



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. 2333/2014*, **

<i>Communication submitted by:</i>	Ilya Petrovets (represented by counsel, Sergei Golubok)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	4 January 2013 (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 14 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Detention and mistreatment of the author
<i>Procedural issue:</i>	Non-substantiation of the claims
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; arbitrary arrest and detention; right to remedy
<i>Articles of the Covenant:</i>	2 and 7
<i>Articles of the Optional Protocol:</i>	1, 2 and 5

1. The author of the communication is Ilya Petrovets, a national of Belarus born in 1986. He claims that the State party has violated his rights under articles 2 and 7 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The communication was examined pursuant to the procedure for repetitive communications, set out in rule 105 of the Committee's rules of procedure. The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



The facts as submitted by the author

2.1 On 22 June 2011, the author was monitoring a peaceful protest in Minsk as an observer for the Belarusian Helsinki Committee.¹ In the evening, as he was walking with two friends in the centre of Minsk he was approached and arrested by two men wearing black uniforms marked “police” but without identification badges. The author was not provided with any reasons for his arrest. He was held in a large police vehicle with other detainees. He and the other detainees were forced to lie down on the floor of the vehicle and were kicked and beaten by the men in the black uniforms. The author received at least five blows to his face and body, including a direct hit to his nose. The author was transported to the Regional Department of the Ministry of the Interior in Minsk where his fingerprints were taken. He was released at around 10 p.m. He did not receive any documents from the police concerning his detention.

2.2 On the same day, at 11 p.m., the author was examined by a surgeon in a hospital in Minsk who diagnosed a closed fracture of his nose. The medical diagnosis was later confirmed by a forensic examination on 29 December 2011, which had been requested during a preliminary inquiry. On 24 June 2011, the author submitted a complaint against the police officers to the Prosecutor of the Central District of Minsk. On 25 July 2011, the investigator of the Central District Department of the Investigative Committee of Belarus decided, after the preliminary inquiry, not to initiate a formal criminal investigation in the absence of the finding that a crime had been committed by police officers. According to the police report, the author was not even present at the Regional Department of the Ministry of the Interior on 22 June 2011.

2.3 On 5 January 2012, the author lodged a complaint against the investigator’s decision of 25 July 2011 with the Prosecutor of the Central District of Minsk. On 9 January 2012, the investigator of the Central District Department of the Investigative Committee of Belarus, after conducting another preliminary inquiry, again refused to initiate a formal criminal investigation, finding that no crime had been committed against the author. In January 2012,² the author submitted a complaint against the investigator’s decision of 9 January 2012 to the Prosecutor of the Central District of Minsk. On 23 January 2012, the investigator of the Central District Department of the Investigative Committee of Belarus again decided not to initiate a criminal investigation.

2.4 On several other occasions investigators decided not to open a formal investigation. On 23 January 2012, the author appealed against the investigator’s decision of the same date to the Central District Court of Minsk. On 28 April 2012, the Central District Court of Minsk approved the author’s appeal and dismissed the 23 January 2012 decision. The Court requested the investigator to complete the investigation, to order further expert examinations and to identify eyewitnesses of the events of 22 June 2011. On 14 June 2012, the investigator of the Central District Department of the Investigative Committee of Belarus decided not to initiate a criminal investigation, ignoring the requests contained in the Court’s decision of 28 April 2012.

2.5 On 14 July 2012, the author submitted an appeal to the Central District Court of Minsk against the investigator’s decision of 14 June 2012. On 8 August 2012, the Central District Court of Minsk approved the author’s claim and dismissed the decision of the investigator of 14 June 2012 on the grounds that the investigator had not complied with the Court’s decision of 28 April 2012. On 16 September 2012, the investigator of the Central District Department of the Investigative Committee of Belarus decided once again not to initiate a criminal investigation. The investigator examined four witnesses of the event of 22 June 2011: the first was at a different place during the event; the second did not remember anything; and the third and the fourth saw the author in the police vehicle. The investigator did not provide any explanation as to why he did not take into account the testimonies of two other eyewitnesses, K.L. and L.E., who had witnessed the beatings and could confirm the author’s allegations.

¹ The author is a member of the Belarusian Helsinki Committee, a non-governmental organization established in 1995 with the aim of protecting human rights in Belarus.

² The date is not specified in the complaint.

2.6 The author submits that he has exhausted all available and effective domestic remedies. He asserts that a further appeal to the courts would be ineffective, since they have already decided twice in the same matter and the investigator has not complied with their decisions. He also claims that, in any event, the domestic procedures to obtain remedies have been unreasonably prolonged.

The complaint

3.1 The author claims that he was detained and beaten for attempting to monitor the ability of citizens to practise their right to freedom of assembly. The inhumane treatment he received was intended to threaten and punish him, and as a result he suffered bruises and a broken nose. He further claims that the burden of proof of cruel treatment cannot rest on the author alone, and that frequently the State party alone has access to information regarding such incidents.

3.2 The author also submits that he provided all the necessary information to enable the authorities to conduct an investigation. The investigators did not comply with court orders, delayed questioning witnesses and disregarded the testimonies of the two friends who were with him when he was detained. The State party therefore violated his rights to an effective remedy, in violation of article 2 of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale of 26 March 2015, the State party challenged the admissibility of the communication under articles 1, 2 and 5 of the Optional Protocol, without specifying further details. The State party explains that the case was submitted by a lawyer who resided in the Russian Federation and not by the author himself, without any justification for this.

4.2 The State party submits that, in the case in question, domestic remedies have not been exhausted, without specifying further details.

4.3 The State party considers that the author has abused his right of submission. In the light of the above, the State party decided to cease correspondence on the present communication with the Committee.

Author's comments on the State party's observations on admissibility

5. The author notes that the right to register communications belongs to the Committee and not to States parties. He is properly represented by a duly authorized attorney who practises law in the Russian Federation, and this is permitted under the Committee's rules of procedure. The State party claims that the author failed to exhaust domestic remedies, but does not indicate which available remedies have not been exhausted. The author considers that he exhausted all effective domestic remedies.

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that the communication was registered by the Committee in violation of the provisions of the Optional Protocol and submitted by the author in violation of the right of submission and that, accordingly, it would cease correspondence on the present communication with the Committee.

6.2 The Committee 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 an 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 the individual (art. 5 (1) and (4)). It is incompatible with these 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.³ It is up to the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by dissociating itself with the Committee's determination on the admissibility or the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.⁴

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it 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 takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of the identification by the State party of a particular remedy that remained available to the author, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communication.

7.4 The Committee considers that the author has sufficiently substantiated his claims under articles 2 (3) and 7 of the Covenant, read separately and in conjunction, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee first notes the author's claim that, on 22 June 2011, he was detained and was subjected to inhuman and degrading treatment and otherwise mistreated. The author was then examined by two different doctors, who diagnosed a broken nose and several bruises. Though the State party did not provide its observations on these allegations, it is clear from the author's submissions that the State party, instead of launching a prompt and impartial investigation by its competent authorities,⁵ refused to initiate a formal criminal investigation on five occasions. The Committee also notes that the author provided the authorities with evidence of mistreatment, testimonies of witnesses and requests to question additional witnesses. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability or unwillingness to explain the visible signs of mistreatment that were witnessed by a number of persons, due weight should be given to the author's allegations.

8.3 Regarding the State party's obligation to properly investigate the author's claims of mistreatment, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.⁶ The Committee notes that according to the material on file, no formal investigation was carried out into the allegations of mistreatment, despite a number of incriminatory witness accounts and two medical certificates. In the circumstances of the present case, the Committee concludes that the facts

³ *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

⁴ *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 8.2.

⁵ General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

⁶ *Ibid.* and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

before it disclose a violation of the author's rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3).

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of Mr. Petrovets' rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant, as well as a violation of article 1 of the Optional Protocol to the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to conduct a prompt and impartial investigation into the author's allegations of mistreatment and to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. 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 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 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 the official languages of the State party.
