



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. 2383/2014*, **

<i>Communication submitted by:</i>	Vladimir Neklyaeв (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	1 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 30 April 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	26 July 2019
<i>Subject matter:</i>	Beating of author by law enforcement officers, unlawful detention and lack of a proper investigation; violation of the right to peaceful assembly
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; prompt and impartial investigation; right to a fair trial; privacy; voting and election; discrimination on the grounds of political or other opinion; freedom of assembly
<i>Articles of the Covenant:</i>	2 (1) and (3) (a); 7; 9 (1) and (3); 10 (1); 14 (1), (2), (3) (b) and (e); 16; 17, 19 (2), 21; 25 (b) and 26
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1. The author of the communication is Vladimir Neklyaeв, a citizen of Belarus born in 1946. He claims that Belarus violated his rights under articles 2 (1) and (3) (a); 7; 9 (1) and (3); 10 (1); 14 (1), (2), (3) (b) and (e); 16; 17, 19 (2), 21; 25 (b) and 26 of the Covenant.

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



The author is not represented by counsel. The Optional Protocol entered into force in Belarus on 30 December 1992.

Factual background

2.1 The author was a candidate in the 2010 presidential elections in Belarus. On 19 December 2010, the day of the elections, the author, along with other presidential candidates, organized a peaceful assembly at October Square in Minsk, which was scheduled to begin at 8 p.m. They intended to wait for the election results at the assembly and to protest against violations during the electoral process. Around 7 p.m., the author and some 50 to 70 supporters were on their way to October Square in a procession, carrying white flags displaying the message "For Neklyaeu" and shouting slogans such as "For Neklyaeu" and "For Belarus". They had a van with audio equipment for the assembly.

2.2 On the way to the assembly, the procession was stopped by the road police. The documents on file indicate that the police unit in question received instructions to go to the street on which the procession was being held, in order to prevent the disruption of public transportation. At the same time, they were informed that there might be explosives in two green and white vans. The police officers saw that the van in the author's procession matched the indicated description and blocked the road with their car. They asked to search the group's van. According to the author, the request was not directed to any person in particular and the police did not move towards the van. The author's supporters tried to move the police car in order to unblock the road, when a group of 10 to 15 people dressed in black uniforms without insignia attacked the procession and ordered everyone to lie down on the ground. One of the attackers hit the author with a rubber baton, rendering him unconscious. The attackers broke some of the windows of the van, took the equipment and left. After being attended to by an ambulance team, the author was taken to the Minsk city emergency polyclinic, where he was diagnosed with contusion of the soft tissues of the head and face to the left, periorbital haematoma on the left, soft tissues injury of the scapular region on the left and abrasion of the parietal and occipital regions.

2.3 At 12.39 a.m. on 20 December 2010, the author was taken from the polyclinic to the temporary detention facility of the Committee of State Security in Minsk. The record of arrest indicates that the author was suspected of having organized mass disorder. While questioned by an investigator, the author complained about having been beaten by unknown people during the procession. On 22 December 2010, the Prosecutor of the City of Minsk approved the author's detention and the author and his two lawyers signed a document indicating that they had been informed of the detention order. On 29 December 2010, the author was charged with organization and participation in mass disorder in violation of article 293 (1) and (2) of the Criminal Code.

2.4 On 3 January 2011, one of the author's lawyers appealed the detention order in the Central District Court of Minsk. The Court rejected the author's appeal on 6 January 2011.

2.5 On 18 January 2011, one of the author's lawyers submitted a complaint to the Committee of State Security concerning the refusal, on nine occasions, by the detention facility administration to allow confidential meetings between the author and his lawyers, under the pretext that all meeting rooms were occupied. On 24 January 2011, the author's wife submitted a complaint to the Prosecutor of the City of Minsk concerning denial of access to a lawyer. Both complaints remained unanswered. On 27 January 2011, one of the author's lawyers submitted a complaint to the Prosecutor General concerning denial of access to a lawyer. The lawyer had brought the same complaint before the Central District Court of Minsk on 3 January 2011, when appealing the detention order. On the basis of the fact that the lawyers had met with the author on 22 December 2010, the Court concluded that there was no violation of the author's rights. On 29 January 2011, the author was released from the detention facility and placed under house arrest.

2.6 On 28 January 2011, the author submitted a request to initiate a criminal investigation of his ill-treatment to the Committee of State Security. On 29 January 2011, one of the author's lawyers submitted a similar request to the Prosecutor of the City of Minsk. On 7 and 11 February 2011, the Committee of State Security and the Deputy Prosecutor of the City of Minsk, respectively, responded that the circumstances of the

beatings were being investigated within the ongoing criminal investigation. As of 14 April 2011, the author's allegations of beatings were treated as a separate investigation.

2.7 On 20 May 2011, the Frunze District Court of Minsk found the author guilty of organizing mass disorder and imposed a suspended sentence of two years of imprisonment. The Frunze District Court found the author guilty on the grounds that, on numerous occasions, he had invited people to attend an unauthorized assembly at October Square on 19 December 2010 and that he had organized a procession towards October Square on the same date. On an unspecified date, the author submitted a cassation appeal to the City Court of Minsk. On 8 August 2011, the City Court dismissed his appeal. The City Court relied, among other things, on the fact that the author had not requested authorization for the public event he had organized at October Square on 19 December 2010 and that the mass processions that followed the assembly at October Square had resulted in loss of income for public and private businesses and in traffic disruptions. The author's supervisory review appeals to the President of the City Court of Minsk and to the Supreme Court were dismissed on 16 January 2012 and 7 May 2012, respectively.

2.8 On 4 August 2011, the Prosecutor of the City of Minsk, following a preliminary investigation, decided not to open a criminal case under article 426 (3) of the Criminal Code, concerning abuse of power or official authority, on the basis of the author's allegations of beatings, owing to a lack of evidence that law enforcement officers were involved in the beatings. In February 2012, the author submitted an appeal to the Prosecutor General of Belarus, which was transmitted to the Prosecutor of the City of Minsk. On 2 April 2012, the Prosecutor of the City of Minsk confirmed his previous decision not to open a criminal case. On 24 May 2012, the author appealed to the Prosecutor General. On 18 June 2012, the Deputy Prosecutor of the City of Minsk reiterated the previous decision not to open a criminal case. According to the author, the investigation was superficial. Among other deficiencies of the investigation, the author mentions that the first questioning of witnesses was conducted only in May 2011 and ended in August 2011 and that not all witnesses had been questioned. According to the author, the road police had cooperated with the unknown attackers, had followed their orders and had referred to them as "special forces", but this was not clarified by the investigation. According to the police officer's testimony on file, he had referred to the attackers as "police".

The complaint

3.1 The author claims that the beatings inflicted on him by law enforcement officers on 19 December 2010 amount to a violation of his rights under article 7 of the Covenant. The author further claims that the failure to investigate the beatings constitutes a violation of article 2 (3) (a) of the Covenant.

3.2 The author claims that the above violations were committed because of his political views and that he did not enjoy equal protection before the law and therefore was discriminated against in the context of the enjoyment of his rights guaranteed by the Covenant, in violation of articles 2 (1) and (3) (a) and 26 of the Covenant.

3.3 The author further claims that the approval of his detention by a prosecutor and not a judge, along with the failure to bring him before a judge, constitute a violation of article 9 (3) of the Covenant.

3.4 The author also submits that the lack of opportunity to have private meetings with his lawyers while he was in the detention facility, which resulted in him not being able to prepare his defence, amount to a violation of his rights under article 14 (3) (b) of the Covenant.

3.5 On 15 February 2015, after the State party had replied to the above allegations, the author submitted new complaints under the Covenant (see paras. 5.2–5.9 below).

State party's observations on admissibility

4. In a note verbale received on 1 July 2014, the State party submits that the registration of the communication was unjustified in so far as the author had not exhausted all available domestic remedies before submitting his communication to the Committee. It

states that such practice is not in line with the provisions of the Optional Protocol, and that it represents an abuse of the individual complaint procedure and undermines its credibility.

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

5.1 On 15 February 2015, the author submitted his comments on the State party's observations on admissibility and provided an update on the facts. According to the author, on 11 February, 25 March and 7 May 2013, he requested a personal meeting with the Prosecutor General. On 25 April and 31 May, his requests were rejected and he was informed that there were no grounds to open a criminal case regarding the beatings. On an unspecified date, the author appealed the decision of 2 April 2012 of the Prosecutor of the City of Minsk not to open a criminal case to the Central District Court of Minsk. On 10 July 2013, his appeal was dismissed by the Court. In May and July 2011 (exact date unspecified), the author submitted a cassation appeal to the City Court of Minsk. The appeal was rejected on 22 July 2011. His supervisory review appeals (date unspecified) to the City Court of Minsk and to the Supreme Court were dismissed on 5 September 2013 and 17 January 2014, respectively.

5.2 The author submitted new complaints under articles 9 (1), 10 (1), 14 (1), (2) and (3) (e), 16, 17, 19 (2), 21 and 25 (b) of the Covenant. He alleges that his arrest at the polyclinic on 20 December 2010 was carried out in violation of articles 7 and 9 (1) of the Covenant. He also claims that, during his detention in the facility of the Committee of State Security, he was not allowed to meet with his lawyers and the correspondence with his wife was not transmitted for a long time. He thus claims to have been detained incommunicado, in violation of article 7 of the Covenant.

5.3 The author claims that his house arrest was arbitrary, that there were constantly two police officers in his apartment and that he was not allowed to leave the apartment. In this regard, he alleges that his rights under articles 9 (1) and (3) and 17 of the Covenant were violated.

5.4 The author submits that he found out during the trial that his telephone had been tapped from 9 to 18 December 2010. He claims that this amounts to a violation of article 17 of the Covenant.

5.5 The author further alleges that his rights under article 14 (1) of the Covenant were violated on the grounds that the prosecutor was able to collect information on the case without hindrance, while he was not allowed to meet with his lawyers to prepare his defence. In this connection, he also alleges that the Frunze District Court of Minsk refused to summon the President of Belarus, Aleksandr Lukashenko, and the Minister of Internal Affairs, and that the court room on the day of the hearing was filled with a large group of young people, leaving no space for those interested in the trial. The author additionally alleges that, before the trial began, he had already been considered guilty of serious crimes by State officials, including the President, and the mass media, which affected the impartiality of the District Court, in violation of article 14 (1) and (2) of the Covenant.

5.6 The author claims that the Frunze District Court of Minsk did not allow him to question two witnesses who testified against him – the head of the road police in Minsk and an officer of the Committee of State Security – in violation of article 14 (3) (e) of the Covenant.

5.7 He claims that his rights under articles 19 (2) and 21 of the Covenant were violated on account of the beatings, which disrupted a planned peaceful assembly in protest of falsified elections to which the author and his supporters were heading.

5.8 The author submits that the elections were unfair and that, in this regard, on 22 December 2010, one of the presidential candidates submitted a complaint to the Office of the Prosecutor General on his own behalf and on behalf of all the arrested candidates, including the author. The author claims that six out of nine alternative candidates were arrested and that he could not protest against the results of the elections because he was detained and was not able to meet with his lawyers. The author claims that violations committed during the elections and his arrest and detention deprived him of the right to be elected in accordance with the provisions set out in article 25 (b) of the Covenant.

5.9 The author does not provide any clarification of his claims of violations of articles 10 (1) and 16 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 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.

6.3 The Committee notes the State party's claim that the author has failed to exhaust domestic remedies. In this regard, the Committee notes that, judging from the information on file, the author has not raised claims under articles 2 (1), 9 (1), 14 (1), (2) and (3) (e), 17, and 26 of the Covenant before the domestic courts and finds these claims inadmissible under article 5 (2) (b) of the Optional Protocol.

6.4 Regarding the author's claims under article 2 (3) (a), read in conjunction with article 7, and articles 7, 9 (3), 19 (2) and 21 of the Covenant, the Committee notes that the author has brought the relevant claims before the domestic authorities and courts (see paras. 2.7 and 5.1 above). The Committee considers that he therefore has exhausted all available domestic remedies on these claims.

6.5 The Committee notes that the author has not provided sufficient information on his claims under article 25 (b) of the Covenant and finds them inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claim under article 7 of the Covenant concerning his alleged incommunicado detention. The Committee observes that the author's lawyers and relatives knew of his whereabouts and that his lawyers were allowed to meet with the author, albeit in the presence of the investigators. In such circumstances, the Committee does not regard the author's claim that his detention was incommunicado as substantiated. It thus finds this part of the author's claim under article 7 of the Covenant unsubstantiated and inadmissible under article 3 of the Optional Protocol.

6.7 The Committee further notes the lack of clarification from the author on the alleged violations of articles 10 (1) and 16 and finds these claims unsubstantiated and inadmissible under article 2 of the Optional Protocol.

6.8 The Committee takes note of the author's allegations under articles 19 (2) and 21 of the Covenant and observes that the author included them in his comments on the State party's observations and not in his first submission. The Committee nevertheless notes that the author provided, from the outset, facts that raise issues under these articles. The Committee considers the author's claims under articles 19 (2) and 21 of the Covenant sufficiently substantiated and admissible.

6.9 The Committee notes the author's claim that the limited access of his lawyers to the detention facility where he was held and the lack of private meetings with his lawyers prevented him from preparing his defence, in violation of article 14 (3) (b) of the Covenant. In this regard, the Committee notes that the author was released from the detention facility on 29 January 2011 and placed under house arrest. The court hearing for his case began some 3 months later, on 5 May 2011. The author does not allege a lack of private communication with his lawyers after the date of his release. The Committee considers that three months was a sufficient period of time for the author to prepare his defence. In view thereof, the Committee finds that the author's allegations relate to his detention rather than to his right to defence covered under article 14 (3) (b) of the Covenant and finds his claim insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.10 The Committee considers that the author's claims under article 7, on its own and read in conjunction with article 2 (3) (a), and articles 9 (3), 19 (2) and 21 of the Covenant are sufficiently substantiated and proceeds with its consideration of the merits.

Consideration of the merits

7.1 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.

7.2 The Committee notes the author's claim that he was subjected to torture or cruel, inhuman or degrading treatment when he was beaten, on 19 December 2010, by a group of unidentified attackers dressed in black uniforms. The Committee notes that the injuries sustained by the author are confirmed by the fact that they are mentioned in the investigation decisions available on file and by the fact that he was hospitalized. There are no indications that the author himself presented a threat to others when he was beaten. The Committee also notes that, according to the documents on file, the road police officers involved in the events of 19 December 2010 testified that the men in black uniforms belonged to the police. According to the author, the road police officers took orders from the attackers. In its response to the initial complaint by the author, the State party did not dispute these facts. The Committee considers that the State party must be held accountable for the attack. The Committee therefore finds that, in any event, the road police officers did not protect the author from the attack, in violation of their obligation to provide such protection under article 7 of the Covenant, read in conjunction with article 2 (1).

7.3 The Committee further notes the author's allegations that there was no effective investigation of the beatings inflicted on him. The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.¹ The Committee observes, in this regard, that the author reported the alleged beatings to the authorities on the day of his arrest, on 20 December 2010. However, a separate criminal investigation into his allegations started only in April 2011, and the first witnesses were interviewed only in May 2011, some five months after the authorities were informed of the events. In this light, the Committee finds a lack of promptness of investigation.

7.4 The Committee notes that the investigation was closed following the conclusion that there was no evidence that the law enforcement officers were involved in the beating of the author. The Committee observes, in this regard, that it was uncontested that the author had been beaten and that the investigation was closed without an attempt to establish the identity of the people who attacked the author. The Committee considers that such an investigation was not effective and amounts to a violation of article 2 (3) (a) read in conjunction with article 7 of the Covenant.

7.5 The Committee further notes the author's allegation that his detention was sanctioned by a prosecutor and not by a judge, contrary to the requirements of article 9 (3) of the Covenant. The Committee recalls that, in its general comment No. 35 (2014) on liberty and security of person, it stated that it is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with (para. 32)² and that a public prosecutor cannot be considered as an officer authorized to exercise judicial power within the meaning of article 9 (3).³ Accordingly, the Committee concludes that the author's right under article 9 (3) of the Covenant to be promptly brought before a judge after his arrest on criminal charges was violated.

¹ See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and *Neporozhnev v. Russian Federation* (CCPR/C/116/D/1941/2010), para. 8.4, and *Abдиеv v. Kyrgyzstan* (CCPR/C/124/D/2892/2016), para. 7.5.

² See also *Smantser v. Belarus* (CCPR/C/94/D/1178/2003), para. 10.2, *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.3, and *Timoshenko v. Belarus* (CCPR/C/114/D/1950/2010), para. 7.2.

³ See also *Smantser v. Belarus*, para 10.2.

7.6 The author was forcibly prevented from attending the assembly, which he organized at October Square on 19 December 2010, and was subsequently convicted of having organized and participated in mass disorder. There are no indications that the planned assembly was not going to be peaceful or that preventing the author's participation in it was justified under article 21 of the Covenant. Accordingly, the Committee concludes that the author's rights under article 21 were violated. In view of this finding, the Committee does not find it necessary to consider the author's claims under article 19 (2) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of the author's rights under article 7, on its own and read in conjunction with article 2 (3) and articles 9 (3) and 21 of the Covenant.

9. 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 take appropriate steps to: (a) conduct a thorough and effective investigation into the author's allegations of beatings on 19 December 2010 and prosecute, try and punish those responsible for the attack on the author; and (b) provide adequate compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 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.