



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2182/2012\*, \*\*

<i>Communication submitted by:</i>	V.S. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 November 2010 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 3 July 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	27 March 2018
<i>Subject matters:</i>	Inhumane conditions of detention; access to justice; effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; State party's failure to cooperate
<i>Substantive issues:</i>	Conditions of detention; effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), 7 and 14 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is V.S., a national of Belarus born in 1972. He claims that the State party has violated his rights under articles 2 (3) (a), 7 and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

#### The facts as submitted by the author

2.1 On 23 March 2010, the author was detained by police officers and charged with an administrative offence. On 24 March 2010, at 2.40 a.m., he was taken to the Offenders' Detention Centre in Minsk and kept there for seven hours, until he was taken to his court hearing. The author complains that the conditions of detention in his cell at the Offenders' Detention Centre were cruel, inhumane and degrading. The cell had no beds or chairs, with only one wooden board that he and another detainee used for sleeping. He was forced to

\* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santo Pais, Yuval Shany and Margo Waterval.



sleep fully clothed on bare boards. He was not provided with a mattress, blanket or pillow, despite the temperature inside ranging between 10°C and 14°C, which resulted in him being constantly cold and having difficulty sleeping. Furthermore, the toilet was not separated from the common area of the cell and he had to use the toilet in full view of the other detainee, which amounted to degrading treatment. The author also complains about the bad quality of the prison food, which he claims was very salty and caused him epigastric burning. The conditions of his detention caused him physical and mental suffering and, taken as a whole, amounted to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant and of paragraphs 10, 12, 15, 19 and 20 (1) of the Standard Minimum Rules for the Treatment of Prisoners.

2.2 On 2 April 2010, the author initiated civil proceedings at Moskovsky District Court in Minsk City, claiming that the conditions of his detention had violated his rights under article 7 of the Covenant. On 11 May 2010, the court refused to initiate proceedings owing to lack of jurisdiction, indicating that national legislation provided for an out-of-court procedure for the consideration of complaints regarding conditions of detention.<sup>1</sup>

2.3 On 24 May 2010, the author submitted a cassation appeal to Minsk City Court, arguing that the national legislation referred to by Moskovsky District Court did not provide for a procedure for submitting a complaint after release from detention, and that article 60 (1) of the Constitution of Belarus guaranteed the protection of a person's rights and liberties by a competent, independent and impartial court of law. On 26 August 2010, Minsk City Court upheld the decision of Moskovsky District Court.

2.4 The author did not complain to the Chairperson of Minsk City Court or to the Chairperson of the Supreme Court of Belarus under the supervisory review procedure, because such extraordinary appeals are dependent on the discretionary power of a judge and are limited to issues of law only, meaning that such appeals cannot be considered effective domestic remedies. The author therefore contends that he has exhausted all available and effective domestic remedies.

### **The complaint**

3.1 The author claims a violation of article 2 (3) (a) of the Covenant in view of the failure by the State party to investigate the alleged violation of his rights under article 7 of the Covenant and to provide him with an effective remedy within the meaning of article 2 (3) (a) of the Covenant.

3.2 The author claims that the conditions of his detention did not comply with the Standard Minimum Rules for the Treatment of Prisoners and amounted to a violation of article 7 of the Covenant.

3.3 The author further alleges that the refusal to have his case duly considered by a court amounted to a denial of his right of access to the courts, in violation of article 14 (1) of the Covenant.

### **State party's observations on admissibility**

4.1 In a note verbale dated 13 August 2012, the State party noted the lack of legal grounds for consideration of the communication on both admissibility and the merits. It argues that the author has not exhausted all available domestic remedies because he did not submit appeals to the Chairperson of Minsk City Court or to the Chairperson of the Supreme Court. Moreover, the author had the right to submit a complaint to the Prosecutor General against the judicial decision under the supervisory review procedure, which he did not do. Thus, his complaint was registered in violation of article 2 of the Optional Protocol.

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<sup>1</sup> The court based its decision on article 56 of the internal regulations relating to the special establishments of internal affairs agencies carrying out administrative sentences in the form of administrative arrest, approved by resolution No. 194 of the Ministry of Internal Affairs of 8 August 2007. Article 56 provides that suggestions, appeals and complaints addressed to a head of a special establishment should be entered in the journal for the registration of administrative detainees' complaints in accordance with annex 3 to the internal regulations, and reported to the head of the special establishment.

4.2 The State party further submits that it has discontinued the proceedings regarding the communication and will disassociate itself from any Views that might be adopted by the Committee.

#### **Author's comments on the State party's observations on admissibility**

5.1 In a letter dated 15 January 2013, the author commented on the observations of the State party. He argues that in accordance with article 432 of the Civil Procedure Code, the decision of a cassation court enters into force on the date of its adoption. Thus, the decision of Minsk City Court of 26 August 2010 entered into force on the same day. The author also explains that the court filing fees were returned to him, which meant that the proceedings had de facto been terminated.<sup>2</sup>

5.2 The author further states that he did not make use of the supervisory review procedure by lodging complaints to the Chairperson of Minsk City Court and the Chairperson of the Supreme Court because that procedure would not have led to a review of the case. He claims that consideration of a supervisory review application is dependent on the discretionary power of a single official and that supervisory review cannot be regarded as an effective remedy, for the following reasons:

- (a) It would not trigger a review of the case;
- (b) It would be considered by a single official;
- (c) Case materials would be requested for review only at the discretion of that official;
- (d) The case would be considered in the absence of the parties, so the author would not have an opportunity to submit any arguments, motions or requests.

5.3 The author also notes that it took three and a half months for Minsk City Court to hear his appeal, although by law his appeal should have been taken up by the appellate court not later than 15 days after being submitted. The court explained that this was due to the large number of cases that had been appealed. The author claims that further appeal to the Chairperson of Minsk City Court and the Chairperson of the Supreme Court would have resulted in even longer delays to his case.

5.4 The author further refers to the case of Vladislav Kovalev, who was executed before his appeal for a supervisory review was considered by the Chairperson of the Supreme Court, showing that the supervisory review procedure in Belarus cannot be considered an effective remedy.<sup>3</sup>

5.5 Referring to the Committee's established practice, the author points out that only domestic remedies that are both available and effective must be exhausted. The Committee in its jurisprudence has consistently considered that supervisory review procedures against court decisions that have entered into force do not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>4</sup> The author also submits that, for the reasons above, an appeal to the Prosecutor General's Office under the supervisory review procedure would not constitute an effective remedy.

#### **Issues and proceedings before the Committee**

##### *Lack of cooperation by the State party*

6.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol due to non-exhaustion of domestic remedies, and that if a decision is taken by the Committee on the present communication, the State party will disassociate itself from the Committee's Views.

<sup>2</sup> In accordance with article 259 of the Tax Code, the court fee, paid to a court to file a lawsuit, is returned to the plaintiff if the case is closed due to lack of jurisdiction of the court.

<sup>3</sup> See *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011).

<sup>4</sup> See *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

6.2 The Committee 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 claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination, to forward its Views to the State party and the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication and in the expression of its Views.<sup>5</sup> It is up to the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.<sup>6</sup>

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 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 State party's assertion that the author has failed to request that the Chairperson of Minsk City Court, the Chairperson of the Supreme Court or the Prosecutor General's Office initiate a supervisory review of the decisions of the domestic courts. The Committee recalls its jurisprudence according to which a petition to a Prosecutor's Office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>7</sup> It also considers that filing requests for supervisory review to the chairperson of a court directed against court decisions that have entered into force 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 requests would provide an effective remedy in the circumstances of the case.<sup>8</sup> Given that the State party has not done so, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee notes the author's claims that he was detained overnight for seven hours in a cell with no beds or chairs and only one wooden board that he and another detainee used for sleeping; that the room temperature in the cell was between 10°C and 14°C, which resulted in him being constantly cold and having difficulty sleeping; that there was no separate toilet; and that the food was salty. He alleges that the conditions of his detention caused him physical and mental suffering and, taken as a whole, amounted to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. While emphasizing that certain conditions of detention that subject a detainee to inhuman and degrading treatment can violate article 7, the Committee refers to paragraph 4 of its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, which reads: "The Covenant does not contain any definition of

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<sup>5</sup> See *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

<sup>6</sup> See *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 8.2.

<sup>7</sup> See *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

<sup>8</sup> See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.” In the present case, the Committee observes that the author was brought into the detention facility at 2.40 a.m. for an unspecified administrative offence and was released seven hours later. The Committee is of the view that the allegations raised by the author regarding the detention conditions during his seven-hour overnight stay are not sufficient to establish a claim under article 7 of the Covenant. The Committee therefore concludes that the author has failed to substantiate his claim under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant for the purposes of admissibility, and declares the claim inadmissible under article 2 of the Optional Protocol. In these circumstances, the Committee also considers that the author’s claim under article 14 (1) of the Covenant is inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author.
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