



## International Covenant on Civil and Political Rights

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### Advance unedited version

#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2619/2015\*,\*\*

<i>Communication submitted by:</i>	Marina Adamovich
<i>Alleged victim:</i>	Mikalai Statkevich
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 November 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 22 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	26 October 2021
<i>Subject matter:</i>	Conviction of an opposition leader; unlawful detention; unfair trial; torture and forced confession; inhuman conditions of detention; unlawful interference with privacy; freedom of expression; freedom of peaceful assembly; freedom of associations; right to participate in public life
<i>Procedural issues:</i>	Level of substantiation of a claim
<i>Substantive issue:</i>	Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge; right to a fair hearing by an impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of defence; right to communicate with counsel of one's own choosing; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to privacy; freedom of expression; right of peaceful assembly; equality

\* Adopted by the Committee at its 133<sup>rd</sup> session (11 October-5 November 2021).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Christopher Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



before the law and equal protection of the law;  
effective remedy

*Articles of the Covenant:* 2, 7, 9, 10, 14 (1), (2), (3) (b) (d) (e) (g), (5), 17,  
19 (1) (2), 21, 22, 25

*Articles of the Optional Protocol:* 2

1.1 The author is Marina Adamovich, a Belarusian national born in 1961, who claims that her husband, Mr. Mikalai<sup>1</sup> Statkevich<sup>2</sup>, a Belarusian national born in 1956, is a victim of violation, by Belarus, of his rights under articles. 2; 7; 9; 10; 14 (1, 2, 3 (b) (d) (e) (g), and 5); 17; 19 (1 and 2); 21; 22, and 25 of the International Covenant on Civil and Political Rights (the Covenant). The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel<sup>3</sup>.

1.2 On 7 May 2021, pursuant to rule 107 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteurs on New Communications and Interim Measures rejected the State party's request for the discontinuance of the complaint.

### **Factual background**

2.1 Mr. Statkevich is the Chairman of the Belarusian Social Democratic Party, former candidate for Belarus presidency and founder of the Belarusian Union of Military Personnel.

2.2 In 1994, Mr. Statkevich founded and headed a public commission for the oversight and management of Belarusian presidential elections. In 1995, he became the Chairman of the People's Assembly. In 1996, Mr. Statkevich assumed the chairmanship of the newly formed Belarusian Social Democratic Party. He was elected the chairman of the Eastern European Social Democratic Forum in February 1999 and stood unsuccessfully for election to the Belarusian parliament in 2000. In 2003, he became the leader of the European Coalition "Free Belarus". He ran as an opposition candidate in the 2001 and 2006 Belarusian presidential elections. In an attempt to force him out of the elections, the authorities initiated criminal proceedings against him on the eve of both of the presidential elections. Mr. Statkevich gained further prominence as an advocate of democracy. He organized and led over thirty demonstrations attended by several thousand people to protect democracy against government policies in the 1990s and 2000s. As a result, he was arrested more than thirty times and he was charged with crimes on at least three occasions. For example, on 1 May 1997, he was arrested for demonstrating against President Lukashenko's policies aimed at forging closer ties with the Russian Federation. In October 2004, Mr. Statkevich organized a peaceful protest against the results of a referendum that lifted the constitutional limits on the number of presidential terms extending President Lukashenko's term indefinitely, and about irregularities in the October 2004 parliamentary elections. He was arrested, and on 31 May 2005, convicted and sentenced to three years of imprisonment for his role in the protest. In 2006, Amnesty International recognized him as a prisoner of conscience. In July 2007, he was released on parole.

2.3 In 2009, Mr. Statkevich was nominated to stand as the Social Democratic Party's opposition candidate in the 2010 presidential election. Throughout his campaign, he was harassed on a number of occasions by the security forces, which, for example, seized his campaign materials, recorded his phone conversations, and confiscated a speaker system.

2.4 On 19 December 2010, the presidential elections were held amongst ten candidates. On the same day, before the announcement of the official results, supporters of the opposition presidential candidates and non-partisan opponents of the President in power gathered in the

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<sup>1</sup> The counsel indicates that the author's first name can also be spelt Mykalai, Mykalau, Nikolai, Mikola.

<sup>2</sup> At time of the communication submission, Mr. Statkevich was imprisoned. He was released from prison on 22 August 2015 after receiving a presidential pardon.

<sup>3</sup> The author is jointly represented by: Freedom Now, McKool Smith PC and Hogan Lovells US LLP. On 4 September 2014, the Secretariat informed that as the main counsel, to whom all the correspondence should be sent, is Mr M. Scheimer from Hogan Lovells US LLP.

downtown Minsk to voice their protest over what they believed to be an unfair election, denouncing massive irregularities and falsifications. The demonstration started at 6:50 pm<sup>4</sup> and at approximately 10:00 pm a small group of protesters started breaking the windows of the House of Government nearby. They were believed to have been government provocateurs and were, thus, urged by the opposition politicians to stop acts of vandalism and remain peaceful. At 10:37pm, law enforcement agents attacked the peaceful demonstrators as a response to the vandalism, and beat, injured and arrested many persons<sup>5</sup>. Mr. Statkevich was also apprehended and beaten by unknown persons wearing masks and was transferred to an unknown location<sup>6</sup>. Later he found out that he was taken to the State Security Committee's (KGB) pre-trial detention facility (further details are not provided). Upon arrest, he was not informed of the charges against him, as well as his case was not brought before a judge to assess whether or not he should remain in custody.

2.5 During his pre-trial detention in the premises of the KGB, Mr. Statkevich was subjected to torture and cruel, inhuman and degrading treatment. He underwent long interrogations during the night, without the presence of his lawyer. In his cell he was forced to sleep on the floor on a wooden panel, with the lights on at all times. He was deprived of access to the toilet and was at times placed with prisoners infected with HIV or tuberculosis. The officers of the KGB also applied psychological pressure on Mr. Statkevich as an attempt to force him to confess guilt in crimes and upon his refusal; Mr. Statkevich was threatened that his wife would also be arrested. He went on a hunger strike<sup>7</sup> and was therefore taken to an unknown place and then to a hospital. On both occasions, the officials threatened to render him unconscious.

2.6 In February 2011, Mr. Statkevich's daughter filed a petition with the UN Working Group on Arbitrary Detention, which concluded that Belarus has breached Mr. Statkevich's rights under article 9 of both the Covenant and the Universal Declaration of Human Rights. The decision was issued on 19 June 2011, but the State Party did not release Mr. Statkevich nor did it provide any compensation.<sup>8</sup>

2.7 On 11 May 2011, Mr. Statkevich's case was brought to trial before the Court of the Leninsky District in Minsk. During the trial, Mr. Statkevich and his co-defendants were kept in a cage in handcuffs at all times. The evidence he presented was disregarded and the credibility of his arguments and explanations was consistently questioned and rejected by the court. He challenged the violations of his rights guaranteed by articles 7; 9 and 10, of the Covenant that occurred during his arrest and incarceration during the trial proceedings. On 26 May 2011, however, the District Court found Mr. Statkevich guilty of having organized a mass riot involving violence and destruction of property and sentenced him to six years of imprisonment.

2.8 Mr. Statkevich appealed this conviction within cassation proceedings, arguing that the charges against him were unfounded and that he was specifically targeted for the peaceful exercise of his rights to freedom of assembly and expression. In his appeal he also claimed that the actions against him appeared to be politically motivated, in retribution for his activities as an opposition political candidate. On 19 July 2011, the Minsk City Court upheld the lower court's judgment. Thereafter, Mr. Statkevich appealed his conviction through the supervisory review procedure. He filed a supervisory review appeal with the Chair of the Minsk City Court. The Chair rejected his appeal on 11 November 2011. Mr. Statkevich filed a second supervisory review appeal to the Chair of the Supreme Court. A Deputy-Chair of the Supreme Court rejected this appeal on 17 Feb 2012. Finally, in November 2012, Mr.

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<sup>4</sup> The chair of the Central Election Commission announced that the immunity for the candidates would end at 8 pm, whereas the Belarusian law endows presidential candidates with immunity for political participation at all times.

<sup>5</sup> The author refers to the report dated 10 April 2010 of the High Commissioner on Human Rights A/HRC/20/8.

<sup>6</sup> 7 Other presidential candidates were also arrested at different times and places.

<sup>7</sup> The author has not specified the exact dates of the mentioned events which occurred during Mr. Statkevich's pre-trial detention.

<sup>8</sup> Opinions adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2–6 May 2011, No. 13/2011 (Belarus), (A/HRC/WGAD/2011/13).

Statkevich lodged an appeal to the Prosecutor's Office of Minsk which was rejected on 23 January 2013.

2.9 Both Mr. Statkevich and his wife have unsuccessfully complained to the penitentiary authorities about the conditions of his detention, his being singled out by the prison administration for alleged violations of the prison regulations, and the excessive limits on his contacts with the outside world.

### **The complaint**

3.1 The author alleges a violation of Mr. Statkevich's rights under articles 2; 7; 9; 10; 14 (1, 2, 3 (b) (d) (e) (g), and 5); 17; 19 (1 and 2); 21; 22 and 25 of the Covenant. She claims that her husband's rights guaranteed by article 7 have been violated as the authorities have subjected Mr. Statkevich to incommunicado detention for several months and denied access to counsel; officers harassed him and threatened to arrest his wife unless he confesses his guilt. He was forced to sleep on the floor with the lights on, he was refused access to a toilet, he was kept among prisoners with infectious diseases. He was transported to an unknown location in order to intimidate him, during any movements he had his hands bound with handcuffs behind his back.

3.2 The author claims that Mr. Statkevich's rights guaranteed by articles 9 (2)(3) have been violated as he was not informed about the reasons of his arrest and charges against him, his pre-trial detention was also unlawful as it was not authorised by a judge. In addition, the decision about the continuation of his detention was taken by a prosecutor without justification, the court review of his detention was not timely or efficient, he was not brought to court for detention review, he was interrogated during the night without the presence of his lawyer. The first time he was brought before a judge was more than five months after his arrest, when the trial began.

3.3 She claims that Mr. Statkevich's rights guaranteed by articles 10 have been violated as the authorities have subjected him to emotional and physical abuse by harassing and threatening him prior and after his conviction. During the December 19, 2010, crackdown by police special forces, Mr Statkevich was physically beaten. In the KGB prison he was held without access to counsel, not being able to see his family. He was held in isolation, in the cold, and forced to sleep with the light on. As a result, his health deteriorated significantly.

3.4 The author also claims that Mr. Statkevich has been denied an open and fair trial before an independent and impartial tribunal in violation of article 14 (1) of the Covenant. Mr. Statkevich did not receive a fair trial before an impartial judiciary because the exclusion of relevant evidence, inclusion of prejudicial irrelevant evidence, failed to hold the prosecution to its burden of proof and to compel attendance of witnesses. The authorities did not refrain from publicly accusing Mr. Statkevich and other opposition candidates of coup d'état and overthrowing the President before and after the elections. Authorities proclaimed opposition candidates, including Mr. Statkevich guilty before the final judgment was established and announced by the court. The author claims that no evidence was presented linking Mr. Statkevich to the single isolated incident of violence. The court indulged in criticism and expressed doubt about the trustworthiness of Mr. Statkevich's testimony. The court also overruled defence motions while sustaining prosecution motions. Mr. Statkevich was unable to mount a fair defense. For instance, his counsel was not permitted to confront the prosecution's key witnesses. The court failed to compel a number of witnesses.

3.5 The author claims that Mr. Statkevich's rights guaranteed by articles 14 (2) have been violated as his presumption of innocence was infringed in of the authorities' proclamation of guilt. He was tried with others on a guilt-by-association basis while splitting off other portions of the trial that were then used to convict him without his participation. This resulted in limitation of his defense. He was also kept in a cage with handcuffs on his hands during the trial.

3.6 The author claims Mr. Statkevich's rights guaranteed by articles 14 (3) (b) have been violated as he was denied access to counsel. He was held incommunicado and denied access to counsel during three months after his arrest. Later, the counsel's access was restricted.

3.7 The author also claims Mr. Statkevich's rights guaranteed by articles 14 (5) have been violated as he was denied the right to appeal because the appeal court did not provide any explanation on the reasons it rejected the appeal and did not examine substantive deficiencies of his conviction. Cassation review was nothing but a mere formality. He was not allowed to be present during the cassation court hearings.

3.8 The author claims a violation of article 17 of the Covenant arguing that the State party unlawfully recorded and published the transcripts of her husband's phone calls during his presidential campaign in 2010. The taping was not necessary, legal or justified and was therefore a violation of Mr. Statkevich's right to privacy.

3.9 The author further claims a violation of Mr. Statkevich's rights under articles 19, 21 of the Covenant since the restrictions such as the confiscation of campaign property, recordings of his phone conversations and his detention, imposed by the State party on the exercise of these rights were not necessary in order to achieve the goals defined by a permissible restriction such as protecting interests of national security, public safety or public health. Moreover, the restrictions imposed by the State party on these rights were not in conformity with the law. His participation in the demonstration of 19 December 2010 was an expression of the rights enshrined in the Covenant because the sole purpose of the demonstration was to peacefully express opposition to fraudulent election results with the aim to promote democracy.

3.10 The author claims a violation of Mr. Statkevich's rights under article 22 of the Covenant arguing that he was arrested because he exercised his right to freedom of association.

3.11 Finally, the author claims a violation of her husband's rights under article 25 of the Covenant as all he suffered was a consequence of his exercising his right to participate in the political process. He notes that he wanted to advocate for a multi-party system and democratic electoral reforms but he was harassed, arrested, beaten, tortured and, subsequently, sentenced to six years in prison due to his political activities. In this connection, he notes that the link between these reprisals and his efforts to engage in public affairs and, particularly, in the election process in 2010 has been clearly acknowledged by the UN Working Group on Arbitrary Detention<sup>9</sup>.

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

4.1 By note verbale of 12 June 2015, the State party returned the communication as it was not in Russian or Belarussian languages. By note verbale of 6 October 2015, the State party requested to be provided with the complete communication including annexed documents in Russian or Belarussian languages.

4.2 By note verbale of 3 December 2018, the State party informed that the communication was submitted without the required documentation, which proves that Mr. Statkevich authorised the author to represent him and submit the communication to the Committee. The State party contends that the registration of communications should strictly uphold and be in strict conformity with the provisions of the Optional Protocol to the Covenant on Civil and Political Rights.

4.3 By note verbale of 20 May 2019, the State party challenged the registration of the communication since it was registered in violation of article 1 of the Optional Protocol to the Covenant on Civil and Political Rights. The State party stated that there was no power of attorney for Marina Adamovich. Furthermore, the State party noted that the author and Mr. Statkevich authorised a U.S.-based organisation "Freedom Now" and a US based law firm "Hogan Lovells" to represent her and her husband, while both organizations are not under the jurisdiction of Belarus but of a third country. The state party claimed that at the time of the submission of the observations,<sup>10</sup> nothing prevented Mr. Statkevich from presenting personally his interests before the Committee. In view of the above, the State party was of

<sup>9</sup> The author refers to paragraph 9 of the WG report 'A/HRC/WGAD/2011/13' accessible at : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/111/78/PDF/G1211178.pdf?OpenElement>.

<sup>10</sup> Mr. Statkevich was released from prison August 22, 2015 after receiving a presidential pardon.

the view that no further procedural actions regarding the communication should be taken and the communication should be discontinued.

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

5.1 On 25 March 2020, the author submitted her comments to the State party observations. She claimed that third party<sup>11</sup> submission of the petition was in accordance with the practice and Rules of Procedure of the Committee, in particular Rule 91<sup>12</sup> which states that a communication submitted on behalf of an individual shall be with their consent "unless the author(s) can justify acting on their behalf without such consent." The actions of the State party prevented the author from obtaining written authorization from Mr. Statkevich, Mr. Statkevich was not allowed to see his family until six months after his arrest. Once convicted, he was subjected to multiple prison transfers, often to stricter prisons where his communication with the outside world was limited and often revoked for allegedly violating prison rules. Furthermore, prison officials confiscated all of his incoming mail and refused to send his outgoing mail. Ms. Adamovich, as Mr. Statkevich's wife, was justified in submitting a communication on his behalf. Rule 99(b) of the Rules of Procedure allows that communication submitted on behalf of an alleged victim may be accepted when it appears that the individual in question is unable to submit the communication personally.<sup>13</sup>

5.2 In relation to the State party's claim that nothing was preventing Mr. Statkevich from presenting personally his interests before the Committee after his release, the author stated that Mr. Statkevich had been detained for nearly three years at the time of the communication's submission and was scheduled for release in December 2017.<sup>14</sup> And even if he was no longer in prison, he has been subjected to detention on at least seven occasions since August 2015.

5.3 The author also claims that the State party had not acted in good faith.

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

#### *Considerations 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 assertion that there are no legal grounds for the consideration of the author's communication, insofar as it is registered in violation of the provisions of the Optional Protocol.

6.4 The Committee recalls that article 39 (2) of the Covenant authorizes it to establish its own rules of procedure, which the States parties have agreed to recognize. 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). The Committee recalls its practice, as reflected in rule 96 (b) of its rules of procedure, that victims may be represented by a person of their choice, provided that the representative is duly authorized. 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 to forward its views to the State party and to the individual (article 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that

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<sup>11</sup> U.S.-based organisation "Freedom Now" and "Hogan Lovells".

<sup>12</sup> Rules of Procedure of the Human Rights Committee, U.N. Doc. CCPR/C/3/Rev.11, (January 9, 2019) Rule 91.

<sup>13</sup> Ibid, Rule 99.

<sup>14</sup> He was released from prison August 22, 2015 after receiving a presidential pardon.

would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.<sup>15</sup> It is up to the Committee to determine whether a case should be registered.<sup>16</sup>

6.5 The Committee takes note of the State party's argument that the communication is inadmissible since it was submitted to the Committee by Marina Adamovich, the wife of Mr Statkevich, without a power of attorney to present his interests before the Committee. However, it has been the long-standing practice of the Committee to allow relatives to bring proceedings for alleged victims, who have died, disappeared or been prevented for other reasons from bringing a communication or designating a representative.<sup>17</sup> In this respect, the Committee recalls that rule 96 (b) of its rules of procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative, but that a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally.<sup>18</sup> In the present case, the Committee notes that the alleged victim was being detained at the time of submission of the communication. The Committee also notes the author's explanation, that the actions of the State party prevented Ms. Adamovich from obtaining written authorization from Mr. Statkevich, since he was not allowed to see family until six months after his arrest. Furthermore, prison officials confiscated all of his incoming mail and refused to send his outgoing mail (see para. 5.1 above). In the circumstances, the failure to provide a power of attorney cannot be attributable to the alleged victim or to his relatives. The Committee further recalls that, where it is impossible for the victim to authorize the communication, the Committee has considered a close personal relationship to the alleged victim, such as family ties, as a sufficient link to justify an author acting on behalf of the alleged victim.<sup>19</sup> In the present case, at the time of the submission of the communication, Mr. Statkevich was in incommunicado detention, with limited access or no access at all to his family and counsel. The State party did not provide any information neither on the conditions of detention of the author's husband nor on his access to his family and lawyers. In view of the information on file, the Committee notes that the complaint was submitted on behalf of the alleged victim by his wife, who has presented a duly signed power of attorney for the counsels to represent them before the Committee. The Committee therefore considers that the author is justified by reason of close family connection in acting on behalf of Mr. Statkevich.

6.6 The Committee takes note of the State party's argument that the communication is inadmissible since it was submitted to the Committee by third parties which are not under the jurisdiction of Belarus but of a third country and not by the alleged victim himself. It also notes that it has been its longstanding practice that authors may designate representatives of their choice, not only to receive correspondence, but to represent them before the Committee. The Committee states that none of the provisions of the Optional Protocol or the Rules of procedure prohibit representation by a legal entity. Also the Committee notes that the Optional Protocol (articles 1 and 2) applies the requirement of "subject to State party jurisdiction" only in relation to the victims of human rights violations. The Rules of procedure make no provision for such issue concerning legal representation by foreign legal

<sup>15</sup> See, e.g., communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Pavel Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

<sup>16</sup> See communication No. 2201/2012, *Tyvanchuk v. Belarus*, Views adopted on 26 March 2018, para. 5.2.

<sup>17</sup> See communication No. 2586/2015, *Zakharenko v. Belarus*, inadmissibility decision of 17 Mar 2017, para. 6.3.

<sup>18</sup> See also communication No. 1355/2005, *X. v. Serbia*, inadmissibility decision of 26 March 2007, para. 6.3.

<sup>19</sup> See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40)*, para. 580. See also, inter alia, communications No. 5/1977, *Bazzano v. Uruguay*, Views adopted on 15 August 1979, para. 5; No. 29/1978, *E. B. v. S.*, decision on admissibility adopted on 14 August 1979; No. 43/1979, *Drescher v. Uruguay*, Views adopted on 21 July 1983, para. 3.

entities as well. Accordingly, the Committee is not precluded by article 1 of the Optional Protocol from examining the communication.

6.7 The Committee notes that the State party has not contested that the domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded from examining the communication by the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.8 The Committee takes note of the author's submission that the State party violated its obligations under article 2 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>20</sup> Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.9 The Committee notes the author's claim that Mr. Statkevich's rights under article 14 (5) of the Covenant have been violated as the appeal court did not provide any explanation on the reasons why it rejected the appeal and did not examine substantive deficiencies of Mr. Statkevich's conviction. The Committee notes, however, that the decision of Minsk City Court of 19 July 2011 does not merely refer to the procedural aspects of the hearing performed by the District Court, but to the "information on file", which indicates that the court did engage in an evaluation of facts and evidence and did not limit the review to points of law only. Accordingly, the Committee finds the author's claims under article 14 (5) to be insufficiently substantiated for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.<sup>21</sup>

6.10 The Committee notes the author's claim that Mr. Statkevich's rights under article 22 of the Covenant have been violated as Mr. Statkevich was arrested because he exercised his right to freedom of association. In the absence of any other pertinent information on file in that respect, the Committee considers the author has failed to sufficiently substantiate these claims for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.11 The Committee considers that the author has sufficiently substantiated the remaining claims raising issues under article articles 7, 9, 10, 14 (1, 2, 3 (b) (d) (e) (g)), 17, 19, 21, 25 of the Covenant, for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol. The Committee notes that, in failing to respond to a communication, or responding incompletely, a State that is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication.<sup>22</sup> In the absence of any explanations from the State party in respect of the merits, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.<sup>23</sup>

7.2 With regard to the author's claim that Mr. Statkevich was subjected to torture, ill-treatment and psychological pressure at the pre-trial detention and investigation stage, with the aim of obtaining a confession, as well as after his conviction, the Committee notes that she provided a detailed description of the methods used, such as emotional and physical abuse by harassment and threats. During the 19 December 2010 crackdown by police special forces,

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<sup>20</sup> See, for example, communications No. 2202/2012, *Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision of inadmissibility adopted on 23 July 2012, para. 8.5; No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

<sup>21</sup> See, for example, communications No. 2337/2014, *Volchek v. Belarus*, Views adopted on 23 July 2020, para. 6.7.

<sup>22</sup> General comment No. 33 (2008), para. 10.

<sup>23</sup> See, for example, communications No. 2455/2014, *Reviako v. Belarus*, Views adopted on 23 July 2020, para. 8.1



Mr Statkevich was physically beaten. He was forced to sleep on the floor with the lights on, he was refused access to a toilet, he was kept among prisoners with infectious diseases. He was transported to an unknown location with an intimidation purpose, during any movements he had his hands bound with handcuffs behind his back. The authorities have subjected Mr. Statkevich to incommunicado detention for several months and denied him access to counsel; officers harassed him and threatened him. In the absence of the State party's observations on these allegations, due weight must be given to the author's claims, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

7.3 In the light of the above conclusions, the Committee does not find it necessary to examine separately the author's claims under article 10 of the Covenant.

7.4 The Committee notes the author's claim, under article 9 of the Covenant, that Mr. Statkevich was not informed about the reasons of his arrest and charges against him, his pre-trial detention was also unlawful as it was not justified. The first time he was brought before a judge was more than five months after his arrest, when the trial began.<sup>24</sup> The Committee notes that the State party has not demonstrated that Mr. Statkevich's arrest was reasonable and necessary. In the absence of any further information, therefore, the Committee concludes that there has been a violation of article 9 (1) of the Covenant.

7.5 The Committee further notes the author's claim that Mr. Statkevich remand in custody was sanctioned by the Prosecutor, who is not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that the above-mentioned provision entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent to the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with.<sup>25</sup> The Committee is, therefore, not satisfied that the Prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized by law to exercise judicial power within the meaning of article 9 (3) of the Covenant,<sup>26</sup> and concludes that there has been a violation of that provision.

7.6 The Committee notes the author's claims that Mr. Statkevich was denied a fair trial before an independent and impartial tribunal, in violation of article 14 (1) of the Covenant (see paras. 2.6 and 3.4 above), and that the State party's courts did not offer him the minimum guarantees set forth in article 14 (3) (b) (d) and (e) of the Covenant. The Committee also notes the author's claim that, during his pre-trial detention in the premises of the KGB, the author underwent long interrogations during the night, without the presence of his lawyer and that he was held incommunicado and denied access to counsel during three months after his arrest. Later, the counsel's access was restricted. The Committee also notes the author's claim that, his counsel was not permitted to confront the prosecution's key witnesses and the court failed to compel a number of witnesses. In the absence of comments from the State party to counter the author's allegations, the Committee concludes that the facts before it constitutes a violation of article 14 (1) and (3) (b) (d) and (e), of the Covenant.

7.7 With regard to the allegations of violations of article 14 (2), the Committee notes the author's claim that Mr. Statkevich's right to be presumed innocent has been violated, because the state-controlled media and the State party's highest authorities publicly accused him of attempting to overthrow the incumbent President, and stated that the author was guilty of having committed crimes in connection with the events of 19 December 2010 before his guilt had been duly established by the court (see paras. 3.4 and 3.5 above). The author also claimed that he was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case. The State party did not contest those allegations. The Committee recalls that the accused person's right to be presumed innocent until proved guilty by a competent court is guaranteed by the Covenant. In the absence of any relevant information from the State party,

<sup>24</sup> See, for example, *Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

<sup>25</sup> See *Kulomin v. Hungary* (CCPR/C/50/D/521/1992), para. 11.3; and *Platonov v. Russian Federation* (CCPR/C/85/D/1218/2003), para. 7.2.

<sup>26</sup> See Human Rights Committee, general comment No. 35 (2014), para. 32.

the Committee concludes that the facts as described by the author disclose a violation of article 14 (2) of the Covenant.

7.8 The Committee also recalls its previous jurisprudence that the wording of article 14 (3) (g) of the Covenant, that no one shall be compelled to testify against himself or to confess guilt, must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt.<sup>27</sup> The Committee also recalls that, in cases involving allegations of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.<sup>28</sup> In the circumstances, the Committee concludes that the facts before it also disclose a violation of 14 (3) (g) of the Covenant.

7.9 The author also claims a violation of article 17 of the Covenant, arguing that the State party's authorities unlawfully tapped Mr. Statkevich's telephone, recording calls made by himself during presidential campaign in 2010 and thereafter published the transcripts. He further argued that the wiretapping was unnecessary, illegal and unjustified, and was therefore a violation of his right to privacy. Furthermore, information obtained illegally through that instance of wiretapping was used by the trial court as evidence to prove the author's guilt. The Committee notes in that regard that the State party has not commented on the author's detailed allegations in that regard. The Committee therefore concludes that the facts before it amounts to a violation by the State party of the author's right under article 17 of the Covenant.

7.10 The Committee notes the author's claim that Mr. Statkevich's criminal conviction under article 293, part 1, of the Criminal Code constituted a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not provided for by law and were not necessary in a democratic society. The author argued that the State party's authorities prosecuted Mr. Statkevich and sentenced him to five years' imprisonment for exercising his right to freedom of expression and political activities. The Committee also notes the author's claim that such a punishment was manifestly disproportionate because the investigating bodies did not show that there was any direct causal link between Mr. Statkevich's incriminating statements and the unlawful actions of the unidentified individuals who stormed the House of Government on 19 December 2010.<sup>29</sup>

7.11 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, which states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society<sup>30</sup>. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only such as are provided by law and are necessary: (a) for the respect of the rights or reputations of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>31</sup> The Committee also recalls that it is for the State party to demonstrate that the restrictions on Mr. Statkevich's rights under article 19 of the Covenant were necessary and proportionate.<sup>32</sup> In the present case, the Committee observes, however, that neither the State party nor the courts have provided any explanation as to how the

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<sup>27</sup> See *Berry v. Jamaica* (CCPR/C/50/D/330/1988), para. 11.7; *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 7.4; and *Deollall v. Guyana* (CCPR/C/82/D/912/2000), para. 5.1.

<sup>28</sup> See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

<sup>29</sup> See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 6.10.

<sup>30</sup> See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

<sup>31</sup> *Ibid.*, para. 22.

<sup>32</sup> See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; and *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

restrictions imposed on Mr. Statkevich in the exercise of his right to freedom of expression were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. Accordingly, the Committee finds that the State party violated the author's rights under article 19 (2) of the Covenant.

7.12 The Committee notes the author's claim that, by sentencing Mr. Statkevich to six years' imprisonment under article 293, part 1, of the Criminal Code for having organized an unauthorized but peaceful public gathering, the State party disproportionately interfered in the exercise of his right of peaceful assembly under article 21 of the Covenant. Such interference is not provided for by law, since the provisions of article 293 of the Criminal Code are too vague and broad to be able to foresee the legal consequences of one's actions and there is no definition of what constitutes "mass disorder" in domestic law. The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including a spontaneous one, at a public location. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions. Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21.<sup>33</sup> In the absence of any relevant information from the State party, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.<sup>34</sup>

7.13 In the light of the above conclusions, the Committee does not find it necessary to examine separately the author's claims under article 25 of the Covenant.

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 articles 7, 9 (1) and (3), 14 (1), (2) and (3) (b), (d), (e) and (g), 17, 19 (2), 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 provide Mikalai Statkevich with adequate compensation, expunge his conviction from his criminal record and carry out a prompt, impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiate criminal proceedings against those responsible. 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 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>33</sup> General comment No. 37 on the right of peaceful assembly (2020), para. 36.

<sup>34</sup> See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 6.11.