



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. 2991/2017* **

<i>Communication submitted by:</i>	Ulyana Zakharenko (represented by counsel, Raisa Mikhailovskaya)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Belarus
<i>Date of communication:</i>	22 March 2017 (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 13 June 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2025
<i>Subject matter:</i>	Denial of right of access to courts
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Fair trial
<i>Article of the Covenant:</i>	14 (1)
<i>Articles of the Optional Protocol:</i>	1, 2 and 5 (2) (b)

1.1 The author of the communication is Ulyana Zakharenko, a national of Belarus born in 1924. She claims that the State Party has violated her rights under article 14 (1) of the Covenant. The Optional Protocol entered into force for Belarus 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 jurisprudence, the State Party continues to be subject to the application of the Optional Protocol with regard to the present communication.¹

* Adopted by the Committee at its 143rd session (3–28 March 2025).

** 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, Mahjoub El Haiba, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

¹ 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), para. 10.



1.3 On 14 May 2018, the author died. In a letter dated 10 December 2018, her family expressed interest in the Committee continuing its consideration of the communication. The letter was signed by the author's niece, Lubov Tokareva.

Facts as submitted by the author

2.1 The author's son, Yuri Zakharenko, was kidnapped on 7 May 1999 and has been missing ever since.² The criminal investigation into his disappearance and possible killing, initiated in September 1999, was still ongoing as at the date of submission of the present communication. On 24 May 2016, the author requested the Oktyabrski District Court in Minsk to declare her son dead so that she could enter into possession of her share of his assets. She asked the court to consider the date of her son's disappearance – 7 May 1999 – as the date of his death.³ On 30 May 2016, the court suspended the case, without consideration of the merits of the author's request, and joined it to a similar case that had been submitted in 2002 by Mr. Zakharenko's wife, Olga Zakharenko. The case of Olga Zakharenko had been suspended on 9 September 2002 after the Oktyabrski District Court linked the declaration of Mr. Zakharenko's death to the outcome of the criminal investigation into his disappearance.

2.2 On 15 June 2016, the author appealed the suspension of her case to Minsk City Court. She contested the District Court decision to link her civil claim to the criminal investigation. She claimed that the fact that her son had been missing for 17 years was sufficient, under article 41 of the Civil Code of Belarus, to declare him dead. On 1 August 2016, Minsk City Court rejected the appeal. On 12 August 2016, the author submitted a supervisory review appeal to the Chair of Minsk City Court, which was rejected on 12 September 2016. Her supervisory review appeal of 7 October 2016, submitted to the Deputy Chair of the Supreme Court, was rejected on 16 November 2017.

2.3 On 15 August 2016, the author submitted a clarification of her request to the Oktyabrski District Court. She requested the court to declare her son dead because he had been missing for more than three years, rather than on the basis of her previous claim to consider him dead as at the date of his disappearance. On 7 October 2016, the author requested the Deputy Chair of the Supreme Court to transmit her new claim to the first instance court for consideration on the merits. On 16 November 2017, the Deputy Chair of the Supreme Court rejected the author's request, considering that the circumstances of the court decision of 2002, by which the case requesting the declaration of Mr. Zakharenko's death was suspended, remained valid.

Complaint

3.1 The author claims a violation of article 14 (1) of the Covenant owing to the refusal of the courts to consider her claim on the merits. She claims that the courts postponed consideration of her claim for an indefinite period of time and put her in a situation of "legal limbo" by linking her civil claim to the criminal investigation into her son's disappearance, which has been ongoing for 17 years. She claims that, by failing to apply national law, which provides that a person can be declared dead after having been missing for three years, the domestic courts created unjustified obstacles to the consideration of her claim and, hence, the enjoyment of her right to benefit from her inheritance.

3.2 The author asks the Committee to urge the State Party to consider her claim on the merits and to pay her compensation for the benefits lost during the period when she was unable to dispose of her inherited property.

State Party's observations on admissibility

4.1 In a note verbale dated 22 August 2017, the State Party contested the admissibility of the communication on the basis of the author's failure to exhaust domestic remedies.

² See *Zakharenko v. Belarus* (CCPR/C/119/D/2586/2015).

³ According to article 41 of the Civil Code of Belarus, a person can be declared dead if, at the place of the person's residence, there has been no information on the person's whereabouts for three years. If the person disappeared under life-threatening circumstances, the respective period is six months.

According to the State Party, the author failed to submit the supervisory review requests to the Prosecutor General and the Chair of the Supreme Court.

4.2 On 23 April 2019, the State Party requested that the case be discontinued, since the author had passed away. The State Party considered that the third parties, albeit the author's relatives, had no standing under article 2 of the Optional Protocol to continue representing her interests in the case. The State Party emphasized that its position should in no way be treated as a lack of cooperation.

4.3 On 29 December 2020, the State Party, referring to rule 99 (b) of the Committee's rules of procedure and article 2 of the Optional Protocol, challenged the continued representation of the case by the author's appointed counsel after the author's death. The State Party submits that the deceased author's family members did not participate in the relevant domestic proceedings and that they do not have standing to pursue the case in the author's stead or to authorize counsel to represent their interests.

Author's comments on the State Party's observations on admissibility

5.1 On 1 September 2017, the author challenged the State Party's position, stating that supervisory review requests to the Prosecutor General and the Chair of the Supreme Court are not effective remedies for the purposes of article 5 (2) (b) of the Optional Protocol. The decision on whether to initiate proceedings on the basis of such a request is entirely at the discretion of public officials; the individual concerned cannot initiate the review directly. The author asserted that she has exhausted all effective remedies, having submitted supervisory review requests to the Chair of Minsk City Court and to the Deputy Chair of the Supreme Court, and that it would be pointless to submit yet another supervisory review request.

5.2 On 30 January 2020, the deceased author's family members – her granddaughter, Elena Zakharenko, and her niece, Lubov Tokareva – submitted comments regarding the State Party's argument that they did not have standing to pursue the case after the author's death. Elena Zakharenko and Lubov Tokareva referred to the national legislation, which defines family members as close and other relatives, unemployed dependents and other persons living with a concerned person and running the household together. Elena Zakharenko is a granddaughter of the deceased author. Lubov Tokareva cared for the elderly author for 20 years, resided with her after her son's disappearance and was a lawful heir of the deceased author. She inherited the author's property after her death and was authorized by the deceased author to represent her before the national authorities. Both Elena Zakharenko and Lubov Tokareva have signed a power of attorney to be represented in the present communication by the deceased author's counsel.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State Party's argument that the author failed to file requests for supervisory review with the Prosecutor General or the Chair of the Supreme Court. In this context, the Committee considers that filing with a higher court a request for a supervisory review of court decisions that have taken effect 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 a request would provide an effective remedy in the circumstances of the case. The Committee recalls its jurisprudence, according to which 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 does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b)

of the Optional Protocol.⁴ The Committee notes that, in the present case, the author has exhausted all effective domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee notes the State Party's argument that third parties who did not participate in the relevant domestic proceedings do not have grounds to continue the case before the Committee. It has been the long-standing practice of the Committee to allow relatives to bring proceedings for alleged victims who have died, disappeared or been prevented for other reasons from bringing a communication or designating a representative.⁵ Both modes of representation are reflected in rule 99 (b) of the Committee's rules of procedure. In the present case, Elena Zakharenko and Lubov Tokareva are close relatives of the deceased author and, as such, are entitled to represent the author's interests by virtue of rule 99 (b) of the rules of procedure. In addition, they are heirs of Mr. Zakharenko and of the deceased author and thus have a personal interest in having the present communication considered by the Committee. In view of the foregoing, the Committee considers that Elena Zakharenko and Lubov Tokareva have valid grounds to pursue the proceedings initiated by the deceased author.

6.5 Elena Zakharenko and Lubov Tokareva have presented a duly signed power of attorney for the counsel to represent them before the Committee. The Committee therefore considers that, for purposes of article 1 of the Optional Protocol, the communication has been presented by the family of the alleged victim, through their duly designated representative. Accordingly, it is not precluded by virtue of article 1 of the Optional Protocol from examining the present communication.

6.6 The Committee considers that the author's claim under article 14 (1) has been sufficiently substantiated for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee notes the author's claim that her rights under article 14 (1) of the Covenant were violated and that she was deprived of the possibility of inheriting her share of her son's property in a timely manner because the domestic courts had refused to consider her request to declare her son, who had by then been missing for 17 years, dead. The Committee reiterates its long-standing view that it is generally up to the courts of States Parties to review the facts and evidence, or to apply the domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.⁶

7.3 In the present case, the Committee notes the author's submission that, under article 41 of the Civil Code, upon which she relied in the domestic courts, a person who has been missing for more than three years can be declared dead by the courts. The Committee also notes that, instead of considering her request under article 41 of the Civil Code on the merits, the Oktyabrski District Court decided, on 30 May 2016, to join her case to a similar case that had been filed by her daughter-in-law, in 2002. The latter case had been linked to the outcome of the investigation into Mr. Zakharenko's disappearance and its consideration had been

⁴ *Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; and *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 8.3.

⁵ For example, *Zakharenko v. Belarus*, para. 6.3.

⁶ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26; *G.J. v. Lithuania* (CCPR/C/110/D/1894/2009), para. 8.10; *V.K. v. Russian Federation* (CCPR/C/116/D/2411/2014), para. 6.6; and *Akulich v. Belarus* (CCPR/C/140/D/2987/2017), para. 7.2.

suspended for 14 years at that time. The Committee further notes that none of the domestic courts provided the author with any reasoning as to why her case had to be linked to the criminal investigation and why the domestic legislation on declaring a missing person dead could not have been applied. In the Committee's view, by refusing to consider on the merits the author's request to establish legally the fate of her missing son, the domestic courts have denied her the right of access to courts under article 14 (1) of the Covenant.

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

9. 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. Accordingly, the State Party is obligated to take appropriate steps to guarantee expeditious access to courts to the author's heirs in the case of declaring Mr. Zakharenko dead and to pay them compensation for any negative consequences caused by the lack of access to courts. The State Party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. On becoming a party to the Optional Protocol, the State Party recognized the competence of the Committee to determine whether there had 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. 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.⁷ 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.

⁷ For example, *Sextus v. Trinidad and Tobago*, para. 10; *Lobban v. Jamaica*, para. 11; and *Shchiryakova et al. v. Belarus*, para. 10.