



Human Rights Committee

Communication No. 1787/2008

**Views adopted by the Committee at its 107th session
(11–28 March 2013)**

<i>Submitted by:</i>	Zhanna Kovsh (Abramova) (represented by counsel, Roman Kisliak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	4 April 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 April 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	27 March 2013
<i>Subject matter:</i>	Failure to promptly bring the author before a judge on two separate occasions
<i>Substantive issues:</i>	Right to be brought promptly before a judge; right to a public hearing by an independent and impartial tribunal
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of a claim
<i>Articles of the Covenant:</i>	9, paragraph 3; and 14, paragraph 1
<i>Articles of the Optional Protocol:</i>	2; 5, paragraph 2 (b)

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (107th session)

concerning

Communication No. 1787/2008*

Submitted by: Zhanna Kovsh (Abramova) (represented by counsel, Roman Kisliak)

Alleged victim: The author

State party: Belarus

Date of communication: 4 April 2008 (initial submission)

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

Meeting on 27 March 2013,

Having concluded its consideration of communication No. 1787/2008, submitted to the Human Rights Committee by Zhanna Kovsh (Abramova) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Zhanna Abramova, a national of Belarus born in 1983. Subsequent to the submission of the communication, she got married and changed her surname to Kovsh. The author claims to be a victim of a violation by Belarus of her rights under article 9, paragraph 3, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. She is represented by counsel Roman Kisliak.

1.2 On 4 August 2008, the State party requested the Committee to examine the admissibility of the communication separately from its merits, in accordance with Rule 97, paragraph 3, of the Committee's rules of procedure. On 4 September 2008, the Special

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. The text of an individual opinion by Committee member Mr. Yuji Iwasawa is appended to the present Views.

Rapporteur for New Communications and Interim Measures decided, on behalf of the Committee, to examine the admissibility of the communication together with its merits.

The facts as presented by the author

2.1 At 9.30 a.m. on 29 September 2005, the author was detained by two police officers on the territory of the Brest central market and taken to the Department of Internal Affairs of the Leninsky District Administration of Brest (Department of Internal Affairs). Her detention was authorized by the Head of the Department of Internal Affairs and was carried out in accordance with procedure established by article 108 of the Criminal Procedure Code. At 1 p.m. on the same day, the author was placed in a temporary detention ward of the Directorate of Internal Affairs of the Brest Regional Executive Committee (Directorate of Internal Affairs). At 10.30 p.m. on 1 October 2005, she was released from detention. During the two days and 13 hours (61 hours) from the moment of actual detention until the moment of her release, the author was not brought before a judge.

2.2 At 9 a.m. on 27 January 2006, the author was again detained in front of her house by two police officers in civilian clothes and then placed in the temporary detention ward of the Directorate of Internal Affairs. Her detention was authorized by the Chief Investigator of the Preliminary Investigation Unit of the Directorate of Internal Affairs pursuant to article 111 of the Criminal Procedure Code. At 9 a.m. on 30 January 2006, the author was released from detention. During the three days (72 hours) from the moment of actual detention until the moment of her release, the author was not brought before a judge.

2.3 On 23 October 2007, the author complained to the Leninsky District Prosecutor of Brest about the failure of the relevant authorities to bring her promptly before a judge on both occasions (29 September 2005 and 27 January 2006), in accordance with article 9, paragraph 3, of the Covenant. The purpose of the complaint was for the Leninsky District Prosecutor of Brest to recognize that the failure to bring the author promptly before a judge was unlawful and violated her right to liberty and security of person. On 12 November 2007, she received a reply dated 5 November 2007 from the acting Leninsky District Prosecutor of Brest, stating that there was no violation of law and that the decisions concerning her detention were taken in conformity with the State party's law in force. The decision does not make any reference to article 9, paragraph 3, of the Covenant.

2.4 On 18 November 2007, the author filed a complaint with the Regional Prosecutor of Brest, claiming a violation of article 9, paragraph 3, of the Covenant. On 5 January 2008, she received a reply dated 20 December 2007 from the Deputy Regional Prosecutor of Brest, who did not find any grounds to establish that the actions of the police officers, that is, not bringing her promptly before a judge, were unlawful under the State party's law in force. The decision does not make any reference to article 9, paragraph 3, of the Covenant.

2.5 On 15 January 2008, the author submitted a complaint to the Prosecutor General, challenging the earlier decisions of the Leninsky District Prosecutor of Brest and of the Regional Prosecutor of Brest, as well as the failure of the relevant authorities to bring her promptly before a judge. On 29 February 2008, the author received a notification from the Prosecutor General's Office dated 26 February 2008, informing her that the complaint was transmitted to the Brest City Prosecutor's Office. On 3 March 2008, she learned that the complaint was further transmitted to the Office of the Regional Prosecutor of Brest.

2.6 On 4 April 2008, the author received a reply dated 31 March 2008 from the Deputy Regional Prosecutor of Brest, which stated that article 9 of the Covenant did not establish a specific time limit for bringing a detained person before a judge. Consequently, the State party's law was not incompatible with the Covenant, as article 143 of the Criminal Procedure Code envisaged that the authority in charge of criminal proceedings was obliged, within 24 hours from the moment of receiving a complaint about detention, to hand it over to the court. Since on both occasions the author did not appeal against her detention either

to the court or to the prosecutor while being detained, there was no violation of either international or national law.

2.7 The author submits that she has exhausted all domestic remedies. She adds, however, that these remedies are not effective for the protection of the rights guaranteed under article 9, paragraph 3, of the Covenant, because the State party's law generally does not provide for such remedies as far as the right to be brought before a judge is concerned.

The complaint

3.1 The author claims a violation by the State party of her rights under article 9, paragraph 3, of the Covenant, because she was not brought promptly before a judge on two separate occasions, i.e. during her detention from 29 September to 1 October 2005 and from 27 January to 30 January 2006. She submits that the requirement of "promptness" would require that a person is brought before a judge within 48 hours from the moment of actual detention. In any case, each State party to the Covenant should establish in its national law a time limit on bringing every detained person before a judge that would be in compliance with article 9, paragraph 3, of the Covenant.

3.2 The author submits that the Code of Criminal Procedure does not recognize any right that is analogous to article 9, paragraph 3, of the Covenant. At the same time, under article 1, paragraph 4, of the same Code, "[i]nternational treaties of the Republic of Belarus that define rights and freedoms of individuals and citizens shall apply in criminal proceedings along with the present Code". Therefore, the author claims that on both occasions when she was detained, the officers of the Department of Internal Affairs should have directly applied the provisions of article 9, paragraph 3, of the Covenant and brought her before a judge within 48 hours from the moment of actual detention.

3.3 As to the argument of the Regional Deputy Prosecutor of Brest (see paragraph 2.6 above) that she had not appealed to a court regarding the decisions on her detention, the author submits that a right of appeal is provided for in article 9, paragraph 4, rather than in article 9, paragraph 3, of the Covenant. The two provisions in question are not dependent on each other, i.e. the fact of not availing oneself of the right provided for in article 9, paragraph 4, does not preclude a person from exercising his or her right provided for in article 9, paragraph 3, of the Covenant.

3.4 As to the argument of the Regional Deputy Prosecutor of Brest that article 9 of the Covenant does not establish a specific time limit for bringing a detained person before a judge, the author refers to the Committee's General Comment No. 8 (1982) on the right to liberty and security of persons, where it noted that the right to be brought promptly before a judge means that the delay "must not exceed a few days" (para. 2). She also refers to the Views in Communication No. 852/1999, *Borisenko v. Hungary*,¹ where the Committee considered the detention which lasted three days before a detainee was brought before a judicial officer, as too long and not fulfilling a condition of "promptness", provided for in article 9, paragraph 3, of the Covenant, except when there are solid reasons for the delay.

The State party's observations on the admissibility and merits

4.1 On 4 August 2008, the State party submits in relation to the facts on which the communication is based that the Office Regional Prosecutor of Brest repeatedly examined the author's complaints with respect to the criminal case initiated by the Department of Internal Affairs against her. As for a long time the author had not come to the Department of Internal Affairs despite the summons issued in her name, the authority in charge of

¹ Human Rights Committee, *Borisenko v. Hungary*, Communication No. 852/1999, Views of 14 October 2002, para. 7.4.

criminal proceedings decided to declare her wanted by the police. Subsequently, the authority in charge of criminal proceedings took a decision to detain the author on the suspicion that she had committed a crime.

4.2 The State further party submits that the author was interrogated as a suspect in the presence of her lawyer and that there was no violation of criminal procedure law by officers of the Department of Internal Affairs in detaining her on 29 September 2005 and 27 January 2006.

4.3 The State party notes that in her communication to the Committee, the author claims that her rights under the Covenant were violated because she was not promptly brought before a judge. In this respect, the State party argues that article 9 of the Covenant does not establish a specific time limit for bringing a detained person before a judge. Consequently, article 143 of the Code of Criminal Procedure is not incompatible with the Covenant, as it envisages that the authority in charge of criminal proceedings is obliged, within 24 hours from the moment of receiving a complaint about detention, to hand it over to the court together with the materials that would show the legality of one's detention. The State party adds that the author was explained in the presence of her lawyer the rights and duties of a detained person,² including the right to appeal against the detention to the court. This fact is corroborated by the author's signature in the relevant report.

4.4 The State party argues that the author did not complain about the fact of her detention either to the court or to the prosecutor. She only appealed against the decision to initiate a criminal case against her pursuant to article 211, part 1, of the Criminal Code. These complaints were examined by the Leninsky District Prosecutor of Brest in compliance with the State party's criminal procedure law. The State party concludes that there was no violation of either international or national law in the author's case and that her arguments on the unlawfulness of actions carried out by officers of the Department of Internal Affairs in detaining her are unfounded.

4.5 On 1 December 2009, the State party stated that it reiterates its observations submitted on 4 August 2008.

The author's comments on the State party's observations

5.1 On 5 March 2012, the author submitted that in its observations of 4 August 2008, the State party did not challenge the fact that she was not brought before a judge on two separate occasions, i.e. during her detentions from 29 September to 1 October 2005 and from 27 January to 30 January 2006. The author added that she maintains her arguments presented in the initial submission of 4 April 2008 in support of the claim that the State party has violated her rights under article 9, paragraph 3, of the Covenant.

5.2 The author challenges the State party's argument that she did not appeal against the first and the second detentions either to the court or to the prosecutor (see paragraph 4.4 above). She recalls that she complained to the Prosecutor's Office on numerous occasions about the violation of her rights under article 9, paragraph 3, of the Covenant (see paragraphs 2.3–2.6 above). The author adds that, contrary to what is asserted by the State party, her complaints were in fact submitted to the district, regional and national levels of the Prosecutor's Office.

5.3 As to the possibility of appealing against one's detention in relation to a criminal case while the person is still being detained, the author argues that it is pointless to appeal against one's detention that lasted for less than 72 hours with the aim of immediate release, because complaints submitted by detained persons themselves or their lawyers are only

² Reference is made to article 139 of the Code of Criminal Procedure.

examined after 72 hours, i.e. when the detained person in question has either already been released or ordered into custody upon the prosecutor's authorization. For this reason, lawyers in Belarus would usually appeal against their client's placement in custody rather than against his or her detention.

5.4 On the facts, the author submits that she was detained for the first time on Thursday, 29 September 2005, and interrogated in the lawyer's presence only on Friday, 30 September 2005. She met with the *ex officio* lawyer made available to her by the investigator shortly before the interrogation and this lawyer was present only for as long as the interrogation lasted. It ended at 5 p.m. The author adds that it was impossible for her to conclude an agreement with a lawyer and to pay for the lawyer's services in appealing against her detention. In any case, such a complaint could have been submitted only on the evening of Friday, 30 September 2005, and would have reached the court only on Monday, 3 October 2005, i.e. after her release from detention.

5.5 The author further submits that she was detained for the second time on Friday, 27 January 2006, and was not provided with a lawyer on that occasion. Even if she had submitted an appeal against her detention on that day, the complaint would have been examined by the court only at 9 a.m. on Monday, 30 January 2006, at the earliest. The author recalls that she was released from detention at 9 a.m. on 30 January 2006. She adds that, not having a legal background, she was unable to write such a complaint on her own. The author notes that investigators and other officers of the Ministry of Internal Affairs in Belarus often detain persons on the weekend's eve, which makes it absolutely impossible for the latter to promptly appeal against their detention due to the fact that lawyers cannot visit their clients in the temporary detention ward over the weekend.

5.6 The author submits that, on 27 December 2007, she complained to the Leninsky District Court of Brest pursuant to the provisions of articles 335 and 353 of the Code of Civil Procedure about a violation of her rights under article 9, paragraph 3, of the Covenant. On 27 February 2008, a judge of the Leninsky District Court of Brest examined the author's complaint in her absence³ and decided to terminate the proceedings for lack of jurisdiction pursuant to article 164, paragraph 1, of the Code of Civil Procedure. He determined that the procedure for appealing one's detention is governed by article 143 of the Code of Criminal Procedure rather than by the Code of Civil Procedure. The judge of the Leninsky District Court of Brest also concluded that the author had not provided the court with evidence proving that in the course of her detention she had requested officers in charge of preliminary investigation to bring her before a judge.

5.7 The author notes that, although the ruling of the Leninsky District Court of Brest mentions that it was rendered in public, no one belonging to the public, including two persons who had specifically expressed their interest in attending the hearing in question, was allowed to enter the court room by a clerk of court. She argues that, irrespective of whether parties to the proceedings are present in the courtroom, the public should be allowed to attend public hearings. The author claims, therefore, that her right to a public hearing by an independent and impartial tribunal provided for in article 14, paragraph 1, of the Covenant was violated.

5.8 On 10 March 2008, the author filed a private appeal against the ruling of the Leninsky District Court of Brest of 27 February 2008. On 17 March 2008, a judge of that Court decided not to accept the private appeal on the ground that the author had missed the deadline to lodge the appeal. On 27 March 2008, the author filed a private appeal against the judge's decision of 17 March 2008, challenging the way the deadline in question had

³ The author stated that she arrived a few minutes late and entered the courtroom when the judge was already reading out the ruling.

been calculated, and, on 18 April 2008, she filed a supplementary private appeal against the ruling of the Leninsky District Court of Brest of 27 February 2008 with the Regional Court of Brest. In her supplementary private appeal, the author specifically argued that the obligation of the detaining authority to promptly bring her before a judge did not depend on whether she had requested it, as it should have been done automatically pursuant to article 9, paragraph 3, of the Covenant. On 21 April 2008, the Judicial College on Civil Cases of the Brest Regional Court rejected the author's private appeals and upheld the ruling of the Leninsky District Court of Brest of 27 February 2008 on the ground that the procedure for appealing one's detention was governed by article 143 of the Code of Criminal Procedure rather than by the Code of Civil Procedure.

5.9 The author argues that there are no effective remedies in Belarus as far as the right to be promptly brought before a judge, provided for in article 9, paragraph 3, of the Covenant, is concerned. She submits that the State party's authorities do not generally recognize the existence of the right to be promptly brought before a judge and simply substitute it with the right to appeal against one's arrest or detention. The author adds that the latter right is provided for in article 9, paragraph 4, of the Covenant, and that it complements the other right provided for in article 9, paragraph 3, of the Covenant. She concludes that, due to the conceptual misunderstanding by the State party's authorities of the right to be promptly brought before a judge and, thus, of her demands to remedy a violation of this right, any further attempts to avail herself of the domestic remedies would be futile.

5.10 With reference to the Committee's jurisprudence,⁴ the author recalls that domestic remedies need not be exhausted if they are either ineffective or unavailable. She argues, therefore, that the State party should have described in detail which domestic remedies would have been available to her in the present case and provided evidence that there would be a reasonable prospect that such remedies would be effective. The author concludes that the State party has failed to provide such evidence in relation to the right to be promptly brought before a judge pursuant to article 9, paragraph 3, of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's argument that the author has not appealed against her first (from 29 September to 1 October 2005) and second (from 27 to 30 January 2006) detentions pursuant to the procedure established by article 143 of the Criminal Procedure Code. The Committee further notes, however, that the author's claim relates not to her right under article 9, paragraph 4, of the Covenant to bring proceedings before a court, but to her right under article 9, paragraph 3, of the Covenant, to be brought promptly before a judge, without having to request it, and observes that she conveyed her arguments in this respect to the State party's authorities by lodging

⁴ Reference is made to Human Rights Committee, *Torres Ramirez v. Uruguay*, Communication No. 4/1977, Views of 23 July 1980, para. 9 (b).

complaints with the Leninsky District Prosecutor of Brest, the Regional Prosecutor of Brest, the Prosecutor General, the Leninsky District Court of Brest and the Regional Court of Brest. Accordingly, the Committee considers that it is not precluded, by article 5, paragraph 2 (b), of the Optional Protocol, from examining the communication.

6.4 As to the alleged violation of the author's right under article 14, paragraph 1, of the Covenant, because no one from the public was allowed to attend the hearing of the Leninsky District Court of Brest on 27 February 2008, the Committee considers that this claim has been insufficiently substantiated for purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, her claim under article 9, paragraph 3, of the Covenant. Therefore, it declares this claim admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that her rights under article 9, paragraph 3, of the Covenant were violated, because on two separate occasions, from 9.30 a.m. on 29 September to 10.30 p.m. on 1 October 2005 and from 9 a.m. on 27 to 9 a.m. on 30 January 2006, i.e. for respectively 61 and 72 hours from the moment of the actual detention until the moment of her release, she was not brought before a judge. She submits that the requirement of "promptness" would require that a person is brought before a judge within 48 hours from the moment of actual detention. The Committee further notes the State party's argument that article 9 of the Covenant does not establish a specific time limit for bringing a detained person before a judge and that the author did not complain about the fact of her detention.

7.3 In this regard, the Committee recalls that pretrial detention should be an exception and should be as short as possible.⁵ To ensure that this limitation is observed, article 9 requires that the detention be brought promptly under judicial control.⁶ Prompt initiation of judicial oversight also constitutes an important safeguard against the risk of ill-treatment of the detained person. This judicial control of detention must be automatic and cannot be made to depend on a previous application by the detained person. The period for evaluating promptness begins at the time of arrest and not at the time when the person arrives in a place of detention.⁷

7.4 Although the meaning of the term "promptly" in article 9, paragraph 3, of the Covenant must be determined on a case-by-case basis,⁸ the Committee recalls its General Comment No. 8 (1982) on the right to liberty and security of persons (para. 2) and its jurisprudence,⁹ pursuant to which delays should not exceed a few days. The Committee

⁵ General Comment No. 8 (1982) on the right to liberty and security of persons, para. 3.

⁶ See, for example, Human Rights Committee, *Saimijon and Bazarov v. Uzbekistan*, Communication No. 959/2000, Views of 14 July 2006, para. 8.2.

⁷ See, for example, Human Rights Committee, *Leehong v. Jamaica*, Communication No. 613/1995, Views of 13 July 1999, para. 9.5.

⁸ See, for example, Human Rights Committee, *McLawrence v. Jamaica*, Communication No. 702/1996, Views of 18 July 1997, para. 5.6.

⁹ See, for example, Human Rights Committee, *Borisenko v. Hungary*, footnote 1 above, para. 7.4; *Freemantle v. Jamaica*, Communication No. 625/1999, Views of 24 March 2000, para. 7.4; *Terán*

further recalls that it has recommended on numerous occasions, in the context of consideration of the States parties' reports submitted under article 40 of the Covenant, that the period of police custody before a detained person is brought before a judge should not exceed 48 hours.¹⁰ Any longer period of delay would require special justification to be compatible with article 9, paragraph 3, of the Covenant.¹¹

7.5 In the present case, the Committee notes that the State party has failed to provide any explanations as to the necessity of detaining the author in a temporary detention ward of the Directorate of Internal Affairs for 61 and 72 hours without bringing her before a judge, other than the fact that she did not initiate a complaint. The inactivity of a detained person is not a valid reason to delay bringing her before a judge. In the circumstances of the present communication, the Committee considers that the detentions of the author were incompatible with article 9, paragraph 3, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 9, paragraph 3, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including reimbursement of any legal costs incurred by her, as well as adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation, in particular the Code of Criminal Procedure, to ensure its conformity with the requirements of article 9, paragraph 3, of the Covenant.

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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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 Belarusian and Russian in the State party.

[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.]

Jijón v. Ecuador, Communication No. 277/1988, Views of 26 March 1992, para. 5.3; and *Nazarov v. Uzbekistan*, Communication No. 911/2000, Views of 6 July 2004, para. 6.2.

¹⁰ See, for example, concluding observations on Kuwait, CCPR/CO/69/KWT, para. 21; concluding observations on Zimbabwe, CCPR/C/79/Add.89, para. 17; concluding observations on El Salvador, CCPR/C/SLV/CO/6, para. 14; concluding observations on Gabon, CCPR/CO/70/GAB, para. 13.

¹¹ See *Borisenko v. Hungary*, footnote 1 above, para. 7.4. See also, Basic Principles on the Role of Lawyers, *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana 27 August–7 September 1990: Report Prepared by the Secretariat*, A/CONF.144/28/Rev.1 (1990), principle 7.

Appendix

Individual opinion of Committee member Mr. Yuji Iwasawa

This opinion elaborates upon the reasoning of the Committee.

Under article 108, part 3, of the Code of Criminal Procedure of Belarus, detention cannot exceed 72 hours from the moment of actual detention, after the expiry of which a suspect should be either released or subjected to restraint measures. The Prosecutor's Office can endorse such restraint measures as placement in custody after the expiry of 72 hours. Under article 108, part 4, of the Code, if a person is suspected of having committed a most serious crime as enumerated such as acts of international terrorism, the person may be detained for up to 10 days, after the expiry of which the person can be subjected to further restraint measures.

The author claims that the Code of Criminal Procedure does not recognize any right that is analogous to article 9, paragraph 3 of the Covenant, and this claim is not contested by the State party. Since article 1, part 4, of the Code provides that international treaties shall apply in criminal proceedings along with the Code, article 9, paragraph 3, of the Covenant presumably has the force of law and applies in criminal proceedings in Belarus.

In the present case, the police officers detained the author in a temporary detention ward of the Directorate of Internal Affairs on two separate occasions for 61 and 72 hours without bringing her before a judge. The author was not suspected of having committed a most serious crime as enumerated in article 108, part 4, of the Code of Criminal Procedure, and thus article 108, part 3, applied to the author. The State party argues that article 9, paragraph 3, of the Covenant does not establish a specific time limit for bringing a detained person before a judge and that the author did not complain about the fact of her detention either to the court or to the prosecutor. Such arguments would defeat the purpose of article 9, paragraph 3, of the Covenant, which is to ensure that anyone detained on a criminal charge be brought promptly before a judge. Judicial control of detention must be automatic and cannot be made to depend on a previous application by the detained person.¹

In such circumstances of the present case, the Committee found the detentions of the author to be incompatible with article 9, paragraph 3, of the Covenant.

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

¹ See *McKay v. the United Kingdom*, Application No. 543/03, European Court of Human Rights (Grand Chamber), 3 October 2006, paragraph 34.