.

7.8 The Committee notes the author's claims that his second trial was not impartial, within the meaning of article 14 (1) of the Covenant, because the Supreme Court had quashed the sentence to life imprisonment handed down in the first trial on the grounds of its excessive leniency, because the same public prosecutor who had lodged the successful appeal against the verdict in the first trial participated in the second trial, because the second trial was presided over by a judge who had ordered the death penalty in another case a month earlier, because the court did not examine carefully the new circumstances of the author pleading not guilty to the murder of E.E. and because the court tolerated aggressive declarations by victims who accused the author of criminal acts he had not committed and called for his execution. The material before the Committee suggests, however, that in the second trial, the judicial authorities determined the author's guilt following a careful examination of his confessions, of witness testimonies and of material evidence. In view of the case file, and bearing in mind the principle according to which it is incumbent on the courts of States parties to review the facts and evidence in each case,[18] the Committee is of the view that the author has failed to substantiate his claims that the trial was not impartial. In particular, the author has failed to provide sufficient explanations as to why the presiding judge may have lacked impartiality or may have appeared so to a reasonable observer due to his prior intervention in another unrelated trial. Regarding the participation of the same public prosecutor in both trials, the Committee observes that article 14 (1) of the Covenant does not impose an obligation of impartiality on public prosecutors acting as a party to criminal proceedings, given that they do not determine criminal charges against accused persons, or their rights and obligations.[19] In the light thereof, the Committee considers that the author's claims under article 14 (1) lack substantiation and are inadmissible under article 3 of the Optional Protocol.

[18] See the Committee's general comment No. 32 (2008), para. 39.

[19] For similar conclusions in relation to article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), see European Court of Human Rights, *Thiam v. France* (application No. 80018/12), judgment of 18 October 2018, para. 71.

7.9 The Committee takes note of the author's claims about violation of the presumption of his innocence under article 14 (2) of the Covenant because several media articles, one of which appeared in a State-owned newspaper, were published prior to his final conviction, accusing him of triple murder, with one of them referring to statements by an official of the Investigative Committee in Minsk. The Committee recalls the duty of government authorities to refrain from prejudicing the outcome of a trial.[20] The Committee is of the opinion, however, based on the facts as submitted by the author, that the material before it does not allow it to establish whether and to what extent the publications concerned affected the trial against the author and its outcome. It concludes, therefore, that the author has not sufficiently substantiated his claims relating to article 14 (2) of the Covenant, which should be found inadmissible under article 2 of the Optional Protocol.[21]

7.10 With regard to the author's claims about violation of article 14 (5) of the Covenant, the Committee notes that the author's appeal against the verdict of 15 February 2016 of Minsk Regional Court was considered, regarding both the facts and the law, by the Supreme Court's judicial panel on criminal affairs on 6 May 2016. Accordingly, it concludes that this part of the communication is inadmissible under article 3 of the Optional Protocol.

7.11 The Committee considers the author's remaining claims, raising issues under articles 6 and 14 (2) and (3) (b) and (e) of the Covenant, to be sufficiently substantiated for the purposes of admissibility and proceeds with its examination of the merits.

Consideration of the merits

8.1 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.

8.2 The Committee notes the author's claims about violation of the presumption of his innocence because he was handcuffed and kept in a cage during the court hearings, was forced to wear special clothing for death row inmates and was convoyed in the "head to knees" posture, specific for death penalty convicts, before his sentence had entered into force. The Committee recalls that the guarantee of presumption of innocence enshrined in article 14 (2) of the Covenant, which is fundamental to the protection of human rights, requires that no guilt be presumed until the charge has been proved beyond reasonable doubt, and that the accused have the benefit of doubt and be treated in accordance with that principle. Defendants should normally not be kept in cages during trials, or otherwise presented to the court in a manner indicating that they may be dangerous criminals.[22] On the basis of the information before it and in the absence of any other pertinent information or argumentation from the State party, the Committee considers that the facts as presented demonstrate that the right of the author to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, has been violated.

8.3 The Committee notes the author's claims of violation of his right to have adequate time and facilities for the preparation of his defence under article 14 (3) (b) of the Covenant. In his communication before the Committee and in his supplement to the cassation appeal before the Supreme Court, submitted in April 2016, the author referred to court records according to which on 6 April 2015, he examined 32 expert assessments between 4.34 p.m. and 5.22 p.m. and 24 other expert assessments and three expert interrogation records between 5.22 p.m. and 5.55 p.m. The Committee notes that it does not appear from the judgment of the Supreme Court of 6 May 2016 that this claim was examined. Neither has the State party provided any clarifications in relation to these allegations. The Committee recalls that the provision of article 14 (3) (b) is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. What counts as "adequate time" depends on the circumstances of each case. If counsels reasonably feel that the time for the preparation of the defence is insufficient, it is incumbent on them to request adjournment of the trial.[23] Even though, in the present case, the author does not claim that his counsel attempted to

[20] *Olanguena Awono v. Cameroon* (CCPR/C/123/D/2660/2015), para. 9.7; and see the Committee's general comment No. 32 (2008), para. 30.

[21] *A.T. v. Russian Federation* (CCPR/C/138/D/2669/2015), para. 7.4.

[22] See the Committee's general comment No. 32 (2008), para. 30.

[23] Ibid., para. 32.

request an adjournment, the Committee recalls that in cases involving capital punishment, article 14 (3) (d) of the Covenant imposes on States parties an obligation to ensure that the appointed lawyers assist the accused effectively at all stages of the proceedings.[24] Bearing in mind the gravity of the charges against the author and the exceptional severity of the selected punishment in the form of the capital punishment, the Committee is of the view that, in the circumstances of the case, the failure by the Supreme Court to respond to the author's allegations of lack of sufficient time to prepare his defence amounted to a violation of article 14 (3) (b) of the Covenant.

8.4 Regarding the author's complaints under article 14 (3) (e) of the Covenant about the court's failure to question the police officer S.T., the Committee recalls that this provision does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.[25] The author claims that summoning S.T. was necessary because the latter could confirm that the author had been submitted to ill-treatment upon his arrest, resulting in him pleading guilty to the murder of E.E. The Committee observes that, as acknowledged by the author, his first motion for summoning S.T. was satisfied by the court, but S.T. did not appear in the courtroom due to valid reasons related to his health. Furthermore, it appears from the case file that the court summoned several other police officers involved in the author's apprehension and interrogation and took into account the testimony provided by S.T. in separate proceedings related to an inquiry into the author's allegations of ill-treatment. In addition, the Committee observes that although S.T. participated in the author's apprehension, the author has affirmed before the Committee that he did not receive any bodily injuries at the moment of his apprehension (see para. 3.2 above). The author has not provided any indication as to the presence of S.T. during his subsequent interrogation, which was allegedly accompanied by ill-treatment. In these circumstances, and taking into account the Committee's conclusions of the inadmissibility of the author's claims under article 7 related to the author allegedly being coerced into confessing under torture (see para. 7.4 above), the Committee is of the view that the material before it does not disclose a violation of article 14 (3) (e) of the Covenant.

8.5 With regard to the author's claims of violation of his right to life, the Committee recalls that article 6 (2) of the Covenant allows for imposition of the death penalty in countries which have not abolished it only for "the most serious crimes", a term which must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing.[26] In the present case, the author was sentenced for three murders, two of which were committed with particular cruelty, which satisfies the requirement of gravity under article 6 (2) of the Covenant. The Committee recalls, however, 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 renders the sentence arbitrary in nature, and in violation of article 6 of the Covenant.[27] In the light of the Committee's findings of violations of article 14 (2) and (3) (b) of the Covenant, the Committee concludes that the sentence of death and the subsequent execution of the author have resulted in violation of his right to life under article 6 of the Covenant.

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 author's rights under articles 6 and 14 (2) and (3) (b) 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. Therefore, the State party is under an obligation to provide adequate monetary compensation to the author's family for the loss of his life and, if applicable, reimbursement of legal costs incurred. The State party is also under an obligation to prevent similar violations in the future and, in the light of its obligations under

[24] Ibid., para. 38.
[25] Ibid., para. 39.
[26] See the Committee's general comment No. 36 (2018), para. 35.
[27] Ibid., para. 41.

the Optional Protocol, to cooperate in good faith with the Committee, particularly by complying with its requests for interim measures.

11. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant. The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. Since, 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.