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|  |  | CCPR/C/139/D/2929/2017 |
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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2929/2017 [[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*,[[3]](#footnote-4)\*\*\*

*Communication submitted by:* Leonid Sudalenko

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 31 December 2016 (initial submission)

*Document references:* Special Rapporteur’s rule 97 decision, transmitted to the State party on 16 January 2017 (not issued in document form)

*Date of adoption of Views:* 20 October 2023

*Subject matter:* Illegal surveillance and arbitrary detention for customs control; human rights and fight against extremism

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issues:* Arbitrary detention; liberty and security of person; fair trial – examination of evidence; right to privacy

*Articles of the Covenant:* 9 (1); 14 (1); and 17

*Articles of the Optional Protocol:* 5 (2)(b)

1.1 The author of the communication is Mr. Leonid Sudalenko, a national of Belarus born in 1966. He claims that Belarus has violated his rights under article 9 (1), article 14 (1) and article 17 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 not represented.

1.2 The present communication was submitted for consideration before the State party’s denunciation of the Optional Protocol became effective on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee’s previous case law, the State party continues to be subject to the application of the Optional Protocol as regards the present communication.[[4]](#footnote-5)

 The facts as submitted by the author

2.1 The author is a human rights defender, who helps citizens of Belarus claim their civil and political rights at national and international levels. His activities are under scrutiny by the authorities. The Committee has repeatedly found violations of his rights.[[5]](#footnote-6)

2.2 On 24 May 2015, the author was crossing the Belarus state border in his car at Kamenny Log checkpoint. A frontier officer scanned his passport, lowered his eyes, got nervous and called for his supervisor who took the author’s passport and left. The author and his car underwent an indepth search . He was requested to take off his trousers and socks. No other person crossing the border underwent a similar control.

2.3 On 25 August 2015, at 6:30 pm, the author was on a train from Vilnius (Lithuania) to Minsk (Belarus). During the international border crossing at Goodogay checkpoint, Minsk Regional Customs Office and the military unit No. 2044 of Smorgonsk Frontier Group conducted a customs and frontier control of the passengers. The author passed the customs control. However, upon scanning his passport, an officer of the military unit No. 2044 hesitated, called for his supervisor and pointed to something on the scanner’s monitor. The supervisor took the author’s passport and left without an explanation.

2.4 After a while, an officer of Minsk Regional Customs Office approached and asked the author to get off the train at Molodechno station for an indepth personal customs control. The author’s objections that he had already passed the customs control and suggestion to have another control on the train or on their arrival to Minsk were disregarded. Also disregarded was the author’s remark that under article 117 of the Customs Code of the Eurasian Economic Union’ Customs Union, a personal customs control was an extraordinary measure which could only be used if sufficient data were available leading to a suspicion that the person was transporting prohibited goods and refused to voluntarily surrender them. The customs officer was unable to explain which prohibited goods the author was suspected of transporting and which items he had to surrender in order to avoid being taken off the train for the customs control.

2.5 Upon the train’s arrival to “Molodechno” station, around ten public officers circled the author insisting that he leave the train for the customs control. As the author attempted to argue the illegality of their demands, he was violently grabbed under the armpits and by his legs and carried off the train. No other passenger had to undergo the thorough customs control.

2.6 Around 9 pm, the author was forcibly taken to Minsk Regional Customs office at “Molodechno” station, where he underwent a customs control consisting of a search of his person and his luggage, which lasted for two hours. He was not allowed to leave and was guarded by officers of the military unit No. 2044 of Smorgonsk Frontier Group. Finally, customs control reports were written which stated that no prohibited goods had been identified in his possession. Around 11 pm, he was allowed to leave. He found himself in an unfamiliar town at night and had to buy a ticket to Minsk for 154500 Belarusian rubles.[[6]](#footnote-7)

2.7 Comparing this incident to the one on 24 May 2015, the author assumed that modifications had been made to his personal data in the electronic system of frontier control that allowed tracking his movements across the state border and his identification by frontier officers.

2.8 On 17 September 2015, the author filed a civil suit against Minsk Regional Customs Office and the military unit No. 2044 of Smorgonsk Frontier Group to Gomel District Court of Gomel Region, requesting compensation for damage to his health, material and moral damage. He claimed that public authorities were tracking his movements across the state border and that modifications had been made to his personal data in the electronicfrontier control system allowing for his repeated illegal detention, which amounted to illegal and arbitrary interference with his privacy.

2.9 The author relied on the following evidence, which was also submitted to the Committee.[[7]](#footnote-8) A decision on the customs control of 25 August 2016, signed by a custom shift manager, stated that the author’s indepth customs control was conducted in order to verify whether he was carrying foreign bank cards, currency, magnetic data carriers with information about illegal activities, printed products and extremist literature. An assignment issued by the border patrol for customs services on 25 August 2016 required search for electronic data carriers containing extremist information. A briefing note written by the border patrol chief on 26 August 2016 stated that the author had been identified by the border patrol and handed over to customs authorities. A report by a customs officer to his supervisor dated 1 September 2016 stated that the author had been searched at the request of the frontier patrol for electronic data carriers containing extremist information.

2.10 On 11 February 2016, Gomel District Court rejected the author’s civil claim. This judgement was upheld on 12 April 2016 by the Judicial Panel on Civil Affairs of Gomel Regional Court. The author’s supervisory review appeals against these judgements were dismissed by the Chair of Gomel Regional Court and a Deputy Chair of the Supreme Court on 20 May and 13 July 2016, respectively. His supervisory review appeals to prosecutorial authorities, namely the Public Prosecutor’s Office of Gomel Region and the Prosecutor General’s Office of the Republic of Belarus, were dismissed on 19 August and 25 October 2016, respectively. Neither judicial nor prosecutorial authorities examined the written evidence submitted by the author and concluded, without any grounds, that his taking off the train for a thorough customs control had been legal.

2.11 On 26 September 2015, the author complained of illegal modifications of his personal data in the electronic frontier control system to the Chair of the State Frontier Committee. On 13 October 2015, the Director of the Frontier Control Department within the State Frontier Committee responded that in accordance with the law “On information, informatization and protection of information”, the issues raised by the author could not be commented on. The author interprets this response as a tacit confirmation of his claims about illegal modifications of his personal data.

2.12 The author notes that the domestic legislation does not provide for a possibility for citizens to directly seize the Constitutional Court. Therefore, he contends that he has exhausted all available domestic judicial remedies.

 Complaint

3.1 The author asserts that his forceful and violent taking off the train and forcible transfer to the office of Minsk Regional Customs in Molodechno violated his right to liberty and security of the person under article 9 (1) of the Covenant. For two hours, he was arbitrarily detained despite the fact that he was not suspected of having committed any offense, and had already undergone customs control. In addition, no response had been provided to his questions about the type of prohibited goods he was suspected of hiding from customs control.

3.2 The author states that his civil claim lodged with Gomel District Court on 17 September 2015 included several documents (para. 2.11) which demonstrated that information was being collected about his private life and his movements across the state border and that his personal data in the electronic frontier control system had been modified, allowing for his repeated arbitrary detentions and arbitrary interferences with his privacy. The judicial authorities did not provide a legal assessment of this evidence, merely claiming that his taking off the train was legal. Therefore, the author claims violation of his right to a fair and public hearing by a competent, independent and impartial tribunal established by law under article 14 (1) of the Covenant.

3.3 Citing article 17 of the Covenant, the author alleges violation of his right not to be subjected to arbitrary or unlawful interference with his privacy. According to him, the facts described in his communication revealed that his personal data had been modified in the information system of frontier control without a prior judicial decision, allowing for tracking his movements across the state border and for his identification by frontier agents. Such modifications of personal data are not foreseen by domestic legislation and the author does not know what measures he can take in order to ensure that his personal data are not modified compared to other citizens. He argues that such interference with his privacy are unnecessary in a democratic society given that he is a law-observing citizen who has never been suspected of having committed any offense. In addition, the author claims an unnecessary and disproportionate interference with his privacy because his personal search and a search of his belongings were conducted without sufficient grounds.

 State party’s observations on admissibility and the merits

4.1 On 17 March 2017, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party informs the Committee that on 24 May 2015, the author entered the customs zone of the Eurasian Economic Union through the green channel at Kamenny Log roadway checkpoint. In the course of the customs control, which included a search of the author’s luggage,car and his person, the following items were found: a notebook and factsheets “Local executive authorities of the Republic of Belarus: 15 years online” (in Russian), “Belarusian Not-for-Profit Law Forum” (in Belarusian and English), “Unedited version draft report of the working group on the Universal Periodic Review” (in English) and “Thematic section 4” (in Belarusian). In order to verify whether these items contained calls for, or propaganda on, extremist activities, prohibited under article 14 of the law “On combatting extremism”, Kamenny Log customs unit of the Ashmyany Customs Office ordered a customs expertise and collection of samples. On 14 September, two expert assessments by Grodno Regional Expert Commission concluded on the absence of signs of extremism in the items transported by the author, and they were returned to him by Gomel Customs Office. The author complained of the acts of Kammeny Log customs unit to the State Customs Committee of Ashmyany region, which, on 7 August 2015, confirmed the legality of these acts. This decision was upheld on 19 October 2015 by the Judicial Panel on Civil Affairs of Grodno Regional Court.

4.3 On 25 August 2015, the author was arriving from Lithuania on a train “Vilnius-Minsk”. When crossing the state border at Gudogay checkpoint, officers of the Public Frontier Committee requested the Ashmyany Customs Office to conduct a customs control of the author, who raised their suspicions. During the frontier control, the author was nervous, had little luggage and had spent little time abroad. The authorities had reasons to suspect that he could have been hiding goods transported in violation of the customs law.

4.4 Under article 117 (6) of the Customs Code of the Eurasian Economic Union’s Customs Union, a personal customs control is conducted by customs officers of the same sex in the presence of two witnesses of the same sex in an isolated area which satisfies sanitary and hygienic requirements. Given that there was no such area on the train, Ashmyany customs officers decided to transfer the author to Minsk Regional Customs Office in Molodechno. Given that the author did not wish to leave the train voluntarily, he was forcibly taken to the customs office in Molodechno, where he underwent a personal customs control.

4.5 Under article 95 (1) and (2) of the Customs Code, a customs control is carried out in accordance with customs legislation of the Customs Union and of States parties to the Union. It is carried out by customs authorities empowered to conduct such control as part of their functional responsibilities. Individuals who are crossing the border can be subject to a customs control.

4.6 Under article 94 (1) and (2) of the Customs Code, customs authorities are guided by the principle of selectivity and choose the forms of customs control which are sufficient for ensuring compliance with legislation of the Customs Union and of its States parties. Risk management is performed when selecting subjects and forms of customs control.

4.7 Under article 117 (1) of the Customs Code, a personal customs search is an extraordinary measure adopted on a written decision of the chief of the customs authority, his or her authorized deputy or individuals acting in their capacity, provided that there are sufficient grounds to believe that the individual who is crossing theborder and has entered the customs control zone or a transit zone of an international airport conceals and does not voluntarily surrender goods transported in violation of customs legislation of the Customs Union.

4.8 Damage caused to a citizen or a legal entity by illegal acts or inactionof state authorities, local governments and self-government bodies or officials thereof is subject to compensation from the treasury of the Republic of Belarus or the treasury of the administrative or territorial unit, respectively (article 938 of the Civil Code).

4.9 On 17 September 2015, the author brought a claim to Gomel District Court against Minsk Regional Customs Office of the State Customs Committee, the military unit 2044 of Smorgonsk Border Group of the State Frontier Committee and the public treasury department in Gomel Region of the Finance Ministry’s Main State Treasury, requesting compensation of damage to his health in the amount of 1,653,000 rubles, material damage of 154,500 rubles, moral damage of 999,000,000 and legal costs. On 11 February 2016, Gomel District Court rejected the author’s claim.

4.10 The procedure for appealing judicial decisions which have not come into force is established in articles 399 and 400 of the Civil Procedure Code. The legality and substantiation of the judgement adopted by Gomel District Court on 11 February 2016 has been verified by Gomel Regional Court, which, on 12 April 2016, upheld this judgement. It came into force on 12 April 2016.

4.11 A judgement in force may be revised under the supervisory review procedure established by articles 436 and 437 of the Civil Procedure Code. The author’s supervisory review appeals were rejected by the Chair of Gomel Regional Court on 20 May 2016, by the Deputy Chair of the Supreme Court on 13 July 2016, by the Public Prosecutor’s Office of Gomel Region on 19 April 2016 and by the Deputy Prosecutor General on 25 October 2016.

4.12 Since the acts of the frontier and customs authorities were recognized as legal, there were no grounds for satisfying the author’s claims for compensation under article 938 of the Civil Code.

4.13 The State party also observes that the frontier authorities have not adopted any decisions impeding the author’s crossing the state border. According to the electronic system of frontier control, he has crossed the border 227 times.

4.14 In view of the above, the State party believes that the author’s claims under articles 9 (1), 14 (1) and 17 of the Covenant are not well substantiated. His rights under articles 9 (1) and 17 have not been violated because the customs control was conducted by a competent authority in accordance with domestic legislation. His right to a fair and public hearing by a competent, independent and impartial tribunal established by law has been fulfilled, as well as his right to have the judgement reviewed by a higher tribunal according to law, in accordance with article 14 of the Covenant.

4.15 In addition, the State party argues that under article 439 of the Civil Procedure Code, it is possible for the author to challenge judicial acts before the Chair of the Supreme Court and the Prosecutor General of the Republic of Belarus under the supervisory review procedure. Therefore, the State party considers that the author has not exhausted all available domestic remedies and his communication should be considered inadmissible under article 2 of the Optional Protocol.

 The author’s comments on the State party’s observations

5.1 In his response to the State party’s observations of 10 March 2017, the author confirms that he crossed the state border 227 times since 1 January 2008. He notes that he always has little hand luggage and stays abroad for short periods of time. He refutes the State party’s affirmation that he was nervous when he was crossing the border on 25 August 2015. As soon as his passport was scanned, the frontier officer called for his supervisor and the latter left with the author’s passport. He returned with a written instruction for a search of electronic media and verifying presence on them of extremist information.

5.2 The author insists that he has provided written evidence to judicial authorities which proves that public authorities are collecting information about his movements across the border and that his personal data in the electronic system of frontier control have been modified (para. 2.11). These documents show that frontier officers identified the author and “called him an extremist” immediately after scanning his passport. The author notes that the State party does not provide any comments in relation to this evidence.

5.3 The author responded to State Party’s argument on non-exhaustion of domestic remedies by stating that his supervisory review appeals to the Chair of the Supreme Court and to the Prosecutor General were rejected by their deputies. The author believes that he cannot be blamed for non-exhaustion of domestic remedies because these officials delegated examination of his complaints to their deputies. The Chair of the Supreme Court and the Prosecutor General have five and four deputies respectively. The State party did not explain which deputy the author had to address in order to ensure that his appeals were examined by the Chair of the Supreme Court or by the Prosecutor General. In the absence of explanations by the State party, the author considers supervisory review appeals to judicial and prosecutorial authorities as non-effective remedies. In addition, he claims that the supervisory review procedure is not effective because supervisory appeals are examined by a limited number of persons, exclusively in accordance with personal opinions of the judge or the prosecutor, and because this procedure only includes examination of legal issues and not revision of facts and evidence.

5.4 The author underlined that judicial and prosecutorial authorities did not assess evidence submitted by him (para. 2.11) therefore no effective remedies were made available for him to prove to an independent and impartial tribunal the arbitrariness of the interference with his liberty and security of person and the illegality of the interference with his privacy. Therefore, he claims that interpretation of his rights and obligations in the civil process did not respect the guarantees of fair trial by a competent, independent and impartial tribunal under article 14 (1) of the Covenant.

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with 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 argument that the author failed to seek a supervisory review of the impugned decisions by the Chair of the Supreme Court and the Prosecutor General. The Committee takes note of the author’s arguments that he has lodged supervisory appeals with these officials but his appeals have been dismissed by deputies of the Supreme Court and the Prosecutor General and that, in any event, the supervisory review cannot be considered as an effective remedy due to inherent limitations of this procedure. In this context, the Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy, and 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. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor’s office, dependent on the discretionary power of the prosecutor requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[[8]](#footnote-9) In the present case, the author appealed, unsuccessfully, under the supervisory review proceedings, to the Chair of the Gomel Regional Court, the Chair of the Supreme Court, the Public Prosecutor’s Office of Gomel region and the Prosecutor General’s Office. The State party does not provide any information to demonstrate that further supervisory review appeals before judicial and prosecutorial authorities would constitute an effective domestic remedy in the circumstances of the case. Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee notes that the author invokes a violation of article 9 (1) of the Covenant because he was taken off the train in violent and forceful way and was forcibly transferred to the office of Minsk Regional Customs in Molodechno where he was arbitrarily detained for two hours although he was not suspected of having committed any offense and had already undergone customs control. The Committee notes the State party’s observations that on 25 August 2015, the author was on a train “Vilnius-Minsk”, crossing the state border at Gudogay checkpoint, when the officers of the Public Frontier Committee requested the Ashmyany Customs Office to conduct a customs control of the author, on a suspicion of transportation of goods in violation of the customs law. The Committee further notes that the customs officers made a decision to transfer the author to Minsk Regional Customs Office in Molodechno since the sanitary and hygienic requirements in Ashmyany Customs Office to conduct a customs control, as prescribed under article 117 (b) of the Customs Code of the Euroasian Economic Union’s Customs Union, could not be met, and that the officers were obliged to use force due to the author’s resistance. The Committee recalls that detention during immigration controls is not arbitrary provided that it is reasonable, necessary and proportionate to the circumstances.[[9]](#footnote-10) However, in the absence of any other pertinent information, the Committee considers that the author has failed to sufficiently substantiate his article 9(1) claim for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also notes the author’s claim that his rights under article 14 (1) of the Covenant have been violated, since the courts of the State party failed to duly assess the facts of the case and therefore failed in their duty of impartiality and independence. The Committee observes, however, the information it has before it is that the national court did appraise author’s claims and, in this context, recalls that it is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise violated its obligation of independence and impartiality.[[10]](#footnote-11) In the present case, the Committee is of the view that the author has failed to demonstrate, for purposes of admissibility, that the conduct of the proceedings in his case was clearly arbitrary or amounted to a manifest error or denial of justice or provide evidence that the courts otherwise violated their obligation of independence and impartiality. In the absence of any other pertinent information, the Committee considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers the author’s claims under article 17 of the Covenant sufficiently substantiated for the purposes of admissibility and proceeds with its examination of the merits.

*Considerations 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 provided under article 5 (1) of the Optional Protocol.

 7.2 The Committee notes that the author claims violation of his right to privacy under article 17 of the Covenant due to, first, the alleged illegal modification of his personal data in the electronic frontier control system without a prior judicial decision, which allows frontier agents to identify him and track his movements across the state border, as well as absence of legal remedies which would allow for their rectification and, second the fact that, as a result of modification of his data, he was subject to an arbitrary search of his person and his belongings.

7.3 The Committee recalls that article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy.[[11]](#footnote-12) The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.[[12]](#footnote-13) The expression “arbitrary interference” is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.[[13]](#footnote-14) The Committee interprets the requirement of reasonableness to imply that any interference with privacy and family life must be proportionate to the legitimate end sought and necessary in the circumstances of any given case.[[14]](#footnote-15)

7.4 The Committee recalls that every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.[[15]](#footnote-16)

7.5 The Committee notes the author’s claims that he was subjected to surveillance and unlawful modifications of his personal data in the electronic system used by the frontier patrol due to two similar incidents at the state border whereby, upon scanning his passport, the frontier patrol requested an extraordinary measure of his thorough personal customs control aiming at search of extremist materials, notwithstanding the fact that the author had no criminal record. The Committee notes that the State party does not refute the author’s claims about the unlawful modifications of his personal data in the electronic system of frontier control, resulting in the possibility for frontier and customs authorities to submit him to arbitrary detentions and personal searches. Neither does the State party refute the author’s arguments about the unavailability of legal remedies for him to request elimination of these modifications. In light thereof and in the absence of any clarifications from the State party with regards to the applicable legal framework and the safeguards in place against abusive and arbitrary collection, access and usage of personal data by frontier patrol, the Committee concludes on violation of the author’s right to privacy under article 17 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 17 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, State party is obligated, to provide the author with adequate compensation for moral and material damage caused to him, including reimbursement of transport, medical and legal expenses incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. On 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. The present communication was submitted for consideration before the State party’s denunciation of the Optional Protocol became effective on 8 February 2023. Since 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.

Annex

 Opinión separada del miembro del Comité Rodrigo A. Carazo (parcialemente disidente)

1. A pesar de su reiterada jurisprudencia el comité vuelve sobre sus pasos al considerar en este caso el hecho de que el autor haya sido obligado a quedar sin pantalones en la vía pública en una oportunidad y haya sido forzado brutal y violentamente por un grupo de 10 agentes de la ley en dos momentos distintos no constituye violación a la seguridad personal del autor (artículo 9.1 del Pacto), quien a la sazón ya había sido identificado por los agentes del estado parte como “defensor de los derechos humanos”.
 El autor fue sujeto de detención arbitraria, desproporcionada a la que se hubiese requerido para una “inspección de aduana”que no generó ningún resultado y sin embargo el Comité opta por considerar que las detenciones en esas circunstancias fueron proporcionales y necesarias.

2. Tratándose de un estado parte contumaz en sus violaciones a las debidas garantías procesales consagradas por el artículo 14 del pacto, en este caso el Comité privilegia la simple manifestación no sustanciada por el Estado parte (párrafo 2.14) de que el proceso cumplió con los requerimientos del citado artículo 14 y lo hace por sobre la manifestación del autor en el sentido de que las autoridades de alzada no valoraron la prueba por el presentada (párrafos 2.11, 5.4), pueba que consta en el Expediente del Comité (nota 5 al párrafo 2.11). Considero que por muchas razones jurisprudenciales y de evidencia concreta el Comité hubo de tener por violentadas las seguridades procesales procesales del artículo 14.

3. El actor es defensor de los derechos humanos en su país; ha obtenido cinco opiniones del Comité considerando que sus derechos consagrados por el pacto han sido violados (existen 2 procesos adicionales en trámite) y ha auspiciado profesionalmente al menos 18 otros casos en que violaciones al pacto han sido definidas. Es por ello que el autor, en las 2 ocasiones señaladas en el caso fue detenido brutal y violentamente y no se le dieron
 domésticamente las debidas garantías procesales. El Comité omitió indicarlo, ignorando de esta forma la Declaración sobre los Defensores de Derechos Humanos adoptada en 1998 por la Asamblea General de las Naciones Unidas.

1. \* Adopted by the Committee at its 139th session (9 October-3 November 2023). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Farid Ahmadov ,Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Laurence R. Helfer, Teraya Koji, Carlos Gómez Martínez, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji Hélène Tigroudja and Imeru Tamerat Yigezu. [↑](#footnote-ref-3)
3. \*\*\* An individual opinion by Committee member Rodrigo A. Carazo, (partially dissenting), is annexed to the present Views [↑](#footnote-ref-4)
4. See, e.g., *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; *Shchiryakova et al. v. Belarus* (CCPR /C/137/DR/2911/2016). [↑](#footnote-ref-5)
5. The author revers to the Committee’s views Nos. 1354/2005, 1750/2008, 1992/2010, 2114/2011 and 2139/2012. [↑](#footnote-ref-6)
6. Around 235 USD [↑](#footnote-ref-7)
7. It appears from the case file that these documents were obtained by Gomel District Court from Gomel Customs Office on the author’s motion. The documents formed part of a separate administrative case against the author for disobedience to public officials. [↑](#footnote-ref-8)
8. *Natalya Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3; *Grygory Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Andrei Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; *Yury Belenky v. Belarus* (CCPR/C/135/D/2860/2016), para. 8.3. [↑](#footnote-ref-9)
9. General Comment №35 (CCPR/C/GC/35), para. 18 [↑](#footnote-ref-10)
10. See, Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26. See also, inter alia, *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 6.3; and *Cuartero Casado v. Spain* (CCPR/C/84/D/1399/2005), para. 4.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010), para. 9.5 ; and *Petr Berlinov v Belarus*, (CCPR/C/133/D/2708/2015), para 6.4 [↑](#footnote-ref-11)
11. General Comment No. 16 (1988), para. 1. [↑](#footnote-ref-12)
12. *Ibid*., para. 3; *Maharajah Madhewoo v. Mauritius*, CCPR/C/131/D/3163/2018, para. 7.3. [↑](#footnote-ref-13)
13. General Comment No. 16 (1988), para. 4. [↑](#footnote-ref-14)
14. *Toonen v. Australia*, No. 488/1992, para. 8.3; and *Vandom v. Republic of Korea*, CCPR/C/123/D/2273/2013, para. 8.8; *Maharajah Madhewoo v. Mauritius*, CCPR/C/131/D/3163/2018, para. 7.4. [↑](#footnote-ref-15)
15. General Comment No. 16 (1988), para.10. See also the Human Rights Council’s Resolution 42/15, *The right to privacy in the digital age*, 26 September 2019 (A/HRC/RES/42/15) noting with appreciation the Committee's General Comment No. 16, recalling that any interference with the right to privacy should be consistent with the principles of legality, necessity and proportionality and calling upon States to ensure transparency and accountability for State surveillance and collection of personal data (see in particular Preambule and paras 2 and 6). [↑](#footnote-ref-16)