



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

One hundredth session

11 to 29 October 2010

Views

Communication No. 1390/2005

<u>Submitted by:</u>	Anna Koreba (not represented by counsel)
<u>Alleged victim:</u>	Dmitry Koreba (the author's son)
<u>State party:</u>	Belarus
<u>Date of communication:</u>	10 December 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 May 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	25 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Conviction of a juvenile person in violation of fair trial guarantees.
<i>Substantive issues:</i>	Effective remedy; torture, cruel, inhuman or degrading treatment or punishment; segregation of juvenile offenders from adults; right to be presumed innocent; right to obtain the attendance and examination of witnesses; right not to be compelled to testify against oneself or to confess guilt.
<i>Procedural issues:</i>	None
<i>Article of the Covenant:</i>	2, paragraph 3; 7; 10, paragraph 2(b); 14, paragraphs 2, 3(e), (3)(g) and 4
<i>Articles of the Optional Protocol:</i>	None

On 25 October 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1390/2005.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (one hundredth session)

concerning

Communication No. 1390/2005**

Submitted by: Anna Koreba (not represented by counsel)
Alleged victim: Dmitry Koreba (the author's son)
State party: Belarus
Date of communication: 10 December 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 October 2010,

Having concluded its consideration of communication No. 1390/2005, submitted to the Human Rights Committee on behalf of Mr. Dmitry Koreba under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mrs. Anna Koreba, a Belarusian national born on 31 July 1954. She submits the communication on behalf of her son, Mr. Dmitry Koreba, a Belarusian national born on 20 July 1984, who at the time of submission of the communication was serving his sentence in colony No.19 in Mogilev, Belarus. Although the author does not claim a violation by Belarus of any specific provisions of the International Covenant on Civil and Political Rights, the communication appears to raise issues under article 2, paragraph 3; article 7; article 10, paragraph 2(b); article 14, paragraphs 2, 3(e), (3)(g) and 4, of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmed Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

Factual background

2.1 On 24 May 2001, the dead body of Mr. R.B. was found with numerous stab wounds in the courtyard of the secondary school No. 2 in Gomel. On 17 September 2001, officers of the Crime Detection Department asked Dmitry Koreba to accompany them to the emergency unit of the Novobelitsk District Department of Internal Affairs for a “conversation”. He went there together with his father. The author and her elder son came to the emergency unit later that evening, where they were informed that Dmitry was arrested on suspicion of having murdered Mr. R.B. The author was not allowed to see her son.

2.2 At 0.30 a.m. on 18 September 2001, Dmitry was interrogated by investigator, Mr. R.Y., in the presence of a lawyer and a social worker. After the interrogation, the Head of the Crime Detection Department, Mr. V.S., informed the author that her son would be immediately transferred to a temporary detention ward (IVS). Instead, he was kept in the emergency unit of the Novobelitsk District Department of Internal Affairs for another 24 hours, where he was interrogated without his lawyer, legal representative and a social worker, subjected to threats (including threats of reprisals against his mother), humiliation and beating by police officers, including the Head of the Crime Detection Department, for the purpose of extracting a confession from him. He was also forced to drink strong alcohol and was poured over with hot tea.

2.3 During this time, he was brought on numerous occasions from the “cage” in which he was sitting in the squatting position to the investigation section for interrogation. When the next day he informed the author and the lawyer about the beating, they requested that a forensic medical examination be carried out. On 20 September 2001, the author’s son was brought for such an examination by the Head of the Crime Detection Department in the absence of the lawyer. The author submits that, predictably, the forensic medical expert concluded that there were no injuries on her son’s body. The author submits that she as his legal representative, the lawyer and a social worker became witnesses of the pressure being exerted on her son to make him confess. The Head of the Crime Detection Department pressured Dmitry to confess guilt in exchange of which he would support that the crime was committed in self defence. The Head of the Crime Detection Department invited the author to persuade her son to confess guilt. When she refused, he threatened to “lock her son up in a way that he would never be able to leave a prison and that she would be bringing food parcels to him until the end of her days”.

2.4 On 20 September 2001, the car in which the author’s son was transported to the IVS by the Head of the Crime Detection Department and another officer stopped next to a bar, Mr. V.S. handcuffed Dmitry to the car’s door and went into the bar. When he returned, he started to pressure Dmitry again to make him confess. When Dmitry insisted that he did not kill Mr. R.B., Mr. V.S. started to beat him and requested the car driver to drive in the direction of the railway. At some point the car stopped and he ordered Dmitry to leave it, threatening to shoot him and present the incident as an escape. The author’s son was crying, clutching at the car seat. Mr. V.S. continued to beat him with the fists and ordered the car driver to drive them to the IVS.

2.5 After the author’s son was formally remanded in custody on 20 September 2001, he was kept in the IVS with adults, some of whom had committed serious crimes. He was held there for 11 days¹ before being transferred to the investigation detention centre (SIZO). During this time he was not allowed to meet with his lawyer and a legal representative. The

¹ In the appeal for a supervisory review of 29 December (year not indicated) addressed to the Chair of the Supreme Court, the author’s son complained about being kept in the IVS for 7 days.

Head of the Crime Detection Department and his officers continued to interrogate him in the IVS, using the same methods, on 21 and 24 September 2001. They beat him, forced him to drink strong alcohol and threatened to put him in a situation where he might face sexual aggression and to imprison his mother.

2.6 On 24 September 2001, under the influence of alcohol Dmitry signed a confession report written by a police officer Ms. N.C. in the absence of a lawyer or a legal representative. During an interrogation on 26 September 2001, which was conducted in the author's presence, her son retracted his confession and stated that he had signed it under pressure. After that, the author was deprived of her procedural status as a legal representative under the pretext that she was obstructing the investigation. This procedural status was reinstated at a later stage by the court.

2.7 On 5 April 2002, the Judicial Chamber for Criminal Cases of the Gomel Regional Court ("the Gomel Regional Court") convicted the author's son on counts of murder with particular cruelty (article 139, part 2, paragraph 6, of the Criminal Code) and attempted theft committed more than once (article 14, part 2, and article 205, part 2). The count of attempted theft was related to the event that took place on 11 June 2001 when the author's son tried to steal a wallet from the office of a sports teacher at his secondary school. The Gomel Regional Court took into account the previous conviction of the author's son² and sentenced him to 12 years' imprisonment to be served in the educational colony. The Court examined his complaints about being subjected to ill-treatment but concluded that they were unfounded and used as a tactic to escape criminal liability. The Gomel Regional Court found admissible as evidence the confession of 24 September 2001.

2.8 The author claims that her son is innocent, his trial was unfair and his guilt has not been established. Thus:

a) Her son's previous conviction played a key role in his conviction for murder of Mr. R.B. and that her son was an easy target.

b) Her son's alibi was not properly considered. The author submits that, on 24 May 2001, Dmitry came home from school at approximately 3 p.m. and spent the rest of the day with his parents. On 25 and 26 May 2001, he went to school and did not show unusual behaviour.

c) Her son testified in court that he learnt about the murder of Mr. R.B. on 25 May 2001 from Mr. A.R., who told him during a break between classes that the day before he saw two adult men fighting in the courtyard of the secondary school No.2. Mr. A.R., in his turn denied in court that he attended any classes in school on that day, without however clarifying whether or not he was present in the school on that day even if he did not attend the classes.

d) Her 17 year old son could scarcely have overpowered the victim, who was a physically fit man twice as old as her son and aggressive.

e) According to the expert opinion examined by the Gomel Regional Court, there were no traces of blood on her son's clothes.

f) The court did not take into account that the parents of Mr. A.R., main witness in the case, were friends of an officer of the Crime Investigation Department who was in charge of investigating the murder of Mr. R.B.

² On 23 January 2001, the Novobelitsk District Court convicted the author's son on the count of large-scale theft (article 205, part 3, of the Criminal Code) and sentenced him to 3 years' imprisonment with the deferral of two years.

g) The court did not objectively examine numerous witness statements (names are available on file), attesting that between 4 p.m. and 5 p.m. on 24 May 2001, Mr. R.B. was seen in a state of a heavy intoxication together with other two adults not far from the place where he was later found dead. The three men were arguing and pushing each other.

h) Several witnesses made contradictory depositions that have not been properly addressed by the court. Thus, there were contradictions about the time when Mr. R.B. was last seen alive and about whether Mr. A.R. and Dmitry had been together in the afternoon of 24 May 2001 at the courtyard of the secondary school No. 2.

i) On 29 March 2002, that is, on the last day of court hearing, the prosecution requested the examination as witness of an undercover agent, Mr. M.T. The author, her son and the social worker were asked to leave the court room when the undercover agent, who wore a mask, testified. He stated that for one day he was detained in the same cell as Dmitry and that the latter had confessed to him about the murder. The author submits that contrary to the requirements of article 438 of the Criminal Procedure Code, her son, after he was allowed to return to the court room, was not given an opportunity to question the undercover agent. Moreover, the prosecution did not present any evidence that the undercover agent was indeed detained with her son and, if he did, under what name. The author submits, therefore, that her son's right to defence was violated.

j) No expert examination was carried out to establish whether the stab wounds on the body of Mr. R.B. had been inflicted by only one person and with one murder weapon.

k) The court ignored a request of the author's son to verify his testimony with the help of a lie detector.

2.9 On 9 August 2002, the Judicial Chamber for Criminal Cases of the Supreme Court upheld the conviction of the author's son and dismissed the cassation appeal. The court concluded, *inter alia*, that the use of unlawful methods of investigation had not been established.

2.10 On numerous occasions the author and her son complained about his ill-treatment by officers of the Crime Detection Department and unjust conviction to the Gomel Regional Prosecutor's Office, to the Supreme Court, to the General Prosecutor's Office, to the Deputy Minister of Internal Affairs and to the Presidential Administration. These complaints basically remained unanswered.

The complaint

3. Although the author does not claim a violation of any specific provisions of the Covenant, the communication appears to raise issues under article 2, paragraph 3; article 7; article 10, paragraph 2(b); and article 14, paragraphs 2, 3(e), (3)(g) and 4.

State party's observations on admissibility and merits

4.1 On 12 July 2005, the State party submits its observations on the admissibility and merits of the communication. The State party confirms that, on 5 April 2002, the Gomel Regional Court convicted the author's son on counts of murder with particular cruelty (article 139, part 2, paragraph 6, of the Criminal Code) and attempted theft committed more than once (article 14, part 2, and article 205, part 2). This conviction was upheld by the Supreme Court on 9 August 2002. On 4 February 2004, the Presidium of the Supreme Court lowered the sentence to 11 years and 6 months' imprisonment.

4.2 The State party points out that the author's son did not challenge his conviction for attempted stealing and that his arguments about the innocence and unjust conviction under article 139, part 2, paragraph 6, of the Criminal Code have been examined by the State

party authorities and found to be groundless. The murder of Mr. R.B. by the author's son was eye-witnessed by Mr. A.R. who described the circumstances in which the crime was committed to his acquaintance, Mr. M.L. The witness Mr. M.T. (see paragraph 2.8 (i)) testified that for one day he was detained in the same cell as the author's son and that the latter confessed to him having murdered a man with a knife. Classmates of the author's son gave testimonies confirming that he carried a knife to the school, including in May 2001. One of the classmates stated that the author's son did not give him back a knife which he borrowed in the autumn of 2000. According to the expert opinion, one could not exclude that a prototype of that knife could have been a murder weapon.

4.3 The State party adds that in his confession report of 24 September 2001 the author's son admitted having stabbed Mr. R.B. with a knife. A combination of the above-mentioned evidence allowed the court to conclude that the author's son was guilty. This conclusion was upheld by the highest judicial instance, the Presidium of the Supreme Court.

4.4 The State party submits that the prosecutorial authorities examined numerous complaints in relation to this case and concluded that there were no grounds for further action. In particular, the claims of the author's son about being subjected to unlawful methods of investigation have been thoroughly considered and found to be groundless. There was no evidence in the case file to corroborate the allegations about biased investigation or about fabricated accusations against the author's son that could have had an impact on the court's conclusion in relation to his guilt. The State party concludes that in her communication to the Committee, the author has provided her own subjective evaluation of the evidence collected against her son.

Author's comments on the State party's observations

5. On 14 June 2007, the author submits her comments on the State party's observations. She reiterates her initial claims and adds that one of the witnesses in her son's case, Mr. M.L. is currently serving a sentence in relation to another crime, whereas the main witness, Mr. A.R. is wanted by the police. She submits that one cannot exclude that the two of them were somehow involved in the murder of Mr. R.B. and gave false testimonies against her son to escape criminal liability.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

6.3 The Committee considers that the author has sufficiently substantiated his claims, raising issues under article 7; article 10, paragraph 2(b); article 14, paragraphs 2, 3(e), (3) (g) and 4, of the Covenant, and declares them admissible.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's allegations that her son was subjected to beatings, threats and humiliation by officers of the Crime Detection Department, for the purpose of extracting a confession from him, and identifies the alleged perpetrators of these acts. The Committee also notes the State party's affirmation that these allegations had been examined by the courts and were found to be groundless. In this respect, the Committee recalls that once a complaint about treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.³ The Committee considers that the information contained in the file does not demonstrate that the State party's competent authorities gave due consideration to the alleged victim's complaints of ill-treatment made both during the pre-trial investigation and in court.

7.3 Furthermore, it recalls its jurisprudence that the wording, in article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities on the accused with a view to obtaining a confession of guilt.⁴ In cases of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.⁵ In the circumstances, and in the absence of sufficient information in the State party's response about the measures taken by the authorities to investigate the claims made by the author's son, the Committee concludes that the facts before it amount to a violation of article 2, paragraph 3, read in conjunction with articles 7 and 14, paragraph 3 (g), of the Covenant.

7.4 The author has claimed that, despite the fact that at the time of his arrest and conviction her son was 17 years old, he was kept for 11 days in the IVS with adults, some of whom had committed serious crimes, and interrogated in the absence of his lawyer, legal representative or a social worker. The State party has not commented on these allegations, which raise issues under article 10, paragraph 2(b), and article 14, paragraph 4, of the Covenant. The Committee recalls that accused juvenile persons are to be separated from adults and to enjoy at least the same guarantees and protection as those accorded to adults under article 14 of the Covenant.⁶ In addition, juveniles need special protection in criminal proceedings. They should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence. In the present case, the author's son was not separated from adults and did not benefit from the special guarantees prescribed for criminal investigation of juveniles. In the circumstances, and in the absence of any other pertinent information, the Committee concludes that the rights of the author's son under article 10, paragraph 2(b), and article 14, paragraph 4, of the Covenant have been violated.

7.5 The Committee further notes the author's claim that her son was not given the opportunity to question one of the two main witnesses of the prosecution, the undercover agent Mr. M.T. The Committee recalls that, as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3(e), is important for ensuring an effective

³ See, e.g., Communication No. 781/1997, *Aliiev v. Ukraine*, Views adopted on 7 August 2003, paragraph 7.2. See also, Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture and cruel treatment or punishment), 1992 (HRI/GEN/1/Rev.8), paragraph 14.

⁴ Communication No. 330/1988, *Berry v. Jamaica*, Views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, paragraph 5.1.

⁵ See, Human Rights Committee General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (article 14), U.N. Doc. CCPR/C/GC/32 (2007), paragraph 41.

⁶ *Ibid*, paragraphs 42 - 44.

defence by the accused and their counsel and guaranteeing the accused the same legal power of compelling the attendance of witnesses relevant for the defence and of examining or cross-examining any witnesses as are available to the prosecution.⁷ In the present case, the Committee notes the absence of information in the file as to the reasons for refusing the presence of the author's son in the court room during the questioning of the undercover agent Mr. M.T. and not allowing him to question this witness. In the absence of information from the State party in that respect, the Committee concludes that the facts, as reported, amount to a violation of the right of the author's son under article 14, paragraph 3(e).

7.6 In relation to the author's claim that her son's trial was unfair and that his guilt has not been established, the Committee notes that the author points to many circumstances which she claims demonstrate that her son did not benefit from the presumption of innocence. The Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.⁸ However, in the present case, given the above findings and in the absence of a sufficient response by the State party on the author's specific allegations, the Committee is of the opinion that the author's son did not benefit from the principle of presumption of innocence, in violation of article 14, paragraph 2, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 2, paragraph 3, read in conjunction with articles 7 and 14, paragraph 3(g); article 10, paragraph 2(b); article 14, paragraphs 2, 3(e), (3)(g) and 4, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author's son with an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for his ill-treatment, as well as his release and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

10. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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. In addition, it requests the State party to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

⁷ Ibid, paragraph 39.

⁸ See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.