



**International Covenant on
Civil and Political Rights**

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Views

Communication No. 1812/2008

<u>Submitted by:</u>	Pavel Levinov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	31 March 2008 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 September 2008 (not issued in document form)
<u>Date of adoption of decision:</u>	26 July 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Arbitrary arrest; degrading treatment; fair trial; freedom of expression; discrimination.
<i>Substantive issues:</i>	Unjustified restrictions on freedom to impart information; non-respect of fair trial guarantees in an administrative case; lack of adequate medical treatment of a detainee; discrimination on political grounds
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Articles of the Covenant:</i>	articles 7 and 10; article 9, paragraph 3; article 14, paragraphs 1, 2, and 3 (b); article 19; and article 26.
Article of the Optional Protocol:	2 and 5, para 2 (b)

On 26 July 2011, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1812/2008.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (102nd session)

concerning

Communication No. 1812/2008**

Submitted by: Pavel Levinov (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 31 March 2008 (initial submission)

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

Meeting on 26 July 2011,

Having concluded its consideration of communication No. 1812/2008, submitted to the Human Rights Committee by Mr. Pavel Levinov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Pavel Levinov, a Belarusian national born in 1961. He claims to be a victim of a violation of his rights under article 7; article 9, paragraph 3; article 10, paragraph 1; article 14, paragraphs 1, 2, and 3 (b); article 19, paragraphs 1 and 2; and article 26, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented by counsel.

The facts as presented by the author

2.1 The author was a representative of the association “Belarus Helsinki Committee” for the Vitebsk region in Belarus. He explains that the association participated in a long-term independent monitoring of the 2007 elections for Local Councils of Deputies (local

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

elections). During the monitoring, it became clear that in thirty four (out of forty) electoral constituencies, only one candidate was registered for the elections. Two candidates were registered in each of the remaining four constituencies. The author decided to carry out a campaign against the lack of choice in the elections. He distributed leaflets and disclosed posters containing the slogan: "Stop! No to the voting without a choice" at visible places. Representatives of the electoral commissions were removing such posters and the police was observing the activities of those disclosing posters and distributing leaflets:

2.2 The day before the ballot, on Saturday, 13 January 2007, the author was disseminating leaflets in mailboxes with the call to boycott the elections. Shortly after 9 p.m., he was stopped by a police patrol when he was placing a poster on an advertisement board near his home, and he was brought to the Pervomaisky District Department of Internal Affairs in Vitebsk.

2.3 In the police premises, the author was charged with minor hooliganism under article 156 of the Code of Administrative Offences, for allegedly having used insulting language against the police officers and having ignored the police instructions. He was placed in a temporary detention facility (IVS, Temporary Detention Isolator) in Vitebsk, pending the examination of his case by a court. He claims that his detention was arbitrary, and that he could have been released on bail – a possibility provided by the law – particularly in light of the fact that during his arrest, he was in possession of the necessary amount of money to pay for his bail. His request to this effect was rejected by the police. He states that he asked the police to be represented by the individuals of his choice (his brother and two other individuals who came to the police centre after his arrest), but his request was denied.

2.4 The author notes that he was detained without taking into consideration article 33 of the Belarus Constitution and article 45 of the Belarus Electoral Code.¹ He claims that the police officers have used the charge in order to have him arrested, and affirms that he did not commit any offence.

2.5 The author contends that while in detention, he suffered a hypertonic crisis, and an ambulance was called in emergency. The police, according to the author, refused his hospitalisation and failed to provide him with medication. He complained about this to the Office of the Prosecutor (no further information is provided). Furthermore, on 24 April 2007, he requested the Prosecutor to open a criminal case against the police officers, with regard to these facts².

2.6 On 15 January 2007, Monday, the author was brought before the Court of the Pervomaisky District in Vitebsk. The court hearing continued also on 19 and 23 January 2007. From the documents available on file, it transpires that the author has been released by the court on 15 January 2007³. On 23 January 2007, the author was found guilty of

¹ Article 33 of the Constitution of Belarus guarantees freedom of thoughts and beliefs and their free expression. The author refers to the last sentences in article 45 of the Electoral Code, which reads as follows (unofficial translation): "Agitation (including appeals to boycott the elections, referendum) on the ballot day shall not be allowed. Agitation printed materials displayed earlier outside the rooms for voting shall remain in their former places" (source: <http://ncpi.gov.by/elections/eng/legal/code.htm>).

² The author provides a copy of a complaint to the Prosecutor of Vitebsk Region, dated 24 April 2007. According to this document, the author has refused to be administered an injection as he suffered allergies and did not have the list of substances he was allergic to with him. The medical doctor then asked his hospitalization, but after a discussion with the Detention Centre's officials, the ambulance left. No information is contained on file concerning the outcome of these complaints.

³ The material on file does not permit to verify whether the author has been released on bail.

minor hooliganism by the Pervomisky District Court of Vitebsk, and sentenced to a fine of 62 000 Belarusian Roubles.

2.7 The author claims that the judge of the Pervomaisky District Court of Vitebsk in charge of his case has failed in her duty of independence and impartiality. Immediately before the beginning of the trial, two high level police officers were consulting the content of the author's case in the judge's office, in the judge's presence. At the end of the trial, the judge announced twenty minutes break prior to the deliberations, went to her office, and never came back. The decision of the court was never officially pronounced to the author, he was not explained the possibility to appeal against the decision, and the closure of the court's session was never announced⁴. The author's complaints to the court in this respect remained without reply. The author claims that, in general, judges are not independent in Belarus.

2.8 The author further claims that the trial transcript contained formulations, such as: "explanation of the offender", "signature of the offender", and also indicated that he had "committed an administrative offence", which appeared more than thirty times.

2.9 In the meantime, on 16 January 2007, the author wrote to the Prosecutor of the Vitebsk Region, claiming that the police officer who prepared the report on his administrative offence had falsified evidence, because, according to the author, during his transportation to the Pervomaisky District Department of Internal Affairs in Vitebsk, on 13 January, he had discovered in the police car a one-page document, which disclosed the photographs of six individuals, including his own, all political activists, and three of them (including him) were charged under article 156 of the Belarus Code on Administrative Offences on 13 and 14 January 2007. Thus, according to the author, the hooliganism charges served as a pretext for his arrest.

2.10 The author affirms that he has exhausted all available and effective domestic remedies. Thus, on 17 July 2007, he appealed against the decision of the Pervomaisky District Court of 23 January 2007 to the Vitebsk Regional Court (which due to legislative changes was directed his appeal to the Supreme Court). He also complained to the Chairperson of the Supreme Court. On 26 December 2007, a Deputy-Chairperson of the Supreme Court, and on 5 February 2008, the First Vice-Chairperson of the Supreme Court, rejected his appeals and affirmed that the decision of the first instance court was grounded, the author was fined lawfully, and his guilt was duly established.

The complaint

3.1. The author claims a violation of his rights under articles 7 and 10, of the Covenant, because during his detention in the Temporary Detention Centre in Vitebsk, the police refused to allow his hospitalization following a hypertonia crisis and failed to provide him with adequate medication.

3.2 He contends that his arrest and subsequent detention were unlawful and arbitrary, in violation of article 9, paragraph 3, of the Covenant, and claims that individuals awaiting trial should not be detained as a general rule and that he should have been released on bail.

3.3 According to the author, article 14 paragraph 1, was also violated in his case, as the judge was not independent and failed in her duty of impartiality, the presiding judge never read out her decision in his case, the end of the trial was not officially announced, and the

⁴ The author submits a copy of the decision of the Pervomaisky District Court of 23 January 2007, without, however, explaining when and how he received it.

individuals present at a public trial were ordered to leave the court room at the end of the hearing without justification.

3.4 The author invokes a violation of his right to be presumed innocent, in violation of article 14, paragraph 2, of the Covenant, as the trial transcript, as signed by the judge, designated him as “the offender” and not as an accused.

3.5 The author further claims that his right to defence as protected under article 14, paragraph 3 (b), of the Covenant has been violated, as he was refused to be represented by the representative of his choice immediately after his arrest.

3.6 The author claims that by arresting him and preventing him to distribute information leaflets and posters, he was prevented from expressing his opinions, in violation of the provisions of article 19, paragraphs 1 and 2, of the Covenant.

3.7 Finally, he claims to be a victim of discrimination, in violation of article 26 of the Covenant, as he was arrested and fined based on his opinions.

State party’s observations on admissibility and merits

4.1 By Note Verbale of 26 October 2008, the State party informed that the Supreme Court of Belarus has examined the author’s communication and verified Mr. Levinov’s (administrative) case file content. According to the State party, it transpired that the author’s allegations on irregularities concerning his administrative case were not confirmed.

4.2 The State party contends that the conclusion of the Court of the Pervomaisky District (Vitebsk City) of 23 January 2007 (by which the author was found guilty of minor hooliganism and fined to 62 000 roubles), corresponded to the factual circumstances of the case and the court decision was grounded.

4.3 According to the State party, the author’s allegations concerning the failure of the judge to read out the court’s decision, to explain how the decision could be appealed, and on the closed nature of the trial, are groundless as they are refuted by the content of the trial transcript⁵.

4.4 The State party explains that the author has been fined because on 13 January 2007, at 9 p.m., near his home in Vitebsk, he has used offensive language against police officers and has disturbed the public order and the tranquillity of the citizens, what constitutes an offence under article 156 of the Code of Administrative Offences – minor hooliganism.

4.5 The State party points out that the author’s guilt has been confirmed by four witnesses, all questioned in court, and the material on file. On this basis, the Court of the Pervomaisky District of Vitebsk found the author guilty of the offence charged and decided to impose him a fine. The author has appealed against this decision to the Supreme Court of Belarus. The author’s appeals were rejected by the Chairperson of the Supreme Court of 26 December 2007, and the First Deputy-Chairperson of the Supreme Court of 5 February 2008, respectively.

4.6 Finally, the State party explains that the author could have also appealed the District Court decision with the General-Prosecutor’s Office, with a request for the Prosecutor to introduce a protest motion with the Supreme Court, under the supervisory proceedings. According to the State party, the author has failed to appeal with the Prosecutor’s Office, and thus domestic remedies have not been exhausted in the present case.

⁵ The State party does not provide a copy of the trial transcript in question.

Author's comments on the State party's observations

5.1 On 23 April 2009, the author explained that pursuant to the provisions of the Code on Administrative Offences (COA), court rulings concerning administrative discipline (fining) are final and not subjected to appeal (art. 266, part 2, CAO).

5.2 He acknowledges that he had the right to appeal, under the supervisory proceedings, against the court ruling once it enters into force to the Chairperson of the Supreme Court and the Prosecutor-General. According to him, however, such appeals cannot be seen as effective remedies, depending of the discretionary power of a judge or prosecutor. In addition, in politically motivated cases, neither the Supreme Court's Chairman, nor the Prosecutor-General use to introduce protest motions.

5.3 The author further notes that supervisory appeals to the Prosecutor-General are not compulsory under Belarusian Administrative law, for purposes of exhaustion of domestic remedies. He had already appealed twice with the Supreme Court, under the supervisory proceedings, against the district court's decision, without success. Thus, he had exhausted the domestic remedies, even ineffective ones.

5.4 On the merits, the author points out that the State party in its reply has contended that his guilt has been duly established, without refuting his allegations of the present communication.

5.5 He further contends that the State party's explanation that his allegations concerning the failure of the judge to read out the decision and inform him of the possibilities to file an appeal were refuted by the content of the trial transcript is groundless. This contention, according to the author, is refuted by a copy of collective appeal (copy provided) signed by several individuals and sent in support of his case to the Ministry of Justice and the Supreme Court, and also by reports in printed and electronic media (copies provided), as well as the author's own appeal to the presiding judge in his case, with a request to have the decision read out to him.

Additional observations by the State party

6.1 By Note Verbale of 21 September 2009, the State party provided additional information concerning another conviction of the author for minor hooliganism, for acts committed in March 2008, where Mr. Levinov was sentenced to ten days of administrative arrest.

6.2 The State party further contested the author's allegations on the independence of Belarusian judiciary. It explains that according to the Constitution and the laws, judges are independent in administrating justice, and no interference in their work is permitted. In addition, judges of the Supreme Court and the Supreme Economic Court are appointed by the President of Belarus following the agreement of the Council of the Republic of the National Assembly, at the proposal of the Chairman of the Supreme Court and the Supreme Economic Court, respectively.

Issues and proceedings before the Committee*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 it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has noted that the same matter is not being examined under another procedure of international investigation or settlement. Accordingly, it considers that the requirements of article 5, paragraph 2 (a) have been met in the present case.

7.3 The Committee has also noted the author's explanation that he had exhausted all available domestic remedies, up to the Supreme Court of Belarus. It has also noted the State party's contention that the author could have further appealed to the Prosecutor-General with a request to have a protest motion filed under the supervisory proceedings. The Committee recalls its jurisprudence that such remedies do not constitute a remedy, which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol⁶. Accordingly, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol, have been met in the present case.

7.4 The author has claimed that while in detention, in violation of article 7 and 10 of the Covenant, the police refused his hospitalisation after a hypertonic crisis and failed to provide him with adequate medication. The Committee notes that while the State party has not addressed this particular claim, the material on file shows that the author himself refused to be administered an injection by the emergency unit called, invoking medical reasons. In the circumstances, and in the absence of any other pertinent information on file in this connection, the Committee considers that this part of the communication, in connection to the author's claims under articles 7 and 10, of the Covenant, is insufficiently substantiated, for purposes of admissibility, and that it is therefore inadmissible under article 2, of the Optional Protocol.

7.5 The Committee has noted the author's claim that his arrest was in violation of the requirements of article 9 of the Covenant, and also that he was not released on bail in spite of his request. The Committee notes that from the information before it, it transpires that the author was notified on the reasons of his arrest and subsequent detention – i.e. minor hooliganism - even if he affirms that police officers have misrepresented the circumstances of his arrest in order to have him detained. The Committee further notes that the author asked to be released on bail during the night of 13 January 2007 (Saturday), and that his release was ordered on 15 January 2007 (Monday) when he was brought before a court. From the material before it, the Committee notes that it also transpires that the court interrogated the police officers who had arrested the author, as well as other individuals, concerning the exact circumstances and reasons of the author's arrest, and found their explanations credible and mutually corroborating. The Committee therefore considers that the author has failed to substantiate his claims under article 9 of the Covenant, for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.6 The Committee has further noted the author's claim that his right to be presumed innocent has been violated, as the trial transcript contained qualifications such as "the offender", and not "the accused". The Committee notes that there is no indication in the information before it which shows how the transcript would have affected the author's right to be presumed innocent, and considers that this part of the communication, concerning the author's claim under article 14, paragraph 2, of the Covenant, is inadmissible under article 2, of the Optional Protocol, as insufficiently substantiated.

7.7 The Committee has taken note of the author's further allegations, raising issues under articles 19 and 26, of the Covenant. It notes that the State party has not refuted them directly, but has stated that Mr. Levinov's guilt of minor hooliganism was duly established and his sentence was grounded. The Committee notes that the information before it does not show that the author has raised these particular allegations before the national courts. It notes that neither in his appeal to the Vitebsk Regional Court of 17 July 2007, nor in his request for a supervisory review to the Supreme Court of Belarus of 5 January 2008, has the

⁶ See, for example, *Yekaterina Gerashchenko v. Belarus*, Communication No. 1537/2006, Inadmissibility decision adopted on 23 October 2009, paragraph 6.3.

author formulated such allegations. In the circumstances, the Committee considers that the author's claims under articles 19 and 26, of the Covenant, are insufficiently substantiated, for purposes of admissibility, and are inadmissible under article 2, and also under article 5, paragraph 2 (b), of the Optional Protocol.

7.8 The Committee considers that the remaining part of the author's claim, raising issues under article 14, paragraphs 1 and 3 (b), of the Covenant, have been sufficiently substantiated for purposes of admissibility, and declares it admissible.

Consideration on the merits

8.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 The author has claimed that his rights under article 14, paragraph 1, of the Covenant have been violated, in particular as the ruling of the Pervomaisky District Court of 23 January 2007 was never read out to him, he was not informed on the possibilities to appeal it, and because the judge ordered the public to leave the court room shortly prior to the conclusion of the trial without justification. The State party has contended that these allegations were groundless and refuted by the content of the trial transcript. The Committee notes first, that the author has explained that the decisions concerning fines under article 156 of the Code of Administrative Offences are final and not subject to appeal (see paragraph 5.1 above). It further notes that, even if he claims that he was never informed on the possibilities to appeal against the decision of the court to fine him for hooliganism, the author has complained to the Vitebsk Regional Court and to the Supreme Court, under a supervisory review procedure, invoking the alleged irregularities made by the presiding judge. The Committee notes also that from the material on file, as provided by the author, it transpires that on 23 January 2007, the presiding judge did explain to him what her decision in his case would be⁷. In light of these circumstances, the Committee considers that the facts before it do not permit it to conclude that Mr. Levinov's rights under article 14, paragraph 1, of the Covenant, have been violated.

8.3 The author has further invoked a violation of his defence rights under article 14, paragraph 3 (b), of the Covenant, as immediately after his arrest, the police refused to allow a relative or acquaintances of the author, present at the police station after his arrest, to act as his representative, or to give him the possibility to designate a lawyer. The Committee notes that the author was represented by a counsel at his trial, and that it does not appear from the material before it that investigation acts were carried out before the beginning of the author's trial. In the circumstances, the Committee considers that the facts before it do not show that Mr. Levinov's rights to defence have been violated in the present case.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any provision of the Covenant.

[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.]

⁷ The author has submitted a copy of a collective appeal prepared on an unspecified date by a number of individuals in his support, to the attention of the Supreme Court. The appeal contains the explanation that the author was informed by the judge of her decision in his administrative case, in her office, on 23 January 2007.

