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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. 2135/2012*, **

Communication submitted by:	Y.Z. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	1 December 2011 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 12 March 2012 (not issued in document form)
Date of adoption of the decision:	3 November 2016
Subject matters:	Arbitrary detention; fair trial
Procedural issue:	Abuse of the right of submission
Substantive issues:	Arbitrary arrest — detention; fair trial — sufficient time to prepare, legal assistance, witnesses
Articles of the Covenant:	2 (2) and (3), 9 (1) and 14 (1) and (3) (a), (b), (d) and (e)
Article of the Optional Protocol:	5 (2) (b)

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.

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Please recycle

1. The author of the communication is Y.Z., a national of Belarus born in 1959. He claims that the State party has violated his rights under articles 9 (1) and 14 (1) and (3) (a), (b), (d) and (e), read in conjunction with article 2 (2) and (3) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992.

Factual background

2.1 On 19 December 2010, the day of the presidential elections in Belarus, the author was heading from the city of Gomel to Minsk to participate in a demonstration against potential falsifications in the counting of the votes. The author claims that he was a representative of the presidential candidate Nikolai Statkevich.

2.2 At around 5.45 a.m. that day, the author was apprehended by the police in the city of Gomel at the public transport station, on the ground that he was cursing in public and therefore committing the offence of petty hooliganism in violation of article 17.1 of the Code of Administrative Offences of Belarus. The same day, the author was placed in a temporary detention centre.

2.3 On 20 December 2010, the author was found guilty of petty hooliganism and sentenced to 12 days of administrative detention by the Court of the Soviet District of Gomel. On the basis of that decision, he remained under administrative detention in the temporary detention centre from 19 to 31 December 2010. The court did not provide him with sufficient time to prepare for the hearing, did not allow him to use his defence lawyer and disregarded his right to call witnesses. According to the author, the police officers who were called as witnesses gave false testimony against him and he was targeted because of his political affiliation with one of the opposition candidates. The author was present during the confirmation of the charges at the court hearing on 20 December 2010 and was notified about the procedure and the deadline for filing an appeal.[1] During the 12 days of administrative detention he was on hunger strike.

2.4 On 5 January 2011, the author filed a complaint with the Regional Court of Gomel, stating that he had been detained arbitrarily and that he had been convicted of petty hooliganism unlawfully. According to Belarusian law, the complainant had five days to appeal an administrative decision. In his appeal, the author asked the court to waive that requirement because he was being held in the temporary detention centre during that time.

2.5 On 26 January 2011, the Regional Court of Gomel rejected the author's complaint, stating that the court needed to receive valid justification in order to waive the five-day rule and that the author had failed to provide such justification.

2.6 On 14 February 2011, the author appealed the decision of the Regional Court of Gomel to the Supreme Court of Belarus. On 4 April 2011, the Supreme Court rejected his appeal.

2.7 The author contends that he has exhausted all available and effective domestic remedies. He submits that he filed no supervisory review appeal as such appeals do not constitute an effective remedy.

The complaint

3. The author claims that the facts as submitted reveal a violation of his rights under articles 9 (1) and 14 (1) and (3) (a), (b), (d) and (e), read in conjunction with article 2 (2) and (3) of the Covenant.

[1] This transpires from the materials on file.

State party's observations on admissibility

4.1 In a note verbale dated 20 July 2012, the State party challenges the admissibility of the communication based on the fact that the author has not exhausted all available domestic remedies. It notes in particular that he failed to submit a complaint to the Prosecutor General within the context of the supervisory review procedure. Furthermore, the State party claims that the communication should not have been registered at all since the legal grounds for considering the admissibility and the merits of the communication were lacking. The State party informs the Committee that it "has discontinued proceedings" regarding the present case and "will disassociate itself from the views that might be adopted on it by the Human Rights Committee".

4.2 In a note verbale dated 4 January 2013, the State party reiterates its initial observations dated 20 July 2012.

Author's comments on the State party's observations

5.1 In a letter dated 14 December 2012, the author submits that, in accordance with the jurisprudence of the Committee[2] and the European Court of Human Rights,[3] the supervisory review before the Prosecutor's office cannot be considered an effective domestic remedy.

5.2 Regarding the State party's challenge to the Committee's competence and rules of procedure, the author notes that the Committee interprets the provisions of the Covenant and that "the Views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument".[4] Thus, according to the author, the State party must respect the Committee's decisions, as well as its "standards, practice, and methods of work".

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 considering the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol, that the State party has discontinued proceedings regarding the communication and that if a decision is taken by the Committee on the present communication the State party will "disassociate itself from the Views".

6.2 As to the State party's objections regarding the registration of the present communication and the discontinuation of the proceedings, 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 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and 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

[2] Communication No. 1418/2005, *Iskiyaev v. Uzbekistan*, Views adopted on 20 March 2009.

[3] European Court of Human Rights, *Tumilovich v. Russia*, (application No. 47033/99), decision of 22 June 1999.

[4] Reference is made to the Committee's general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol.

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. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communications, the State party is violating its obligations under article 1 of the Optional Protocol.

Consideration 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 is required to ascertain, under article 5 (2) (b) of the Optional Protocol, that the author has exhausted all available domestic remedies. It takes note of the State party's objection that the author has failed to exhaust all available domestic remedies and, in particular, that he failed to request the Prosecutor's office to initiate a supervisory review of the domestic courts' decisions. The Committee recalls its jurisprudence, according to which a petition asking the Prosecutor's office to initiate supervisory review of court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[6]

7.4 In this regard, the Committee further notes that the author was present during the court hearing on 20 December 2010, at which he was informed of the deadline and the procedure for filing an appeal. The Committee also notes that the author, released on 31 December 2010, filed an appeal with the Regional Court of Gomel on 5 January 2011 only, stating that he had been detained arbitrarily and had been convicted of petty hooliganism unlawfully, i.e. after 16 days following his conviction, while according to the State party's law, a complainant has five days to appeal an administrative decision. On the basis of the documents on file, the Committee notes that the author did not establish the reasons that would have prevented him from submitting an appeal while still in detention. It concludes that the author did not comply with the deadlines to file an appeal established by law and that he knowingly submitted a complaint late. Accordingly, the Committee considers that it is precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

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

[5] See, for example, communications No. 1867/2009, No. 1936/2010, No. 1975/2010, Nos. 1977/2010-1981/2010 and No. 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 6.2.

[6] See communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 6.3; and No. 2082/2011, *Levinov v. Belarus*, Views adopted on 14 July 2016, para. 7.3.