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**Human Rights Committee**

 Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2084/2011[[1]](#footnote-2)\* [[2]](#footnote-3)\*\*

*Submitted by:* V.L. (unrepresented)

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 3 November 2010 (initial submission)

*Document references:* Decision taken pursuant to rule 97 of the Committee’s rules of procedure, transmitted to the State party on 18 May 2010 (not issued in document form)

*Date of adoption of decision:* 30 March 2016

*Subject matter:* Torture; right to liberty and security; fair trial; right to an effective remedy

*Procedural issues:* Exhaustion of domestic remedies; insufficient substantiation of claims

*Substantive issues:* Torture, arbitrary arrest, fair trial

*Article of the Covenant:* 2, 7, 9 and 14

*Article of the Optional Protocol:* 2

1. The author of the communication is V.L., a Belarus national born in 1985. He claims to be a victim of violations by Belarus of his rights under article 2, paragraph 3(a), article 7, article 9, paragraph 1, and article 14, paragraph 1 of the International Covenant on Civil and Political Rights(hereinafter “the Covenant”). 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 The author is a member of the organization ‘European Belarus’ which supports the opposition. On 27 November 2009, the author was approached in the street by two police officers who requested his identification documents. They took his passport and two mobile phones. The author was subsequently brought into a minivan with no license plates where he was subjected to a search. Additional personal items were taken from him, including a flash drive and a flag of the Belarus People’s Republic. The police officers ignored his requests to identify themselves and inform him about the reason of his apprehension.

2.2 The author was handcuffed and his hat was put over his eyes. He was driven in an unknown direction for about 30 minutes and then released in an unknown location. One of the abductors, not in uniform, told him that he was warned, and to think about the future as his wife and children would not be happy with a father revolutionary but with his good salary. The author found himself to be about 25 kilometers from Minsk. He claims he feared for his life during the drive.

2.3 On 3 December 2009, the author submitted to the prosecutor’s office of the Central district of Minsk a request to open a criminal investigation regarding his abduction. His claim was forwarded to the prosecutor’s office of the Soviet district of Minsk.

2.4 On 29 December 2009, the author filed a complaint with the Prosecutor General’s office and Minsk city prosecutor’s office, claiming inaction by the district prosecutor’s office. He submitted that he was called for questioning only once and was mostly questioned with regard to his political activity and affiliation rather than his abduction. Despite his descriptions of the abductors, no investigative steps were taken to compile a photo robot. He was not shown the Soviet district police officers’ pictures for possible identification of the abductors.

2.5 On 11 January 2010, the Prosecutor General’s office informed the author that his complaint was sent to the Minsk city prosecutor’s office, which, in turn, sent it to the Soviet district prosecutor’s office.

2.6 On 18 February 2010, the author received the Soviet district prosecutor’s decision, refusing to open a criminal investigation, after having reviewed the author’s claims. Within the scope of this review, the author himself was questioned along with several other potential witnesses; video recording from a nearby shop and a printout of the author’s phone calls were also reviewed.

2.7 On 3 March 2010, the author appealed the Soviet district prosecutor’s decision to the Soviet district court. On 1 April 2010, the court rejected his appeal on the ground that there was no credible evidence that a crime was committed referring to the findings of the prosecutor’s office.

2.8 On 9 June 2010, the author filed a supervisory appeal (appealed under the supervisory review procedure) with the Minsk city court which was rejected on 22 September 2010 on the ground of lack of credible evidence.

 The complaint

3.1 The author claims to be a victim of violations by Belarus of his rights under articles 2 (3) (a), 7, 9 (1) and 14 (1) of the Covenant.

3.2 He claims that his abduction by the police officers amounts to torture in violation of article 7 and constitutes an arbitrary arrest in violation of article 9 (1) of the Covenant.

3.3 The author further contends that the prosecutor’s office and the courts respectively failed to investigate thoroughly his abduction and to review his claims in this connection. According to him, the denial of opening a criminal investigation and the subsequent rejection of his claims by the courts are in violation of article 14 (1).

 State party’s observations on admissibility

4.1 By note verbale of 27 September 2011, the State party submitted, inter alia, that it “[…] there are no legal grounds for the consideration of V.L.’s communication both on the admissibility and the merits”. It further informed that the author did not exhaust all available domestic remedies, in particular he ‘did not appeal in Minsk and/or the General Prosecutor’s office against a denial by the Sovetsky District Prosecutor’s office to institute criminal proceedings based on his claim’.

4.2 By note verbale of 25 January 2012,[[3]](#footnote-4) the State party recalled its position repeatedly expressed before and in particular in the note verbale of 6 January 2011. The State party submitted that any communications registered in violation of articles 2 and 5 of the Optional Protocol will be viewed by the State party as incompatible with the Protocol and will be rejected without comments on the admissibility or on the merits. It further stated that it has no obligations regarding recognition of the Committee’s rules of procedure or the Committee’s interpretation of the provisions of the Optional Protocol; and that decisions taken by the Committee on the present communication will be considered by its authorities as “invalid”.

 Author’s comments on the State party’s observations

5. On 19 December 2011, the author submits that according to the Committee’s jurisprudence one is required to exhaust domestic remedies that are not only available but also effective. He adds that only complaints examined by the judiciary can be considered as effective domestic remedies. An appeal to the Minsk City Prosecutor’s office and the General prosecutor’s office cannot be considered as an effective domestic remedy because it remains at the discretion of a public official and a review of the case, if granted, takes place in the absence of the person concerned. Furthermore, such procedure does not allow the person concerned to ask questions, put forward his/her arguments and file motions. The author states that the way the Minsk City Prosecutor’s office and the General Prosecutor’s office have handled his complaints in the past, affirms his doubts as to the effectiveness of any further appeals to these state bodies. He recalls that on 29 December 2009, he filed a complaint with the General Prosecutor’s office about the deliberate delay by the Soviet District Prosecutor’s office to initiate criminal proceedings against police officers who had abducted him on 27 November 2009. He further reiterates that on 11 January 2010, his complaint was forwarded by the General prosecutor’s office to the Minsk City Prosecutor’s office and then on 15 January 2010, it was further forwarded by the Minsk City Prosecutor’s office to the Soviet District Prosecutor’s office, the very same entity the author had initially complained about to the General Prosecutor’s office. The author asserts that all domestic remedies have been exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.

 Issues and proceedings before the Committee

 The lack of cooperation from 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 is registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding recognition of the Committee’s rules of procedure nor the Committee’s interpretation of the provisions of the Optional Protocol; and that decisions taken by the Committee on the present communication will be considered by its authorities as “invalid”.

6.2 The Committee recalls that article 39, paragraph 2, of the Covenant authorizes it to establish its own rules of procedure, which the States parties have agreed to recognize. By adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State’s adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5, paragraphs 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.[[4]](#footnote-5) It is up to the Committee to determine whether a communication 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 on the admissibility and on the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.

 Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 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 objection to the admissibility of the communication as the author has not complained to the Prosecutor’s Office under the supervisory review procedure. The Committee notes however that the author filed a complaint with the Prosecutor General’s office and Minsk city prosecutor’s office, appealed the Soviet district prosecutor’s decision to the Soviet district court and filed a supervisory appeal with the Minsk city court. Accordingly, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the communication.

7.4 The Committee notes the author’s claim that his abduction amounts to torture under article 7 and to a violation of his right to liberty and security under article 9 of the Covenant. In this regard, the Committee also takes note of the author’s claim that by not conducting a thorough and complete investigation of his abduction the State party violated his right of an effective remedy under article 2 (3) (a) in conjunction with article 7 and article 9 on the Covenant. The Committee notes the author’s allegations that despite his descriptions of the abductors, no investigative steps were taken to compile a photo robot and carry out photo-identification of police officers of the Soviet district police office. The Committee also notes that the documents submitted by the author indicate that the prosecution office undertook several steps to review the author’s claims, including questioning him along with other potential witnesses, reviewing video recording from a shops in the area where alleged abduction took place and a printout of the author’s phone calls, which could support his alleged abduction. Furthermore, based on the author’s complaint to the Prosecutor’s General office dated 29 December 2009, the decision of the prosecutor’s office of the Soviet district of Minsk was quashed and the case was returned for additional investigation during which witnesses were questioned again yet did not corroborate the author’s allegations. The Committee also notes the Soviet District Court of Minsk and the City Court of Minsk both rejected the appeal of the author challenging the decision of the Prosecutor General on the ground that there was no credible evidence that a crime was committed referring to the findings of the prosecutor’s office. In the light of the above, the Committee considers the author’s claims under articles 7 and 9, read alone and in conjunction with article 2, paragraph 3, of the Covenant, inadmissible under article 2 of the Optional Protocol, as they are insufficiently substantiated.

7.5 The Committee notes the author’s claim that the denial of opening of criminal investigation and subsequent rejection of his claims by the courts are in violation of article 14, paragraph 1, of the Covenant. The Committee recalls however that article 14 of the Covenant does not provide for the right to see another person criminally prosecuted.[[5]](#footnote-6) Accordingly this part of the communication is inadmissible *ratione materiae* as incompatible with the provisions of the Covenant.

8. The Human Rights Committee therefore decides:

 (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

 (b) That this decision shall be transmitted to the State party and to the author of the communication.

1. \* Adopted by the Committee at its 116th session (7-31 March 2016). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. [↑](#footnote-ref-3)
3. The note verbale is of a general nature and refers to a number of communications registered with the Committee. [↑](#footnote-ref-4)
4. See communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1, communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Pavel Levinov v. Belarus,* Views adopted on19 July 2012, para. 8.2; No. 1948/2010, *Denis Turchenyak et al. v. Belarus,* Views adopted on 24 July 2013, para 5.2 and No. 1950/2010, *Viktor Timoshenko v Belarus,* Views adopted on 22 July 2015*,* para. 5.2. [↑](#footnote-ref-5)
5. See communication 213/1986, *H.C.M.A. v. The Netherlands*, decision of inadmissibility adopted on 30 March 1989, para 11.6 [↑](#footnote-ref-6)