

[Imposition of death sentence in Belarus violates rights to life, liberty, a fair trial and freedom from torture](#)

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The Human Rights Committee finds Belarus in violation of the International Covenant on Civil and Political Rights in connection with its decision to sentence an individual to death after an unfair trial.



Grishkovtsov v. Belarus (2013/2010)

Summary

In April 2015, the Human Rights Committee was asked to consider whether Belarus violated its obligations under the International Covenant on Civil and Political Rights in connection with its decision to sentence an individual to death after an unfair trial and its non-respect of interim measures, requested by the Human Rights Committee, in carrying out the death sentence.

The communication was submitted on behalf of the victim by his legal counsel under the Optional Protocol to the Covenant.

Background

The author, Oleg Grishkovtsov, is a Belarusian national born in 1980. At the time of the submission of his communication, the author was detained on death row in Minsk after being sentenced to death by the Grodno Regional Court on 14 May 2010.

On 14 October 2009, the author was detained and held in police custody in the Oktyabrsk district police station in Grodno. The author noted that he was not allowed to meet with his lawyer in private during his time in police custody and therefore refused the assistance of a lawyer altogether. He was placed in pre-trial detention on 21 October 2009. He was subsequently charged with the murder of three persons, kidnapping, theft and arson. The author alleged that he was tortured by police officers in order to obtain his confession to the charges laid against him.

On 23 October 2009, a medical expert confirmed incidents of torture and ill-treatment against the author, who was at that stage "unable to move around by himself" and had signs of hyperaemia around both his wrists. The author reiterated that during his initial interrogation he was intoxicated, due to drinking large amount of alcohol, and could not express himself in a coherent way. Nevertheless, the investigators continued the interrogation and gave him additional alcohol. When he was initially brought to the police station, the author claimed that ten officers had beaten him. The administration at the detention centre had to call an ambulance four times during the first night at the detention centre, as the author felt ill, could not walk and had bruises all over his body.

On 14 May 2010, the Grodno Regional Court found the author guilty of three murders, kidnapping, theft and arson. The author, acting through his lawyer, filed an appeal on 22 May 2010, which was revised on 26 July 2010 with new arguments including references to articles of the Covenant. On 17 September 2010, the Supreme Court of Belarus rejected the appeal, finding that the author's conviction was fully supported by the evidence in the file.

On 6 December 2010, the author filed his communication with the Committee under the Optional Protocol to the Covenant. On the same day, the Committee transmitted the communication to Belarus to request that the death sentence not be carried out. In his communication, the author claimed that his arbitrary arrest, torture, ill-treatment and death sentence after an unfair trial violated his rights to: (i) life, (ii) freedom from torture, (iii) freedom from arbitrary arrest and detention, and (iv) a fair trial.

On 14 April 2011, the Committee reiterated its request to Belarus.

On 20 July 2011, the Committee was informed that the author had been executed, despite its request for interim measures.

The Committee's decision

The Committee first considered Belarus' lack of cooperation and failure to respect the Committee's request for interim measures. The Committee disagreed with Belarus' argument that it was under no obligation to consider the communication, the Committee's rules of procedure, or the Committee's interpretation of the Optional Protocol, or to respect the request for interim measures. The Committee noted that State parties to the Covenant and the Optional Protocol agree to recognise the Committee's rules of procedure. It considered that implicit to a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith. The Committee reiterated that a State party commits serious breaches of its obligations if it acts to prevent or frustrate consideration of a communication by the Committee. The Committee concluded that Belarus, having been notified of the communication and the request, committed a serious breach of its obligations under the Optional Protocol in executing the author.

On admissibility, the Committee rejected Belarus' argument that the communication was inadmissible as it was submitted by a third party and not by the alleged victim itself. The Committee recalled that under rule 96(b) of its rules of procedure a communication should be submitted by the individual personally or by a representative. In the present case, the Committee considered that the communication was admissible because it was submitted by that author's counsel together with a duly signed power of attorney, in circumstances where the author himself was detained on death row at the time of submission. In terms of the specific claims made by the author, the Committee declared the claims under articles 14 and 3 of the Covenant as inadmissible due to the absence of sufficient evidentiary support. However, the Committee concluded that communication was admissible to the extent it raised issues under articles 6, 7, 9 and 14 of the Covenant.

On the merits, the Committee first considered the author's claims under articles 7 and 14 of the Covenant. The Committee noted the author's allegations that he was subject to physical and psychological pressure that forced him to confess to a number of crimes, and that this forced confession was the basis for his conviction of those offences. Without any evidence to the contrary presented by Belarus, the Committee found that due weight must be given to the author's allegations. The Committee noted that Belarus had failed to promptly and impartially investigate the author's complaints in this respect, as required by article 7 of the Covenant. In view of the above, the Committee concluded that, in addition to clear signs that the author had been tortured, the State had not presented any information to show that an effective investigation had been conducted, thereby violating the author's rights under articles 7 and 14(3)(g) of the Covenant.

With respect to the author's claims under article 9(3), the Committee found that Belarus had indeed violated the author's right to be brought promptly before a judge or other judicial officer once he was detained. The Committee noted that any delay longer than 48 hours between initial detention and appearance before a judge must be absolutely exceptional and justified under the circumstances. The Committee therefore found that the delay between the author's initial arrest on 14 October 2009, and being placed in pre-trial detention on 21 October 2014, and being brought before a judge on 30 March 2010, violated of the author's rights under article 9(3) of the Covenant. In light of this finding, the author's claim under article 9(4) was not examined

separately.

With respect of the author's complaint under Article 14(2) that he was denied the presumption of innocence during his trial, the Committee recalled its jurisprudence and its general comment No. 32, according to which the presumption of innocence is considered fundamental to the protection of human rights, imposes on the prosecution a burden of proving the charge and guarantees that no guilt can be presumed until the charge is proven beyond a reasonable doubt. On the basis of the author's unrefuted allegations, the Committee concluded that the keeping of the author shackled and in a metal cage during his trial and allowing photos of him in the cage to be published in the media, constituted a violation of his right to be presumed innocent under article 14(2) of the Covenant.

With respect to the author's complaint under Article 14(3)(d), the Committee noted that the author was not afforded effective access to legal assistance during pre-trial detention, when he confessed his guilt under duress, and during preparations for his appeal. Referring to its general comment No. 32 and jurisprudence, the Committee held that effective assistance of a lawyer is paramount at all stages of proceedings, especially in cases involving capital punishment. The Committee noted that the allegations had not been refuted by Belarus and concluded that there was a violation of the author's rights under article 14(3)(d) of the Covenant.

In addressing the claim of a violation of the author's right to life under article 6 of the Covenant, the Committee recalled its general comment No. 6, noting that the provision of a death sentence may only be imposed in accordance with the law and not contrary to the provisions of the Covenant. The Committee also noted its jurisprudence, whereby a trial that violates article 14 and results in the imposition of a death sentence will constitute a violation of the concerned individual's right to life. In light of the above, and the author's unrefuted allegations of torture, ill-treatment and absence of legal assistance, the Committee concluded that the final sentence and subsequent execution of the author failed to meet the requirements of article 14 of the Covenant and therefore gave rise to a violation of his right to life under article 6 of the Covenant.

In accordance with article 2(3) of the Covenant, the Committee observed that Belarus was under an obligation to provide adequate monetary compensation to the author's family for the loss of his life, including reimbursement of legal costs incurred. Belarus was also obliged to prevent similar future violations and to cooperate in good faith with the Committee, particularly in complying with requests for interim measures.

Belarus must now submit its written response within six months of the Committee's decision, including information on the action taken in the light of the Committee's recommendations, and ensure that the Committee's decision is published widely in Belarusian and Russian.

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