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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning Communication No. 2182/2012 *,**

Communication submitted by:	Valentin Stefanovich (not represented by counsel)
Alleged victims:	the author
State party:	Belarus
Dates of communication:	15 November 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decisions, transmitted to the State party on 03 July 2012 (not issued in document form)
Date of adoption of decision:	27 March 2018
Subject matters:	Inhumane conditions of detention; access to justice; effective remedy
Procedural issue:	Exhaustion of domestic remedies; State party's failure to cooperate
Substantive issues:	conditions of detention; effective remedy
Articles of the Covenant:	2(3)(a), 7, and 14(1)
Articles of the Optional Protocol:	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 Santo Pais, Yuval Shany and Margo Waterval. The text of an individual opinion by Committee members Yuval Shany and Sarah Cleveland is annexed to the present decision.

1. The author of the communication dated 15 November 2010 is Mr. Valentin Stefanovich, a national of Belarus born in 1972. 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 23 March 2010, the author was detained by police officers and charged with an administrative offence. On 24 March 2010 at 02:40 he was taken to the Offenders' Isolation Centre (OIC) in Minsk and kept there for 7 hours, until he was taken to his court hearing. The author complains that conditions of detention in his cell at OIC were cruel, inhumane and degrading. He submits that the cell had no beds and no chairs, with only one wooden board used for sleeping by him and another detainee. 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 +10 and +14 °C, which resulted in him being constantly cold and having difficulties to sleep. Furthermore, the toilet was not separated from the common area of the cell, and he had to use the toilet in full view of another detainee who was held with him in the cell, 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. 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, in violation of article 7 of the Covenant and of articles 10, 12, 15, 19, and 20(1) of the Standard Minimum Rules for the Treatment of Prisoners.

2.2 On 2 April 2010, the author initiated civil proceedings at the Moscow District Court of Minsk city, claiming that the conditions of his detention had violated his rights under article 7 of the Covenant. On 11 May 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.[1]

2.3 On 24 May 2010, the author submitted a cassation appeal to the Minsk City Court, arguing that the Regulations No. 194 do not contain a procedure for submitting a complaint after release from 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 26 August 2010, the Minsk City Court upheld the decision of the Moskow District Court.

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, 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

[1] 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".

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 conditions of his detention do not meet the Standard Minimum Rules for the Treatment of Prisoners and 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, the State party noted the lack of legal grounds for consideration of the communication on both admissibility and the merits. It argued that the author has 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 15 January 2013, 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 26 August 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.[2]

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;

(c) case materials would be requested for review only at the disrection 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 Also, the author noted that it took 3 ½ months for the Minsk city court to hear his appeal, although by law his appeal should have been taken up by the appellate court not later than 15 days after being submitted. The court explained that this was due to the large number of appealed cases. The author claimed that further appeal to the Chairman of the Minsk city court and to the Chairman of the Supreme Court would have resulted in even longer delays in his case.

[2] 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.

5.4 The author further referred to the case of Vladislav Kovalev, who was executed before his appeal for a supervisory review was considered by the Chairman of the Supreme Court of Belarus, which showed that the supervisory review procedure in Belarus could not be considered an effective remedy.[3]

5.5 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, paragraph 2 (b) of the Optional Protocol.[4] 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.[5] 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.[6]

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.

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[3] See *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011).

[4] See *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

[5] 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.

[6] See *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 8.2.

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 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.[7] 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.[8] 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 claim that he was detained overnight for seven hours in a cell with no beds or chairs, with only a wooden board used for sleeping by him and another detainee, where the room temperature was between +10 and +14 °C, which resulted in him being constantly cold and having difficulties to sleep, with no separate toilet and salty food. He alleges that the conditions of his detention had caused him physical and mental suffering, and taken as a whole, amounted to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. While emphasizing that certain conditions of detention subjecting a detainee to inhuman and degrading treatment can violate article 7, the Committee refers to paragraph 4 of its General Comment No. 20 on prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, which states that "the Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied". In the present case, the Committee observes that the author was brought into the detention facility at 02:40 in the morning for an unspecified administrative offence and was released seven hours later. The Committee is of the view that the allegations raised by the author regarding the detention condions during his seven-hour overnight stay are not sufficient to establish a claim under article 7 of the Covenant. The Committee therefore concludes that the author failed to substantiate his claim under article 7, read alone and in conjunction with article 2(3)(a), of the Covenant for purposes of admissibility, and declares said claim inadmissible under article 2 of the Optional Protocol. In these circumstances, the Committee also considers that the authhor's claim under article 14(a) is inadmisiible under article 2 of the OP.

8. The Committee therefore decides:

(a)That the communication is inadmissible under article 2 of the Optional Protocol;

(b)That the present decision shall be transmitted to the State party and to the author.

[7] 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.

[8] 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.

Annex:

Separate opinion of Committee Members Mr. Yuval Shany and Ms. Sarah Cleveland (dissenting)

1. We regret not being able to join the other members of the Committee in finding the communication inadmissible.

2. The author alleged that following his detention on 23 March 2010, "at 02:40 he was taken to the Offenders' Isolation Centre (OIC) in Minsk and kept there for 7 hours, until he was taken to his court hearing", that "the cell had no beds and no chairs, with only one wooden board used for sleeping by him and another detainee." He claims that he "was not provided with mattress, blanket or pillow, although the temperature inside varied between +10 and +14 °C, which resulted in him being constantly cold and having difficulties to sleep. Furthermore, the toilet was not separated from the common area of the cell, and he had to use the toilet in full view of another detainee who was held with him in the cell". Finally, he complained of the quality of the food which caused him "epigastric burning". The author initiated civil proceedings in connection with the conditions of detention to which he was subject, but two judicial instances in Belarus rejected his complaint, citing lack of grounds for the complaint under domestic law.

3. The State party has contested jurisdiction on the basis of lack of exhaustion of local remedies (a position which the Committee rightfully rejected). It has not contested the merits of the author's allegations.

4. Despite the failure of the State party to contradict the allegations of the author, the Committee was of the view that "the allegations raised by the author regarding the detention conditions during his seven-hour overnight stay are not sufficient to establish a claim under article 7 of the Covenant" (para. 7.4). This seems to imply that the treatment to which the author was subjected did not reach the threshold of severity that would qualify it as an article 7 violation.

5. Note however that the Committee reached in a case featuring comparable facts - Bobrov v. Belarus[9] that conditions of detention in the Minsk OIC resulted in a violation of the rights of the author in that case under article 7 and 10. It appears that the decisive factor distinguishing between the two cases is the length of time during which the authors were held under essentially the same conditions (15 days vs. 7 hours).

4. While we agree that article 7 bans only serious forms of ill-treatment, and that the length of time spent in detention under harsh conditions is a relevant factor in determining whether or not the threshold of gravity has been reached in ill-treatment in detention cases, [10] we are also of the opinion that article 7 protects against certain forms of short-term exposure to harsh detention conditions. Thus, when confronted with allegations of poor conditions of detention qualifying as "degrading", such as having to sleep on the floor and use the toilet in front of another inmate, which potentially results in a feeling of humiliation or debasement, it is generally for the State party to explain how the duration of exposure to such conditions influences the intensity of the detainee's humiliation or debasement.

[9] Comm. No. 2181/2012, Bobrov v. Belarus, Views adopted on 27 March 2018.
[10] Comm. No. 265/1987, Vuolanne v. Finland, Views adopted on 7 April 1989, para. 9.2.

5. It is useful to observe that in its case law on what constitutes "degrading treatment", the European Court of Human Rights has held that it will consider whether the object of the treatment "is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3"[11]. It noted however that the 'object of treatment test' is not dispositive of the question of whether article 3 (the prohibition on torture or inhuman or degrading treatment and punishment) was violated. Thus, in Peers v Greece, it held that poor conditions in holding cells and lack of privacy when using toilets gave rise to a violation of article 3, because "the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance." [12]

6. In the circumstances of the case, the author was deprived of his liberty in connection with a charge of committing an administrative offence, and he was exposed to harsh conditions of detention, which seem to clearly fall short of articles 10, 12, 19 and 20(1) of the Standard Minimum Rules for the Treatment of Prisoners.[13] [4]

7. Although the short duration in which the author was held in detention renders it less likely that the suffering he experienced reached the threshold of gravity provided for in article 7 of the Covenant, one cannot but note that the State party did not provide any information contradicting the assertion that he experienced physical and mental suffering while in detention, as well as degrading treatment. Nor did the State party provide information explaining the object of the treatment to which the author was exposed, taking into consideration the fact that he was charged with a mere administrative offence, and showing that the conditions of detention were not deliberate, and were not intended to humiliate and degrade him. We also note that the domestic legal system in Belarus does not appear to provide the author with an effective remedy to examine allegations relating to detention conditions after release, and that as a result, he could not obtain a domestic remedy for any violation of his rights under articles 7 and 10 of the Covenant (had he wished to make an article 10 claim).

8. Consequently, we believe that the author made a prima facie case in support of his allegation and that it was premature for the Committee to dismiss the case as inadmissible, without considering whether, on the basis of the information before us, the author's rights under article 7, read alone and in conjunction with article 2(3), were violated.

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[11] Peers v. Greece, Judgment of the European Court of Human Rights of 19 April 2001, at para. 68.

[12] Ibid, at para 75. See also Cenbauer v. Croatia, Judgement of the European Court of Human Rights of 9 March 2006 (incarceration in crowded, poorly maintained cell with limited access to toilet violated article 3); Mathew v Netherlands, Judgment of the European Court of Human Rights of 29 Sept. 2005 (incarceration in adequate detention facility violated article 3).

[13] United Nations Standard Minimum Rules for the Treatment of Prisoners 1955 (substituted by the Nelson Mandela Rules of 29 September 2015, UN Doc. A/C.3/70/L.3 (2015).