
Shchetka vs. Ukraine

Facts

In 2000, Mr. Shchetka was arrested, prosecuted and sentenced to life imprisonment on counts of murder aggravated by rape, theft and illegal bearing of "cold" weapons. He is currently serving his sentence in Ukraine. His mother, Nataliya Litvin submitted the communication on his behalf.

On 11 July 2000, Mr. Shchetka's sister-in-law was murdered in the apartment she shared with her family, including Mr. Shchetka. Upon returning home later that evening, Mr. Shchetka was requested to come to the police station to testify. The author claims that during the initial interrogation, the police tried to make Mr. Shchetka confess guilt, he was deprived of water, sleep and was prohibited from using the toilet. During a subsequent interrogation, Mr. Shchetka was allegedly subjected to torture; such as, a gas mask to restrict airway, as well as being handcuffed and hung on a crowbar, whilst being hit on the head.

The author disputed that the courts failure to recognize her son's claim that his confession was obtained through the use of torture; distorted testimonies and concealed facts; tampering with evidence and granting privileges to the prosecutor's side amounted to a violation of Art. 14 §1. Furthermore, the author claims that her son was deprived of his right under Art. 14 §2, as he was named in official documents as the perpetrator without his guilt being established. Moreover, the author claims that her son was repeatedly denied the examination of several witnesses that could confirm his alibi, thus violating his rights under Art. 14 §3(e). Lastly, the author argues that the refusal of the General Prosecutor to examine his application for reconsideration, based on newly found facts, as well as the Supreme Courts rejection of 'his motion for the review of his conviction' (No. 1535/2006, [Nataliya Litvin vs. Ukraine](#), 2011, §3.5) amounted to a violation of Art. 14 §5.

The State submitted a reply and refuted the author's allegations. The State argues that there was substantive evidence against Mr. Shchetka, which proved his guilt. They added that the courts took into account Mr. Shchetka's confession and reasons for withdrawal of his confession. They also argued that their claims are supported by the Supreme Court decision, which found that there were no violations in the criminal procedure norms that would have vindicated Mr. Shchetka of the crimes he was found guilty of and reversed his sentence.

Consideration of admissibility

Art 5 § 2 (b): The Committee concluded that in the absence of an objection from the State, that the author had exhausted all available domestic remedies.

Art 14 §5: The Committee states that the author's claims are incompatible *ratione materiae* with the provision of the ICCPR; and declares this part of the communication inadmissible. The reason being, the scope of Art. 14 §5, 'does not extend to a review of a conviction and sentence based on newly discovered facts once this sentence has become final' (No. 1535/2006, [Nataliya Litvin vs. Ukraine](#), 2011, §9.4).

Key words

- Torture
- Ill-treatment
- Fair hearing
- Presumption of innocence
- Access to witness
- Self-incrimination

Relevant Provisions

- Article 7
- Article 14 §1
- Article 14 §2
- Article 14 §3 (e), (g)

Violated Provisions

- Article 7 and Article 14 §3 (g)
- Article 14 §1, 3 (e)

Art 7: Art 14 §3 (b): The Committee notes that case raises issues under Art. 14 §3 (g), as well as Art. 7, 14 §1, 2, 3 (e) and (g) and declares this part of the communication admissible.

Consideration of merits

With regard to Art. 7, the Committee considered that when it is alleged that a confession was obtained through forceful means, such as torture, then the State must 'investigate it promptly and impartially' (No. 1535/2006, *Nataliya Litvin vs. Ukraine*, 2011, §9.4). The Committee referred to its past jurisprudence (No. 1401/2005, *Kirpo v. Tajikistan*, 2009), because it had found that there was a breach of Art. 7 and Art. 14 §3, as the 'competent authorities did not give due and adequate consideration to Mr. Shchetka's complaints of torture made both during the pre-trial investigation and in court' (No. 1535/2006, *Nataliya Litvin vs. Ukraine*, 2011, §10.3). Moreover, the Committee noted that the State had failed to provide a response for the refusal to examine witnesses that were relevant for the defence; and found a violation of the principle of equality of arms enshrined in Art. 14, §3(e). Finally, the Committee stated that, 'the courts did not observe the minimum guarantees of a fair hearing' (No. 1535/2006, *Nataliya Litvin vs. Ukraine*, 2011, §10.5), thus violating Art. 14, §1. This is because, 'the State party has not addressed the substance of the author's respective claims, but merely affirmed, in general terms, that her son's guilt was duly established on the basis of corroborating testimonies and other evidence' (No. 1535/2006, *Nataliya Litvin vs. Ukraine*, 2011, §10.5), which amounted to a violation of Art. 7 and Art. 14, §3(e) and (g).

Conclusions

The Committee finds that there has been a violation of Art. 7, Art. 14 §1, 2, 3(e) and (g) of the Covenant.

The Committee recommended that Ukraine was under an obligation to provide Mr. Shchetka with effective remedy. This includes providing full reparation and adequate compensation. As well as, launching 'an impartial, effective and thorough investigation' of the author's claims under article 7, and the prosecution of those found to be responsible. Furthermore, Ukraine should consider the retrial of Mr. Shchetka in accordance with the Covenant or release. The State should also prevent similar violations in the future, publish the Committee's views and submit information about the measures taken to give effect to the Committee's decision by **19 January 2012**.

Dissent/Concurrence

Mr. Fabián Salvioli agreed with the reasoning and conclusion of the Committee. He held his individual opinion to place greater emphasis on an issue related to the concept of "cross-fertilisation." Mr. Salvioli reminded the Committee of the importance of outlining exactly what are the steps that a State Party should take in order to ensure that future violations do not occur. For this reason, he suggested that the Committee could cross-fertilise from the findings of other international or regional human rights bodies. Mr. Salvioli then refers to an example from the Committee Against Torture, who provided concrete steps indicating what the State Party should do in order to avoid similar violations. Finally, Mr. Salvioli concluded that the Committee could ask a State Party to establish "an independent and effective mechanism for investigating complaints of torture or ill-treatment and making the

filming of interrogations mandatory"(No. 1535/2006, [Nataliya Litvin vs. Ukraine](#), 2011, appendix, §5).