



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1606/2007

Decision adopted by the Committee at its 104th session, 12 to 30 March 2012

<i>Submitted by:</i>	E.I. (not represented by counsel)
<i>Alleged victim:</i>	The author's husband, A.I.
<i>State party:</i>	Belarus
<i>Date of communication:</i>	22 November 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 October 2007 (not issued in document form)
<i>Date of adoption of decision:</i>	26 March 2012
<i>Subject matter:</i>	Arbitrary detention and beating in custody of a suspect; violation of the criminal procedure legislation during a criminal trial
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Unfair trial; arbitrary detention; torture, cruel, inhuman or degrading treatment
<i>Articles of the Covenant:</i>	7; 9; 14
<i>Article of the Optional Protocol:</i>	2

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (104th session)

concerning

Communication No. 1606/2007*

Submitted by: E.I. (not represented by counsel)
Alleged victim: The author's husband, A.I.
State party: Belarus
Date of communication: 22 November 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 2012,

Adopts the following:

Decision on admissibility

1. The author of the communication is E.I., a Belarus national born in 1969. She submits the communication on behalf of her husband, A.I., born in 1966, also Belarusian, who at the time of submission of the communication was serving a prison sentence. She alleges that her husband is a victim of violation by Belarus¹ of his rights under articles 7; 9, paragraph 1; and 14, paragraphs 1, 2, 3 (c), 3 (g) and 5, of the International Covenant on Civil and Political Rights. The author is unrepresented.

The facts as presented by the author

2.1 The author's husband was arrested on 30 August 2003 on charges of multiple car thefts. The author submits that there were no legal grounds for his arrest under Belarusian law and that documents had been falsified by investigating officers in order to justify his arrest.

2.2 The author submits that at the moment of her husband's arrest, he did not show resistance and no physical force was used against him. According to the author, later on the same day, her husband was beaten up on the premises of the Borisov City Department of the Interior by officers of the Ministry of Interior of the Minsk Regional Executive Committee, who wanted to compel him to testify against himself. On 1 September 2003,

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

¹ The Covenant and the Optional Protocol thereto entered into force for Belarus on 23 March 1976 and 30 December 1992, respectively.

the author's husband complained about the beatings in the presence of his lawyer during an interrogation. She submits that the case file contained a medical certificate for her husband, dated 3 October 2003, confirming the infliction of bodily injuries.²

2.3 The author claims that her husband was tried with undue delay. She states that at the time of her husband's arrest he had military status and, under the applicable law, he had to be tried by a military court. However, on 13 January 2004, the case was transferred to the civilian district court, where it remained for six months. On 8 June 2004, a judge of the district court established the court's error in admitting the case for consideration, for lack of jurisdiction. The case was then transferred to a military court.

2.4 On 4 August 2004, the author's husband was convicted by the Borisov Inter-Garrison Military Court and sentenced to nine years of imprisonment. The author considers that her husband's right to be presumed innocent was not respected. She submits that the court examined only inculcating evidence against her husband and refused to hear the witnesses who could have testified that her husband had been beaten up, including his counsel and some policemen.

2.5 The author submits that some evidence was declared inadmissible by the court, because it was obtained in violation of the criminal procedure legislation. However, according to her, the court still based its verdict on the above evidence. She also alleges that the court did not resolve contradictions in the testimonies of the witnesses and that the judge "distorted" the testimonies of some witnesses and misrepresented some of the evidence in the verdict. She maintains that the above facts violated the presumption of innocence established in article 14, paragraph 2, of the Covenant.

2.6 The author's husband appealed the first instance judgment before the Belarus Military Court, which, allegedly after a cursory examination only, rejected the appeal on 15 October 2004. The author's husband made several appeals for supervisory reviews to the Supreme Court, which were rejected on 29 December 2004, 25 February 2005 and 19 October 2005, respectively. The appeals included allegations of unfair trial and ill-treatment. The author claims that her husband's appeals were not duly considered. For instance, she states that the court did not examine her husband's allegations about the use of physical force to make him confess guilt. There were two inquiries into A.I.'s allegations that he had been beaten by the police officers. The first inquiry ended with a decision of the Prosecutor's Office that A.I.'s allegations were not founded and a refusal to initiate criminal prosecution against the arresting police officers. The author claims that when her husband appealed that decision, a second inquiry was conducted, which was led by the same prosecutor who had rejected his claims the first time. The author considers that her husband was thus deprived of his right to have his conviction and sentence being reviewed by a higher tribunal according to law, contrary to article 14, paragraph 5, of the Covenant.

² A copy of the medical certificate is not provided. The author however provided copies of the Decisions of the Prosecutor's Office, dated 1 October 2003 and 19 February 2005, in which the Office refused to open a criminal investigation into the acts of the investigating police officers. From the decisions it appears that inquiries into the allegations of the author's husband took place. During the first inquiry a medical examination of A.I. was conducted on 4 September 2003; this established that he had "light" injuries, such as bruises, which did not threaten his health and life. The Prosecutor questioned the author, the arresting police officers, individuals who were in the vicinity of the arrest of the author's husband and his co-defendant and reviewed the journal of the police station where it was recorded that the arresting officers had used "special methods" in order to apprehend A.I. The Prosecutor concluded that A.I.'s injuries were consistent with the police officers' testimony of using force during the arrest and that the latter had lawfully employed the use of force.

The complaint

3. The author contends that the facts described disclose violations of her husband's rights under articles 7, 9, paragraph 1, and 14, paragraphs 1, 2, 3 (c), 3 (g) and 5, of the Covenant.

State party's observations on admissibility and merits

4.1 On 2 May 2008, the State party submitted that, on 4 August 2004, the author's husband was convicted by the Borisov Inter-Garrison Military Court for theft and attempted theft, committed as a part of an organized group, and that he was sentenced to nine years of imprisonment. The verdict and sentence were confirmed, on appeal, by the Belarus Military Court on 5 October 2004. The State party details the circumstances of the crimes committed by the author's husband, restating the content of the verdict.

4.2 The State party further submits that the arguments of the author that her husband was subjected to physical violence upon arrest are "untenable". Following A.I.'s complaint, a "verification" had been carried out by the Prosecutor's Office. It was established that the author's husband was apprehended while attempting to steal a vehicle; he resisted arrest and the police officers were compelled to employ "special methods" in order to apprehend him, which might have resulted in light injuries. The prosecutor concluded that the use of force by the arresting police officers had been justified and formally refused to start a criminal investigation.

4.3 The State party declares that the trial was conducted in compliance with the applicable legislation, and that there are no indications that the presiding judge had a personal interest in the outcome of the case or that he had falsified evidence or committed any other violations of the criminal procedure. The State party maintains that the guilty verdict was pronounced based on the assessment of the entirety of the evidence examined by the court, which was given "appropriate assessment".

4.4 The State party submits that while the author claims that her husband's rights under articles 7, 9 and 14 of the Covenant were violated, the essence of her complaint is that she disagrees with the finding that her husband is guilty of committing crimes. It maintains that the evaluation of facts and evidence is a sovereign right of each State party and does not fall under the sphere of regulation of the International Covenant on Civil and Political Rights.

4.5 The State party maintains that the author's opinion that the ruling of the court stating that some violations had been committed during the pretrial procedure contradicts the guilty verdict is based on random interpretation and a lack of understanding of the legal terminology, in particular the meaning of "evidence" and "source of evidence". The State party submits that it had been explained to the author and her husband, on several occasions, that the evidence obtained in violation of the criminal procedure did not constitute a basis of the guilty verdict. Therefore, the author's claims that articles 7, 9, paragraph 1, and 14, paragraph 3, of the Covenant were violated are unfounded.

4.6 The State party further attempts to refute the author's claim that her husband was tried with undue delay. While the State party admits that, due to an error, the case was assigned to the wrong court for a certain period of time, it maintains that the additional time spent in custody was credited in the term of his sentence.

4.7 The State party further submits that the author's claims regarding violations of article 14, paragraph 5, of the Covenant are unfounded. All appeals submitted by A.I., including his appeals to the Supreme Court, had been reviewed in accordance with the legislation and he received replies, signed by the officials authorized to do so.

Author's comments on the State party's observations³

5.1 On 4 July 2008, A.I. reiterated at length the arguments submitted by his wife in the initial communication. He challenges the assessment of much of the evidence presented in court by the prosecution, such as the meaning of the transcripts of phone conversations between him and his co-defendant. He reiterates that the court based its verdict partially on inadmissible evidence. He maintains that, on 30 August 2004, he was beaten by police officers and was forced to write a confession. He submits that when he appealed the refusal of the Prosecutor's Office to file criminal charges against the police officers who had mistreated him, the case was assigned to the same prosecutor who rejected his complaint the first time.

5.2 A.I. maintains that the six-month delay in the proceedings caused by the assignment of his case to the wrong jurisdiction violated his right to be tried without undue delay.

5.3 He further maintains that the cassation instance that confirmed the verdict had refused to acknowledge the violations of the criminal procedure which took place during the first instance trial. He submits that supervisory review, according to the domestic legislation, is to be conducted by the Supreme Court, but that one of his appeals was rejected by the Head of the Department for Citizens' Complaints rather than the Court itself.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a) and (b), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, and that domestic remedies have been exhausted.

6.3 The Committee notes the author's allegations that in violation of articles 7 and 14, paragraph 3 (g), of the Covenant, her husband was subjected to psychological and physical pressure to make him confess guilt (see paras. 2.2 and 5.1 above). However, the author has failed to provide details on the alleged beatings and, in particular, on the method of the alleged torture or details on the identity of those who committed it. The Committee further notes the State party's contention that A.I.'s complaints had been investigated, on two occasions, and had been found to be groundless. In the circumstances, and in the absence of any other relevant information before it, the Committee concludes that this part of the communication is insufficiently substantiated for purposes of admissibility, and therefore inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes the author's submission that in violation of article 9, paragraph 1, of the Covenant, there were no legal grounds for her husband's arrest under Belarusian law and that documents had been falsified by investigating officers in order to justify his arrest. The Committee, however, observes that the author presented no substantiation in that regard and that the State party has indicated that A.I. was arrested while attempting to steal a vehicle. Accordingly, the Committee considers that the author

³ The comments on the State party's observations were provided by A.I. (the alleged victim in this case) and not by his wife ("the author"), who submitted the initial communication to the Committee on her husband's behalf.

failed to substantiate this claim, for purposes of admissibility, and considers the author's claims relating to violations of article 9, paragraph 1, of the Covenant inadmissible under article 2 of the Optional Protocol.

6.5 With respect to the allegations under article 14, paragraph 1, the Committee observes that those complaints refer primarily to the appraisal of evidence adduced at the trial, a matter falling in principle to the national courts, unless the evaluation of evidence was manifestly arbitrary or constituted a denial of justice.⁴ In the present case, the Committee is of the view that the author has failed to demonstrate that the conduct of the criminal proceedings suffered from such defects. Consequently, it considers that this part of the communication has not been sufficiently substantiated, for purposes of admissibility, and thus finds it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further notes that the author has invoked a violation of her husband's rights under article 14, paragraph 2, of the Covenant, since the verdict was partially based on evidence declared inadmissible by the court. The Committee however observes that the author presented no substantiation in that regard and that the first instance verdict lists a number of other evidences on which the court based its conclusions. Consequently, the Committee considers that this part of the communication is insufficiently substantiated for purposes of admissibility, and it is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes the author's contention that her husband's trial was conducted with undue delay, in breach of article 14, paragraph 3 (c), of the Covenant, because the case was transferred to a civil court by mistake and remained there for six months before it was reassigned to the military court, which had jurisdiction according to the domestic legislation. The Committee, however, observes that the author's husband was arrested on 30 August 2003 and convicted by first instance on 4 August 2004, and that his cassation appeal was adjudicated on 15 October 2004. In the specific circumstances of the case, considering the overall duration of the proceedings, and the uncontested fact that the length of this pretrial detention was deducted from his sentence, the Committee considers that the author has failed to sufficiently substantiate her claim, for purposes of admissibility, and therefore this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes the author's submission that that her husband was deprived of his right to have his conviction and sentence reviewed by a higher tribunal according to law, contrary to article 14, paragraph 5, of the Covenant. It observes that the verdict against the author's husband has been reviewed on appeal by the Belarus Military Court, and from its judgement it transpires that that body carefully examined the first instance court's assessment of the evidence, including the assessment of the results of the inquiry conducted by the Prosecutor's Office into the ill-treatment allegations. The Committee further observes that A.I.'s case also underwent supervisory reviews by the Supreme Court. The Committee consequently considers that this part of the communication has not been

⁴ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI), para. 26. See also, inter alia, communications No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 29 March 2004, para. 5.7; No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, para. 6.3; No. 1084/2002, *Bochaton v. France*, decision of inadmissibility adopted on 1 April 2004, para. 6.4; No. 1167/2003, *Ramil Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.7; and No. 1399/2005, *Cuartero Casado v. Spain*, decision of inadmissibility adopted on 25 July 2005, para. 4.3.

sufficiently substantiated for the purposes of admissibility, and thus finds it inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
