



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2084/2011*, **

<i>Communication submitted by:</i>	V.L. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	3 November 2010 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 18 May 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	30 March 2016
<i>Subject matter:</i>	Torture; right to liberty and security; fair trial; right to an effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; insufficient substantiation of claims
<i>Substantive issues:</i>	Torture; arbitrary arrest; fair trial
<i>Articles of the Covenant:</i>	2, 7, 9 and 14
<i>Articles of the Optional Protocol:</i>	2

* 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, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1. The author of the communication is V.L., a national of Belarus born in 1985. He claims to be a victim of violations by Belarus of his rights under articles 2 (3) (a), 7, 9 (1) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 The author is a member of the European Belarus organization, which supports the opposition. On 27 November 2009, the author was approached in the street by two police officers who requested his identification documents. They took his passport and two mobile phones. The author was subsequently put into a minivan with no license plates, where he was subjected to a search. Additional personal items were taken from him, including a flash drive and a flag of the Belarusian People's Republic. The officers ignored the author's requests to identify themselves and inform him of the reason for his apprehension.

2.2 The author was handcuffed and his hat was used to cover his eyes. He was driven in an unknown direction for about 30 minutes and then released in an unknown location. One of the abductors, not in uniform, told him that he was being warned, and also told him to think about the future, as his wife and children would not be happy with him as a revolutionary, but rather with him earning a good salary. The author found himself to be about 25 kilometres from Minsk. He claims he feared for his life during the drive.

2.3 On 3 December 2009, the author submitted to the prosecutor's office of the Central District of Minsk a request to open a criminal investigation regarding his abduction. His claim was forwarded to the prosecutor's office of the Soviet District of Minsk.

2.4 On 29 December 2009, the author filed a complaint with the Prosecutor General's office and the Minsk city prosecutor's office, claiming inaction by the district prosecutor's office. He submitted that he had been called for questioning only once and had, for the most part, been questioned about his political activity and affiliation rather than about his abduction. Despite his provision of descriptions of the abductors, no investigative steps were taken to compile composite images of the suspects. He was not shown photographs of the Soviet District police officers for possible identification of the abductors.

2.5 On 11 January 2010, the Prosecutor General's office informed the author that his complaint had been sent to the Minsk city prosecutor's office, which, in turn, sent it to the Soviet District prosecutor's office.

2.6 On 18 February 2010, the author received the decision of the Soviet District prosecutor, by which the prosecutor refused to open a criminal investigation, after having reviewed the author's claims. Within the scope of the review, the author himself had been questioned along with several other potential witnesses; a video recording from a nearby shop and a printout of the author's phone calls had also been reviewed.

2.7 On 3 March 2010, the author appealed the decision of the Soviet District prosecutor to the Soviet District court. On 1 April 2010, the court rejected his appeal on the ground that there was no credible evidence that a crime had been committed, referring to the findings of the prosecutor's office.

2.8 On 9 June 2010, the author filed a supervisory appeal, under the supervisory review procedure, with the Minsk city court, which was rejected on 22 September 2010 on the ground of lack of credible evidence.

The complaint

3.1 The author claims to be a victim of violations by Belarus of his rights under articles 2 (3) (a), 7, 9 (1) and 14 (1) of the Covenant.

3.2 The author claims that his abduction by the police officers amounts to torture, in violation of article 7 of the Covenant, and constitutes an arbitrary arrest, in violation of article 9 (1) of the Covenant.

3.3 The author contends that the prosecutor's office and the courts respectively failed to investigate thoroughly his abduction and to review his claims in that connection. According to the author, the refusal to open a criminal investigation and the subsequent rejection of his claims by the courts are in violation of article 14 (1).

State party's observations on admissibility

4.1 In a note verbale dated 27 September 2011, the State party submitted, inter alia, that there were no legal grounds for the consideration of the communication of V.L., either on the admissibility or the merits. It further informed the Committee that the author had not exhausted all available domestic remedies; in particular, he had not appealed, in Minsk and/or before the Prosecutor General's office, the denial by the Soviet District prosecutor's office of the request to institute criminal proceedings on the basis of his claim.

4.2 In a note verbale dated 25 January 2012,¹ the State party recalled the position it had repeatedly expressed previously, in particular in a note verbale dated 6 January 2011. The State party submitted that any communication registered in violation of articles 2 and 5 of the Optional Protocol would be viewed by the State party as incompatible with the Optional Protocol and would be rejected without comments on the admissibility or the merits. It further stated that it had no obligations regarding the recognition of the Committee's rules of procedure or the Committee's interpretation of the provisions of the Optional Protocol, and that decisions taken by the Committee on the present communication would be considered by its authorities as "invalid".

Author's comments on the State party's observations

5. In a communication dated 19 December 2011, the author submits that, in accordance with the Committee's jurisprudence, one is required to exhaust domestic remedies that are not only available but also effective. He adds that only complaints examined by the judiciary can be considered as effective domestic remedies. An appeal to the Minsk city prosecutor's office and the Prosecutor General's office cannot be considered as an effective domestic remedy because it remains at the discretion of a public official and because a review of the case, if granted, takes place in the absence of the person concerned. Furthermore, such a procedure does not allow the person concerned to ask questions, put forward his or her arguments and file motions. The author states that the way in which the Minsk city prosecutor's office and the Prosecutor General's office have handled his complaints in the past confirms his doubts as to the effectiveness of any further appeals to those State bodies. He recalls that on 29 December 2009, he filed a complaint with the Prosecutor General's office about the deliberate delay by the Soviet District prosecutor's office in initiating criminal proceedings against police officers who had abducted him on 27 November 2009. He reiterates that on 11 January 2010, his complaint was forwarded by the Prosecutor General's office to the Minsk city prosecutor's office and that on 15 January 2010, it was further forwarded by the Minsk city prosecutor's office to the Soviet District prosecutor's office, the same entity about which the author had initially complained to Prosecutor General's office. The author asserts that all domestic remedies have been exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.

¹ The note verbale is of a general nature and refers to a number of communications registered with the Committee.

Issues and proceedings before the Committee

The State party's lack of cooperation

6.1 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; that it has no obligations regarding recognition of the Committee's rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and that decisions taken by the Committee on the present communication will be considered by its authorities as "invalid".

6.2 The Committee recalls that under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, 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). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and to the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.² It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.

Consideration of admissibility

7.1 Before considering any claim 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.

7.2 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.

7.3 The Committee notes the State party's objection to the admissibility of the communication as the author has not complained to the prosecutor's office under the supervisory review procedure. The Committee notes, however, that the author filed a complaint with the Prosecutor General's office and the Minsk city prosecutor's office, appealed the decision of the Soviet District prosecutor to the Soviet District court and filed a supervisory appeal with the Minsk city court. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

² See communications No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1, Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 5.2 and No. 1950/2010, *Timoshenko v. Belarus*, Views adopted on 22 July 2015, para. 5.2.

7.4 The Committee notes the author's claim that his abduction amounts to torture under article 7 of the Covenant and to a violation of his right to liberty and security under article 9. In this regard, the Committee also takes note of the author's claim that by not conducting a thorough and complete investigation of his abduction the State party violated his right to an effective remedy under article 2 (3) (a), read in conjunction with articles 7 and 9 of the Covenant. The Committee notes the author's allegations that, despite his descriptions of the abductors, no investigative steps were taken to compile a composite image or carry out a process of photo-identification of Soviet District police officers. The Committee also notes that the documents submitted by the author indicate that the prosecutor's office undertook several steps to review the author's claims, including questioning him, along with other potential witnesses, and reviewing a video recording from a shop in the area where the alleged abduction took place and a printout of the author's phone calls, which could support his alleged abduction. Furthermore, on the basis of the author's complaint to the Prosecutor General's office dated 29 December 2009, the decision of the prosecutor's office of the Soviet District of Minsk was quashed and the case was returned for additional investigation, during which witnesses were questioned again but did not corroborate the author's allegations. The Committee also notes that the Soviet District court and the Minsk city court both rejected the author's appeal challenging the decision of the Prosecutor General, on the ground that there was no credible evidence that a crime had been committed, referring to the findings of the prosecutor's office. In the light of the above, the Committee considers the author's claims under articles 7 and 9, read alone and in conjunction with article 2 (3) of the Covenant, inadmissible under article 2 of the Optional Protocol, as they are insufficiently substantiated.

7.5 The Committee notes the author's claim that the refusal to open a criminal investigation and the subsequent rejection of his claims by the courts are in violation of article 14 (1), of the Covenant. The Committee recalls, however, that article 14 of the Covenant does not provide for the right to see another person criminally prosecuted.³ Accordingly, this part of the communication is inadmissible *ratione materiae* as incompatible with the provisions of the Covenant.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author of the communication.

³ See communication No. 213/1986, *H.C.M.A. v. Netherlands*, decision of inadmissibility adopted on 30 March 1989, para 11.6.