



## International Covenant on Civil and Political Rights

Distr.: General  
5 August 2016

Original: English

### Human Rights Committee

#### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2047/2011\*, \*\*

<i>Communication submitted by:</i>	S.V. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	24 January 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 June 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	30 March 2016
<i>Subject matter:</i>	Fair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies; insufficient substantiation of claims
<i>Substantive issues:</i>	Fair trial; fair trial – witnesses
<i>Articles of the Covenant:</i>	14 (1), (2), (3) (a) and (e), (5)
<i>Articles of the Optional Protocol:</i>	2 and 5

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* 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 Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1.1 The author of the communication is S.V., a national of Belarus born in 1968. He claims to be a victim of a violation by Belarus of his rights under articles 14 (1), (2), (3) (a), (3) (e) and (5) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

1.2 On 19 April 2012, 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.

#### **The facts as submitted by the author**

2.1 On 23 May 2006, the author, a senior investigator at the Department of Internal Affairs under the Brest Regional Executive Committee, was denounced by one K.V. as having taken a bribe consisting of two mobile telephones and a laptop computer. On 8 May 2007, the Kobrin District court of the Brest Region found the author guilty under articles 430 (3) (reception of a bribe), 424 (3) (abuse of power or official position) and 427 (1) (forgery) of the Belarus Criminal Code. On 23 July 2007, the author filed an appeal to the Brest regional court, which was rejected on 31 July 2007. On 17 November 2010, the author appealed under the supervisory review procedure to the Supreme Court, but his appeal was rejected on an unspecified date. In his appeals, the author raised, inter alia, complaints about the failure of the first instance court to inform him of the charges against him under article 424 (3) of the Criminal Code, to verify the claims of the witnesses testifying against him about the pressure exerted on them by the investigators at the pretrial stage, and the failure of the district court to summon a witness requested by the defence. The author claims also that the appeal court upheld the decision of the first instance court without addressing his claims in substance.

2.2 The author claims that K.V. and one L.S. denounced him and testified against him under pressure from the investigators while they were being held in pretrial detention. He submits that procedural rules were breached during the investigation, given that an investigator who was officially on leave processed the testimony from L.S. The author submits that such breaches regarding key witnesses render the district court's judgment unlawful. He also claims that during the hearing at the first instance court he requested that a witness, one S.O., be summoned, but the district court refused to do so and did not reflect the request in the trial record. According to the author, S.O., whom the author questioned on the same date as he questioned K.V., could testify that K.V. did not have a laptop with him on the day concerned. Her testimony could have proven the author's innocence or otherwise affected the decision of the court. The author claims that the date on which S.O. was questioned was stated incorrectly in the documents presented to the court. He submits that the charges against him under article 424 (3) of the Criminal Code, concerning abuse of an official position — specifically, omitting and misrepresenting information in the testimonies of witnesses (Ch.T. and P.T.) — were unilaterally modified by the district court during the hearing and that he learned about the new charges only upon receiving the final verdict of the court.

#### **The complaint**

3.1 The author alleges that his rights under article 14 (1) and (2) of the Covenant were violated, because the first instance court failed to verify his claims about the pressure exerted on the witnesses who testified against him and whose testimonies were used as a basis for his conviction.

3.2 The author claims that his rights under article 14 (3) (e) of the Covenant were violated, because the first instance court failed to summon a witness as requested by the defence.

3.3 The author submits that his rights under article 14 (3) (a) and (e) of the Covenant were violated because he was not informed of the charges against him under article 424 (3) of the Criminal Code before the trial, the materials relevant to that part of sentence were not examined at the court hearing and the respective witnesses were not questioned in that connection.

3.4 The author claims that article 14 (5) of the Covenant was violated because the courts did not address his claims in substance when examining his cassation or supervisory review appeals.

#### **State party's observations**

4. In a note verbale dated 14 February 2012, the State party submitted that the author's submission had been registered in violation of article 2 of the Optional Protocol, since the author had failed to submit a request for supervisory review to the Prosecutor General's office and, thus, had failed to exhaust available domestic remedies. The State party noted that in such circumstances there were no legal grounds for it to consider the communication, on admissibility or on the merits.

#### **Author's comments on the State party's observations**

5. In a communication dated 19 March 2012, the author submits that his communication complies with the registration criteria, since he filed an appeal for supervisory review with the Prosecutor General's office on 1 September 2009, which was recorded in the prison correspondence registration book on 1 September 2009. He further states that his appeal was transmitted by the Prosecutor General's office to the Supreme Court, without his being informed. He learned of the transmittal of his appeal when he received a rejection letter from the Supreme Court dated 9 October 2009.

#### **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 rule 93 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 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 due to the fact that the author has 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 for supervisory review to a prosecutor's office to initiate supervisory review against a judgment having the force of *res judicata* does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b), of the Optional Protocol.<sup>1</sup> Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

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<sup>1</sup> See communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; and No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 6.3.

6.4 The Committee notes the author's claim that in violation of article 14 (3) (a) and (e) of the Covenant, the grounds on which the first instance court found him guilty under article 424 (3) of the Criminal Code differed from those under which he was originally charged and that those grounds were based on the pretrial testimony by the witnesses Ch.T. and P.T. and were not examined at the court hearing. The Committee observes from the decision of the district court of 8 May 2007 that the witnesses who provided the testimonies to which the author refers, Ch.T. and P.T., were in fact questioned by the district court. It also notes that the author's claim relates in essence to the assessment of the witness testimonies by the court. The Committee recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty of independence and impartiality. On the basis of the information before it, the Committee does not consider that the decision of the district court under article 424 (3) of the Criminal Code was arbitrary or amounted to a denial of justice, or that the court failed in its duty of independence and impartiality. In these circumstances, the Committee finds this part of the claim insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.5 Regarding the alleged violation of article 14 (1) and (2) of the Covenant, the Committee notes the author's claim that the court and the prosecutors failed to investigate his claim about the pressure exerted by the investigators on L.S. at the pretrial stage. The Committee observes, however, that the material on file does not show that the author or his lawyers raised this claim in the appeal or whether the author has exhausted domestic remedies in relation to his claim under article 14 (1) and (2) of the Covenant. The Committee thus concludes that this part of the communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

6.6 Finally, the Committee notes the author's argument under article 14 (5) of the Covenant that the cassation and supervisory courts have not considered his appeals in substance. Taking into account that the author has not provided the text of his cassation appeal, the decision of the Brest regional court, acting as the cassation instance, or the decision of the Supreme Court, acting as the supervisory instance, the Committee finds this part of the author's complaint insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

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

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

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