



**International Covenant on
Civil and Political Rights**

Distr.: General
11 December 2012

Original: English

Human Rights Committee

Communication No. 2169/2012

**Decision adopted by the Committee at its 106th session (15 October–
2 November 2012)**

<i>Submitted by:</i>	S.K. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	5 December 2011 (initial submission)
<i>Date of adoption of decision:</i>	31 October 2012
<i>Subject matter:</i>	Author's conviction for violation of public order
<i>Substantive issues:</i>	Right to a fair hearing by an impartial tribunal, freedom of expression
<i>Procedural issues:</i>	Inadmissibility due to non-substantiation
<i>Articles of the Covenant:</i>	14, 19 and 26.
<i>Articles of the Optional Protocol:</i>	2



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (106th session)

concerning

Communication No. 2169/2012*

Submitted by: S.K. (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 5 December 2011 (initial submission)

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

Meeting on 31 October 2012,

Adopts the following:

Decision on admissibility

1. The author of the communication dated 5 December 2011 is S.K., a Belarus national born in 1975. He claims to be the victim of violations by Belarus of his rights under articles 2, paragraph 1; article 14, paragraph 1; article 19, paragraph 2; and article 26 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 On 7 January 2010, the day when Orthodox Christians celebrate Christmas, at around noon, the author climbed to the top of a Christmas tree located in Pobeda (“Victory”) Square in the city of Vitebsk and placed a white-red-white flag, that used to be the national flag, there. He was subsequently arrested and charged with violations of articles 339 and 363 of the Criminal Code of Belarus.

2.2 The author submits that he is a member of the Conservative Christian Party of the Belarus National Front, which is in opposition to the current regime in Belarus. The white-red-white flag was used as the national flag of Belarus from 1991 to 1994, and currently is considered as a historic symbol of the country. The author submits that the flag is not prohibited and has a holy meaning for him. By hanging placing it on the tree, the author wanted to express his political opinion.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev and Mr. Krister Thelin.

2.3 The author further claims that by placing the flag on the tree, he did not break any laws. Such expression of political opinion cannot be restricted, because it does not infringe on national security, public order, public health, morals or the reputation of others.

2.4 The author submits that on 14 May 2010, the Oktyabrsky District Court convicted him of carrying out “acts, dangerous to the general public,” as proscribed by articles 339 and 363 of the Criminal Code, and fined him the amount of 3 500 000 Belarusian roubles¹ to compensate for damage to the Christmas tree and the lighting. During the court hearing, the court did not allow the author to summon witnesses in his defence.²

2.5 The Vitebsk Regional Court rejected the author’s appeal in its decision of 25 June 2010. The Supreme Court of Belarus rejected his appeal on 2 November 2011.

2.6 The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that by arresting and prosecuting him, the State party violated his rights under articles 19 and 26 of the Covenant³. He submits that the State party’s decision was not based on concerns of national security, public order, public health, morals or the reputation of others.

3.2 The author further claims that by not allowing him to summon witnesses in his defence, the State party violated his rights under article 14, paragraph 1, of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The Committee observes that although the author invokes a violation of article 14, paragraph 1, his claims seem to fall under article 14, paragraph 3 (e), of the Covenant, and are linked primarily to the evaluation of facts and evidence. The Committee recalls its jurisprudence according to which it is generally not up to the Committee, but rather the courts of the State party concerned, to review or evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice.⁴ The Committee observes that the materials before it, including the transcripts of court hearings, do not suggest that the impartiality of the court was affected, nor was the principle of equality of arms violated nor was the fairness of the author’s trial otherwise undermined. It therefore concludes that the author failed to substantiate his claim under article 14, paragraph 1, of the Covenant for

¹ This amount is equal to approximately 925€ based on the official exchange rate at the time.

² The author provides no further explanation as to who the witnesses were nor how their testimony would have changed the outcome of the court proceedings.

³ The author does not explain how article 26 was violated.

⁴ See the Committee’s general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI; see, inter alia, communications No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2; No. 1616/2007, *Manzano v. Colombia*, decision of inadmissibility adopted on 19 March 2010, para. 6.4; No. 1532/2006, *Sedljar and Lavrov v. Estonia*, decision of inadmissibility adopted on 29 March 2011, para. 7.3.

purposes of admissibility, and declares the claim inadmissible under article 2 of the Optional Protocol.

4.3 Regarding the author's allegations under article 2, paragraph 1; article 19 and article 26, of the Covenant, the Committee notes that the information provided by the author does not provide any substantiation of his claim that his rights were violated. The Committee further notes that under article 19, paragraph 3 (a) and (b) of the Covenant, the right to freedom of expression may be subject to certain restrictions, including those necessary for the protection of public order (*ordre public*). As to the violation of his rights under article 26, the author has not explained how the issues are separate from those falling under article 19. Accordingly, the author has failed to sufficiently substantiate his claim for purposes of admissibility. The Committee therefore concludes that the author failed to substantiate his claims under article 2, paragraph 1; article 19 and article 26, of the Covenant for purposes of admissibility, and declares said claims inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall 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.]
