

Belarusian detainee held for over 48 hours in violation of human rights

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Kovsh (Abramova) v. Belarus (1787/2008)

Summary

In March 2013, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights by detaining a person for a period in excess of 48 hours without bringing them before a judge.

The communication was submitted by a Belarusian national under the Optional Protocol to the Covenant.

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Background

On 29 September 2005 and 27 January 2006, the author of the communication, Zhanna Abramova (now Kovsh), was detained by police for periods of 61 hours and 72 hours respectively. The author was not brought before a judge during either of these periods of detention.

On 23 October 2007, the author filed a complaint with the District Prosecutor, alleging that on both occasions the relevant authorities had failed to bring her promptly before a judge as required by article 9(3) of the Covenant. On 12 November 2007, the District Prosecutor rejected the author's claim, confirming the lawfulness of such detention under Belarusian law but making no reference to article 9(3) of the Covenant.

On 18 November 2007, the author submitted her complaint under article 9(3) to the Regional Prosecutor. On 20 December 2007, the Regional Prosecutor rejected the author's complaint on the basis that her detention was in conformity with national law, again without making reference to article 9(3).

On 27 December 2007, the author brought her complaint before the District Court. On 14 January 2008, the author submitted a complaint to the Prosecutor General, challenging the decisions of the District and Regional Prosecutors. On 27 February 2008, the District Court decided to terminate the proceedings for lack of jurisdiction. On 3 March 2008, the author's complaint to the Prosecutor General was transmitted to the Regional Prosecutor's Office. On 4 April 2008, the Regional Prosecutor rejected the author's claim on the grounds that article 9(3) of the Covenant did not specify a time limit for pre-trial detention. The Regional Prosecutor also stated that the author was required to have registered a complaint during her detention for there to have been a potential violation of either national or international law.

On 4 April 2008, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Belarus had violated its obligations under article 9(3) of the Covenant in its failure to bring her before a judge during two separate periods of detention in excess of 48 hours. In relation to the District Court hearing of 27 February 2008, the author also claimed that Belarus had violated its obligation to uphold the right to a public hearing under article 14(1) of the Covenant as the public had been

denied entry to the court room.

The Committee's decision

In considering the complaint's admissibility, the Committee found that the author's claim under article 14(1) of the Covenant in respect of her right to a public hearing had not been sufficiently substantiated for the purposes of article 2 of the Optional Protocol. Accordingly, the Committee found this part of the author's claim to be inadmissible.

With respect to the author's claim under article 9(3) of the Covenant, the Committee observed that the author's failure to register a complaint under the applicable national law during her detention did not preclude the complaint's admissibility. As such, the right in question was that of a detained person to be brought before a judge under article 9(3) of the Covenant, and not the entitlement to bring judicial proceedings under article 9(4). As this part of the author's complaint had been sufficiently substantiated and all available domestic remedies had been exhausted, the Committee declared it to be admissible under the Optional Protocol.

Turning to the merits, the Committee noted that pre-trial detention should generally, in view of its exceptional character, be kept as short as possible. As prompt initiation of judicial oversight constituted an important safeguard against the ill-treatment of detained persons, the Committee concluded that such judicial control must be automatic and not dependant on any prior complaint or application by the detained person.

In the Committee's view, the term "promptly" in article 9(3) had to be construed on a case-by-case basis. However, as indicated in the Committee's jurisprudence and General Comment No. 8 on the right to liberty and security of the person, such delays should not exceed a few days. The Committee also noted its general recommendation in the context of State parties' reports that the period of police custody before which a detained person is brought before a judge should not exceed 48 hours.

The Committee therefore concluded that Belarus had violated its obligations under article 9(3) of the Covenant by detaining the author for periods of 61 hours and 72 hours without judicial oversight. In accordance with article 2(3) of the Covenant, Belarus was under an obligation to provide the author with an effective remedy, including reimbursement of any legal costs incurred and adequate compensation. The Committee further recommended that Belarus review its legislation, in particular the Criminal Procedure Code, to ensure that it conforms with the requirements of article 9(3).

Belarus must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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