



# 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 communication No. 2619/2015\*, \*\*

<i>Communication submitted by:</i>	Marina Adamovich (represented by Michael Scheimer, of Hogan Lovells, in addition to Freedom Now and McKool Smith)
<i>Alleged victim:</i>	Mikalai Statkevich
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 November 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	26 October 2021
<i>Subject matter:</i>	Conviction of an opposition leader; unlawful detention; unfair trial; torture and forced confession; inhuman conditions of detention; unlawful interference with privacy; freedom of expression; freedom of peaceful assembly; freedom of association; right to participate in public life
<i>Procedural issue:</i>	Level of substantiation of claim
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge; right to a fair hearing by an impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of defence; right to communicate with counsel of one's own choosing; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to privacy; freedom of expression; right of peaceful assembly; equality

\* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



before the law and equal protection of the law;  
effective remedy

*Articles of the Covenant:* 2, 7, 9, 10, 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 17, 19 (1) and (2), 21, 22 and 25

*Article of the Optional Protocol:* 2

1.1 The author of the communication is Marina Adamovich, a national of Belarus born in 1961, who claims that her husband, Mikalai<sup>1</sup> Statkevich,<sup>2</sup> a national of Belarus born in 1956, is a victim of violation by the State party of his rights under articles 2, 7, 9, 10, 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 17, 19 (1) and (2), 21, 22 and 25 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.<sup>3</sup>

1.2 On 7 May 2021, pursuant to rule 107 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, rejected the State party's request for the complaint to be discontinued.

### **Factual background**

2.1 Mr. Statkevich is the Chairman of the Belarusian Social Democratic Party, a former presidential candidate in Belarus and the founder of the Belarusian Union of Military Officers.

2.2 In 1994, Mr. Statkevich founded and headed a public commission for the oversight and management of Belarusian presidential elections. In 1995, he became the Chairman of the People's Assembly. In 1996, Mr. Statkevich assumed the chairmanship of the newly formed Belarusian Social Democratic Party. He was elected chairman of the Eastern European Social Democratic Forum in February 1999 and stood for election to the Belarusian parliament in 2000, without success. In 2003, he became the leader of the European Coalition Free Belarus. He ran as an opposition candidate in the 2001 and 2006 Belarusian presidential elections. In an attempt to force him out of the elections, the authorities initiated criminal proceedings against him on the eve of both of the presidential elections. Mr. Statkevich gained further prominence as an advocate of democracy. He organized and led over 30 demonstrations attended by several thousand people to protect democracy against government policies in the 1990s and 2000s. As a result, he was arrested more than 30 times and was charged with crimes on at least three occasions. For example, on 1 May 1997, he was arrested for demonstrating against President Lukashenko's policies aimed at forging closer ties with the Russian Federation. In October 2004, Mr. Statkevich organized a peaceful protest against the results of a referendum that lifted the constitutional limits on the number of presidential terms, extending President Lukashenko's term indefinitely, and about irregularities in the October 2004 parliamentary elections. He was arrested, and on 31 May 2005, convicted and sentenced to three years of imprisonment for his role in the protest. In 2006, Amnesty International recognized him as a prisoner of conscience. In July 2007, he was released on parole.

2.3 In 2009, Mr. Statkevich was nominated to stand as the Social Democratic Party's opposition candidate in the 2010 presidential election. Throughout his campaign, he was harassed by the security forces, which, for example, seized his campaign materials, recorded his telephone conversations and confiscated a speaker system.

2.4 On 19 December 2010, the presidential elections were held, with 10 candidates. On the same day, before the announcement of the official results, supporters of the opposition presidential candidates and non-partisan opponents of the President in power gathered in the centre of Minsk to voice their protest over what they believed to be an unfair election,

<sup>1</sup> Counsel indicates that the author's first name can also be spelled Mykalai, Mykalau, Nikolai or Mikola.

<sup>2</sup> At the time of submission of the communication, Mr. Statkevich was imprisoned. He was released on 22 August 2015, after receiving a presidential pardon.

<sup>3</sup> The author is jointly represented by Freedom Now, McKool Smith and Hogan Lovells. On 4 September 2014, the secretariat was informed that the main counsel, to whom all correspondence should be sent, was Michael Scheimer from Hogan Lovells.

denouncing massive irregularities and falsifications. The demonstration started at 6.50 p.m.<sup>4</sup> and at approximately 10 p.m., a small group of protesters started breaking the windows of the House of Government nearby. They were believed to have been government provocateurs and were thus urged by the opposition politicians to stop committing acts of vandalism and remain peaceful. At 10.37 p.m., law enforcement agents attacked the peaceful demonstrators as a response to the vandalism, beating, injuring and arresting many persons.<sup>5</sup> Mr. Statkevich was apprehended and beaten by unknown persons wearing masks and was transferred to an unknown location.<sup>6</sup> Later, he found out that he had been taken to the State Security Committee's pretrial detention facility. Upon arrest, he was not informed of the charges against him, and neither was his case brought before a judge to assess whether he should remain in custody.

2.5 During his pretrial detention in the premises of the State Security Committee, Mr. Statkevich was subjected to torture and cruel, inhuman and degrading treatment. He underwent long interrogations during the night, without the presence of his lawyer. In his cell, he was forced to sleep on the floor on a wooden panel, with the lights on at all times. He was deprived of access to the toilet and was at times placed with prisoners who were HIV-positive or suffering from tuberculosis. The State Security Committee officers put psychological pressure on Mr. Statkevich in an attempt to force him to confess to crimes and upon his refusal to admit guilt, the officers threatened to arrest his wife. After going on hunger strike,<sup>7</sup> he was taken to an unknown place, then to a hospital. On both occasions, the officials threatened to render him unconscious.

2.6 In February 2011, Mr. Statkevich's daughter filed a petition with the Working Group on Arbitrary Detention, which concluded that Belarus has breached Mr. Statkevich's rights under article 9 of both the Covenant and the Universal Declaration of Human Rights. The Working Group's decision was issued on 19 June 2011, but the State party did not release Mr. Statkevich or provide any compensation.<sup>8</sup>

2.7 On 11 May 2011, Mr. Statkevich's case was brought to trial before the Court of the Leninsky District in Minsk. During the trial, Mr. Statkevich and his co-defendants were kept handcuffed in a cage at all times. The evidence he presented was disregarded and the credibility of his arguments and explanations was consistently questioned and rejected by the court. During the trial proceedings, he challenged the violations of his rights under articles 7, 9 and 10 of the Covenant that had occurred during his arrest and incarceration. On 26 May 2011, however, the court found Mr. Statkevich guilty of having organized a mass riot involving violence and destruction of property and sentenced him to six years of imprisonment.

2.8 Mr. Statkevich appealed this conviction in cassation proceedings, arguing that the charges against him were unfounded and that he had been specifically targeted for the peaceful exercise of his rights to freedom of assembly and of expression. In his appeal, he also claimed that the actions against him appeared to be politically motivated, in retribution for his activities as an opposition political candidate. On 19 July 2011, Minsk City Court upheld the lower court's judgment. Thereafter, Mr. Statkevich appealed his conviction through the supervisory review procedure. He filed a supervisory review appeal with the Chair of Minsk City Court, who rejected his appeal on 11 November 2011. Mr. Statkevich filed a second supervisory review appeal to the Chair of the Supreme Court. A Deputy-Chair of the Supreme Court rejected that appeal on 17 February 2012. In November 2012, Mr. Statkevich lodged an appeal to the Prosecutor's Office of Minsk, which was rejected on 23 January 2013.

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<sup>4</sup> The chair of the Central Election Commission announced that immunity for the candidates would end at 8 p.m., whereas Belarusian law provides presidential candidates with immunity for political participation at all times.

<sup>5</sup> The author refers to [A/HRC/20/8](#).

<sup>6</sup> Seven other presidential candidates were also arrested at different times and places.

<sup>7</sup> The author did not specify the exact dates of the events that occurred during Mr. Statkevich's pretrial detention.

<sup>8</sup> [A/HRC/WGAD/2011/13](#).

2.9 Both Mr. Statkevich and his wife have unsuccessfully complained to the penitentiary authorities about the conditions of his detention, about his being singled out by the prison administration for alleged violations of the prison regulations and about the excessive limits on his contact with the outside world.

### **Complaint**

3.1 The author alleges a violation of Mr. Statkevich's rights under articles 2, 7, 9, 10, 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 17, 19 (1) and (2), 21, 22 and 25 of the Covenant. She claims that her husband's rights under article 7 have been violated as the authorities subjected Mr. Statkevich to incommunicado detention for several months, denied him access to counsel, and officers harassed him and threatened to arrest her unless he confessed his guilt. He was forced to sleep on the floor with the lights on, refused access to a toilet and detained together with prisoners with infectious diseases. He was transported to an unknown location in order to intimidate him, and while being moved, he was handcuffed behind his back.

3.2 The author claims that Mr. Statkevich's rights under article 9 (2) and (3) have been violated as he was not informed about the reasons for his arrest or of the charges against him. His pretrial detention was unlawful as it was not authorized by a judge. In addition, the decision to continue his detention was taken by a prosecutor without justification, the court review of his detention was not timely or efficient, he was not brought before a court to review his detention, and he was interrogated at night, without the presence of his lawyer. The first time he was brought before a judge was more than five months after his arrest, when the trial began.

3.3 The author claims that Mr. Statkevich's rights under article 10 have been violated as the authorities subjected him to emotional and physical abuse by harassing and threatening him prior to and after his conviction. During the 19 December 2010 crackdown by police special forces, Mr. Statkevich was physically beaten. In the State Security Committee prison, he was held without access to counsel and was not permitted to see his family. He was held in isolation, in the cold, and forced to sleep with the light on. As a result, his health deteriorated significantly.

3.4 The author also claims that Mr. Statkevich has been denied a fair and public hearing by an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. Mr. Statkevich did not receive a fair trial before an impartial judiciary because relevant evidence was excluded, prejudicial, irrelevant evidence was included, the prosecution was not held to the burden of proof and witnesses were not compelled to testify. The authorities did not refrain from publicly accusing Mr. Statkevich and other opposition candidates of planning a coup d'état and to overthrow the President before and after the elections. The authorities proclaimed opposition candidates, including Mr. Statkevich, guilty before the final judgment was established and announced by the court. The author claims that no evidence was presented linking Mr. Statkevich to the single isolated incident of violence. The court indulged in criticism and expressed doubt about the trustworthiness of Mr. Statkevich's testimony. The court also overruled defence motions while sustaining prosecution motions. Mr. Statkevich was unable to mount a fair defence. For instance, his counsel was not permitted to confront the prosecution's key witnesses. The court failed to subpoena a number of witnesses.

3.5 The author claims that Mr. Statkevich's rights under article 14 (2) have been violated as his right to be presumed innocent was infringed by the authorities' proclamation of guilt. He was tried with others on the basis of guilt by association, while other portions of the trial were held separately and used to convict him without his participation. This resulted in a severe limitation to his defence. He was also kept handcuffed in a cage during the trial.

3.6 The author claims that Mr. Statkevich's rights under article 14 (3) (b) have been violated as he was held incommunicado and denied access to counsel for three months after his arrest. Later, counsel's access to Mr. Statkevich was restricted.

3.7 The author also claims that Mr. Statkevich's rights under article 14 (5) have been violated as he was denied the right to appeal because the appeal court did not provide any explanation of the reasons why it rejected the appeal and did not examine the substantive

deficiencies in his conviction. Cassation review was but a mere formality. He was not allowed to be present during the cassation court hearings.

3.8 The author claims a violation of article 17 of the Covenant, arguing that the State party unlawfully recorded and published the transcripts of her husband's telephone calls during the presidential campaign in 2010. The wiretapping was not necessary, legal or justified and was therefore a violation of Mr. Statkevich's right to privacy.

3.9 The author claims a violation of Mr. Statkevich's rights under articles 19 and 21 of the Covenant. She claims that her husband's criminal conviction under article 293, part 1, of the Criminal Code constituted a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not provided by law and were not necessary for the protection of national security or of public order or of public health. The author also claims that the State party's authorities prosecuted Mr. Statkevich and sentenced him to five years' imprisonment for exercising his right to freedom of expression and for his political activities. The author further claims that the punishment was manifestly disproportionate because the investigating bodies did not show that there was any direct causal link between Mr. Statkevich's incriminating statements and the unlawful actions of the unidentified individuals who stormed the House of Government on 19 December 2010. Furthermore, his participation in the demonstration of 19 December 2010 was an expression of the rights enshrined in article 21 of the Covenant because the sole purpose of the demonstration was to peacefully express opposition to fraudulent election results, with the aim of promoting democracy.

3.10 The author claims a violation of Mr. Statkevich's rights under article 22 of the Covenant, arguing that he was arrested because he exercised his right to freedom of association.

3.11 Lastly, the author claims a violation of her husband's rights under article 25 of the Covenant, as everything he was made to suffer was a consequence of his efforts to exercise his right to participate in the political process. He wanted to advocate for a multiparty system and democratic electoral reforms, but was harassed, arrested, beaten, tortured and subsequently sentenced to six years in prison due to his political activities. The author notes that in 2011, the Working Group on Arbitrary Detention clearly acknowledged the link between these reprisals and her husband's efforts to engage in public affairs, particularly in the election process in 2010.<sup>9</sup>

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

4.1 In a note verbale dated 12 June 2015, the State party returned the communication, as it was not written in either Belarusian or Russian. In a note verbale dated 6 October 2015, the State party requested to be provided with the complete communication, including the annexed documents, in Belarusian or Russian.

4.2 In a note verbale dated 3 December 2018, the State party informed the Committee that the communication had been submitted without the required documentation proving that Mr. Statkevich had authorized the author to represent him and submit the communication to the Committee. The State party contends that the registration of communications should be in strict conformity with the provisions of the Optional Protocol.

4.3 In a note verbale dated 20 May 2019, the State party challenged the registration of the communication, claiming that it had been registered in violation of article 1 of the Optional Protocol, given that there was no power of attorney for Marina Adamovich. Furthermore, the State party noted that the author and Mr. Statkevich had authorized Freedom Now, an organization based in the United States of America, and Hogan Lovells, a United States-based law firm, to represent her and her husband, while both organizations were not under the jurisdiction of Belarus but of a third country. The State party claimed that, at the time of submission of its observations, nothing prevented Mr. Statkevich from communicating personally with the Committee. In view of the above, the State party was of the view that no

<sup>9</sup> The author refers to [A/HRC/WGAD/2011/13](#), para. 9.

further procedural action regarding the communication should be taken and that the communication should be discontinued.

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

5.1 On 25 March 2020, the author submitted that third party<sup>10</sup> submission of the communication was in accordance with the practice and rules of procedure of the Committee, in particular rule 91, which states that where a communication is submitted on behalf of an individual, that must be with the individual's consent, unless the author can justify acting on the individual's behalf without such consent. The actions of the State party prevented the author from obtaining Mr. Statkevich's written authorization, since he was not allowed to see his family until six months after his arrest. Once convicted, he was subjected to multiple prison transfers, often to prisons with stricter regulations where his communication with the outside world was limited and often revoked for allegedly violating prison rules. Furthermore, prison officials confiscated all his incoming mail and refused to send his outgoing mail. The author, as Mr. Statkevich's wife, was justified in submitting a communication on his behalf. Rule 99 (b) of the rules of procedure indicates that a communication submitted on behalf of an alleged victim may be accepted when it appears that the individual in question is unable to submit the communication personally.

5.2 In relation to the State party's claim that nothing prevented Mr. Statkevich from communicating personally with the Committee after his release, the author states that Mr. Statkevich had been detained for nearly three years at the time of submission of the communication and that he was scheduled to be released in December 2017. Moreover, even if he was no longer in prison, he has been subjected to detention on at least seven occasions since August 2015.

5.3 The author also claims that the State party has not acted in good faith.

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

##### *Considerations of admissibility*

6.1 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.

6.2 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.

6.3 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the author's communication, insofar as it is registered in violation of the provisions of the Optional Protocol.

6.4 The Committee recalls that article 39 (2) of the Covenant authorizes it to establish its own rules of procedure, which the States parties have agreed to recognize. 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). The Committee recalls its practice, reflected in rule 99 (b) of its rules of procedure, that victims may be represented by a person of their choice, provided that the representative is duly authorized. 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 to 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

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<sup>10</sup> United States-based organizations Freedom Now and Hogan Lovells.

examination of a communication and in the expression of its Views.<sup>11</sup> It is up to the Committee to determine whether a case should be registered.<sup>12</sup>

6.5 The Committee notes the State party's argument that the communication is inadmissible since it was submitted to the Committee by Marina Adamovich, Mr. Statkevich's wife, without a power of attorney to represent his interests before the Committee. However, it has been the long-standing practice of the Committee to allow relatives to bring proceedings for alleged victims who have died, disappeared or been prevented for other reasons from bringing a communication or designating a representative.<sup>13</sup> In this respect, the Committee recalls that rule 99 (b) of its rules of procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative, but that a communication submitted on behalf of an alleged victim may be accepted when it appears that the individual in question is unable to submit the communication personally.<sup>14</sup> In the present case, the Committee notes that the alleged victim was being detained at the time of submission of the communication. The Committee also notes the author's explanation that the actions of the State party prevented Ms. Adamovich from obtaining written authorization from Mr. Statkevich, since he was not allowed to see family until six months after his arrest. Furthermore, prison officials confiscated all his incoming mail and refused to send his outgoing mail. In the circumstances, the failure to provide a power of attorney cannot be attributable to the alleged victim or to his relatives. The Committee recalls that, where it is impossible for the victim to authorize the communication, the Committee has considered a close personal relationship to the alleged victim, such as family ties, as a sufficient link to justify an author acting on behalf of the alleged victim.<sup>15</sup> In the present case, at the time of submission of the communication, Mr. Statkevich was in incommunicado detention, with limited access or no access at all to his family and counsel. The State party did not provide any information on the conditions of detention of the author's husband or on his access to his family and lawyers. In view of the information on file, the Committee notes that the complaint was submitted on behalf of the alleged victim by his wife, who has presented a duly signed power of attorney for the counsels to represent the alleged victim and his wife before the Committee. The Committee therefore considers that the author is justified by reason of close family connection in acting on behalf of Mr. Statkevich.

6.6 The Committee notes the State party's argument that the communication is inadmissible since it was submitted to the Committee by third parties which are not under the jurisdiction of Belarus, but of a third country, and not by the alleged victim himself. It also notes that it has been its long-standing practice that authors may designate representatives of their choice, not only to receive correspondence, but to represent them before the Committee. The Committee states that none of the provisions of the Optional Protocol or the rules of procedure prohibit representation by a legal entity. The Committee also notes that the Optional Protocol (arts. 1 and 2) applies the requirement that individuals be subject to the State party's jurisdiction only in relation to the victims of human rights violations. The rules of procedure make no reference to legal representation by foreign legal entities. Accordingly, the Committee is not precluded by article 1 of the Optional Protocol from examining the communication.

6.7 The Committee notes that the State party has not contested that domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded from examining the communication by the requirements of article 5 (2) (b) of the Optional Protocol.

<sup>11</sup> For example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 8.2; and *Piandiong et al. v. Philippines* (CCPR/C/70/D/869/1999 and CCPR/C/70/D/869/1999/Corr.1), para. 5.1.

<sup>12</sup> *Tyvanchuk et al. v. Belarus* (CCPR/C/122/D/2201/2012), para. 5.2.

<sup>13</sup> *Zakharenko and Zakharenko v. Belarus* (CCPR/C/119/D/2586/2015), para. 6.3.

<sup>14</sup> See also *X. v. Serbia* (CCPR/C/89/D/1355/2005), para. 6.3.

<sup>15</sup> *A/33/40*, para. 580. See also, inter alia, Human Rights Committee, *Bazzano v. Uruguay*, communication No. 5/1977, para. 5; *B, C, D, E v. S.*, communication No. 29/1978, decision on admissibility of 14 August 1979 (CCPR/C/OP/1, p. 11); and *Drescher Caldas v. Uruguay*, communication No. 43/1979, para. 3.

6.8 The Committee takes note of the author's submission that the State party violated its obligations under article 2 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>16</sup> Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.9 The Committee notes the author's claim that Mr. Statkevich's rights under article 14 (5) of the Covenant have been violated as the appeal court did not provide any explanation of the reasons why it rejected the appeal and did not examine the substantive deficiencies in Mr. Statkevich's conviction. The Committee notes, however, that the decision of Minsk City Court of 19 July 2011 does not refer merely to the procedural aspects of the District Court hearing, but to the "information on file", which indicates that the court did engage in an evaluation of facts and evidence and did not limit the review to points of law only. Accordingly, the Committee finds the author's claims under article 14 (5) to be insufficiently substantiated for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.<sup>17</sup>

6.10 The Committee notes the author's claim that Mr. Statkevich's rights under article 22 of the Covenant have been violated as he was arrested because he was exercising his right to freedom of association. In the absence of any other pertinent information on file in that respect, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.11 The Committee considers that the author has sufficiently substantiated the remaining claims under articles 7, 9, 10, 14 (1), (2) and (3) (b), (d), (e) and (g), 17, 19 (1) and (2), 21 and 25 of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol. The Committee notes that, in failing to respond to a communication, or responding incompletely, a State that is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication.<sup>18</sup> In the absence of any explanations from the State party in respect of the merits, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.<sup>19</sup>

7.2 With regard to the author's claim that Mr. Statkevich was subjected to torture, ill-treatment and psychological pressure at the pretrial detention and investigation stage, with the aim of obtaining a confession, and after his conviction, the Committee notes that the author provided a detailed description of the methods used, such as emotional and physical abuse using harassment and threats. During the 19 December 2010 crackdown by police special forces, Mr. Statkevich was physically beaten. He was forced to sleep on the floor with the lights on, refused access to a toilet and detained together with prisoners with infectious diseases. He was transported to an unknown location in order to intimidate him, and while being moved, he was handcuffed behind his back. The authorities subjected Mr. Statkevich to incommunicado detention for several months, denied him access to counsel, and officers harassed and threatened him. In the absence of the State party's observations on these allegations, due weight must be given to the author's claims. The Committee therefore considers that the facts as submitted disclose a violation of article 7 of the Covenant.

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<sup>16</sup> For example, *Rodríguez Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

<sup>17</sup> For example, *Volchek v. Belarus* (CCPR/C/129/D/2337/2014), para. 6.7.

<sup>18</sup> Human Rights Committee, general comment No. 33 (2008), para. 10.

<sup>19</sup> For example, *Reviako v. Belarus* (CCPR/C/129/D/2455/2014), para. 8.1.



7.3 In the light of the above conclusions, the Committee does not find it necessary to examine separately the author's claims under article 10 of the Covenant.

7.4 The Committee notes the author's claim, under article 9 of the Covenant, that Mr. Statkevich was not informed about the reasons for his arrest or of the charges against him, and that his pretrial detention was unlawful as it was not justified. The first time he was brought before a judge was more than five months after his arrest, when the trial began.<sup>20</sup> The Committee notes that the State party has not demonstrated that Mr. Statkevich's arrest was reasonable and necessary. In the absence of any further information, the Committee therefore concludes that there has been a violation of article 9 (1) of the Covenant.

7.5 The Committee also notes the author's claim that the decision to remand Mr. Statkevich in custody was taken by a prosecutor, who is not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that the above-mentioned provision entitles a detained person charged with a criminal offence to judicial control of his or her detention. It is inherent to the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with.<sup>21</sup> The Committee is not satisfied that the prosecutor in question could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized by law to exercise judicial power within the meaning of article 9 (3) of the Covenant,<sup>22</sup> and therefore concludes that there has been a violation of that provision.

7.6 The Committee notes the author's claims that Mr. Statkevich was denied a fair hearing by an independent and impartial tribunal, in violation of article 14 (1) of the Covenant, and that the State party's courts did not offer him the minimum guarantees set forth in article 14 (3) (b), (d) and (e) of the Covenant. The Committee also notes the author's claim that, during her husband's pretrial detention in the premises of the State Security Committee, he underwent long interrogations at night, without the presence of his lawyer and that he was held incommunicado and denied access to counsel for three months after his arrest. Later, the counsel's access was restricted. The Committee further notes the author's claim that her husband's counsel was not permitted to confront the prosecution's key witnesses and the court failed to subpoena a number of witnesses. In the absence of comments from the State party to counter the author's allegations, the Committee concludes that the facts before it constitute a violation of article 14 (1) and (3) (b), (d) and (e) of the Covenant.

7.7 With regard to the allegations of violations of article 14 (2), the Committee notes the author's claim that Mr. Statkevich's right to be presumed innocent has been violated because the State-controlled media and the State party's highest authorities publicly accused him of attempting to overthrow the incumbent President and stated that he was guilty of having committed crimes in connection with the events of 19 December 2010, before his guilt had been duly established by the court. The author also claimed that he was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case. The State party did not contest those allegations. The Committee recalls that the accused person's right to be presumed innocent until proved guilty by a competent court is guaranteed by the Covenant. In the absence of any relevant information from the State party, the Committee concludes that the facts as described by the author disclose a violation of article 14 (2) of the Covenant.

7.8 The Committee recalls its previous jurisprudence that the provision in article 14 (3) (g) of the Covenant that, in the determination of any criminal charge against him or her, everyone shall be entitled not to be compelled to testify against him or herself or to confess guilt, must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt.<sup>23</sup> The Committee also recalls that, in cases involving allegations of forced confessions, the burden is on the State to prove that statements made by

<sup>20</sup> For example, Human Rights Committee, *Van Alphen v. Netherlands*, communication No. 305/1988, para. 5.8.

<sup>21</sup> *Kulomin v. Hungary* (CCPR/C/50/D/521/1992), para. 11.3; and *Platonov v. Russian Federation* (CCPR/C/85/D/1218/2003), para. 7.2.

<sup>22</sup> Human Rights Committee, general comment No. 35 (2014), para. 32.

<sup>23</sup> *Berry v. Jamaica* (CCPR/C/50/D/330/1988), para. 11.7; *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 7.4; and *Deolall v. Guyana* (CCPR/C/82/D/912/2000), para. 5.1.

the accused have been given of their own free will.<sup>24</sup> In the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of article 14 (3) (g) of the Covenant.

7.9 The Committee notes the author's claim that the State party violated article 17 of the Covenant, as its authorities unlawfully tapped Mr. Statkevich's telephone, recording calls he made during the presidential campaign in 2010 and thereafter publishing the transcripts. She argued that the wiretapping was unnecessary, illegal and unjustified and was therefore a violation of her husband's right to privacy. Furthermore, information obtained illegally through that instance of wiretapping was used by the trial court as evidence to prove the author's guilt. The Committee notes that the State party has not commented on the author's allegations in that regard. The Committee therefore concludes that the facts before it amount to a violation by the State party of the author's right under article 17 of the Covenant.

7.10 The Committee notes the author's claim that Mr. Statkevich's criminal conviction under article 293, part 1, of the Criminal Code constituted a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not provided by law and were not necessary for the protection of national security or of public order or of public health. The Committee also notes the author's claim that the State party's authorities prosecuted Mr. Statkevich and sentenced him to five years' imprisonment for exercising his right to freedom of expression and for his political activities. The Committee further notes the author's claim that the punishment was manifestly disproportionate because the investigating bodies did not show that there was any direct causal link between Mr. Statkevich's incriminating statements and the unlawful actions of the unidentified individuals who stormed the House of Government on 19 December 2010.<sup>25</sup>

7.11 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that they are essential for any society. They constitute the foundation stone for every free and democratic society.<sup>26</sup> The Committee recalled that article 19 (3) of the Covenant allows certain restrictions only such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>27</sup> The Committee also recalls that it is for the State party to demonstrate that the restrictions on Mr. Statkevich's rights under article 19 of the Covenant were necessary and proportionate.<sup>28</sup> In the present case, the Committee observes, however, that neither the State party nor the courts have provided any explanation as to how the restrictions imposed on Mr. Statkevich in the exercise of his right to freedom of expression were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. Accordingly, the Committee finds that the State party violated the author's rights under article 19 (2) of the Covenant.

7.12 The Committee notes the author's claim that, by sentencing Mr. Statkevich to six years' imprisonment under article 293, part 1, of the Criminal Code for having organized an unauthorized but peaceful public gathering, the State party disproportionately interfered in the exercise of his right of peaceful assembly under article 21 of the Covenant. Such interference is not provided for by law, since the provisions of article 293 of the Criminal Code are too vague and broad to be able to foresee the legal consequences of one's actions and there is no definition of what constitutes "mass disorder" in domestic law. The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the

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<sup>24</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>25</sup> For example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 6.10.

<sup>26</sup> Human Rights Committee, general comment No. 34 (2011), para. 2.

<sup>27</sup> *Ibid.*, para. 22.

<sup>28</sup> For example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

Covenant, is a fundamental human right that is indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including a spontaneous one, at a public location. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions. Authorities must be able to show that any restrictions meet the requirement of legality and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21.<sup>29</sup> In the absence of any relevant information from the State party, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.<sup>30</sup>

7.13 In the light of the above conclusions, the Committee does not find it necessary to examine separately the author's claims under article 25 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7, 9 (1) and (3), 14 (1), (2) and (3) (b), (d), (e) and (g), 17, 19 (2) and 21 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide Mikalai Statkevich with adequate compensation, expunge his conviction from his criminal record and carry out a prompt, impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiate criminal proceedings against those responsible. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring 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 and that, 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.

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<sup>29</sup> Human Rights Committee, general comment No. 37 (2020), para. 36.

<sup>30</sup> For example, *Sannikov v. Belarus*, para. 6.11.