



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. 2198/2012*, **

<i>Communication submitted by:</i>	V.D. (represented by Roza Magomedova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	23 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 and rule 97 of the rules of procedure, transmitted to the State party on 8 October 2012 (not issued in a document form)
<i>Date of adoption of Views:</i>	30 March 2016
<i>Subject matter:</i>	Extradition to Belarus
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; insufficient substantiation of claims
<i>Substantive issues:</i>	Risk of torture and ill-treatment; unfair trial; no bis in idem; right to family life
<i>Articles of the Covenant:</i>	7, 14, 15 and 17
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is V.D., a national of Belarus born on 17 March 1960. He claims that, by extraditing him to Belarus, the Russian Federation would violate his rights under articles 7, 14, 15 and 17 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented.

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1.2 On 8 October 2012, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure.

1.3 On 26 November 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided under rule 97, paragraph 3 of its rules of procedure to accede to the State party's request to examine the admissibility of the communication separately from its merits.

The facts as presented by the author

2.1 In December 1995, the author was arrested and detained in a pretrial detention facility (SIZO) in Minsk. During his arrest, police officers in civilian clothing subjected the author to ill-treatment. In particular, his right wrist was dislocated and his spine, in the area of the neck, was injured. On an unspecified date, he was officially charged with having committed crimes under articles 150, paragraph 2 (defraud); 209 (fraud); 210 (theft); 221 (forgery); and 427 (abuse of authority) of the Belarus Criminal Code.

2.2 During his detention in a short-term detention facility, as well as in the SIZO, where he was eventually held for 18 months, the author was subjected to inhuman and degrading treatment. During the first few weeks in SIZO detention, he did not have access to a lawyer. During so-called "conversations" in the absence of a lawyer, the author was put under pressure and threatened in order to elicit statements. The author was denied communication with his family. He was also threatened that, if he refused to confess guilt, he would not be brought before a judge for a long period of time. The author further notes that he was not provided adequate medical assistance, although he contracted a number of illnesses. He was threatened that, if he continued to complain about that, he would be subjected to physical ill-treatment. In addition, the detention conditions were inhumane. His cell was overcrowded, sometimes he had to sleep on the floor, the bed linen was worn out and mattresses were full of lice, and the temperature could reach up to 40°C in summer.

2.3 The author was released from the SIZO in April 1997, after he promised that he would not leave the country.

2.4 On 4 September 2001, the Court of the Oktyabrsk District in Minsk found the author guilty of having committed a crime under articles 427 (abuse of authority) and 150, paragraph 2 (defraud), of the Criminal Code, and sentenced him to one year and four months of imprisonment, a period that he had already served while in pretrial detention. The author was acquitted of the remaining charges.

2.5 Having felt helpless and suspecting that the authorities had persecuted him because of his opposition to the regime in place, the author decided to leave the country and moved to the Russian Federation in September 2001, where he has been living ever since. However, he continued to visit his relatives, his medical doctors and employees of some local municipality institutions in Belarus. In 2005, he married a citizen of the Russian Federation; they have two children.

2.6 On 2 or 3 September 2011, the author was arrested by the authorities of the Russian Federation, as his name appeared on a list of internationally wanted individuals. He was informed that the judgment of 4 September 2001 had been reviewed on appeal and that, on 29 March 2004, the Court of the Sovetsky District in Minsk had found him guilty in absentia of having committed crimes in Belarus and that an extradition request had been issued by the authorities of that country. The author submits that he was not aware that the criminal proceedings in his case had been reopened and that, on 29 March 2004, the court in Minsk had convicted him in absentia under articles 209 (fraud), 210 (theft) and 221 (forgery) of the Belarus Criminal Code and had sentenced him to eight years and six

months of imprisonment. He maintains that he is innocent and that he did not commit the crimes for which he was sentenced in 2004.

2.7 On 23 December 2011, the Office of the Prosecutor General of the Russian Federation authorized the author's extradition to Belarus in connection with his convictions under articles 17, 209 and 210 of the Belarus Criminal Code. On 18 January 2012, the author appealed this decision before the Moscow City Court, stating, inter alia, that he had not committed the crimes in question and that, upon his arrival in Belarus, he would face ill-treatment. On 20 February 2012, he submitted additional information, stating that, in the past, he had also been persecuted in Belarus on political and religious grounds and on account of his social status as an entrepreneur; that in Belarus he had been subjected to psychological pressure and detained under inhuman conditions; and that he had a wife and two small children in the Russian Federation. On 6 July 2012, the Moscow City Court upheld the decision authorizing the author's extradition. On 13 July 2012, the author appealed to the Supreme Court, but his appeal was dismissed on 24 September 2012.

2.8 In the meantime, on 9 November 2011, the author applied for refugee status. On 18 November 2011, the Federal Migration Service in Moscow rejected his application, noting in particular that he had not provided sufficient grounds demonstrating that he would be subjected to ill-treatment if returned to Belarus. The Board also noted that the author had applied for asylum only after his arrest on 3 November 2011, and not within 24 hours after his initial entry into the Russian Federation in 2001. Moreover, the author had not substantiated his claims that he had been persecuted in Belarus on political and religious grounds and on account of his social status. On an unspecified date, the author appealed this decision, but the appeal was rejected by the Federal Migration Service on 21 March 2012. On an unspecified date, he appealed to the Court of the Basman District in Moscow, but his appeal was rejected on 11 May 2012. Subsequently, on an unspecified date, the author appealed the decision of District Court, but this appeal was dismissed by the Supreme Court on 4 July 2012. On 15 August 2012, the author applied for temporary refugee status before the Federal Migration Service in Moscow; his application was dismissed on 11 September 2012. He appealed this decision on 22 September 2012 to the Federal Migration Service.

2.9 On 31 August 2012, a prosecutor of the Prosecutor's Office of the Presnensky district of Moscow modified the author's detention in exchange for the author's commitment not to leave the country, and the author was released.

The complaint

3. The author claims that the Russian Federation would breach his rights under articles 7, 14, 15 and 17 of the Covenant if he were extradited to Belarus. He argues, inter alia, that he did not commit the crimes of which he was found guilty, that he was unaware that the criminal proceedings against him had subsequently been re-examined, and that he was convicted twice for the same crimes. He claims that he had been ill-treated in Belarus while in detention. He also notes that he has a wife and two children living in the State party. In this regard, he refers to different United Nations, intergovernmental and non-governmental reports, wherein it is stated that torture and other ill-treatment have been recorded in places of detention in Belarus and that the conditions in places of detention are inhuman and degrading.

State party's observations on admissibility

4.1 On 13 December 2012, the State party challenged the admissibility of the communication. It notes that, on 23 December 2011, the Deputy Prosecutor General of the Russian Federation partly satisfied the extradition request issued by the Office of the Prosecutor General of Belarus on the grounds that, on 29 March 2004, the Court of the Sovetsky District in Minsk had found the author guilty in absentia of having committed a

number of crimes (fraud, theft, abuse of official authority). The request was not satisfied in part concerning the author's conviction under article 221, paragraph 1, of the Belarus Criminal Code (organizing production and storing of securities with the aim to sell). The author appealed the decision of the Deputy Prosecutor General, but the appeal was dismissed by the Moscow Regional Court on 6 July 2012. The author appealed it within the cassation proceedings; however, on 24 September 2012, the Supreme Court upheld the Regional Court's decision. The State party notes that neither the author nor his counsel appealed the Supreme Court's decision within the supervisory review procedure.

4.2 In the light of the above, the State party notes that, pursuant to article 2 of the Optional Protocol to the Covenant, individuals may submit a complaint concerning violations of their rights guaranteed by the Covenant only after exhausting all available domestic remedies. In this connection, it further notes that, pursuant to article 402 of the Criminal Procedure Code, judgments that have entered into force, as well as other court rulings and decisions, may be reviewed in line with the procedure set out in chapter 48 of the Code. As the plenary of the Supreme Court of the Russian Federation explained in its ruling No.1 of 11 January 2007, "On application of chapter 48 of the Criminal Procedure Code in relation to proceedings before the supervisory instance", judgments that have entered into force may be appealed within the supervisory review procedure by, inter alia, a suspect, an accused, a convict, a counsel or a third person whose rights have been breached. Pursuant to article 406, paragraph 3, of the Criminal Procedure Code, a judge examines the request for supervisory review and decides either to initiate proceedings within the supervisory review and forward the appeal for examination to a court of supervisory instance or to reject the request. The President of the Supreme Court or his or her deputy may disagree with the judge's decision to dismiss the request for supervisory review. In that case, she or he revokes the negative decision, decides to initiate proceedings within the supervisory review and forwards the appeal for examination by a court of supervisory instance. Furthermore, pursuant to article 408, paragraph 1, of the Criminal Procedure Code, a court of a supervisory instance may: (a) reject the supervisory appeal or application, and leave the appealed judicial decision unchanged; (b) revoke the appealed judgment, ruling or decision and all the subsequent judicial decisions, and terminate the proceedings in the respective criminal case; (c) revoke the judgment, ruling or decision and all the subsequent decisions, and forward the criminal case for a new court examination; (d) revoke the judgment of the appeals instance court and forward the criminal case for a new appeals examination; (e) revoke the ruling of the cassation instance court and all the subsequent judicial decisions, and forward the criminal case for new examination within cassation proceedings; and (f) introduce amendments in a judgment, ruling or decision.

4.3 Accordingly, since neither the author nor his counsel appealed to the Supreme Court within the supervisory review procedure, the State party considers that the communication is inadmissible due to non-exhaustion of all available domestic remedies as required by the Optional Protocol to the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

5.2 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.

5.3 The Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies on the ground that the author failed to exhaust the available domestic remedies in that he did not file any appeals to the Supreme Court of the Russian Federation within the supervisory review procedure. The Committee notes that the author's appeal against the decision of the Moscow Regional Court had already been dismissed by the Supreme Court. The Committee recalls its jurisprudence¹ that filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.² The State party has not shown, however, whether and in how many cases petitions within the supervisory review procedure were applied successfully in extradition cases. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

5.4 The Committee further notes the author's claim that his extradition to Belarus would breach his rights, inter alia, under article 7 of the Covenant. In particular, the author claims that he risks being subjected to torture and ill-treatment upon return. In this connection, the Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.³ The Committee has also indicated that the risk must be personal⁴ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.⁵ In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.⁶ The Committee further recalls its jurisprudence that considerable weight should be given to the

¹ See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision adopted on 26 July 2011, para. 6.2 ; No. 2021/2010, *E.Z. v. Kazakhstan*, decision adopted on 1 April 2015, para. 7.3; No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; No. 2041/2011, *Dorofeev v. Russian Federation*, Views adopted on 11 July 2014, para. 9.6; and No. 2141/2012, *Arkadyevich v. Russian Federation*, Views adopted on 23 October 2015, para. 6.3.

² See, for example, *Dorofeev v. Russian Federation*, para. 9.6; *Gelazauskas v. Lithuania*, para. 7.4; *P.L. v. Belarus*, para. 6.2 ; communication No. 1785/2008, *Olechkevich v. Belarus*, Views adopted on 18 March 2013, para. 7.3; *Schumilin v. Belarus*, para. 8.3; communications No. 1839/2008, *Komarovsky v. Belarus*, Views adopted on 25 October 2013, para. 8.3; No. 1903/2009, *Youbko v. Belarus*, Views adopted on 17 March 2014, para. 8.3; No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 6.3; and *Arkadyevich v. Russian Federation*, para. 6.3.

³ See general comment No. 31, para. 12.

⁴ See, for example, communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

⁵ See, for example, *X v. Denmark*, para. 9.2; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

⁶ *Ibid.*

assessment conducted by the State party,⁷ and that it is generally for organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.⁸

5.5 In the light of the above and taking into account the information provided by the author, the Committee observes that the author has not convincingly identified any irregularity in the decision-making process, or provided sufficient explanation as to why the decisions of the State party's authorities were clearly arbitrary or manifestly erroneous, or amounted to a denial of justice. In this connection, the Committee notes that the material before it does not permit it to conclude that the examination by the State party's authorities, including the courts, of the author's claim concerning his fears and risks upon return to Belarus suffered from any such defects.

5.6 In addition, the Committee is of the view that there are inconsistencies in the author's story that undermine the credibility of his claim that he would be at risk of being subjected to ill-treatment by the authorities upon return to Belarus. The author has not submitted any objective evidence to substantiate his present claim. In particular, he has not provided any details about the lack of adequate medical assistance or about the allegedly inhuman and degrading prison conditions to which he would be subjected. During his extradition and asylum proceedings, the author claimed that he was persecuted by the authorities of Belarus because of his political opinion, religion and social status. However, he has not provided any details about his persecution on these grounds. In this regard, the Committee observes that, during his asylum proceedings, the author refused to provide any details concerning his political activities. Moreover, despite the alleged persecution in Belarus, the author applied for asylum only in September 2011, 10 years after his arrival in the State party in September 2001. In addition, from 2001 until 2011, the author could freely visit his relatives, medical doctors and other persons in Belarus without experiencing any problems with the authorities of Belarus.

5.7 Finally, with regard to the author's remaining claims that, by extraditing him to Belarus, the State party would also breach his rights under articles 14, 15 and 17 of the Covenant, the Committee notes that the author has not provided sufficient details and substantiation of his claims under these provisions of the Covenant.

5.8 In these circumstances, and in the absence of any other pertinent information on file, while not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Belarus, the Committee concludes that, in the present case, the author has failed to sufficiently substantiate his claims for purposes of admissibility, and, accordingly, declares the communication inadmissible under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

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

⁷ See, for example, communications No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3; and No. 2344/2014, *E.P. and F.P. v. Denmark*, Views adopted on 2 November 2015, para. 8.4.

⁸ See, for example, *E.P. and F.P. v. Denmark*, para. 8.4.