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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

**VIEWS**

**Communication No. 1100/2002**

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|---|---|
| Submitted by: | Yuri Bandajevsky (represented by counsel) |
| Alleged victim: | The author |
| State party: | Belarus |
| Date of communication: | 19 April 2002 (initial submission) |
| Document references: | Special Rapporteur's rule 91 decision, transmitted to the State party on 17 July 2002 (not issued in document form);<br><br>CCPR/C/78/D/1100/2002 - admissibility decision of 7 July 2003. |
| Date of adoption of Views: | 28 March 2006 |

* Made public by decision of the Human Rights Committee.

*Subject matter*: Detention ordered under anti-terrorist legislation; alleged persecution because of public expression of opinions critical of State party's Government.

*Procedural issues*: Level of substantiation of claim; non-exhaustion of domestic remedies.

*Substantive issues*: Unlawful detention; conditions of detention, unfair trial, freedom of opinion/right to impart information.

*Articles of the Covenant*: 9, 10, 14, 19

*Articles of the Optional Protocol*: 2 and 5, paragraph 2 (a)

On 28 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1100/2002. The text of the Views is appended to the present document.

[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

eighty-sixth session

concerning

**Communication No. 1100/2002***

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| Submitted by: | Yuri Bandajevsky (represented by counsel) |
| Alleged victim: | The author |
| State party: | Belarus |
| Date of communication: | 19 April 2002 (initial submission) |

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

Meeting on 28 March 2006,

Having concluded its consideration of communication No. 1100/2002, submitted to the Human Rights Committee by Yuri Bandajevsky 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 author of the communication and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

1. The author of the communication is Yuri Bandajevsky, a citizen of Belarus, born in 1957, who at the time of submission of the communication was imprisoned in Minsk, Belarus. He claims to be a victim of violations by Belarus of his rights under articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Factual background:2.1 The author was a professor and Rector of the State Institute of Medicine in Gomel, Belarus. In 1999, a criminal case was filed against him under article 169 of the Criminal Code of Belarus (1960 version), on a charge of having accepted bribes. He was arrested on 13 July 1999, subsequently released, but asked not to leave the State territory. On 18 June 2001, the Military Chamber (Collegium) of the Supreme Court convicted him of having accepted bribes, pursuant to article 430 of the Criminal Code (1999 version), and sentenced him to 8 years of imprisonment. According to the author, the Court held that in 1997, when he was Rector of the Medical Institute, he proposed to the Education Director to collect money as bribes from parents of applicants to study at the Institute.

2.2 The author affirms that he has exhausted all domestic remedies.

**The complaint**

3.1 The author claims a violation of article 9, paragraph 1, of the Covenant: he notes that he was arrested on 13 July 1999, with approval of the Procurator General, and detained for 30 days under a Presidential Decree of 21 October 1997 “On the urgent measures for the fight of terrorism and other particularly dangerous violent crimes”. He claims that he was later charged with having accepted bribes, contrary to article 169 (3) of the Criminal Code of Belarus. This offence, he notes, has no relation with terrorism or other violent or particularly dangerous crimes. According to him, there was no justification for his arrest and detention.

3.2 The author claims that he was not informed of the charges against him upon his arrest on 13 July 1999, and that he was accused of having received bribes only 3 weeks later, on 5 August 1999, in violation of article 9, paragraph 2, of the Covenant. He also claims that he was deprived of the possibility of having his detention reviewed, in violation of article 9, paragraph 4, of the Covenant.

3.3 He also claims that, during his detention, he did not receive any medical car e, commensurate to his state of health, in violation of article 10, paragraph 1, of the Covenant. He states that only after an abrupt deterioration of his state of health, he was hospitalized on 8 August 1999 in the regional hospital of Mogilev; on 18 September 1999, at the request of the authorities, he was again placed in detention. He further claims that he was unable to have any items for personal hygiene or adequate personal facilities. The conditions of detention did not allow the author to consult scientific or artistic literature, or press from independent media, “corresponding to his background and profession”.

3.4 He claims that during his pre-trial detention, the conditions of detention were identical to those of convicted prisoners, in violation of article 10, paragraph 2, of the Covenant.

3.5 The author reiterates that the charges against him were notified only on 5 August 1999 (23 days after his arrest), and claims that until this moment, he was deprived of the possibility to defend himself against those charges, in violation of article 14, paragraph 3 (a), of the Covenant. He alleges that between 6 August 1999 and 18 September 1999, during his stay in hospital, he was not allowed to consult his lawyer, in violation of article 14, paragraph 3 (b), of the Covenant. Allegedly, the Court did not allow his counsel — Mr. G. P. from the Belarusian Helsinki Committee — to represent him in court, in violation of article 14, paragraph 3 (d).

3.6 In relation to article 14, the author claims that his guilt was not proven in Court. The only evidence against him were the allegedly contradictory declarations of two witnesses — Mr. Shaichek and Mr. Ravkov; the judgment allegedly did not refer to other evidence. It is stated that the Court considered only the arguments of benefit to the prosecution, ignoring procedural violations committed during the investigation and in court. According to the author, this proves the lack of impartiality of the Court, and that the investigation and the court's proceedings were biased and incomplete. He adds that Mr. Ravkov had initially made a deposition on 12 July 1999, accusing him of taking bribes, but later, in court, he retracted his deposition, stating that initially he was under pressure from the investigators (interrogation longer than legally authorized, with no food or sleep, and use of threats against his wife and daughter; he also claimed that a psychotropic substance had been added to his food). The Court allegedly ignored these declarations and took into account only the initial ones.

3.7 The author contends that contrary to article 14 of the Covenant, courts in Belarus are not independent because the President of the Republic has sole authority to appoint and dismiss judges; before their formal designation, they go through a probationary period, without any guarantee that they will ultimately be appointed. In the author's opinion, the lack of independence of judges is also confirmed by a report of the Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights (June 2000).

3.8 The author further claims that under article 1 of the Decision of the Supreme Council (Supreme Chamber of the Belarusian Parliament) on the "interim situation in the designation of people's jurors (assessors)" (7 June 1996), all Belarusian citizens of above 25 years can become jurors, and citizens of 25 years and in active military service — can become jurors in military courts. However, in his case, only the President of the Military Chamber of the Supreme Court was in active military service, and none of the jurors. This is said to raise issues under article 14 of the Covenant.

3.9 Finally, the author claims that his rights under article 19, paragraphs 1 and 2, of the Covenant were violated. He contends that in April 1999, during a Parliamentary Session on the consequences of the Chernobyl disaster, he produced a critical report on the effects of the event for Belarus, which was very different from the official position of the Government. In the

author's opinion, his criticism was the true reason for his persecution and dismissal from the Medical Institute.

**State party's observations on admissibility**

4. By submission of 17 September 2002, the State party argued that the communication should be declared inadmissible, because "the same matter" was already registered and was being examined by another international body of settlement, i.e. the United Nations Educational, Scientific and Cultural Organization (UNESCO), under the individual complaints procedure before the Executive Board's Committee on Conventions and Recommendations of UNESCO. The author presented no comments in this regard.

**Committee's admissibility decision**

5. On 7 July 2003, at its seventy-eighth session, the Committee examined the admissibility of the communication. It noted the State party's challenge to admissibility, and considered that the complaints procedure before the Executive Board's Committee on Conventions and Recommendations of UNESCO is extra-conventional, without any obligation of the State party concerned to cooperate with it; that no conclusion of violation or non-violation of specific rights by a given State is made in the examination of individual cases; and that such an examination ultimately does not lead to any authoritative determination of the merits of a particular case. The Committee concluded that the UNESCO complaints procedure does not constitute another "procedure of international investigation or settlement" in the sense of article 5, paragraph 2 (a), of the Optional Protocol, and having also noted the author's statement that domestic remedies were exhausted, declared the communication admissible.

**State party's observations on the merits**

6.1 By Note Verbale of 20 January 2004, the State party notes that the author was found guilty of being, in his personal and official capacity, a member of a group that had conspired to receive bribes in large amounts.[1] He was arrested on 13 July 1999 on the basis of a written statement of 12 July 1999 of his colleague Ravkov to the Gomel Regional Prosecutor, in which the latter voluntarily informed the prosecutor about the bribes he received for the admission of new students to the Institute. Ravkov had described, in detail, dates and names of persons from whom he received bribes that he transmitted to the author, the exact amounts received, and the functioning of the group. He had affirmed in writing that his confessions were made under no constraint, and that he was informed of his criminal responsibility in case of giving false information against the author.

6.2 For the State party, the author's arrest was carried out with the agreement ("sanction") of a prosecutor and at the moment of arrest, the author was informed of the reasons and grounds

[1] I.e. for the crime prescribed by article 430 (2) of the Criminal Code of Belarus Article 430 (2) of the Belarusian Criminal Code: receipt of bribes.

for his arrest. His arrest is said to be grounded on and made in accordance with Presidential Decree of 21 October 1997; the Decree was applied in his case as it applies not only to suspects of "terrorism and other particularly dangerous violent crimes", but also to individuals who "lead a criminal organization, an organized criminal gang, or belong to it". The State party adds that in the light of Ravkov's deposition, the existence of an organized criminal group could not be excluded by the investigators.

6.3 From the criminal case file, it transpires that the author led a group set up with Ravkov and other individual. Under the provisions of the above-mentioned Decree, and after a verification of the facts by the preliminary investigation, and within the statutory 30-day delay, the author was served his indictment for bribery. His detention was extended with the approval of a prosecutor.

6.4 The State party explains that the author's detention was lawful, as he was charged with a serious crime, and that article 126 of the Criminal Procedure Code provides that in relation to those accused of having committed serious offences, preventive detention is justified by reference to the nature of the crime. In addition, the investigators had information that the author had exerted pressure on witnesses in the case, on subordinates at his Institute, thus obstructing the conduct of the investigation. The author was released in light of his health, after he signed a declaration that he would not leave the country, and was also allowed to continue his work. On 10 June 2001, however, he was arrested with a forged passport, when attempting illegally to cross the border to Ukraine.

6.5 The State party argues that during the investigation, the author received the necessary medical care. On 13 August 1999, his chronic illness intensified and he was treated at the Hospital of the Committee on the Execution of Penalties. On 13 December 1999, he was admitted for an examination in the National Cardiology Research Institute. He continued to receive the required medical care in the prison colony to which he was transferred. According to information provided by the Committee on the Execution of Penalties on 28 February 2003, the author had not requested medical assistance since September 2002 and visited the colony's medical unit only at the doctors' request. His mental and physical health is said to be satisfactory. No requests for detailed examination of his health were received from him, his lawyer or relatives.

6.6 According to the State party, the author was always assisted by a lawyer during the investigation and in court. Investigation proceedings, accusation, and consultation of the content of the criminal case, were all carried in a lawyer's presence and were co-signed by the latter. Exceptionally, no lawyer took part in certain proceedings (as during a cross-examination with Ravkov); this was due however to the author's request and was duly recorded. The author was informed by investigators and in court of his rights; these rights were also printed on the procedural forms that were examined and signed by him.

6.7 The State party recalls that G. P. was not allowed to act as the author's representative, because domestic law does not provide for such representation, and because he had no licence to practise as a lawyer in Belarus.

6.8 According to the State party, the preliminary investigation established that the author had received bribes from families of student applicants; he acted through Mr. Ravkov and members of examination commissions; all instances of bribes were duly examined during the investigation and in court (amount, currency, exact place and time of the transfer, etc.). In addition, various examination forms and questions on different subjects, as well as records with names of persons for whom bribes were given, were seized in the author's office.

6.9 The State party contends that the court concluded that Ravkov modified his testimony in court as a defence strategy. The allegation that he confessed under influence of psychotropic substances was duly examined by the court, including through psychiatric/psychological examinations, and was not confirmed. The author's guilt was established by testimony of other accused, cross-examinations, and other material evidence. He was charged with multiple receipt of bribes, acting in agreement within an organized group; preparation and attempted receipt of bribes on preliminary agreement with a group; and abuse of authority.On 12 December 2000, the case was sent to court; proceedings were instituted by the Supreme Court, given the public interest in the case and the author's notoriety. The proceedings were public and held in presence of representatives of international non-governmental organizations.

6.10 Under article 270 of the Criminal Procedure Code, the case was examined by the Military College of the Supreme Court, as Ravkov was a medical colonel of the reserve, and it was impossible to try him separately. As an example of objectivity and impartiality of the trial, several charges made by the investigators were dropped in court. In accordance with article 15 of the Covenant, the author was convicted under the provisions of a new law which applied lighter penalties than those at the time of commission of the offences. The form and the content of the judgment is said to be in compliance with the criminal procedure then in force. The court took into account the severe social repercussions of the crime (classified as "heavy" in the Criminal Code), as well as information on the personality of the accused and the existence of mitigating circumstances (e.g. positive references from the author's employer; his merits as an internationally recognized medical scientist; his health; and the fact that he had the charge of his children). Mr. Bandajevsky was sentenced for multiple acts of bribery to 8 years of imprisonment, coupled with a ban on the exercise of any administrative functions for 5 years.

6.11 On appeal, the criminal case was examined under the supervisory procedure by the Supreme Court, and the judgment was found lawful and just. According to the State party, if the Supreme Court had detected serious violations of the law, the judgment would have been cancelled.

6.12 The State party rejects the author's allegation that he was prosecuted because of his critical opinion on the authorities' reaction to the Chernobyl crisis, and affirms that in prison, the author has continued his research and has completed several scientific publications

6.13 According to the State party, the author has submitted no request for a pardon since October 2002. Pursuant to an Amnesty Law of 2002, his sentence was reduced by one year. According to articles 90 and 91 of the Criminal Code, his sentence could be substituted by a lighter one after serving not less than half of the initial sentence, which in the author's case would be after 6 September 2004. The issue of conditional early release could therefore be examined after 6 September 2005.

6.14 By Note Verbale of 10 March 2004, the State party informs the Committee that on 8 January 2004, the author's sentence was reduced by another year. It is stated that the author was placed on medical observation for "duodenal ulcer" and receives treatment. His health situation is said to be stable. It also submits the text of a report from the OSCE representative in Minsk, after his visit to Mr. Bandajevsky on 3 December 2003.

**Author's comments on State party's submissions**

7.1 By letters of 12 March, 26 April 2004, and 17 May 2005, the author reaffirms that his arrest was unlawful, and recalls that a preventive detention up to 30 days relates only to terrorism and other particularly serious crimes. He reaffirms that the conditions in the detention centre where he was held for 23 days were inadequate, and that this allegation was not refuted. He claims that he was not able to meet with his lawyer within 24 hours, nor was he promptly informed of the charges against him, and that "he could not exercise other procedural guarantees as a suspect".

7.2 In detention, the author allegedly developed acute peritonitis and had to be operated on "at the end of September 2003", due to inadequate medical attention. He had suffered from ulcers for a long time and claims that he is allowed to receive only 30 kg of parcels per trimester, while the prison diet is inadequate for his ailment.

7.3 He reiterates that he had requested Mr. G. P. to represent him in court, but on two occasions the Supreme Court allegedly dismissed the latter's requests to this effect. Mr. G. P. is a member of the Moscow Lawyers' Guild, and under the CIS[2] Convention[3] of 23 January 1993, Russian lawyers can practise in Belarus.

7.4 The author notes that the State party does not refute his allegations about the unlawful composition of the court and about the impossibility for him to file an appeal in cassation against the judgment of the Supreme Court.

7.5 As to the possibility of his conducting scientific research, the author claims that because of his detention, his contacts with foreign researchers are limited, and he is unable to use special equipment or to gain access to the latest scientific developments. Such articles as he

[2] Community of Independent States.

[3] CIS Convention on Legal Assistance and Relations on Civil, Family, and Criminal Cases.

wrote were mainly based on his memory. His computer has no Internet access and is used only for word processing, and he had no mobile phone access.

**Additional submissions by the State party**

8.1 On 16 December 2004, the State party submits that under article 22 of the Law on Collective Organizations (1994), organizations (such as NGOs) are allowed to represent rights and lawful interests of their own members. The author was not a member of the Belarusian Helsinki Committee, and in addition, he had requested Mr. G. P. to participate in the trial not as his representative, but as a NGO representative.

8.2 From 5 July 2001 to 1 June 2004, the author was held at the Minsk Correctional Colony No. 1. According to his medical records, during this period, he visited the medical service on twelve occasions, including for eight routine examinations in the dispensary, passed a number of specialized examinations, and was also hospitalized. He was given treatment commensurate with his health, and he received additional medicines from abroad. The State party denies that he was operated on for "peritonitis" on 1 October 2003, stating that the operation was in fact for "appendicitis", and that he was discharged as early as 6 October 2003.

8.3 On 26 May 2004, the Minsk Central District's Court changed the author's penitentiary regime and he was transferred to a Gazgalyi colony-village. Since 7 June 2004, he has worked as a guard in a private agricultural firm and lives outside the colony-village. He has received visits from foreign diplomats, journalists, and the Chairperson of the United Nations Working Group on Arbitrary Detention. On two occasions, he has been allowed to travel to Minsk, for a week. His family is free to visit him without limitation.

8.4 On 25 April 2005, the State party reaffirms that during his free time, the author is able to conduct scientific research. The administration's decision not to request his anticipated release was lawful and taken pursuant to the provisions of the Criminal Execution Code (CEC). On 21 September 2004, the author was granted a 7-day leave, but he returned only on 4 January 2005. During his absence, he omitted duly to inform the prison authorities or the police of the reasons for his absence, in violation of both the provisions of CEC and the colony's internal rules. During this period, he passed different examinations and received treatment in several medical institutions in Minsk, but from 27 September to 27 October 2004, and from 23 November to 3 January 2005, he was treated at a day hospital, whereas from 12 to 16 November 2004, he stayed at home.

8.5 The State party contends that during his treatment in Minsk, the author consulted different specialists and passed a number of examinations, following which he was prescribed appropriate medication. The author was able to visit the local (ordinary) medical institution in charge of the penitentiary colony.

8.6 By Note Verbale of 18 August 2005, the State party explained that on 5 August 2005, the Dyatlov regional court decided to release the author early and conditionally.

**Additional comments by author**

9.1 On 20 February 2005, the author reaffirmed that the detention centre where he was held between 13 July and 4 August 1999 was not even equipped with beds, so that detainees slept on the floor, with no visits with relatives or lawyers allowed.

9.2 As to the visits received, the author concedes that journalists, researchers, and other visitors were allowed to see him, but that this was possible only upon a specific authorization from the Ministry of Internal Affairs' Department on Execution of Penalties. He claims that several such requests for visits were denied.

9.3 He contends that on 31 January 2005, the penitentiary authorities refused to request his anticipated release, allegedly because they considered that he could not demonstrate that he was "rehabilitated", and also because he was absent from the colony, and refused to pay the fine of 35 million BLR. He affirms that his absence from the colony for 3 months was due to "clinical treatments for illnesses he contracted in prison".

9.4 On 1 June 2005, the author reiterated that his scientific work is limited to the analysing of data of his past research. According to him, his treatment in Minsk towards the end of 2004 had been approved by the chief of the penitentiary colony; he wrote to the colony and received the authority's agreement to be treated in Minsk, without informing him of any particular obligation to notify or to report to the police. He called the penitentiary twice a week, and regularly faxed copies of attestations and medical records; the penitentiary authorities checked his whereabouts on several occasions, by calling the medical institutions concerned and asking to talk to him.

**Examination of the merits**

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

10.2 The Committee has noted the author's claim that his arrest on 13 July 1999 was "groundless", that he was not informed on the reasons upon arrest, was not able to meet with his lawyer within the first 24 hours, and was indicted for bribery only 23 days later, and that the Presidential Decree "On the urgent measures for the fight of terrorism and other particularly dangerous violent crimes" was applied to him to limit his defence rights. The State party claims that the author's arrest and pre-trial detention were lawful, as a criminal case for bribery had been opened on 12 July 1999 against him; that there were grounds for believing that he was a leader of a criminal group, and that the investigators had information that he exercised pressure on witnesses of the case. According to the State party, the author's arrest under the provisions of the Decree was fully justified, as the crime he was suspected of was serious; he was informed of the reasons for arrest, and was accused within 23 days, and also he was represented by a lawyer throughout the preliminary investigation. On the basis of the

information before it, the Committee concludes that there has been no violation of article 9, paragraph 1.

10.3 However, the author claimed that he was arrested and detained for 23 days under Decree No. 21 (1997), without any possibility to challenge the lawfulness of his detention before a court, as those detained under this Decree are not allowed to do so. This allegation has not been refuted by the State party, which only noted that the author's arrest and subsequent detention were subject to previous approval by a public prosecutor. The Committee recalls,[4] first, that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. It further considers that the public prosecutor cannot be characterized as having the institutional objectivity and impartiality to be considered as an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3[5]. In the circumstances, the Committee concludes that the author's rights under article 9, paragraph 3, of the Covenant, were violated.

10.4 In light of the above finding, the Committee considers that the author's right under article 9, paragraph 4, of the Covenant, was also violated.

10.5 The Committee notes the author's allegations under article 10, paragraph 1, about the lack of appropriate medical care and on the way he was treated medically in detention. The State party in turn provides detailed information on the type of medical treatment, clinical examinations and hospitalizations the author received or underwent while in detention. It also affirms that neither the author nor his relatives or his lawyer complained to the competent authorities or in court about these issues. This is not refuted by the author. In these circumstances, the Committee considers that there is no violation of article 10, paragraph 1.

10.6 The Committee has noted the author's allegations, that, contrary to article 10, paragraph 1, the conditions of detention in the Gomel detention centre, where he was held from 13 July 1999 to 6 August 1999, were inappropriate for long stays, and that the centre was not equipped with beds; that, in general, he did not have items of personal hygiene or adequate personal facilities. The State party has not refuted these allegations. In the circumstances, the Committee must give them due weight, and it concludes that the author's conditions of detention reveal a violation of his rights under article 10, paragraph 1, of the Covenant.

10.7 The author has claimed that during his preliminary detention, his conditions of detention were "identical to those of convicted prisoners". Even though the State party has not commented on this, the Committee notes that the author's allegation remains vague and general. Accordingly, and in the absence of any other pertinent information, the Committee

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[4] See Kulomin v. Hungary, Communication No. 521/1992, Views adopted on 22 March 1996, para. 11.3.

[5] See Views on communication 1218 /2003 , Platonov v. Russian Federation, adopted 1 November 2005, paragrsph 7.2.

concludes that the facts before it do not reveal any violation of the author's rights under article 10, paragraph 2.

10.8 The author has further claimed that the State party's courts are not independent because judges are nominated by the President. The State party has not commented on this. In the absence of further relevant information from the author to the effect that he was personally affected by the alleged lack of independence of the courts that tried him, however, the Committee considers that the facts before it do not disclose a violation of article, 14, paragraph 1, on this count.

10.9 The author alleges, again in general terms, a violation of article 14, paragraph 1, in that his guilt was not proven in court, that the court proceedings were biased, incomplete, and that the court considered only the arguments of the prosecution, and that the judgment was based only on Ravkov's deposition that the latter retracted in court. The State party replies, in detail, that the court had considered Ravkov's retraction as a defence strategy, and that the author's guilt was established by several other testimonies and other evidence. The Committee notes that the above claims relate primarily to the evaluation of facts and evidence. It recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice.[6] The Committee considers that the material before it does not reveal that the author's trial had suffered from such defects, and the Committee considers that the facts before it do not disclose a violation of the author's rights under article 14, paragraph 1.

10.10 Further in relation to article 14, the author claims that he was sentenced by the Military Chamber of the Supreme Court which was sitting in an unlawful composition, as pursuant to a decision of the Supreme Council of Belarus of 7 June 1996, people's jurors (assessors) in military courts must be in active military service, whereas in his case, only the presiding judge was a member of the military but not the jurors. The State party has not refuted this allegation and merely stated that the trial did not suffer from any procedural defect. The Committee considers that the unchallenged fact that the court that tried the author was improperly constituted means that the court was not established by law, within the meaning of article 14, paragraph 1, and thus finds a violation of this provision on this count.

10.11 The author has claimed that since he was charged only on 5 August 1999 (23 days after his arrest), he was deprived of the possibility to defend himself properly, in violation of article 14, paragraph 3 (a), of the Covenant. He also claimed that in violation of article 14, paragraph 3 (b), he was not allowed to see his lawyer between 6 August 1999 and 18 September 1999, during his stay in hospital. The State party refutes these allegations and argues that he was always assisted by a lawyer, and was informed both by the investigators and in court of his

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[6] See Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

procedural defence guarantees. On the basis of the material before it, the Committee considers that there has been no violation of article 14, paragraph 3 (a) and (b).

10.12 As to the author's claim under article 14, paragraph 3 (d), that on two occasions the Supreme Court rejected his request to be represented by G. P., a member of the Belarusian Helsinki Committee, the Committee notes the State party's objection that the author was represented by another lawyer, and that G. P. had asked to represent him only in his quality as NGO representative, and that also he had no Belarusian lawyer's licence. The author has replied that G. P. was a member of the Moscow Bar Association and could have practised in Belarus under a specific CIS Agreement. He has however not challenged the State party's claim that he had requested this lawyer to participate in the trial not as his own representative but as a NGO representative. In the circumstances, the Committee concludes that there has been no violation of article 14, paragraph 3 (d), in relation to this allegation.

10.13 The author has claimed that his sentence was not susceptible of cassation appeal and became executory immediately. The State party affirms that the case was examined by the Supreme Court under a supervisory procedure which reviewed the first instance judgment, and that if the Supreme Court had detected violations of the law, the judgment would have been cancelled. The Committee notes, however, that the judgment stipulates that it could not be reviewed by a higher tribunal. The supervisory review invoked by the State party only applies to already executory decisions and thus constitutes an extraordinary mean of appeal which is dependent on the discretionary power of judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal within the meaning of article 14, paragraph 5, imposes on States parties a duty substantially to review conviction and sentence, both as to sufficiency of the evidence and of the law. [7] In the circumstances, the Committee considers that the supervisory review cannot be characterized as an "appeal", for the purposes of article 14, paragraph 5, and that this provision has been violated.[8]

10.14 Finally, on the author's claim under article 19, in that he was persecuted because of his criticism of certain Government positions, especially on the consequences of the Chernobyl disaster, the Committee notes that the State party has repeatedly emphasized that the author was prosecuted and sentenced for bribery only. In the absence of any other relevant information

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[7] See Aliboev v. Tajikistan, Communication No. 985/2001, Views adopted on 18 October 2005; Khalilov v. Tajikistan, Communication No. 973/2001, Views adopted on 30 March 2005, Domukovsky et al. v. Georgia, Communications No. 623-627/1995, Views adopted on 6 April 1998, and Saidova v. Tajikistan, Communication No. 964/2001, Views adopted on 8 July 2004.

[8] See decision in Gelazauskas v. Lithuania, Communication No. 836/1998, Views adopted on 17 March 2003, and Domukovsky et al. v. Georgia, Communications Nos. 623-624, and 627-628/1995, Views adopted on 6 April 1998.

on this particular issue, and given the general nature of the author's claim, the Committee considers that there has been no violation of article 19 of the Covenant.

11. 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 disclose a violation of Mr. Bandajevsky's rights under articles 9, paragraphs 3 and 4; 10, paragraph 1; and 14, paragraphs 1 and 5, of the Covenant.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Bandajevsky with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

13. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[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.]

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