



# 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. 2361/2014\*\*\*

<i>Communication submitted by:</i>	Igor Postnov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	22 February 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 March 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2021
<i>Subject matter:</i>	Unlawful involuntary medical confinement of the author resulting in torture
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person, fair and public hearing, privacy, freedom of expression, discrimination
<i>Articles of the Covenant:</i>	2(1) and (3), 7, 9(1), 10(1), 14(1), 15(2), 17(1) and (2), 19 and 26
<i>Articles of the Optional Protocol:</i>	2, 5 (2) (b)

1.1 The author of the communication is Igor Postnov, a national of Belarus born in 1968. He claims that the State party violated his rights under articles 2(1) and (3), 7, 9(1), 10(1), 14(1), 15(2), 17(1) and (2), 19 and 26, of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

1.2 On 23 July 2014, pursuant to rule 93 (1) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 17 September 2014, pursuant to rule 93 of its rules of procedure,

\* Adopted by the Committee at its 132nd session (28 June-23 July 2021).

\*\* The following members of the Committee participated in the examination of the communication:  
Wafa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Kobauyah Kpatcha Tchamdjia, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi

the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

### **Factual background<sup>1</sup>**

2.1 The author submits that he is a medical doctor who used to work at Vitebsk regional clinic of psychiatry and drug abuse treatment (hereinafter “the Vitebsk clinic”). He submits that he started facing problems from the authorities after he published several articles and videos. In his newspaper articles and videos published online, he complained about the state of medical health and asked the prosecutor’s office to investigate crimes committed by the management of the Vitebsk clinic, the chief medical doctor Mr. M.E.V. and his deputy, Ms. P.I.V<sup>2</sup>. In these articles, he also complained about low salaries and poor education of doctors working at the Vitebsk clinic. The author further complained about the Governor and Deputy Governor of the Vitebsk region. Instead of dealing with issues that the author raised, the representatives of several government agencies conspired to subject him to involuntary medical confinement. These officials included the chief prosecutor of the Vitebsk region, Y.R., chair of the Vitebsk Regional Court, N.H, and others.

2.2 The author submits that, upon prosecutor’s request, he was detained in psychiatric ward from 15 August 2013. Although the author claims to be in good health, the prosecutor cited the author’s behaviour to be “inadequate, with signs of long-lasting psychiatric disorder”, and argued that the author refused to undergo treatment and take medicines. This initial detention was done only to medically evaluate him, but the author submits that his rights were immediately restricted since he could not correspond with anyone, use phone, make any purchases, etc. The numerous complaints that he sent to the prosecutor’s office, and other authorities, were not mailed, but instead, were simply added to his medical file. The law allows such restrictions only upon finding that the author is a danger to himself and/or other persons, but the author states that he was not. The author considers that the order from the prosecutor’s office to medically evaluate him was arbitrary. The author submits that this was done to silence him, as he openly criticized the state of health care in the region in newspaper articles. The author further claims that he could not have been sick because he worked as a doctor of psychiatry in this same Vitebsk clinic for many years.

2.3 The author submits that by the order of the Vitebsk District Court<sup>3</sup> dated 21 August 2013, he was committed to an involuntary hospitalization in the Vitebsk clinic for compulsory psychiatric treatment for an indefinite period of time<sup>4</sup>. This decision was adopted in a “closed” hearing, and the procedure of committing the author was initiated by the chief medical doctor of the Vitebsk clinic where the author used to work himself. The chief medical doctor, Mr. M.E.V., informed the court, through a report he submitted, that the author was ordered to undergo psychiatric treatment but did not follow. According to the report of the chief medical doctor, the author, due to his current condition, “poses risk to himself”,<sup>5</sup> and without proper medical treatment, his “health would suffer”. The chief medical doctor asked the court to subject the author to involuntary confinement and medical treatment.

2.4 The representative of the chief medical doctor was present at the hearing on 21 August 2013, and testified that the author, if not confined, could pose danger to himself, and he suffers from “delirium”.<sup>6</sup> The prosecutor who was present as well, also requested to confine the author. The court stated in its decision that the “interested person” – the author – was not present at the hearing, despite being informed about time, date and location of the hearings. The author submits that he asked the Vitebsk clinic, and the court, to inform him about the hearing, but the authorities failed to provide this information. Since the author was confined

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<sup>1</sup> Due to absence of some information from the author, and complete absence of information on merits from the State party, the factual background was compiled based on copies of court decisions provided by the author.

<sup>2</sup> The author submits that these two persons are husband and wife.

<sup>3</sup> Civil court.

<sup>4</sup> It is not clear from the author’s submission whether he has been released from the psychiatric ward, at the time of submission.

<sup>5</sup> No further information is provided in the court decision dated 21 August 2013, which consist of 1.5 pages.

<sup>6</sup> Idem.

to the Vitebsk clinic at the treatment clinic, he could not leave there without the proper and timely court notice and permission.

2.5 The author further submits that in violation of his rights, he himself and his lawyers were not present at the court hearings on 21 August 2013 in the Vitebsk District Court, despite the statements made by the judge during the hearing. Once the author received this court decision, he filed a cassation appeal to the Vitebsk Regional Court. In his appeal, the author complained that his procedural rights had been violated. For example, the report of the chief medical doctor of the Vitebsk clinic does not contain any specific references to the author's medical status. Instead the chief medical doctor refers to the "worsening" of the author's condition. Based on this report, the court, in its decision dated 21 August 2013, concluded that the author "may have a chronic condition of delirium"

2.6 The author also complained in his appeal that the real reason to subject him to involuntary medical treatment was to silence him after his critical articles and some videos, and enmity towards him of the chief medical doctor of the Vitebsk clinic. The commission that has an authority to find someone eligible for involuntary confinement, was headed by P.I.V, who is a spouse of the chief medical doctor of the Vitebsk clinic. The author further asked the appeal court to order an independent psychiatric evaluation, which can be done by the Belarus national institute of mental health.

2.7 On 12 September 2013, the Vitebsk Regional Court upheld the lower court's decision. Again, the author was not present, and the court only heard testimonies from a representative of the Vitebsk clinic and the prosecutor's office. The author's lawyers were not present, although the author submits that he specifically requested to be present himself, and to inform the lawyer he hired to represent him, Mr. V.P., about the hearing. The court hearing was also held as "closed" – which means it was closed to public. The Vitebsk Regional Court accepted all the findings of the district court, without further questioning additional witnesses or considering additional circumstances. Without providing any evidence, the Vitebsk Regional Court made a finding that the author was a danger to himself.

2.8 The author further appealed the decision by the Vitebsk Regional court, under the supervisory review procedure, to the chairperson of that same court. On 21 November 2013, the chairperson rejected the author's appeal. The author filed another appeal, this time to the Supreme Court of Belarus. The court also rejected the author's appeal, fully upholding decisions of lower courts. The author and his lawyers were not presented during these supervisory appeal procedures. The author therefore submits that he has exhausted all available and effective domestic remedies.

### **The complaint**

3.1 The author submits that by placing him in indefinite detention and psychiatric treatment, the State party violated his rights under article 7 and article 10(1) of the Covenant.

3.2 He further submits that by subjecting him to involuntary confinement and denying him and his lawyers the right to be present during the court hearings, the State party violated his rights under article 9(1) and 14(1) of the Covenant.

3.3 The author further claims that he was persecuted for voicing his critical opinion of the state of health care in the region, both through newspaper articles and video speeches. By punishing him, and through placing him in psychiatric detention, and by not letting him use phone or correspond with outside world, the State party violated his rights under article 19 of the Covenant.

3.4 The author further claims that the State party violated his rights under articles 2(1), 2(3), 15(2), 17(1) and (2), 26 of the Covenant<sup>7</sup>.

3.5 The author requests the Committee to find the State party responsible for violations of the Covenant, and compensate for his court expenses, as well as award him monetary compensation for the human rights violations that he suffered.

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<sup>7</sup> The author does not seem to substantiate these claims.

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

4. On 23 July 2014, the State party provided its observations on the admissibility of the author's complaint. It stated that "the author of the communication has not exhausted all available domestic remedies at the time of submission of the communication". The State party submits that in this regard, Mr. Postnov complaint shall be considered inadmissible under article 2 of the Optional Protocol.<sup>8</sup> On 7 October 2014, responding to the request to provide comments on merits of the present communication, the State party submits an explanation to "OHCHR as to the fact that article 2 of the Optional Protocol stipulates that all available domestic remedies, and not effective domestic remedies" should be exhausted. The State party requested the OHCHR to "provide the author" of the present communication "with relevant explanation of the provision of the article 2 of the Optional Protocol".<sup>9</sup>

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

5.1 On 26 August 2014, responding to the State party's observations, the author submits that he has exhausted all available domestic remedies, including cassation and supervisory review procedures. The Committee, in its decisions such as *Oleshkevich*<sup>10</sup> and *Shumilin*<sup>11</sup>, has long established that the supervisory review procedure is not an effective remedies, and does not have to be exhausted for the purposes of the Optional Protocol.

5.2 The author also provides the findings of the report prepared by the commission comprised of experts of "Independent Association of Psychiatrists of Russia", dated 14 April 2014. In this report, the commission examined the author upon his request. The commission diagnosed the author with "paranoid personality disorder" with "tendencies to seek truth". From the teenage years, the author had a sharp sense of fairness and demanded truth. The author identified shortcomings, and would express them openly. However, the author's forced hospitalization was not justified, , according to the independent commission. The author was not a danger to himself or others, and did not need any psychiatric treatment. In his relationships with neighbours, for example, the author was "well adapted".

### **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 article 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 contention that the author failed to exhaust all available domestic remedies, without providing any specific details as to the potential remedies that the author should have exhausted<sup>12</sup>. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 The Committee has noted the author's claims under articles 2(1), 2(3), 10(1), 15(2), 17(1) and (2), 26 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these

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<sup>8</sup> No further information is provided by the State party.

<sup>9</sup> The State party was requested to provide its observations on merits of the communication on 17 September 2014 (in addition to the request that was sent during the initial registration). Further reminders were sent on 3 December 2014, 26 August 2020, and 8 April 2021. No response has been received to date.

<sup>10</sup> The author refers to communication 1758/2008, *Oleshkevich v. Belarus*.

<sup>11</sup> The author refers to communication 1814/2008, *Shumilin v Belarus*.

<sup>12</sup> Please see para. 4.1 above. The State party provides no information on the available remedies.

allegations, for purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining claims, raising issues under articles 7, 9(1), 14(1) and 19 of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

*Consideration of the merits*

7.1 The Committee has considered the case 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 claims that his involuntary hospitalization and detention in a psychiatric hospital violated his rights under article 9(1) of the Covenant.

7.3 The Committee recalls that commitment to and treatment in a psychiatric institution against the will of a patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant.<sup>13</sup> It further recalls that article 9(1) requires that deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests and detentions may be both arbitrary and unlawful.<sup>14</sup> Furthermore, it recalls that the notion of arbitrariness is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.<sup>15</sup>

7.4 While acknowledging that States may deem an individual's mental health to be impaired to such an extent that, in order to avoid harm to the individual or others, the issuance of a committal order is unavoidable,<sup>16</sup> the Committee considers that involuntary hospitalization can only be applied, if at all, as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law.<sup>17</sup> The procedures should ensure respect for the views of the individual and should ensure that any representative genuinely represents and defends the wishes and interests of the individual.<sup>18</sup>

7.5 The Committee notes that in the present case, the author or his lawyers were neither informed about time and location nor able to be present during the trial hearings or appeal procedures, that during the proceedings against him he was not allowed to be examined by other medical professionals and that the order of involuntary confinement was unlimited in time and not subject to periodic review. In the absence of any information from the State party, and based on the review of the submissions by the author, the Committee considers that his rights under article 9 were violated.<sup>19</sup>

7.6 As regards the author's claim under article 7, the Committee has to evaluate whether the involuntary hospitalization amounted to inhuman and degrading treatment or punishment. The Committee observes that, while involuntary hospitalization may be applied as a measure of last resort and, at times, may be justified to protect the life and health of individuals, illegal and arbitrary committal to a hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment, within the meaning of article 7 of the Covenant.

7.7 The Committee notes the author's submission that his committal to psychiatric clinic was the result of his outspoken criticism of the regional authorities in charge of medical

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<sup>13</sup> See, for example, *A. v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.2; and *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), para. 8.2.

<sup>14</sup> See the Committee's general comment No. 35 (2014) on liberty and security of person, paras. 10–11.

<sup>15</sup> *Ibid.*, para. 12. See also, for example, *M.G.C. v. Australia* (CCPR/C/113/D/1875/2009), para. 11.5.

<sup>16</sup> See *Fijalkowska v. Poland*, para. 8.3.

<sup>17</sup> See general comment No. 35, para. 19. See also *Fijalkowska v. Poland*, para. 8.3.

<sup>18</sup> See general comment No. 35, para. 19; and CCPR/C/CZE/CO/2, para. 14.

<sup>19</sup> See *Mukhortova v. Kazakhstan*, (CCPR/C/127/D/2920/2016), para. 7.14.

facilities of the Vitebsk region, including the chief medical doctor of the clinic, Mr. M.E.V. and his deputy, Ms. P.I.V (see para. 2.1 above). The Committee also notes the undisputed fact that the author submitted numerous complaints to courts and the prosecutor's office. The Committee further notes that the independent examination dated 14 April 2014 (see para. 5.2 above) concluded that the author was not a danger to himself or others, and did not need to be hospitalized. The Committee further notes the findings of the Vitebsk District and Regional Court do not contain any examples of the author being a danger to himself and/or others, nor an assessment that his involuntary hospitalization was required as a measure of last resort. On the basis of the information available, the Committee concludes that the decisions to commit the author to psychiatric clinic caused him substantial anguish and mental suffering on the basis of persistent fear for his health and freedom.<sup>20</sup> Accordingly, the Committee is of the view that, in the present case, the author's involuntary hospitalization and the subjection of the author to medical treatment despite his opposition amounted to inhuman and degrading treatment or punishment within the meaning of article 7 of the Covenant.

7.8 The Committee also notes the author's claims that his right to a fair and public hearings has been violated when the initial hearing on 21 August 2013, the subsequent appeal of 12 September 2013, and the supervisory appeal procedures were all closed to public, and the author and his lawyers were not present, despite their written requests. The Committee notes that while the requirements of article 14(1) of the Covenant generally apply to criminal cases and suits at law, the "notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity".<sup>21</sup> The Committee also considers that some detention regimes that result in confinement, as in the present case, attempt to bypass the controls imposed by the rules of criminal procedure. In the present case, the Committee notes the author's claim that the involuntary hospitalization upon the prosecutor's request is punishment for his criticism to the regional authorities. In the absence of any pertinent explanations from the State party, the Committee considers that due weight must be given to the author's allegations, and finds that, based on the purpose, character and severity of his involuntary hospitalization, the guarantees of article 14(1) of the Covenant apply. Accordingly, the Committee concludes that, in the circumstances of the present case, the facts as presented by the author amount to a violation of the author's rights under articles 14 (1) of the Covenant.

7.9 The Committee notes the author's claim that his psychiatric detention from 15 August 2013 and subsequent involuntary hospitalization were imposed on the author to silence him, and amounted to a restriction of his right to impart information and ideas which was incompatible with article 19(3) of the Covenant.

7.10 The Committee refers to its General comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society.<sup>22</sup> According to article 19(3) of the Covenant, freedom of expression can be subject to certain restrictions but only those which are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>23</sup> All restrictions imposed on freedom of expression must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of article 19(3); and they must conform to the strict tests of necessity and proportionality. The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.<sup>24</sup> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat to any of the enumerated grounds listed in article 19(3) that has caused it to

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<sup>20</sup> Ibid, para. 7.16.

<sup>21</sup> Communication No. 1015/2001, *Perterer v. Austria*, para. 9.2.

<sup>22</sup> General comment No. 34, *op. cit.*, para. 2.

<sup>23</sup> Ibid., para. 28.

<sup>24</sup> Ibid., para. 34.

restrict freedom of expression, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>25</sup>

7.11 In the present case, the Committee notes that the State party has not advanced any arguments as to the lawfulness and compatibility of the psychiatric detention and involuntary hospitalization with the requirements of article 19(3) of the Covenant. Therefore, the Committee finds that the State party has failed to justify that the restriction of the author's impartiment of information and ideas by his involuntary confinement was necessary and proportionate to the legitimate aim pursued, as set out in article 19 (3) of the Covenant. The Committee concludes that the author's rights under article 19 of the Covenant have been violated.

8. 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 the rights of the author under articles 7, 9(1), 14(1) and 19, 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 provide the author with adequate compensation including reimbursement for any legal costs incurred by him. The State party is also obligated, 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 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 the official languages of the State party.

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<sup>25</sup> *Ibid.*, paras 35, 36.