



# 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. 2181/2012\*, \*\*

<i>Communication submitted by:</i>	Egor Bobrov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 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 3 July 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	27 March 2018
<i>Subject matters:</i>	Inhumane conditions of detention; access to justice; effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; State party's failure to cooperate
<i>Substantive issues:</i>	Conditions of detention; effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), 7, 10 and 14 (1)
<i>Articles of the Optional Protocol:</i>	1, 2 and 5 (2) (b)

1. The author of the communication is Egor Bobrov, a national of Belarus born in 1984. He claims that the State party has violated his rights under articles 2 (3) (a), 7 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 On 3 December 2009, the author was found guilty of having committed an administrative offence,<sup>1</sup> and was sentenced to 15 days of administrative arrest. He claims that he was kept in a number of different cells of the Offenders' Detention Centre in Minsk,

\* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santo Pais, Yuval Shany and Margo Waterval.

<sup>1</sup> The author does not provide details of his administrative offence.



and complains that the conditions of detention in all of those cells were cruel, inhumane and degrading. The overcrowded cells had no beds or chairs, with only one wooden board that was used for sleeping by approximately 10 detainees at the same time. The author was forced to sleep fully clothed on bare boards. He was not provided with a mattress, blanket or pillow, despite the temperature inside ranging between 12 °C and 14 °C. The temperature dropped to 10 °C during the night, which resulted in him being constantly cold, having difficulty sleeping and suffering from headaches. The cells were very small, with only 1.5 metres between the board and the cell walls, which meant that he could not undertake any physical activity. During his detention, he was deprived of daily walks and was always kept in his cell. The author also claims that, because of poor ventilation, he was exposed to strong tobacco smoke that had an adverse impact on his health as a non-smoker. Furthermore, the toilet was not separated from the common area of the cell and he had to use it in full view of the other detainees, which amounted to degrading treatment. The author also complains about the bad quality of the prison food, which he claims was very salty and caused him epigastric burning. He was not allowed to receive food parcels from his family. The conditions of his detention caused him physical and mental suffering and, taken as a whole, amounted to a violation of article 7 of the Covenant and of paragraphs 1, 9, 10, 12, 14, 15, 19, 20 (1) and 21 (1) of the Standard Minimum Rules for the Treatment of Prisoners.

2.2 On 29 December 2009, after his release, the author initiated civil proceedings at Moskovsky District Court in Minsk City against the illegal inaction of the administration of the detention facility, claiming that the conditions of his detention had violated his rights under article 7 of the Covenant. On 11 January 2010, the court refused to initiate proceedings owing to lack of jurisdiction, indicating that national legislation provided for an out-of-court procedure for the consideration of complaints regarding conditions of detention.<sup>2</sup>

2.3 On 20 January 2010, the author submitted a cassation appeal to Minsk City Court, arguing that the national legislation referred to by Moskovsky District Court was applicable at the time of his detention only, and that article 60 (1) of the Constitution of Belarus guaranteed the protection of a person's rights and liberties by a competent, independent and impartial court of law. On 11 February 2010, Minsk City Court upheld the decision of Moskovsky District Court, thus rendering the decision of Moskovsky District Court final.

2.4 The author did not complain to the Chairperson of Minsk City Court or to the Chairperson of the Supreme Court of Belarus under the supervisory review procedure, because such extraordinary appeals are dependent on the discretionary power of a judge and are limited to issues of law only, meaning that such appeals cannot be considered effective domestic remedies. The author therefore contends that he has exhausted all available and effective domestic remedies.

### **The complaint**

3.1 The author claims a violation of article 2 (3) (a) of the Covenant in view of the failure by the State party to investigate the alleged violation of his rights under article 7 of the Covenant and to provide him with an effective remedy within the meaning of article 2 (3) (a) of the Covenant.

3.2 The author claims that, taken as a whole, the inhuman conditions of his detention — in particular the overcrowded and cold cells, the denial of daily walks, the lack of privacy of the toilet facilities and the poor ventilation, clothing and food — amounted to a violation of article 7 of the Covenant.

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<sup>2</sup> The court based its decision on article 56 of the internal regulations relating to the special establishments of internal affairs agencies carrying out administrative sentences in the form of administrative arrest, approved by resolution No. 194 of the Ministry of Internal Affairs of 8 August 2007. Article 56 provides that suggestions, appeals and complaints addressed to a head of a special establishment should be entered in the journal for the registration of administrative detainees' complaints in accordance with annex 3 to the internal regulations, and reported to the head of the special establishment.

3.3 The author further alleges that the refusal to have his case duly considered by a court amounted to a denial of his right of access to the courts, in violation of article 14 (1) of the Covenant.

#### **State party's observations on admissibility**

4.1 In notes verbales dated 13 August 2012 and 4 January 2013, the State party noted a lack of legal grounds for consideration of the communication on both admissibility and the merits. It argues that the author has not exhausted all available domestic remedies because he did not submit appeals to the Chairperson of Minsk City Court or to the Chairperson of the Supreme Court. Moreover, the author had the right to submit a complaint to the Prosecutor General against the judicial decision under the supervisory review procedure, which he did not do. Thus, his complaint was registered in violation of article 2 of the Optional Protocol.

4.2 The State party further submits that it has discontinued the proceedings regarding the communication and will disassociate itself from any Views that might be adopted by the Committee.

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

5.1 In a letter dated 17 October 2012, the author commented on the observations of the State party. He argues that in accordance with article 432 of the Civil Procedure Code, the decision of a cassation court enters into force on the date of its adoption. Thus, the decision of Minsk City Court of 11 February 2010 entered into force on the same day. The author also explains that the court filing fees were returned to him, which meant that the proceedings had de facto been terminated.<sup>3</sup>

5.2 The author further states that he did not make use of the supervisory review procedure by lodging complaints to the Chairperson of Minsk City Court and the Chairperson of the Supreme Court because that procedure would not have led to a review of the case. He claims that consideration of a supervisory review application is dependent on the discretionary power of a single official and that supervisory review cannot be regarded as an effective remedy, for the following reasons:

- (a) It would not trigger a review of the case;
- (b) It would be considered by a single official;
- (c) Case materials would be requested for review only at the discretion of that official;
- (d) The case would be considered in the absence of the parties, so the author would not have an opportunity to submit any arguments, motions or requests.

5.3 Referring to the Committee's established practice, the author points out that only domestic remedies that are both available and effective must be exhausted. The Committee in its jurisprudence has consistently considered that supervisory review procedures against court decisions that have entered into force do not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>4</sup> The author also submits that, for the reasons above, an appeal to the Prosecutor General's Office under the supervisory review procedure would not constitute an effective remedy.

#### **Lack of cooperation by the State party**

6.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol, and that if a decision is taken by the Committee on the present communication, the State party will disassociate itself from the Committee's Views.

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<sup>3</sup> In accordance with article 259 of the Tax Code, the court fee, paid to a court to file a lawsuit, is returned to the plaintiff if the case is closed due to lack of jurisdiction of the court.

<sup>4</sup> See *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

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 article 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.<sup>5</sup> 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 declaring beforehand that it will not accept 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.<sup>6</sup>

### **Issues and proceedings before the Committee**

#### *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 takes note of the State party's assertion that the author has failed to request that the Chairperson of Minsk City Court, the Chairperson of the Supreme Court or the Prosecutor General's Office initiate a supervisory review of the decisions of the domestic courts. The Committee recalls its jurisprudence according to which a petition to a Prosecutor's Office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>7</sup> It also considers that filing requests for supervisory review to the chairperson 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.<sup>8</sup> Given that the State party has not done so, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee notes the author's claim that the State party violated its obligations under article 2 (3) (a) of the Covenant, since it failed to investigate the alleged violation of his rights under article 7 of the Covenant. The Committee recalls its jurisprudence that article 2 (3) can be invoked by individuals only in conjunction with other substantive articles of the Covenant, and therefore considers that the author's claims under article 2 (3) are inadmissible under article 3 of the Optional Protocol. The Committee further refers to paragraph 14 of its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it is stated that article 7 of the Covenant should be read in conjunction with article 2 (3) of the Covenant. The

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<sup>5</sup> See *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.

<sup>6</sup> See *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 8.2.

<sup>7</sup> See *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

<sup>8</sup> See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

Committee therefore decides to examine the author's claim of violation under article 2 (3) (a) of the Covenant in conjunction with article 7.

7.5 The Committee considers that the communication is admissible insofar as it raises issues under article 7, read alone and in conjunction with articles 2 (3) (a) and 14 (1) of the Covenant. Accordingly, it declares this part of the communication admissible and proceeds with its examination 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 notes the author's claim that he was incarcerated in a number of overcrowded but small cells with no beds, chairs or heating, under extremely poor sanitary and hygiene conditions. For the full duration of his detention, he was obliged to sleep on a wooden board that was used by approximately 10 people at the same time, and he was not allowed to leave his cell. The temperature inside ranged between 10 °C and 14 °C, which resulted in him being cold and having difficulty sleeping. The author also claims that the toilet was not separated from the common area of the cell and he had to use it in full view of the other detainees. During his detention, the author was deprived of daily walks and was always kept in his cell. The author claims that the conditions of his detention caused him physical and mental suffering. The Committee notes that these allegations are consistent with the findings of the Committee against Torture in its concluding observations with regard to the State party, adopted in November 2011, in which it stated that it remained deeply concerned about continuing reports of poor conditions in places of deprivation of liberty, including with respect to the problems of overcrowding, poor diet, lack of access to facilities for basic hygiene, and inadequate medical care.<sup>9</sup> The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated humanely in accordance with the Standard Minimum Rules for the Treatment of Prisoners.<sup>10</sup> The Committee notes that the State party has not contested the information provided by the author on his conditions of detention, nor has it provided any information in this respect. In these circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee considers, as it has repeatedly found in respect of similar substantiated claims,<sup>11</sup> that the author's conditions of detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore also contrary to article 10 (1), a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7. For these reasons, the Committee finds that the circumstances of the author's detention, as described by the author, constitute a violation of articles 7 and 10 (1) of the Covenant.

8.3 The Committee notes the author's allegations that when he initiated civil proceedings at Moskovsky District Court in Minsk City against the illegal inaction of the administration of the detention facility, claiming that the conditions of his detention had violated his rights under article 7 of the Covenant, the court refused to initiate proceedings owing to lack of jurisdiction, indicating that national legislation provided for an out-of-court procedure for the consideration of complaints regarding conditions of detention, namely through a complaint to the head of the detention facility in which the author had served his administrative sentence.

8.4 The Committee reiterates the importance that it attaches to States parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. It refers to paragraph 15 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that a failure by a State party to investigate allegations of

<sup>9</sup> See CAT/C/BLR/CO/4, para. 19.

<sup>10</sup> See *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

<sup>11</sup> See *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.

violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the information before the Committee indicates that the out-of-court (administrative) procedure was not an effective remedy and that the national courts refused to initiate proceedings owing to lack of jurisdiction. In the absence of any information from the State party as to the merits of the present communication, the Committee concludes that the author's rights under articles 7 and 10 (1) of the Covenant, read alone and in conjunction with article 2 (3) (a) of the Covenant, have been violated.

8.5 In the light of that conclusion, the Committee decides not to examine separately the author's remaining claims under article 14 (1) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7 and 10 (1) of the Covenant, read alone and in conjunction with article 2 (3) (a) of the Covenant. The Committee reiterates its conclusion that the State party has also violated its obligations under article 1 of the Optional Protocol.

10. In accordance with 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. In the present case, the State party is under an obligation, *inter alia*, to provide adequate compensation to the author, including reimbursement of any legal costs incurred, as well as appropriate measures of satisfaction. The State party is also under an obligation to take steps to prevent similar violations in the future, including by amending the current system of complaints regarding conditions of detention to ensure that complainants have access to effective remedies.

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 and 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 all the official languages of the State party.

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