



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 communications No. 3196/2018 and No. 3209/2018*, **

<i>Communications submitted by:</i>	Natalya Berezhnaya (communication No. 3196/2018) and Lyudmila Gershankova (communication No. 3209/2018) (both represented by counsel, Andrei Paluda)
<i>Alleged victims:</i>	The authors, Semyon Berezhnoi (communication No. 3196/2018) and Igor Gershankov (communication No. 3209/2018)
<i>State party:</i>	Belarus
<i>Dates of communications:</i>	28 June 2018 (communication No. 3196/2018) and 13 July 2018 (communication No. 3209/2018) (initial submissions)
<i>Document references:</i>	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 29 June 2018 (communication No. 3196/2018) and 13 July 2018 (communication No. 3209/2018) (not issued in document form)
<i>Date of adoption of Views:</i>	21 March 2024
<i>Subject matter:</i>	Imposition of a death sentence after unfair trial
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Death penalty, torture and ill-treatment; habeas corpus; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent; fair trial – legal assistance; right not to be compelled to testify against oneself or to confess guilt
<i>Articles of the Covenant:</i>	6, 7, 9 (1), (2), (3) and (4) and 14 (1), (2), (3) (a), (b), (d), (g) and (e) and (5)

* Adopted by the Committee at its 140th session (4–28 March 2024).

** 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 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.



1.1 The authors of the communications are Natalya Berezhnaya (communication No. 3196/2018) and Lyudmila Gershankova (communication No. 3209/2018). The authors are nationals of Belarus born in 1967 and 1957, respectively. They claim that the State party has violated their rights and the rights of their sons, Semyon Berezhnoi (communication No. 3196/2018) and Igor Gershankov (communication No. 3209/2018), under articles 6, 7, 9 (1), (2), (3) and (4) and 14 (1), (2), (3) (a), (b), (d), (g) and (e) and (5) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are represented by counsel.

1.2 On 29 June and 13 July 2018, 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 sentences imposed on Mr. Berezhnoi and Mr. Gershankov while the cases were under examination by the Committee. On 29 November 2018, the authors' counsel informed the Committee that Mr. Berezhnoi and Mr. Gershankov had been executed.

1.3 The present communications were 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 communications.¹

1.4 On 21 March 2024, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to join communications No. 3196/2018 and No. 3209/2018, which had been submitted by two different authors, for a joint decision, in view of their substantial factual and legal similarity.

Facts as submitted by the authors

2.1 At the time of the submission of the communications, the sons of both authors were facing execution, having been found guilty of committing serious crimes and sentenced to death. Their respective appeals lodged before the domestic courts were rejected and the authors claim that they have exhausted all available domestic remedies.

2.2 On 21 July 2017, Mr. Berezhnoi and Mr. Gershankov were sentenced to death by Mahiliou Regional Court after being found guilty on multiple counts of murder, attempted murder, robbery, and fraud by an organized group.

2.3 On 30 and 31 July 2017, Mr. Gershankov and Mr. Berezhnoi submitted appeals to the Supreme Court, which were denied on 20 December 2017.

2.4 On 12 January and 5 March 2018, Mr. Berezhnoi submitted requests for a supervisory review to the Prosecutor General's Office, which were denied on 15 February and 9 April 2018 by the Deputy Prosecutor General and Prosecutor General, respectively. On 18 January and 5 March 2018, Mr. Gershankov also submitted requests for a supervisory review to the Prosecutor General's Office, which were denied on 19 February and 3 April 2018 by the Deputy Prosecutor General and Prosecutor General.

2.5 On 21 May and 20 June 2018, Mr. Berezhnoi submitted requests for a supervisory review to the Supreme Court, which were denied on 25 June 2018. On 28 May 2018, Mr. Gershankov also submitted a request for a supervisory review to the Supreme Court, which was denied on 6 July 2018.

2.6 Mr. Berezhnoi and Mr. Gershankov also submitted requests for a presidential pardon, which were denied on an unspecified date.

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), para. 10.

Complaint

3.1 The authors claim that the rights of Mr. Berezhnoi and Mr. Gershankov were violated under article 6 of the Covenant because the men were sentenced to death following an unfair trial.

3.2 The authors claim that the State party has violated the rights of Mr. Berezhnoi and Mr. Gershankov under articles 7 and 14 (3) (g) of the Covenant because, during the time between their arrest and first interrogation, the men were subjected to physical and psychological torture, as a result of which they gave self-incriminating statements. They were continuously subjected to torture and ill-treatment both by police officers and by cellmates, while detained in pretrial detention facility No. 1 (SIZO No. 1) and prison No. 4 during pretrial investigation and court proceedings. While detained in SIZO No. 1, Mr. Berezhnoi was beaten, and the case investigator threatened that Mr. Berezhnoi's common-law wife would be arrested if he did not cooperate. Mr. Berezhnoi did not complain about the torture during the pretrial investigation because he was afraid of reprisals. Regarding Mr. Gershankov, the authors submit that he was subjected to torture and ill-treatment throughout the pretrial investigation and during the trial, and all of his confessions were obtained by the police through torture.

3.3 The authors further claim that the State party has violated the rights of Mr. Berezhnoi and Mr. Gershankov under article 7 of the Covenant because of the mental suffering experienced by them after being sentenced to death, which was exacerbated by their placement in a cell for convicts on death row alongside another convict whose sentence had already become final.²

3.4 The authors claim that the State party has also violated their rights under article 7 of the Covenant by sentencing Mr. Berezhnoi and Mr. Gershankov to death, which caused the authors anguish and psychological suffering.

3.5 The authors claim that the State party has violated the rights of Mr. Berezhnoi and Mr. Gershankov under article 9 (1), (2), (3) and (4) of the Covenant because their detention was not officially documented until several hours after their de facto arrest, during which they were subjected to physical and psychological torture and ill-treatment. They further note that Mr. Berezhnoi and Mr. Gershankov were arrested on 26 March 2015, while a warrant for their placement in custody was issued by the Deputy Prosecutor of Mahiliou Region only on 3 April 2015.³ Finally, Mr. Berezhnoi and Mr. Gershankov were first taken before a judge on 9 November 2016, that is, about 19 months after they were arrested.

3.6 The authors claim that the rights of Mr. Berezhnoi and Mr. Gershankov under article 14 (1) of the Covenant were violated because the courts were not impartial, rejected the claims of torture made during the pretrial investigation, and allowed the case prosecutor to compare the accused to fascists of the Second World War, comments that were later publicized by the media covering the trial.

3.7 The authors also claim that the rights of Mr. Berezhnoi and Mr. Gershankov under article 14 (2) of the Covenant were violated because they were held in metal cages and handcuffs during their trial by Mahiliou Regional Court and the appeal hearing by the Supreme Court. They also had to wear jail uniforms that had words on the back marking them as death row inmates. During the men's trial, several mass media outlets aired photographs and video materials obtained from investigation authorities and referred to Mr. Berezhnoi and Mr. Gershankov as "perpetrators", which led to a biased public opinion against them and problems in finding lawyers willing to take on their criminal cases. The authors argue that the right of Mr. Berezhnoi and Mr. Gershankov to be presumed innocent until proven guilty was also violated when the presiding judge of Mahiliou Regional Court allowed victims' relatives to behave aggressively towards the accused in the courtroom; such behaviour included shouting that the accused were killers who should be sentenced to death. In addition,

² The author was detained on death row with Aleksei Mikhalenya, the author of communication No. 3105/2018 (CCPR/C/132/D/3105/2018), who was executed in mid-2018.

³ According to article 126 of the Code of Criminal Procedure, a warrant for one's placement in custody is issued by a prosecutor and other heads of law enforcement agencies. See also *Smantser v. Belarus* (CCPR/C/94/D/1178/2003) and *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002).

Mr. Berezhnoi and Mr. Gershankov were each escorted to the Supreme Court, for their appeal hearing, by six guards who made them walk in a humiliating and extremely uncomfortable position reserved exclusively for persons sentenced to death, that is, with their heads bent towards their knees.

3.8 The authors further claim that the State party has violated the rights of Mr. Berezhnoi and Mr. Gershankov under article 14 (3) (a), (b), (d) and (e) of the Covenant because the men were not informed about the grounds for their arrest or about their rights as suspects under article 41 of the Criminal Procedure Code, including the right to legal assistance from the moment of their detention. They were not provided with counsel until their first official interrogation, several hours after their arrest. By the time they could finally meet with their ex officio lawyers, they had already been subjected to beatings and psychological pressure by police officers and forced to give self-incriminating testimonies. Mr. Berezhnoi and Mr. Gershankov were not allowed to confidentially discuss anything with their lawyers before their formal interrogations as suspects. Similarly, they were not allowed to meet confidentially with their lawyers in SIZO No. 1 when preparing their appeals, as all of their meetings were attended by prison guards. Owing to their financial difficulties and the negative publicity around their case, Mr. Berezhnoi and Mr. Gershankov could not hire their own lawyers and had to rely on ex officio lawyers. However, the ex officio lawyers were replaced on several occasions without explanation; Mr. Berezhnoi was represented by two different ex officio lawyers, and Mr. Gershankov was represented by four different ex officio lawyers. Moreover, Mr. Berezhnoi and Mr. Gershankov had problems with sending and receiving correspondence while in detention, especially legal documents such as powers of attorney, including for their representation before the Human Rights Committee.

3.9 The authors claim that the State party has violated the rights of Mr. Berezhnoi and Mr. Gershankov under article 14 (5) of the Covenant because their appeals and requests for a supervisory review to the Supreme Court were examined superficially without careful consideration of the arguments put forward by the defence.

State party's observations on the merits

4.1 In notes verbale dated 26 July 2018 and 27 March 2019, the State party submitted its observations on the merits of the communications. The State party notes that both authors were sentenced to death after being found guilty of multiple crimes, including murder, attempted murder, robbery, and fraud by an organized group. It also notes that the provisions stipulating that the death penalty may be imposed, until its abolition, in accordance with the law as an exceptional measure of punishment for particularly grave crimes and only pursuant to a court sentence, are set out in article 24 of the Constitution and in article 59 (1) of the Criminal Code, which stipulates that the death penalty as an exceptional measure of punishment may be imposed only for certain particularly grave crimes involving the intentional deprivation of human life under aggravating circumstances. According to the State party, the penalty imposed on the authors was based on the principle of individualization of punishment, the existence of circumstances aggravating their responsibility, and the absence of mitigating circumstances. The State party submits that the circumstances of the case attest to the special danger of the authors to society. Therefore, the courts justifiably imposed on them an exceptional measure of punishment – the death penalty – having not seen the possibility of imposing any other type of punishment.

4.2 The State party rejects the authors' allegations of physical and psychological torture and ill-treatment. It notes that Mr. Berezhnoi never complained about such treatment during the pretrial investigation or the trial. Concerning Mr. Gershankov's allegations of torture and forced confession, the State party notes that there was an exhaustive investigation into the allegations in accordance with the procedure established by law. It submits that Mr. Gershankov's statements were found to be contradictory and inconsistent, and none of the stated facts were confirmed. The State party refers to physical injuries suffered by Mr. Gershankov during the pretrial investigation and submits that the trial court has reliably established that he suffered those injuries while attempting to escape during his arrest, and

the arresting officers had to resort to physical force within prescribed limits to prevent his escape.⁴

4.3 Concerning the authors' claims under article 9 of the Covenant, the State party submits that the pretrial detention of Mr. Berezhnoi and Mr. Gershankov was carried out in accordance with the Code of Criminal Procedure. Both men were detained on 26 March 2015 in the process of committing criminal acts against one of the victims. Immediately after their detention, the police explained to them their rights and the procedure for appealing against the detention, and the two men signed a document confirming that they understood their rights. Subsequently, they were informed of the prosecutor's decision to authorize their remand in custody and given copies of relevant procedural documents. They were also informed of their right to appeal against the prosecutor's decision; they chose not to appeal.

4.4 Regarding the authors' allegations of unfair trial, the State party submits that Mr. Berezhnoi and Mr. Gershankov were fully guaranteed the right to a fair and public hearing by a competent, independent and impartial court established on the basis of the law, and to a review of the case by a higher court according to the law, with the participation of their defence counsel. According to the State party, the first instance court examined the circumstances of the criminal case in a comprehensible and objective manner, and properly assessed the collected evidence. Mr. Berezhnoi and Mr. Gershankov's guilt was proved and confirmed by the totality of the examined evidence. The State party submits that there were no violations of the law of criminal procedure that would have prevented the court from comprehensively, fully and objectively investigating the circumstances of the case and influencing the decision of a lawful and well-founded verdict.

4.5 The State party rejects the authors' allegations that the trial court was influenced by the public and the media and that it repeatedly allowed actions indicating bias against Mr. Berezhnoi and Mr. Gershankov, which would violate the presumption of innocence.

4.6 Regarding the Mr. Berezhnoi and Mr. Gershankov's access to legal defence, the State party submits that their interests were represented by professional defence lawyers during the preliminary investigation and in court proceedings. The State party notes that Mr. Berezhnoi did not complain about violations of his right to communicate freely with his lawyers during the pretrial investigation or trial. Regarding the allegations of Mr. Gershankov about the failure to send his correspondence from the pretrial detention facility and the violation of the procedure for meetings with his lawyer, the State party submits that an inquiry by the prosecutor's office did not identify any violations of the current legislation.

Authors' comments on the State party's observations on the merits

5.1 On 15 and 16 October 2022, the authors submitted their comments on the State party's observations. The authors note that the State party has not provided any evidence to refute their allegations. They reiterate that both Mr. Berezhnoi and Mr. Gershankov repeatedly complained about the torture and ill-treatment they had suffered after their arrest. Namely, during the trial, Mr. Berezhnoi drew the trial court's attention to the injuries he had suffered in pretrial detention, which had been confirmed in the report of a medical expert dated 29 April 2014.⁵ Mr. Gershankov had to seek medical assistance on 6 April 2014, after signing statements of confessions given on 5 and 6 April 2014, which was recorded in the journal of the remand facility in which he was being detained. Those confession statements were later used by the trial court as evidence of his guilt, even though he repeatedly renounced both statements because they had been obtained using torture. The author of communication No. 3209/2018, Ms. Gershankova, submits that Mr. Gershankov told her that during the course of the pretrial investigation he had signed five different confession statements, all dictated to him by the police, although some of them were not added to the materials of the criminal case.

⁴ According to the materials in the case file, when the police arrested Mr. Berezhnoi and Mr. Gershankov, Mr. Gershankov attempted to escape, and physical force was used against him by the police.

⁵ There is a description of the report in the authors' submission. However, the authors did not submit a copy of the report and there is no mention of the report or the allegations in the court decision.

5.2 The authors reject the State party's submission that Mr. Berezhnoi and Mr. Gershankov could communicate freely with their lawyers. For example, when preparing his appeal, Mr. Gershankov was not given the opportunity for confidential communication with his defence counsel, as their meetings were attended by prison guards. Moreover, they reiterate that Mr. Berezhnoi and Mr. Gershankov had problems with sending and receiving correspondence while in detention, especially legal documents such as powers of attorney, including for their representation before the Human Rights Committee.

5.3 Finally, the authors draw the Committee's attention to the fact that the State party has violated the Committee's request for interim measures issued on 29 June 2018 in the case of Mr. Berezhnoi and on 13 July 2018 in the case of Mr. Gershankov.

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 Mr. Berezhnoi and Mr. Gershankov before the Committee had concluded its consideration of the communications.⁶

6.2 In the present case, the Committee observes that on 29 June and 13 July 2018, the Committee transmitted to the State party requests not to carry out the death sentences while the cases were under examination by the Committee. On 29 November 2018, the authors' counsel informed the Committee that Mr. Berezhnoi and Mr. Gershankov had been executed. The Committee observes that it is uncontested that the executions 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.⁷

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.⁸ In the present case, the authors alleged that the rights of Mr. Berezhnoi and Mr. Gershankov under various provisions of the Covenant had been violated in a manner that directly reflected on the legality of their death sentences. Having been notified of the communications and the requests 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 victims before the Committee had concluded its consideration of the present communications.

⁶ See <https://www.ohchr.org/en/press-releases/2018/12/un-human-rights-experts-condemn-belarus-executions>.

⁷ 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 *Mikhailenya v. Belarus* (CCPR/C/132/D/3105/2018), para. 6.2.

⁸ 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 *Mikhailenya v. Belarus*, para. 6.4.

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 victims, undermines the protection of Covenant rights through the Optional Protocol.⁹ The Committee therefore concludes that by failing to respect the requests for interim measures transmitted to the State party on 29 June and 13 July 2018, the State party failed in its obligations under article 1 of the Optional Protocol.¹⁰

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 notes the authors' claim that they have exhausted all available legal domestic remedies. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

7.4 The Committee has noted the authors' claims that the State party violated the rights of Mr. Berezhnoi and Mr. Gershankov under articles 7, 9 (1), (2) and (4) and 14 (1), (3) (a) (b), (d), (e), and (g) and (5) of the Covenant. The Committee observes from the appellate decision in the case file that the court rejected Mr. Gershankov's allegations that his confession was the result of him being tortured, and that the court had justified the rejection by, inter alia, referring to the inquiries conducted in the pretrial stage and during the trial. Similarly, the court rejected Mr. Berezhnoi's allegations of torture and ill-treatment because they were not supported by any evidence and were not raised by him until the appellate hearing. In the absence of any pertinent information on file with regard to the remaining claims mentioned above, the Committee considers that the authors have failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol

7.5 The Committee observes that the authors claim a violation of article 7 of the Covenant as regards Mr. Berezhnoi and Mr. Gershankov because they were subjected to mental suffering as a result of being sentenced to the death penalty in the first instance, and placed in 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.¹¹ Even though conditions of detention on death row may, under certain circumstances, entail violations of this provision,¹² the Committee is of the view that in the present case, the authors have failed to substantiate their claim that the conditions of detention of Mr. Berezhnoi and Mr. Gershankov 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 2 of the Optional Protocol.

⁹ 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.

¹⁰ *Lapshin v. Belarus* (CCPR/C/135/D/2945/2017), paras. 7.1 and 7.2; *B.A. et al. v. Austria* (CCPR/C/127/D/2956/2017), paras. 9.1 and 9.2; and *F.F.J.H. v. Argentina* (CCPR/C/132/D/3238/2018), paras. 16.1 and 16.2.

¹¹ *Johnson v. Jamaica* (CCPR/C/56/D/588/1994), paras. 8.2–8.4.

¹² *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 15.3; and Human Rights Committee, general comment No. 36 (2018), para. 40.

7.6 The Committee notes the authors' claims that the State party has violated the authors' rights under article 7 of the Covenant by sentencing Mr. Berezhnoi and Mr. Gershankov to death, which caused the authors anguish and psychological suffering. In the absence of any further pertinent information on file, and due to the general nature of the claims brought forward by the authors, however, the Committee considers that the authors have failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.7 The Committee considers the author's remaining claims, raising issues under articles 6, 9 (3) and 14 (2) of the Covenant, to be sufficiently substantiated for the purposes of admissibility and proceeds with its examination of the merits.

Considerations of the merits

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

8.2 Regarding the claims that the rights of Mr. Berezhnoi and Mr. Gershankov under article 9 (3) of the Covenant were violated, the Committee recalls that, in accordance with article 9 (3), anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Committee also recalls that, while the exact meaning of "promptly" may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.¹³ The Committee takes note of the authors' unchallenged allegations that Mr. Berezhnoi and Mr. Gershankov were apprehended on 26 March 2015 and that the Deputy Prosecutor of Mahiliou Region authorized their pretrial detention on 3 April 2015, but that Mr. Berezhnoi and Mr. Gershankov were not brought before a judge until 9 November 2016, that is, over 19 months after they were arrested. The Committee recalls that, in paragraph 32 of its general comment No. 35 (2014), it states that it is inherent to the proper exercise of judicial power that such power should be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with, and that a public prosecutor cannot be considered as an officer authorized by law to exercise judicial power within the meaning of article 9 (3). In these circumstances, the Committee considers that the facts before it show that Mr. Berezhnoi and Mr. Gershankov were not brought promptly before a judge or other officer authorized by law to exercise judicial power, as required under article 9 (3) of the Covenant. Accordingly, the Committee concludes that the above-mentioned facts reveal a violation of their rights under article 9 (3) of the Covenant.

8.3 The Committee notes the authors' claim that the State party has violated the presumption of innocence of Mr. Berezhnoi and Mr. Gershankov because they were held in metal cages and handcuffs during their trial by Mahiliou Regional Court and during the appeal hearing at the Supreme Court. They also had to wear jail uniforms that had words on the back referring to them as death row inmates and were escorted to the Supreme Court, for their appeal hearing, by six guards who made them walk in a humiliating and extremely uncomfortable position reserved exclusively for persons sentenced to death, that is, with their heads bent towards their knees. The Committee also notes the authors' claim that during the trial, several mass media outlets aired photographs and video materials obtained from investigation authorities and called Mr. Berezhnoi and Mr. Gershankov "perpetrators", which led to a biased public opinion against them and problems in finding lawyers willing to take on their criminal cases. 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, that the accused have the benefit of doubt, and that the accused be treated in accordance with the principle of the presumption of innocence. 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.¹⁴ Regarding the photographs and video

¹³ Human Rights Committee, general comment No. 35 (2014), para. 33.

¹⁴ Human Rights Committee, general comment No. 32 (2007), para. 30.

materials disseminated by the investigative authorities to mass media, which referred to Mr. Berezhnoi and Mr. Gershankov as “perpetrators” of the crimes committed, the Committee recalls that it is a duty for all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.¹⁵ 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 Mr. Berezhnoi and Mr. Gershankov to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, has been violated.

8.4 With regard to the authors’ claims of the violation of Mr. Berezhnoi and Mr. Gershankov’s right to life, the Committee recalls that article 6 (2) of the Covenant allows for the imposition of the death penalty in countries that have not abolished it only for “the most serious crimes”, a term that must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing.¹⁶ In the present case, Mr. Berezhnoi and Mr. Gershankov were sentenced for multiple crimes, including murders and attempted murders, 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.¹⁷ In the light of the Committee’s findings of violations of article 14 (2) of the Covenant, the Committee concludes that the sentencing to death, and the subsequent execution, of Mr. Berezhnoi and Mr. Gershankov resulted in violations of their 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 violations by the State party of the rights of Mr. Berezhnoi and Mr. Gershankov under articles 6, 9 (3) and 14 (2) of the Covenant. The Committee also concludes that by not respecting its requests 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 authors with an effective remedy. Accordingly, the State party is under an obligation to provide adequate monetary compensation to the authors for the loss of their sons’ lives 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 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 communications were 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 communications.¹⁸ 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.

¹⁵ *Brewer-Carias v. Bolivarian Republic of Venezuela* (CCPR/C/133/D/3003/2017), para. 9.4.

¹⁶ Human Rights Committee, general comment No. 36 (2018), para. 35.

¹⁷ *Ibid.*, para. 41.

¹⁸ See, for example, *Sextus v. Trinidad and Tobago*, para. 10; and *Lobban v. Jamaica*, para. 11.