



# 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

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<i>Communication submitted by:</i>	Egor Bobrov (not represented by counsel)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Belarus
<i>Dates of communication:</i>	17 November 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 03 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 issue:</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>	2 and 5(2)(b)

\* 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 present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelic, Bomariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval. The text of two individual opinions by Committee members Christof Heyns, José Manuel Santos Pais and Olivier de Frouville is annexed to the present Views.

1. The author of the communication dated 17 November 2010 is Mr. Egor Bobrov, a national of Belarus born in 1984. He claims to be a victim of a violation by Belarus of his rights under articles 2(3) (a); 7; and 14(1) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

#### **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 different cells of the Offenders' Isolation Centre in Minsk, and complains that conditions of detention in all of those cells were cruel, inhumane and degrading. He submits that the overcrowded cells had no beds and no chairs, with only one wooden board used for sleeping by around 10 detainees at a time. He was forced to sleep fully clothed on bare boards. The author was not provided with mattress, blanket or pillow, although the temperature inside varied between +12 and +14 °C. The temperature dropped to +10 °C during the night, which resulted in him being constantly cold and having difficulties to sleep, as well as headaches. The cells were very small, with only 1,5 metres between the board and cell walls, therefore he could not practice any physical activity. During his detention he was deprived of daily walks and was always kept in his cells. The author also claims that, because of poor ventilation, he was exposed to strong tobacco smoke that had an adverse impact on his health (he being non-smoker). Furthermore, the toilet was not separated from the common area of the cell, and he had to use the toilet in full view of other detainees, which amounted to degrading treatment. The author also complains of bad quality of 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, as outlined above, had caused him physical and mental suffering and, taken as a whole, amounted to cruel, inhuman and degrading treatment, a violation of article 7 of the Covenant and of articles 1; 9; 10; 12; 14; 15; 19; 20, para. 1; and 21, para. 1, of the Standard Minimum Rules for the Treatment of Prisoners. He was released on 18 December 2009.

2.2 On 29 December, 2009, the author initiated civil proceedings against the illegal inactions of the administration of the detention facility to the Moscow District Court of Minsk city, claiming that the conditions of his detention violated his rights under article 7 of the Covenant. On 11 January 2010, the court refused to initiate proceedings for lack of jurisdiction, indicating that national legislation provides 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 the Minsk City Court, arguing that article 56 of the Regulations No. 194 was only applicable at the time of his detention, and that article 60, paragraph 1, of the Constitution of Belarus guarantees protection of one's rights and liberties by a competent, independent and impartial court of law. On 11 February 2010, the Minsk City Court upheld the decision of the Moskovsky District Court, thus making the decision of the Moscow District Court final.

2.4 The author did not complain to the Chairperson of the Minsk City Court and to the Chairperson of the Supreme Court of Belarus under the supervisory review procedure,

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

<sup>2</sup> The court based its decision on article 56 of the Internal Regulations of special establishments of internal affairs agencies carrying out administrative sentences in the form of administrative arrest, approved by the resolution No. 194 of the Ministry of Internal Affairs of 8 August 2007, (hereinafter the Regulations No. 194). Article 56 reads: "Suggestions, appeals and complaints, addressed to a head of a special establishment, shall be registered in the journal for registration of administrative detainees' complaints in accordance with Annex 3, and reported to a head of a special establishment".

because such extraordinary appeals are dependent on the discretionary power of a judge and are limited to issues of law only – therefore such appeals cannot be considered as 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 Belarus 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 the inhuman conditions of his detention, in particular the overcrowded and cold cells, the denial of everyday walks, the inappropriate isolation of the toilet facilities, the poor ventilation, clothing and food, taken as a whole, amount to a violation of article 7 of the Covenant.

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 By a note verbale dated 13 August 2012, and again on 4 January 2013, the State party noted the lack of legal grounds for consideration of the communication on both on admissibility and the merits. It argued that the author had not exhausted all available domestic remedies because he did not submit an appeal to the Chairman of the Minsk City Court and to the Chairman 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 proceedings, 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 submitted that it has discontinued the proceedings regarding the communication and would disassociate itself from the Views that might be adopted by the Committee.

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

5.1 By a letter dated 17 October 2012, the author commented on the observations of the State party. He argued 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 the Minsk City Court of 11 February 2010 entered into force on the same day. The author also explained 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 stated that he did not make use of the supervisory review procedure by lodging complaints to the Chairman of the Minsk City Court and the Chairman of the Supreme Court, because the supervisory review procedure would not lead to the review of the case. He claimed that the consideration of a supervisory review application was dependent on the discretionary power of a single official and could not be regarded as an effective remedy for the following reasons:

- a) would not trigger a review of the case;
- b) would be considered by a single official;

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

c) case materials would be requested for review only at the discretion of this official;  
d) would be considered in the absence of the parties to the case, 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 pointed 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, which have entered into force, do not constitute a remedy, which has to be exhausted for the purposes of article 5(2)(b) of the Optional Protocol.<sup>4</sup> The author also submitted that, for the reasons above, any appeal to the General Prosecutor's Office under the supervisory review would not constitute an effective remedy.

## Issues and proceedings before the Committee

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

6.1 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 was registered in violation of the provisions of the Optional Protocol due to non-exhaustion of domestic remedies; and that if a decision is taken by the Committee on the present communication, its authorities will 'disassociate' themselves from the Committee's Views.

6.2 The Committee observes that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1). 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 (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 a communication and in the expression of its Views.<sup>5</sup> It is up to the Committee to determine whether a case should be registered. By failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring outright that it will not accept the Committee's determination of the admissibility and the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol.<sup>6</sup>

### *Considerations 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 notes the State party's assertion that the author has failed to request that the Chairman of the Minsk City Court, the Chairman of the Supreme Court, or the

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

<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.

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 constitute 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> In the absence of such showing in the present case, 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 submission 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 its general comment No. 20 (1992) on the prohibition of torture, which states that article 7 should be read in conjunction with article 2(3) of the Covenant.<sup>9</sup> The Committee therefore considers that the author's claim of violation under article 2(3)(a) of the Covenant shall be considered in conjunction with article 7.

7.5 The Committee considers that the communication is admissible as far as it raises issues under article 7 read alone and in conjunction with article 2(3)(a), and article 14(1), of the Covenant. The Committee considers that the author's claim about the conditions of his detention also appears to raise issues under article 10(1) of the Covenant. Accordingly, it declares this part of the communication admissible and proceeds to its examination on the merits.

#### *Considerations of the merits*

8.1 The Human Rights 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.

8.2 The Committee notes the author's claim that he was incarcerated in an overcrowded but small cell without beds, chairs or heating, under extremely poor sanitary and hygienic conditions. For the full duration of his detention, he was obliged to sleep on a wooden board with 10 other people and wasn't allowed to leave his cell. The temperature inside varied between +10 and +14 °C, which resulted in him being cold and caused him difficulties to sleep. The author also claims that the toilet was not separated from the common area of the cell, and he had to use the toilet in full view of other detainees. The Committee notes that during his detention the author was deprived of daily walks and was always kept in his cells. The author claims that in overall, the conditions of his detention, as outlined above, had caused him physical and mental suffering and amounted to cruel, inhuman and degrading treatment. The Committee notes that these allegations are consistent with the findings of the

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

<sup>9</sup> General Comments No. 20, para. 14.



Committee against Torture in its December 2011 concluding observations with regard to the State party, where the CAT Committee was deeply concerned about continuing reports of poor conditions in places of deprivation of liberty that included the problem of the overcrowding, poor diet and lack of access to facilities for basic hygiene and inadequate medical care.<sup>10</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; and they must be treated humanely in accordance with the Standard Minimum Rules for the Treatment of Prisoners.<sup>11</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 additional 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>12</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 against the illegal inactions of the administration of the detention facility to the Moscovsky District Court of Minsk city, claiming that the conditions of his detention violated his rights under article 7 of the Covenant, the court refused to initiate proceedings for lack of jurisdiction, indicating that national legislation provides 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, where the author had served his administrative sentence.

8.4 The Committee reiterates the importance it attaches to States parties establishing appropriate judicial and administrative mechanisms for addressing alleged violations of rights 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 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 the national courts refused to initiate proceedings for 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), read alone and in conjunction with article 2(3)(a) of the Covenant have been violated.

8.5 In 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 Human Rights 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, paragraph 1, 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

<sup>10</sup> CAT/C/BLR/CO/4, para. 19.

<sup>11</sup> See *Aminov v Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

<sup>12</sup> See *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para.7.4; *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para 6.4.

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 complaint against conditions of detention to ensure that complainants have access to effective remedy.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 official languages in the State party.

**Annex:**

**Separate opinion of Committee Members Mr. Christofer Heyns and Mr. José Manuel Santos Pais (partly concurring, partly dissenting)**

1. We regret that we are unable to join the majority of the Committee in finding that the incarceration of the author constituted violations of the author's rights under articles 7 and 10 (1) of the Covenant.
2. The first question is whether this case should have been admitted at all. There is limited information about the real nature of the conditions of detention of the author. The Committee states that the cell where he was held was overcrowded; there were no beds or chairs; and the toilet was not separated from the cell (paragraph 8.2). According to the author, he was moved between cells (see para 2.1), the sizes of which are unknown. There was a wooden board of some sort on which to sleep. Given the relative short duration of his incarceration - 15 days - it is not clear how serious the effects on him had been.
3. The State party has not collaborated with the Committee, and as a result, due weight must be given to the allegations by the author. However, the lack of collaboration by the State party cannot, by itself, complete a sketchy picture presented by the author.
4. In a similar case, involving the same State party and prison, and decided during the same session, the Committee decided a claim of a violation of article 7 was inadmissible due to lack of substantiation.<sup>13</sup> In our view, the complaints in the current case should likewise have been declared inadmissible due to a lack of substantiation. (It should be noted that the Committee had itself added the complaint under article 10 (1).)
5. We also do not agree with the majority on some substantive aspects.
6. The case turns on the general conditions of detention. No allegations of violence or other mistreatment by the wardens were made by the author, nor that he was treated differently from the other detainees.
7. This brings up the relationship between articles 7 and 10 (1). The Committee in its jurisprudence often applies article 10 (1) to general conditions of detention, and generally reserves findings a violation of article 7 for situations where the individual is singled out for specific attacks.<sup>14</sup> This puts into question the approach which the Committee seems to follow in the current case, namely that a violation of article 10 (1) is merely one manifestation of a violation of article 7 (paragraph 8.2).
8. In dealing with the question whether there was a violation of article 10 (1) in the present case, the Committee is no doubt correct in asserting that persons deprived of their liberty must be treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners (para 8.2). However, not every individual infringement of those Rules necessarily constitute a violation of article 10 (1) (see §§ 1-3 of these Rules). Whether there has been such a violation must be determined on the basis of the cumulative effect of the conditions of detention. A "minimum level of severity" must be reached, to be assessed on the basis of "all circumstances of the case, such as the nature and context of the treatment, its duration, [and] its physical and mental effects ...".<sup>15</sup>

<sup>13</sup> Communication No. 2182/2012, *Stefanovich v Belarus*, views adopted 27 March 2017, paragraph 7.4. The period of detention here was only 7 hours

<sup>14</sup> Cf communication No. 845/1998, *Kennedy v Trinidad and Tobago*, views adopted 26 March 2002.

<sup>15</sup> See communication No. 1184/2003, *Brough v Australia*, views adopted on 17 March 2003, para. 9.2.



9. In finding a violation of article 10 (1), the Committee does not refer to the importance of considering the duration of the incarceration in such cases, nor to the relatively short duration in this particular case. One would expect such a period of detention to be accompanied by comparatively severe conditions before a violation of article 10 (1) is found.

10. The Committee says that it has repeatedly found that there had been violations of article 10 (1) in similar cases (paragraph 8.2) and refers (in footnote 12) to *Weerawansa v. Sri Lanka*.<sup>16</sup> However, in that case, the author had been held for around seven years on death row "in a small and filthy cell, in which he is kept for twenty three and a half hours a day with inadequate food."<sup>17</sup> The Committee secondly refers to *Evans v. Trinidad and Tobago*.<sup>18</sup> There the author was detained in solitary confinement on death row for a period of five years, in a cell measuring 6 by 9 feet, with no sanitation except for a slop pail and no natural light. He was allowed out of his cell only once or twice a week, in handcuffs. Neither of these cases appear to be comparable to the facts of the case under consideration.

11. The finding of a violation of article 7, likewise, seems to be out of line with other Committee cases, where the specific mistreatment of the individual is, as a general rule, required.

12. In a small number of cases, mostly of an exceptional nature, general conditions of detention have served as a basis for a violation of article 7, even where the specific individual was not singled out for mistreatment: for example, where detainees had to sit on excrement and had no food,<sup>19</sup> and where the author had been held for ten years alone in a small cell.<sup>20</sup>

13. The facts in the present case are not comparable. A finding of an article 10 (1) violation is even questioned. There appears to be little room for finding a violation of article 7.

<sup>16</sup> Communication No. 1406/2005, views adopted 17 March 2009.

<sup>17</sup> *Weerawansa v. Sri Lanka*, para. 7.4.

<sup>18</sup> Communication No. 908/2000, views adopted 21 March 2003, para. 6.4.

<sup>19</sup> Communication No. 188/1984, *Portorreal v Dominican Republic*, views adopted on 5 November 1984.

<sup>20</sup> Communication No. 529/1993, *Edwards v Jamaica*, views adopted on 28 July 1997.

### **Opinion individuelle (partiellement dissidente) de M. Olivier de Frouville**

1. Le raisonnement suivi par le Comité dans ces constatations est difficilement compréhensible, pour plusieurs raisons.

2. L'auteur invoquait une violation de l'article 7 du Pacte, mais les faits allégués ne permettaient pas, à mon sens, d'étayer une telle allégation : ils étaient plutôt de nature à étayer un grief relevant de l'article 10 du Pacte, qui concerne plus spécifiquement les mauvaises conditions de détention. Dans sa jurisprudence, le Comité a pu constater des violations de l'article 7 au titre des conditions de détention, mais uniquement dans des cas tout à fait extrêmes aux termes d'une évaluation à la fois objective et subjective (v. à cet égard l'opinion de M. Christof Heynz et de M. José Santos Pais). Les articles 7 et 10 sont complémentaires et ne se recoupent qu'en partie. Il me semble par conséquent que le grief au titre de l'article 7 aurait dû être déclaré irrecevable. Une option ouverte au Comité consistait à y substituer ex officio un grief au titre de l'article 10. Le Comité peut s'autoriser à procéder à une telle substitution lorsque l'auteur présente sa communication sans l'aide d'un conseil, comme c'était le cas de M. Bobrov. Mais ici, le Comité procède différemment et de manière peu explicite : il déclare recevable le grief au titre de l'article 7 mais constate sur le fond que la détention de l'auteur a été contraire au paragraphe 1 de l'article 10. Après ce glissement, il retourne toutefois à l'article 7, au motif que l'article 10 « étend aux personnes privées de liberté les garanties générales énoncées à l'article 7 », ce qui est une formule pour le moins étrange, avec un résultat qui ne l'est pas moins, puisque le Comité finit par constater une double violation des articles 7 et 10.

3. L'auteur invoquait également des violations du paragraphe 3 de l'article 2 – pour absence d'enquête sur les allégations de violation de l'article 7 – et du paragraphe 1 de l'article 14, à raison du rejet pour incompétence par un tribunal d'un recours présenté en matière civile pour dénoncer le manquement au « devoir d'agir » de l'administration. Le raisonnement du Comité sur la recevabilité est à nouveau difficilement compréhensible, mais je n'y reviens pas. Sur le fond, le Comité aboutit à un constat de violation du paragraphe 3 de l'article 2, en lien avec les articles 7 et 10 et décide de ne pas examiner séparément le grief au titre du droit d'accès à un tribunal. Pourtant, il me semble que l'auteur n'a pas étayé son allégation selon laquelle il n'a pas bénéficié d'un recours effectif : il n'a pas même prétendu avoir essayé d'exercer un recours administratif lorsqu'il était en détention et n'explique pas ce qui l'aurait empêché de dénoncer les mauvaises conditions de détention qu'il a dû subir. Par ailleurs, une fois libéré, il n'a pas porté plainte pour mauvais traitement ou dénoncé de toute autre manière les faits, mais a engagé une procédure civile pour rechercher la responsabilité de l'administration. Le tribunal auquel il a présenté cette plainte s'est déclaré incompétent. Or l'auteur n'a pas expliqué au Comité en quoi cette décision d'incompétence constituait une entrave injustifiée à son droit d'accéder à un tribunal. A mon sens, ces griefs étaient insuffisamment étayés et auraient dû être déclarés irrecevables.