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International Covenant on Civil and Political Rights

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Human Rights Committee
One hundredth and first session
14 March to 1 April 2011

Decision

Communication No. 1994/2010

Submitted by:	I. S. (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	14 December 2009 (initial submission)
Date of adoption of Decision:	25 March 2011

* Made public by decision of the Human Rights Committee.

Subject matter:	Compulsory labour / fair trial.
Substantive issues:	Obligation to work for a particular enterprise after receiving a state funded university education.
Procedural issues:	Incompatibility of claims with the Covenant; level of substantiation of claim.
Articles of the Covenant:	Article 8, paragraph 3 (a); article 14, paragraph 1
Articles of the Optional Protocol:	Articles 2 and 3

[Annex]

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth and first session)

concerning

Communication No. 1994/2010**

Submitted by:	I. S. (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	14 December 2009 (initial submission)

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

Meeting on 25 March 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is I. S., a Belarusian national born in 1984. He claims to be a victim of violations by Belarus of his rights under article 8, paragraph 3 (a), and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

The facts as presented by the author:

2.1 Having successfully passed an examination, on 6 August 2001, the author enrolled as a student in the Belarusian State Polytechnic Academy, (later transformed into Belarusian National Technical University), and graduated, on 29 June 2006, with a degree in engineering. The author was assigned to work for two years as a young specialist in the state owned Construction Trust No 21 in Borisov town, in accordance with a Bulletin for Personnel Allocation issued by the University. The Bulletin for Personnel Allocation was issued on the basis of article 10 of the Law "On Education", the 2006 amendment of which provides that universities' graduates, whose studies had been funded by the state or the municipal budgets, must work for the State "mandatorily allocated" for a period of two years, according to the order established by the Belarus government. If they fail to comply

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

with the "mandatory assignment" in return for the educational program that they chose to undertake, they are obliged to reimburse the funds spent on their education to the respective budget.

2.2 The author accepted and signed a work contract with the Construction Trust No 21. He started to work on 28 August 2006[1]. The author's residence being in Minsk, he had to travel for three hours every day to his work station and he could not find living arrangements in the town of Borisov. He requested his employer to release him from the contract, but the latter refused, claiming that he was not permitted to dismiss a young specialist in the first two years after his graduation. The author stopped going to work and on 21 January 2007 he was dismissed for absenteeism based on article 42 of the Labour Code.

2.3 The Belarusian National Technical University filed a law suit against the author, claiming reimbursement of the funds for his education. The author objected, claiming that the Law "On Education" contradicts article 49 of the Constitution, which declares that education in Belarus is free of charge, and that forcing him to work in a company where he does not want to work, under the penalty of having to repay his education costs, constitutes compulsory labor. On 4 March 1998, the Borisov Regional Court granted the University's claim and convicted the author to pay 13 071 253 rubles to the State budget, based on the fact that he did not complete his mandatory work allocation term.

2.4 The author appealed the court decision before the Minsk District Court, which rejected his appeal on 19 May 2008. The author attempted to file for a supervisory review with the President of the Minsk District Court and with the Supreme Court of Belarus, but his appeals were rejected. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author refers to the article 2, paragraph 1, of the Forced Labour ILO Convention No29 of ILO, which defines forced or compulsory labour to mean "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The author further refers to ILO Convention No105 on Abolition of Forced Labour, to which Belarus is a state party, and therefore has undertaken "to suppress and not to make use of any form of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development".[2] The author also refers to article 41, paragraph 4 of the Belarus Constitution which also prohibits compulsory labour. The author submits that after having enjoyed his right to free education, guaranteed by the constitution, he was forced to work following a mandatory allocation under the threat of heavy financial penalty. He maintains that the mandatory allocation is used by the State party as a method of mobilization of the work force for the purpose of economic development of certain regions by placing there young specialists on a non-voluntary basis. He claims that his mandatory placement in the Construction Trust No 21 violated his right under article 8, paragraph 3(a), of the Covenant.

3.2 The author also submits that neither the first instance court, nor the subsequent instances took into consideration his arguments that his constitutional and Covenant rights were violated. He also submits that, since article 10 of the Law "On Education" was not enacted until June 2006, during his education in the period 2001 - 2006, the rules on mandatory allocation of young specialists, whose education was paid by the state budget,

[1] The author submits a copy of his work contract. According to the contract, his salary was 732 974 Belarusian Roubles per month, for five working days, eight hours a day.

[2] Article 1(b) of the Abolition of Forced Labour Convention (1957).

did not exist and therefore the courts applied the law retroactively in violation of his rights under article 14, paragraph 1, of the Covenant.

Issues and proceedings before the Committee

Consideration of Admissibility

4.1 Pursuant to rule 93 of its Rules of Procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee notes the author's claim that that his mandatory placement in the Construction Trust No 21 violated his right under article 8, paragraph 3 (a) of the Covenant. The Committee considers that, for the purpose of article 2 of the Optional Protocol, the author has not sufficiently substantiated, for purpose of admissibility, how the requirement to pay the expenses for his state funded education or to work in a specific enterprise for two years could be seen as constituting a violation of article 8, paragraph 3 (a) of the Covenant.

4.3 With regard to the author's claims that his rights under article 14, paragraph 1, the Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. The Committee recalls its jurisprudence in this respect and reiterates that, in general, it is for the relevant domestic courts to review or evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice.[3] Based on the material before it the Committee considers that the author has not shown sufficient grounds to support his claims that the judicial proceedings in his case have suffered from such defects. The Committee, therefore, concludes that the communication is inadmissible under article 2, of the Optional Protocol.

4.4 The Committee also notes the author's allegation that the law "On Education" was applied retroactively in his case. The Committee, however, observes that article 14, paragraph 1 of the Covenant does not contain a prohibition of the retroactive application of laws regulating civil matters. The Committee also observes that article 15, paragraph 1, of the Covenant prohibits retroactive application of laws only in relation to criminal law matters. Accordingly, the Committee considers that the above allegation of the author is incompatible with the provisions of the Covenant, and therefore declares this part of the communication inadmissible under article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

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

[3] See, for example, communication No. 1212/2003, *Lanzarote* v. *Spain*, decision of inadmissibility of 25 July 2006, para. 6.3.