



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. 2361/2014*, **

<i>Communication submitted by:</i>	Igor Postnov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	22 February 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 March 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2021
<i>Subject matter:</i>	Unlawful involuntary medical confinement of the author resulting in torture
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person; fair and public hearing; privacy; freedom of expression; discrimination
<i>Articles of the Covenant:</i>	2 (1) and (3), 7, 9 (1), 10 (1), 14 (1), 15 (2), 17, 19 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Igor Postnov, a national of Belarus born in 1968. He claims that the State party has violated his rights under articles 2 (1) and (3), 7, 9 (1), 10 (1), 14 (1), 15 (2), 17, 19 and 26 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

1.2 On 23 July 2014, pursuant to rule 93 (1) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 17 September 2014, pursuant to rule 93 of its rules of procedure,

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberli.



the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

Factual background¹

2.1 The author submits that he is a medical doctor who used to work at the Vitebsk regional clinic of psychiatry and drug abuse treatment. He submits that he started facing problems from the authorities after he published online several articles and videos in which he complained about the state of the available medical health services and asked the prosecutor's office to investigate crimes committed by the management of the Vitebsk clinic, including the chief medical doctor, M.E.V., and his deputy, P.I.V.² In the articles, he also complained about the low salaries and poor education of doctors working at the Vitebsk clinic, as well as about the Governor and Deputy Governor of the region of Vitebsk. Instead of dealing with the issues raised by the author, the representatives of several government agencies conspired to have him placed in involuntary medical confinement. These officials included the Chief Prosecutor of the region of Vitebsk, Y.R., and the Chair of the Vitebsk Regional Court, N.H.

2.2 The author submits that, upon the prosecutor's request, he was detained in a psychiatric ward from 15 August 2013. Although the author claims to have been in good health, according to the prosecutor the author's behaviour was "inadequate, with signs of long-lasting psychiatric disorder" and the author refused to undergo treatment and take medicines. The author was initially detained only so that he could be medically evaluated, but the author submits that his rights were immediately restricted since he could not correspond with anyone, use the telephone, make any purchases etc. The numerous complaints that he sent to the prosecutor's office and other authorities were not mailed but simply added to his medical file. The law allows such restrictions only if it finds that the individual is a danger to himself or herself or to others, but the author states that he was neither a danger to himself nor to others. The author considers that the order from the prosecutor's office to medically evaluate him was arbitrary. The author submits that this was done to silence him, as he had openly criticized the state of health care in the region in newspaper articles. Furthermore, the author claims that he could not have been sick because he had worked as a psychiatrist in that same clinic in Vitebsk for many years.

2.3 The author submits that, by an order of the Vitebsk District Court, a civil court, dated 21 August 2013, he was committed to involuntary hospitalization in the Vitebsk clinic for compulsory psychiatric treatment for an indefinite period of time.³ The decision to commit him was adopted in closed hearing, and the procedure for committing the author was initiated by the chief medical doctor of the Vitebsk clinic, where the author himself used to work. The chief medical doctor, M.E.V., informed the court, through a report he submitted, that the author had been ordered to undergo psychiatric treatment but that he did not follow it. In his report, the chief medical doctor stated that the author, owing to his current condition, posed risk to himself⁴ and that, without proper medical treatment, his health would suffer. The chief medical doctor asked the court to subject the author to involuntary confinement and medical treatment.

2.4 The representative of the chief medical doctor who was present at the hearing on 21 August 2013 testified that the author, if not confined, could pose a danger to himself and that he suffered from "delirium".⁵ The prosecutor, who was present as well, also requested that the author be confined. The court stated in its decision that the "interested person" – i.e., the author – was not present at the hearing, despite having been informed about its date, time and

¹ Owing to the absence of some information from the author and to the complete absence of information on the merits from the State party, the section on the factual background was compiled using copies of court decisions provided by the author.

² The author submits that these two persons are husband and wife.

³ It is not clear from the author's submission whether he had been released from the psychiatric ward at the time of making the submission.

⁴ No additional information is provided in the court decision dated 21 August 2013, which consists of 1.5 pages.

⁵ No additional information is provided in the court decision dated 21 August 2013.

location. The author submits that he asked the Vitebsk clinic and the court to inform him about the hearing but that the authorities failed to provide that information. Since the author was confined to the Vitebsk clinic for treatment, he could not leave without the proper and timely court notice and permission.

2.5 The author submits that, in violation of his rights, he and his lawyers were not present at the court hearing on 21 August 2013 at the Vitebsk District Court, despite the statements made by the judge during the hearing. After the author had received notification of the Court's decision, he filed a cassation appeal to the Vitebsk Regional Court. In his appeal, the author complained that his procedural rights had been violated. For example, the report of the chief medical doctor did not contain any specific references to the author's medical status. Instead, the chief medical doctor refers to a "worsening" of the author's condition. Based on that report, the Court, in its decision dated 21 August 2013, concluded that the author "may have a chronic condition of delirium".

2.6 The author also complained in his appeal that the real reasons for subjecting him to involuntary medical treatment was to silence him, given his critical articles and videos, and the enmity towards him of the chief medical doctor of the Vitebsk clinic. The commission with the authority to find someone eligible for involuntary confinement was headed by P.I.V., the spouse of the chief medical doctor. In that same appeal, the author requested the Vitebsk Regional Court to order an independent psychiatric evaluation, which could be done by the Belarus national institute of mental health.

2.7 On 12 September 2013, the Vitebsk Regional Court upheld the lower court's decision. The Court only heard the testimonies of a representative of the Vitebsk clinic and a representative of the prosecutor's office. Neither the author nor his lawyer were present, although the author submits that he specifically requested to be present and that his lawyer, V.P., be informed about the hearing. Moreover, the hearing was held in closed session, which means that it was closed to the public. The Court accepted all the findings of the Vitebsk District Court, without questioning additional witnesses or considering additional circumstances. Without providing any evidence, the Vitebsk Regional Court found that the author was a danger to himself.

2.8 The author further appealed the decision by the Vitebsk Regional Court under the supervisory review procedure to the Chair of that same Court. On 21 November 2013, the Chair rejected the author's appeal. The author filed another appeal, this time to the Supreme Court of Belarus. That Court too rejected the author's appeal, fully upholding the decisions of the lower courts. The author and his lawyers were not present during the supervisory review procedures. The author therefore submits that he has exhausted all available and effective domestic remedies.

Complaint

3.1 The author submits that, by placing him in indefinite detention and psychiatric treatment, the State party violated his rights under articles 7 and 10 (1) of the Covenant.

3.2 The author also submits that, by subjecting him to involuntary confinement and by denying him and his lawyers the right to be present during the court hearings, the State party violated his rights under articles 9 (1) and 14 (1) of the Covenant.

3.3 The author claims that he was persecuted for voicing his critical opinion of the state of health care in the region, through both online articles and videos. By punishing him and placing him in psychiatric detention, and by not letting him use a telephone or correspond with the outside world, the State party violated his rights under article 19 of the Covenant.

3.4 The author also claims that the State party violated his rights under articles 2 (1) and (3), 15 (2), 17 and 26 of the Covenant.⁶

3.5 The author requests the Committee to find the State party responsible for violations of the Covenant. According to the author, the State party should compensate him for his court

⁶ The author does not seem to substantiate these claims.

expenses and award him monetary compensation for the human rights violations that he suffered.

State party's observations on admissibility and the merits

4. On 23 July 2014, the State party provided its observations on the admissibility of the author's complaint. It states that the author of the communication had not exhausted all available domestic remedies at the time of submitting the communication. Thus, the complaint should be considered inadmissible under article 2 of the Optional Protocol.⁷ On 7 October 2014, responding to the request to provide comments on the merits of the communication, the State party explained to the Office of the United Nations High Commissioner for Human Rights that article 2 of the Optional Protocol stipulates that all available domestic remedies, not all effective domestic remedies, should be exhausted. The State party requested the Office to provide the author with the relevant explanation of article 2 of the Optional Protocol.⁸

Author's comments on the State party's observations

5.1 On 26 August 2014, responding to the State party's observations, the author submits that he has exhausted all available domestic remedies, including the cassation and supervisory review appeals. The Committee, in its jurisprudence,⁹ has long established that the supervisory review procedure is not an effective remedy and does not have to be exhausted for the purposes of the Optional Protocol.

5.2 The author provides the findings of a report dated 14 April 2014 prepared by a commission of experts of the Independent Psychiatric Association of Russia following an examination of the author, conducted upon his request. The commission diagnosed the author with "paranoid personality disorder" and with "tendencies to seek the truth". From his teenage years, the author had a sharp sense of fairness and demanded to know the truth. The author identified shortcomings and would talk about them openly. However, the author's forced hospitalization was not justified, according to the independent commission. The author was not a danger to himself or to others, nor did he need any psychiatric treatment. In his relationships with his neighbours, for example, the author was "well adapted".

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 article 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 contention that the author failed to exhaust all available domestic remedies, without providing any specific details as to the potential remedies that the author should have exhausted.¹⁰ In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 The Committee has noted the author's claims under articles 2 (1) and (3), 10 (1), 15 (2), 17 and 26 of the Covenant. In the absence of any further pertinent information on file,

⁷ No additional information is provided by the State party.

⁸ The State party was requested to provide its observations on the merits of the communication on 17 September 2014 (in addition to the request that was sent during the initial registration). Additional reminders were sent on 3 December 2014, 26 August 2020 and 8 April 2021. No response has been received to date.

⁹ The author refers to *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008) and *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008).

¹⁰ See also paragraph 4 above. The State party provides no information on the available remedies.

however, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining claims, raising issues under articles 7, 9 (1), 14 (1) and 19 of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims that his involuntary hospitalization and detention in a psychiatric hospital violated his rights under article 9 (1) of the Covenant.

7.3 The Committee recalls that commitment to and treatment in a psychiatric institution against the will of a patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant.¹¹ It also recalls that article 9 (1) requires that deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law.¹² Moreover, article 9 (1) prohibits arbitrary arrest and detention, as well as the unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law.¹³ The two prohibitions overlap, in that arrests and detentions may be both arbitrary and unlawful.¹⁴ Furthermore, the Committee recalls that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.¹⁵

7.4 While acknowledging that States may deem an individual's mental health to be impaired to such an extent that, in order to avoid harm to the individual or others, the issuance of a committal order is unavoidable,¹⁶ the Committee considers that involuntary hospitalization can only be applied, if at all, as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law.¹⁷ The procedures should ensure respect for the views of the individual and should ensure that any representative genuinely represents and defends the wishes and interests of the individual.¹⁸

7.5 The Committee notes that, in the present case, the author or his lawyers were neither informed about the time and location of the hearings, nor able to be present during the trial hearings or appeal procedures; that, during the proceedings against him, the author was not allowed to be examined by other medical professionals; and that the order of involuntary confinement was unlimited in time and not subject to periodic review. In the absence of any information from the State party and based on the review of the submissions by the author, the Committee considers that his rights under article 9 were violated.¹⁹

7.6 As regards the author's claim under article 7 of the Covenant, the Committee has to evaluate whether the involuntary hospitalization amounted to inhuman and degrading treatment or punishment. The Committee observes that, while involuntary hospitalization may be applied as a measure of last resort and, at times, may be justified to protect the life and health of individuals, illegal and arbitrary committal to a hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment, within the meaning of article 7.

¹¹ See, for example, *A v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.2; and *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), para. 8.2.

¹² General comment No. 35 (2014), para. 10.

¹³ *Ibid.*, para. 11.

¹⁴ *Ibid.*, para. 11.

¹⁵ *Ibid.*, para. 12. See also, for example, *M.G.C. v. Australia* (CCPR/C/113/D/1875/2009), para. 11.5.

¹⁶ *Fijalkowska v. Poland*, para. 8.3.

¹⁷ General comment No. 35, para. 19. See also *Fijalkowska v. Poland*, para. 8.3.

¹⁸ General comment No. 35, para. 19. See also CCPR/C/CZE/CO/2, para. 14.

¹⁹ *Mukhortova v. Kazakhstan*, (CCPR/C/127/D/2920/2016), para. 7.14.

7.7 The Committee notes the author's submission that his committal to a psychiatric clinic was the result of his outspoken criticism of the regional authorities in charge of medical facilities in the region of Vitebsk, including the chief medical doctor of the Vitebsk clinic, M.E.V., and his deputy, P.I.V. (see para. 2.1 above). The Committee also notes the undisputed fact that the author submitted numerous complaints to the courts and the prosecutor's office. The Committee further notes that an independent examination was conducted and that a report thereon dated 14 April 2014 (see para. 5.2 above) indicated that the author was not a danger to himself or others, nor did he need to be hospitalized. The Committee notes that the findings of the Vitebsk District Court and the Vitebsk Regional Court do not contain any examples of the author being a danger to himself or to others, nor do they include an assessment that his involuntary hospitalization was required as a measure of last resort. On the basis of the information available, the Committee concludes that the decisions to commit the author to a psychiatric clinic caused him substantial anguish and mental suffering on the basis of persistent fear for his health and freedom.²⁰ Accordingly, the Committee is of the view that, in the present case, the author's involuntary hospitalization and subjection to medical treatment against his will amounted to inhuman and degrading treatment or punishment within the meaning of article 7 of the Covenant.

7.8 The Committee notes the author's claims that his right to a fair and public hearing has been violated because the initial hearing on 21 August 2013, the subsequent appeal hearing of 12 September 2013 and the supervisory appeal hearing were all closed to public and because neither the author nor his lawyers were present at them despite their written requests. The Committee also notes that, while the requirements of article 14 (1) of the Covenant generally apply to criminal cases and suits at law, the notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.²¹ The Committee considers that some detention regimes that result in confinement, as in the present case, attempt to bypass the controls imposed by the rules of criminal procedure. In the present case, the Committee notes the author's claim that the involuntary hospitalization to which he was subjected upon the prosecutor's request is punishment for his criticism of the regional authorities. In the absence of any pertinent explanations from the State party, the Committee considers that due weight must be given to the author's allegations and finds that, based on the purpose, character and severity of his involuntary hospitalization, the guarantees of article 14 (1) of the Covenant apply. Accordingly, the Committee concludes that, in the circumstances of the present case, the facts as presented by the author amount to a violation of the author's rights under articles 14 (1) of the Covenant.

7.9 The Committee notes the author's claim that his psychiatric detention from 15 August 2013 and subsequent involuntary hospitalization were imposed on the author to silence him and therefore amounted to a restriction of his right to impart information and ideas, which is incompatible with article 19 (3) of the Covenant.

7.10 The Committee recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and are essential for any society and constitute the foundation stone for every free and democratic society.²² In accordance with article 19 (3) of the Covenant, freedom of expression can be subject to certain restrictions but only those which are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security, the public order or public health or morals.²³ All restrictions imposed on freedom of expression must be "provided by law"; they may only be imposed for one of the grounds set out in article 19 (3) (a) and (b); and they must conform to the strict tests of necessity and proportionality.²⁴ The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.²⁵ When a State

²⁰ Ibid., para. 7.16.

²¹ General comment No. 32 (2007), para. 15. See also *Perterer v. Austria* (CCPR/C/81/D/1015/2001), para. 9.2.

²² General comment No. 34 (2011), para. 2.

²³ Ibid., para. 21.

²⁴ Ibid.

²⁵ General comment No. 27 (1999), para. 15.

party invokes a legitimate ground for restricting freedom of expression, it must demonstrate in a specific and individualized fashion the precise nature of the threat to any of the enumerated grounds listed in article 19 (3) that has caused it to impose the restriction, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.²⁶

7.11 In the present case, the Committee notes that the State party has not advanced any arguments as to the lawfulness and compatibility of the psychiatric detention and involuntary hospitalization with the requirements of article 19 (3) of the Covenant. Therefore, the Committee finds that the State party has failed to justify that the restriction of the author's right to impart information and ideas by his involuntary confinement was necessary and proportionate to the legitimate aim pursued, as set out in article 19 (3) of the Covenant. The Committee concludes that the author's rights under article 19 of the Covenant have been violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of the rights of the author under articles 7, 9 (1), 14 (1) and 19 of the Covenant.

9. Pursuant to 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, the State party is obligated, *inter alia*, to provide the author with adequate compensation, including reimbursement for any legal costs incurred by him. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. 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 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.

²⁶ General comment No. 34 (2011), para. 35.