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International Covenant on Civil and Political Rights

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Views

Communications No. 1502/2006

Submitted by:	Mikhail Marinich (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	15 May 2006 (initial submission)
Document references:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 31 October 2006 (not issued in document form)
Date of adoption of Views:	16 July 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	Conviction of an opposition leader accompanied with unfair trial, unlawful detention, inhuman conditions of detention and alleged violation of his right to privacy, freedom of expression and freedom of assembly
Procedural issue:	Non-substantiation
Substantive issues:	Right to fair trial, right to immediate access to a lawyer, unlawful constraint measure, right to be promptly informed of the charges, inhuman treatment and poor conditions of detention, presumption of innocence.
Articles of the Covenant:	7; 9, paragraph 1; 10; 14, paragraphs 1, 2 and 3 (a) and (b); 15; 17; 19; and 22
Article of the Optional Protocol:	2

On 16 July 2010, 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. 1502/2006.

[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 (ninety-ninth session)

concerning

Communication No. 1502/2006**

Submitted by:	Mikhail Marinich (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	15 May 2006 (initial submission)

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

Meeting on 16 July 2010,

Having concluded its consideration of communication No. 1502/2006, submitted to the Human Rights Committee by Mr. Mikhail Marinich 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:

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

1. The author of the communication is Mr. Mikhail Marinich, born in 1940, a citizen of Belarus and former presidential candidate, who claims to be the victim of violations by the State party of articles 7, 9, 10, 14, 15, 17, 19 and 22 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented.

The facts as presented by the author

2.1 The author, formerly a high-level state official,[1] was a candidate to the presidential elections of Belarus in 2001. Following the unsuccessful elections, he became head of the Belarusian Association Business Initiative (BABI). He published several articles and made

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli. and Mr. Krister Thelin.

[1] He was a former Mayor of Minsk city, former deputy of the Parliament, former Minister of Foreign Economic Relations and former Ambassador of Belarus to several European countries.

speeches at conferences on economic reform suggesting views different from those of the Government. This led to persecution of BABI members by the State.

2.2 The author submits that since 2002, he has been under tight surveillance. His phone was tapped, his car was followed, and he was not given permission to open branches of BABI in the regions. After the publication of one of his articles in a national newspaper, administrative charges were brought against him. Furthermore, the BABI offices were closed down several times, forcing them to change their location. At the beginning of 2004, the organization rented an apartment in Minsk city. While the author was on a business trip to the United States of America, the authorities forced the owner of the apartment to cancel the lease to the BABI. Thus, they had to move and the organization's equipment, part of which had been provided by the Embassy of the United States on the basis of an agreement, was moved to a garage until the new office could be rented.

Arrest

2.3 On 24 April 2004, while driving, the author was stopped by the traffic police for exceeding the speed limit and driving in a drunken state, which he denied. Soon after, the KGB[2] officers arrived and searched his personal belongings without any search warrant. During the search, the KGB officers seized his case with US$ 91,000. No protocol in relation to seizure was made. At around 8 p.m., the author was taken to the KGB office without a warrant issued by the prosecutor's office or any other agency. He claims that he was not allowed to call his relatives or to contact a lawyer.

2.4 The author was interrogated during the night without legal assistance. The interrogation was allegedly recorded with a hidden camera. Subsequently, some parts of the interrogation were shown on Belarusian TV, accompanied with false and degrading comments about the author. He submits that the Belarusian TV aired the distorted information even before the investigation ended.

2.5 Early on the morning of 25 April 2004 the author was released, but was ordered to return for a meeting with KGB officers on 26 April 2004 at 3 p.m. The author was not given any procedural documentation in relation to his detention. During the following interrogation, which also took place in the absence of a lawyer, the author was informed that part of the money (US$ 41,900) seized from him was found to be counterfeit. He was not given the results of the expertise that came to such conclusion and was given no explanation of why such expertise was required in the first place. As such, the author became a witness in a crime of producing and distributing counterfeit foreign currency.

2.6 On 26 April 2004, the investigators searched his summer house and seized a firearm and personal documents. His house was broken into as the windows were shattered and his belongings were scattered around. The firearm did not have his fingerprints. No video or photo was taken during the search. The search report did not take note of the broken window and other traces of burglary. His personal documents were seized in violation of the Criminal Procedure Code. The search of his house was unlawful as it was carried out in relation to the criminal case on counterfeit of foreign currency, under which he was only a witness.

[2] The State Security Agency of the Republic of Belarus (Belarusian: Камітэт дзяржаўнай бяспекі, КДБ, Russian: Комитет государственной безопасности, КГБ) is the intelligence agency of Belarus. It is the only intelligence agency that kept the Russian name KGB after the dissolution of the Soviet Union.

Opening of criminal proceedings

2.7 On 27 April 2004, a criminal case was opened against the author under section 295, part 2 (illegal actions involving a firearm) and section 377, part 2 (theft of documents, stamps or seals). The same day, he managed to meet a lawyer.

2.8 On the same day, the apartment of his former daughter-in-law and grandson was searched. They also interrogated his former daughter-in-law on his health and financial situation. His own apartment was also searched in the absence of his lawyer. Personal documents, business cards, letters, articles, mobile phones and documents concerning the BABI were seized. The garage of his son was also searched.

Pretrial constraint measure

2.9 On 29 April 2004, having spent five days in the KGB remand prison, the author was provided with a warrant authorizing his incarceration. Sections 295, part 2, and 377, part 2, of the Criminal Code invoked in the warrant include other measures of pretrial constraint which do not involve incarceration. He claims that while choosing the constraint measure, KGB investigators did not take into account the circumstances of the case, the severity of the charge, the services he rendered to the society and the state, his health condition and the appeals of the public at large. The health report, which was provided to the KGB, stated that a week prior to the arrest he had sought medical advice for severe pains and fever. He was diagnosed as suffering from a heart and kidney condition and was recommended to undergo treatment at a cardiovascular hospital due to tachycardia. A petition filed by the author and his lawyer with the Minsk Regional Prosecutor to change the constraint measure on health grounds was rejected. The petition was accompanied with letters of support by public figures.

Investigation

2.10 The preliminary investigation lasted for eight months, which he spent in the KGB remand prison. During this time, he claims he was presented with trumped-up charges in order to prolong his incarceration. When evidence could not be found, other charges were brought against him. Thus, a criminal case which led to his conviction was launched on 23 September 2004, five months after his detention, and only on 4 November 2004 an accusation warrant was issued. He claims that his detention from 26 October 2004 onwards was based on the need to explore the possibility of launching another criminal case against him under section 377, paragraph 1, of the Criminal Code in connection with the theft of the seal of the organization that he headed. In May and June 2004, a total of six petitions were lodged with the Minsk Region Prosecutor's Office to protest against the illegal detention and charges against him. Two similar petitions were filed with the General-Prosecutor's Office of Belarus. On 29 June 2004 he wrote a letter to the head of the Belarusian KGB and the Belarusian Prosecutor-General to expose the illegal nature of his detention and the charges laid by the KGB. On 24 September 2004, the author's lawyer filed a complaint with the Minsk Regional Prosecutor demanding the dropping of all charges against the author. The complaint was dismissed.

2.11 The author adds that the investigation was carried out by the Department of the KGB for Minsk city and Minsk region, although under section 182 of the Criminal Procedure Code, it falls under the purview of the Ministry of Interior.

Prison conditions

2.12 The author submits that during the pretrial detention, he was held in inhuman and degrading conditions at the KGB remand prison, which had a negative effect on his health as shown in medical reports. He claims that recommendations made by a cardiologist were

not observed. In August 2004, the United Nations Working Group on Arbitrary Detention was refused authorization to visit the author in his place of his detention.

2.13 He submits that during the incarceration he was held in five different cells, none of which was larger than 5 square metres. These cells were originally designed for one or two people, but in fact were populated by four or five people. The cells were not equipped with artificial ventilation and there was no source of fresh air from the outside. Thus, the air reeked of sweat, urine and excrement. In summer, the cells were excessively hot and the inmates had to be half naked. Their clothes were always damp due to high humidity. In autumn, the cells were cold and moist. There was no natural light and the cell was lit by a single bulb. Thus, the cell was always in semi-darkness. The light, which was not switched off at night, did not penetrate the lower bunks and it was impossible to either read or write, while people on the upper bunks found it difficult to sleep. The insufficient light strained his eyes and worsened his eyesight. This is allegedly documented in a medical report.

2.14 He claims that meals at the remand prison were very meagre. Oatmeal was served for breakfast, a soup and porridge for lunch and boiled unpeeled potatoes and herring for dinner. The ration never included vegetables, fruit or meat. Inmates were entitled to two monthly food packages sent by relatives. However, the packages were controlled tightly. He claims he lost 10 kilograms in six months. He adds that his inmates were heavy smokers and the prison administration did nothing to limit smoking or separate those who smoked from those who did not.

2.15 He claims that during his detention he developed several chronic cardio-vascular diseases. His kidney condition also deteriorated. While in jail, he underwent two medical examinations, which revealed several cardiovascular diseases, including arrhythmia, ischemic heart disease, and atherosclerosis. The medical examination report of 20 October 2004 said that he should undergo treatment at a specialized medical establishment. He claims that the members of the medical commission were pressured to conclude that there were no medical grounds for releasing him from the remand prison.

Trial

2.16 The author submits that the trial, which lasted from 23 to 30 December 2004, was neither independent nor unbiased. Although the hearings were declared open to the public, representatives of political parties and NGOs were effectively barred from the court room. The court building was allegedly surrounded by the police who prevented people from even approaching it. He adds that KGB officers were constantly present in the building. Two of them recorded the proceedings. The hearings were held in a small room which could seat only 12 people. He claims that during recesses, KGB officers and the judge held consultations without witnesses. Journalists allowed into the court room at the insistence of the defence and relatives were not permitted to record the hearings.

2.17 The author claims that during the hearings the judges took scant interest in the speeches made by lawyers and the defendant. The prosecutor was rude and tendentious. He repeatedly made scurrilous statements about the author. On 30 December 2004, the last day of the trial, the judge travelled to the Minsk Region Court to obtain guidance as to the verdict and the punishment. The author was convicted for stealing computer and other office equipment donated by the United States Embassy to the BABI and sentenced to five years of imprisonment with confiscation of property and without a right to hold certain official positions for the duration of three years. He claims that his conviction under section 210, part 2, of the Criminal Code is illegal as there were no elements of the crimes in his actions. The United States Embassy and the State Department allegedly stated that they had no claims whatsoever against the author and the organization he headed. Not only did the court ignore the statement submitted by the United States Embassy regarding the absence of any claims, but also misrepresented the actual facts by claiming in its verdict that the

property owner demanded that the equipment be returned. The court also disregarded the protocol of the BABI council meeting which stipulated that the organization had no property claims against the author.

2.18 The author adds that the court underestimated the fact that he was abroad when the equipment was moved out of the office and was not capable of contacting the organization members. This is proved by the documents which the prosecution obtained from the passport and visa service. They show that he left Belarus on 25 January 2003 and returned on 17 February 2003. This fact was also confirmed by the witnesses and the documents provided by the defence. The author adds that the court tendentiously granted the statements only partial acknowledgement. He claims that in the sentence the court twisted the logic and the meaning of these statements.

2.19 After the trial in January 2005, he was transferred to the KGB remand prison in Minsk and was kept there until 3 March 2005 when he was taken to the Orsha penal colony. The conditions remained the same (meagre ration, a 40-minute daily walk, and absence of medical assistance). At that time, his lawyers filed a cassation appeal to the Minsk Region Court which resulted in the reduction of his term from five to three and half years.

Orsha penal colony

2.20 The author claims that it took more than one day for him and other inmates to get to Orsha. During the trip in freezing railway cars, the handcuffed inmates were subjected to degrading searches and inspections. Once they reached Orsha, they were taken to the penal colony in specially equipped lorries. After they arrived at the colony, they were ordered out of the lorries, and were forced to squat, lower their heads and kneel. During the trip to Orsha, the guards confiscated all the medications he had to take twice a day and did not give them back.

2.21 After the arrival at the colony on 3 March, he approached the administration for medical assistance, but to no avail. He claims it was difficult to get admitted to a prison hospital: only five inmates could be put in hospital at one time. Before a transfer to the hospital an inmate had to stand in a lengthy queue to be examined by a doctor. Sometimes as many as 50 inmates from different units crowded in the corridor.

2.22 On 4 March, he accidentally dropped a kettle with boiling water and badly scalded the left side of his body. Two days later, he was paralysed and was taken to the prison hospital. He claims he suffered a stroke and the prison administration did not notify either his relatives or his lawyer. The administration and prison doctors did nothing to provide him with the needed assistance or to contact cardiovascular specialists.

2.23 On 10 March 2005, his wife managed to arrange a meeting with him while he was half paralysed. He got medications back, but they were not suitable for treating strokes. He spent a week without receiving any treatment.

2.24 On 11 March 2005, he complained to the General Prosecutor's Office demanding action regarding the refusal of medical assistance by the Orsha penal colony administration. The same day, the Orsha prosecutor finally visited the colony. However, a special medical commission came to the colony only on 14 March, i.e. one week after he had the stroke. On 15 March, he was taken to the central prison hospital at penal colony No. 1 in Minsk. A report of the head of the prison hospital at the penal colony of 22 March 2005 said that he suffered a stroke on 7 March 2005. The report added that he also developed a post-stroke cardiosclerosis, fibrillation, atherosclerosis of aorta, coronary, carotid H2A, arterial hypertension, urolithiasis, cataract, angiosclerosis of the retina of both eyes, and thermal burn of a middle and upper third of the left forearm. The report testifies that from November 2004 to February 2005, while he was in remand prison, he suffered from a heart

attack. He adds that it was not certified by the medical centre of the remand prison and he did not get the required medical treatment at the prison hospital.

Conditions at penal colony No. 1

2.25 The author claims that the administration of penal colony No. 1 made no special arrangements despite his serious condition. The conditions and the rations at the colony were hardly sufficient for ensuring his recovery. He was entitled to two three-day and three 90-minute visits a year by relatives and only three food packages annually. His request for additional packages was allegedly denied.

2.26 He adds that in January 2006, the temperature did not exceed 10° C in the cells and 16° C in the hospital.

2.27 He claims that since 26 July 2005, he was entitled to release on parole in accordance with the Penal Code of Belarus as he was above the age of 60 years and had served half of his sentence. However, it was rejected due to the fact "that he had not entered on the path of correction".

2.28 In November 2005, he was declared a disabled person of the second group, and therefore entitled to release on health grounds. An application of 24 September 2005 in that regard seeking release on health grounds was turned down. As a pure formality, he was transferred to a less strict regime allowing two additional short and two lengthy visits a year. However, these regime changes remained largely on paper. Only in March 2006, he was allowed to be examined by a doctor from outside the prison. The author was released on parole on 14 April 2006 after the 19 March presidential elections in Belarus.

2.29 The author adds that after his detention a public campaign was launched to ensure his release. NGOs held mass protests against his incarceration and conviction. All protests were dispersed by the authorities and many activists were persecuted for taking part in them. The investigation and the trial were observed by representatives from the European Union, the United States and international organizations. In their numerous statements they condemned the actions of the Belarusian authorities and exposed the biased justice system. They also called for the author's immediate release and a halt to his political persecution.

The complaint

3.1 The author claims violations of articles 7 and 10, as he was held in inhumane, severe and degrading conditions at the KGB remand prison, during his transfer to colony No. 8 (Orsha) and in both colonies No. 8 and No. 1. He claims that such conditions had a negative effect on his health, which was documented in medical reports. He claims that he suffered a stroke in the penal colony after the administration refused to provide him with the required medications and that he did not receive treatment for one week after the stroke.

3.2 He claims violations of article 9 as the charges pressed, the pretrial constraint measure selected, and the continued extension of his incarceration were unlawful. He claims that the decision on the pretrial constraint measure did not take into account the circumstances of the case, the severity of the charge, the services he rendered to the society and the State, his health condition or the appeals of the public at large. He also claims that he was taken to the KGB without a warrant issued by the prosecutor's office or any other agency. No charges were laid for five days. The preliminary investigation lasted for eight months, which he spent in the KGB remand prison. During this time, he was presented with a variety of trumped-up charges in order to prolong his incarceration. A criminal case which led to his conviction was launched on 23 September 2004, five months after his detention and only on 4 November 2004 was an accusation warrant issued. He claims that his detention from 26 October 2004 onwards was based on the need to explore the possibility of launching another criminal case.

3.3 The author claims violation of article 14 as he was not provided with legal assistance during his initial interrogations. Furthermore, his right to the presumption of innocence has been violated. He claims that the interrogation was recorded with a hidden camera. Subsequently, some episodes of the interrogation were shown on Belarusian TV, accompanied with false and degrading comments about the author. He adds that during the court proceedings the judges were acting under instructions from the authorities. The hearings were not fully open to the public and were closely monitored by special services which taped the whole trial. The judges tendentiously interpreted the evidence gathered by the investigation, as well as the evidence given by the witnesses and the defendant.

3.4 The author claims violation of article 17 as he claims that despite his status of a witness initially, all searches of his flat and property confiscations were illegal.

3.5 He claims violation of articles 19 and 22, as his opposition to the political and economic course pursued by Belarusian President Aleksandr Lukashenko was behind his detention and sentencing. For two years prior to his arrest, he personally, as well as the organization he headed, had come under pressure and suffered from persecution by the authorities.

3.6 The author does not provide any details on his claim under article 15 of the Covenant.

State party's observations

4.1 On 7 June 2007, the State party submitted that the author was convicted under section 210, part 4 of the Criminal Code for theft of 40 pieces of equipment given for a temporary use by the United States Embassy. The author failed to register the equipment in proper order with the Department on Humanitarian Affairs under the Office of the President. The equipment was not registered in the financial records of the organization; instead it was kept at the rented apartment and then moved in his son's car to a garage.

4.2 It submits that the author was found not guilty on the charges of illegal storage of firearms under section 295, part 2, of the Criminal Code for lack of evidence.

4.3 The author's sentence was reduced to three years and six months. It submits that the court trial was open to the public and was conducted in accordance with the criminal procedure law. The author's claims of inappropriate behavior of the prosecutor and the judge have not been confirmed.

4.4 The author's argument on the absence of claims from the United States Embassy in relation to the equipment contradicts the materials in the case file, in particular the statements by the employees of the United States Embassy. The court's decision is thus based on evidence that are examined and analysed in the judgment.

4.5 As to the author's claim with respect to unlawful expropriation of his money by the KGB officers, the State party submits that US$ 49,000 out of US$ 90,900 found in the author's car were found to be counterfeit. The author acknowledged that the money belonged to him but refused to comment on the results of the expertise. The investigation did not conclude the author's involvement in the crime and the investigation was suspended as no responsible person could be found.

4.6 Upon his arrival at Orsha, the author underwent a medical examination and was prescribed a treatment. Close relatives of the author submitted a petition against those held responsible for causing harm to his health. In this respect, the Prosecutor's office ordered an investigation into the cause of the brain stroke suffered by the author. The investigation did not reveal any breach of professional responsibilities by the medical personnel of colony No. 8. On 15 March 2005, he was transferred to the neurological department of the hospital at colony No. 1, for convicts with the diagnosis of brain stroke. The author

underwent treatment prescribed by the consultant at the Scientific Research Institute on Neurology and Neurosurgery as well as by a cardiologist. He was examined by the Scientific Research Centre on Cardiology. The medications were provided by the colony hospital. Those medications that were not available at the hospital were provided by the author's relatives.

4.7 On 22 March 2005, the author stated that he did not have any claims against the administration of colony No. 1 on the conditions of his detention and that he was satisfied with his treatment. Due to his health condition the author was detained in the colony No. 1 until his release.

4.8 The author's sentence was reduced by one year under the amnesty for the sixtieth anniversary of the victory in World War II.

4.9 The State party refers to the author's claim of unfair trial, violations of the rights of the accused and violation of presumption of innocence and submits that the requirements of these articles are reflected in the national legislation. The author's sentence was reviewed at the cassation and supervisory review levels, including by the Supreme Court. The sentence was found to be lawful and justified. It submits that there were no violations of the right of the accused which could lead to annulment of the sentence. The court observed the presumption of innocence as required by section 16 of the Criminal Procedure Code.

Author's comments

5.1 On 7 January 2008, the author submitted that the observations by the State party do not correspond to the facts and materials of his case. He reiterates his previous submissions and adds that the facts provided by the State party are arbitrary and distorted despite the documentary evidence. He claims that during the trial his lawyer and himself requested the judge to replace the prosecutor as well as noted the judge's communication with the KGB officers. However no action was taken to follow up these requests and notifications. He adds that none of his complaints and requests during his pretrial detention was addressed.

5.2 The author refutes the State party's observation finding the court's sentence justified. He states that the case materials do not contain any evidence to prove his intentions. He refers to the State party's observations that the United States Embassy had claimed the property, and argues that the case file contains a letter from the United States Embassy and the United States State Department confirming the absence of any claims towards him personally and towards his organization. The court ignored this evidence. He adds that the accusation invited a technical staff member of the United Nations Embassy as a witness, a Belarusian citizen who was under pressure by the KGB. The officials of the United Nations Embassy –United States citizens - were not invited to the court.

5.3 He adds that the State party's comment that he had passed a medical examination upon arrival at the colony is false. He reiterates that he was transferred to the medical unit only after he had had a stroke on 4 March 2005, not 7 March 2005 as stated by the State party. He claims that he was transferred to the prison hospital only on 15 March 2005, and that he could have avoided complications if he had been treated in time.

Additional comments by the parties

6.1 On 2 May 2008, the State party reiterates its previous submissions and adds that the author's claims of inadequate behavior by the accusation as well as of communication between the judge and intelligence officers during the trial have not been confirmed. The evidence was assessed correctly according to section 105 of the Criminal Procedure Code.

6.2 The author's statement that there were no claims of the equipment from the United States Embassy contradicts the case materials, in particular the testimonies by witnesses.

6.3 The State party submits that under the law the equipment should have been reflected in the financial report of the organization as "rented". However the report for 2002-2003 to the tax office does not indicate that the BABI received the equipment. The author had been the president of the BABI since 9 October 2001. On 13 October 2003 he was excluded from its membership. This was confirmed by witnesses. The arguments of the author that the agreement with the United States Embassy was extended have not been confirmed.

6.4 The State party argues that the case file contains materials indicating that the United States Embassy demanded the return of the equipment. However, the author gave false information as if the equipment was installed in regional centers. In fact, the equipment was found at the residence of the author and in a garage where they were transferred under his instruction. Thus, the author's guilt was proven by the evidence examined during the proceedings and analysed in the sentence.

7.1 On 12 September 2008, the author reiterated his previous allegations and adds that during the trial, the witnesses did not testify that he had stolen the equipment; they had only confirmed that the equipment was installed in the BABI office. He adds that all the witnesses testified on the reasons why the equipment was not registered, mainly due to the obstacles created by the authorities to register the BABI regional offices, which forced the organization to leave its central office in Minsk. As such, he claims that the court distorted the logic and the meaning of the testimonies as well as cut and paraphrased them. In addition, he claims that the fact that the equipment was not registered under the law, should be considered under an administrative, not criminal, procedure.

7.2 As to the comment by the State party that the author was excluded from the BABI membership, the author submits that the court contradicted itself, by first punishing him as a head of the organization and at the same time excluding him from the membership in the organization. He states that he was not excluded from the organization despite the attempts by the Ministry of Justice, which blocked its activities. All these attempts were made six to eight months prior to his detention.

8.1 On 26 March 2009, the State party submitted that under section 287 of the Criminal Procedure Code those who are present at the public court hearings have a right to an audio or written record of the process. Photo and video recordings are allowed with the permission of the Chair and of the parties. Therefore, the author's statement about the prohibition of recording, if he meant audio or written recording, is false.

8.2 The author's allegations about the communication between the judge and intelligence officers have not been justified. Public order is the duty of the interior offices. Since the case has attracted the attention of mass media and the diplomatic community as confirmed by the author himself, the law enforcement officers took necessary measures to maintain public order in the court. The restrictions on the number of persons willing to participate at the hearing were due to the limited space available in the court room.

8.3 With regard to the author's claim to return his money, the State party reiterates that US$ 49,000 out of US$ 91,000 were counterfeit. The rest was confiscated as part of the confiscation of property envisaged in his sentence.

8.4 With regard to the author's claim of violations during his transfer to the colony, the State party submits that the transfer took five hours, in accordance with the regulations of the Ministry of Interior. The transfer was carried out by train in special carriages which are equipped with cells with three row beds. The heating system of such carriages is operated under general rules. Taking into account these circumstances, a criminal investigation was denied for lack of criminal elements in the action of the staff who accompanied the author during his transfer.

8.5 Under the regulations of the Ministry of Interior, medications are not allowed during the transfer and the same regulations state that convicts being transferred from one prison to another are subject to personal search, including a search of their belongings.

8.6 Under the internal regulations of the colonies upon arrival at the colony all convicts are placed in isolated quarantine cells for 14 days where they undergo medical examination. The first week, they undergo a thorough examination by the doctor to reveal diseases as well as to assess their condition of health.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes that the State party has not raised any issues regarding exhaustion of domestic remedies.

9.4 The Committee notes the author's allegations under articles 19 and 22, that his opposition to the political and economic course pursued by Belarusian President Aleksandr Lukashenko was behind his detention and conviction. The Committee considers, however, that the author did not provide sufficient details to illustrate his claims. It, therefore, concludes that the claims are insufficiently substantiated for purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

9.5 As to the alleged violation of article 15, the Committee considers that the author did not explain the reasons why he considers that this provision has been violated. The Committee therefore declares this allegation inadmissible for lack of substantiation under article 2 of the Optional Protocol.

9.6 The Committee notes the author's allegations under article 17 regarding the search of his and his relatives' home as well as the search of his personal belongings, tapping of his phone, surveillance of his car, and confiscation of his money and documents. The Committee considers, however, that these allegations should be examined in connection with his allegations under article 14, as they relate to the criminal case initiated against him.

9.7 Regarding the claims related to articles 7, 9, 10, and 14 of the Covenant, the Committee considers that they have been sufficiently substantiated for the purposes of admissibility. The Committee, therefore, declares them admissible.

Consideration of the merits

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

10.2 The Committee notes the author's claim under articles 7 and 10 of the Covenant that during his detention he was held in inhuman, severe and degrading conditions at the KGB remand prison, and subsequently in colonies No. 8 in Orsha and No. 1 in Minsk, as well as subjected to inhuman treatment during his transfer from the remand prison to the colony in Orsha. He claimed that such conditions and treatment had a negative effect on his health, and led to a brain stroke while in the penal colony because the administration refused to

provide him with the required medications; furthermore, he claims the administration did not provide treatment for one week after the stroke.

10.3 The State party contested part of these allegations stating that the author underwent a medical examination and was prescribed a treatment. It submitted that the investigation conducted following the author's complaint did not find any breaches of professional duties by the medical personnel of the colony No 8 and that he was transferred to colony No 1 due to his health condition. However, the State party did not comment on the deterioration of the author's health while in detention and on the fact that he was not provided with required medication and immediate treatment after his stroke. The Committee notes that States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners. It is apparent from the author's account as well as from the medical reports provided that he was in pain, and that he was not able to obtain the necessary medication and to receive proper medical treatment from the prison authorities. As the author stayed in prison for more than a year after his stroke and had serious health problems, in the absence of any other information, the Committee finds that he was the victim of violation of article 7 and article 10, paragraph 1, of the Covenant.

10.4 The Committee notes the author's claim under article 9 that the charges pressed, the pretrial constraint measure selected and the continued extension of his incarceration were unlawful. The criminal case which led to his conviction was launched five months after his detention. The Committee also notes the author's claim that he was taken to the KGB without a warrant issued by a prosecutor's office or any other agency was not presented with charges for five days and was prevented from having legal assistance during his initial interrogations. The author also claimed that during the eight months of detention in the KGB remand prison, he was presented with a variety of trumped-up charges in order to prolong his incarceration. The State party merely stated that there were no violations of the rights of the accused which could lead to the annulment of the trial. The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means inter alia that remand in custody pursuant to arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime. The State party has not shown that these factors were present in the instant case.[3] In the absence of any further information, therefore, the Committee concludes that there has been a violation of article 9 of the Covenant.

10.5 The Committee notes the author's claims that the court was neither independent nor unbiased as the judges were acting under instructions from the authorities; the hearings were not fully open to the public and were closely monitored by special services which taped the whole trial; and the judges tendentiously interpreted the evidence gathered by the investigation, as well as the evidence given by the witnesses and the defendant. The State party limited itself to stating that the court trial was open to the public and conducted in accordance with the criminal procedure law, and that the author's claims of inappropriate behavior of the accusation and the judge have not been confirmed. The Committee notes the prominent profile of the author and recalls its jurisprudence that the court must provide for adequate facilities for the attendance of interested members of the public, within

[3] See communication No. 305/1988, *Alphen v. Netherlands*, Views adopted on 23 July 1990, para. 5.8.

reasonable limits, taking into account, e.g. potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made.[4] It also notes that the State party did not provide any arguments as to the measures taken to accommodate the interested public taking into account the role of the author as a public figure. The Committee further notes that the author's allegations related to the search of his and his relatives' home as well as the search of his personal belongings, tapping of his phone, surveillance of his car, and confiscation of his money and documents. In the absence of comments from the State party to counter the allegations by the author, the Committee concludes that the facts alleged constitute a violation of article 14, paragraph 1, of the Covenant.

10.6 With regard to the allegations of violations of article 14, paragraph 2, the Committee notes the author's claims that his right to the presumption of innocence has been violated, as some episodes of the interrogation were broadcasted on Belarusian TV accompanied with false and degrading comments about the author suggesting that he was guilty. He submitted that the State-controlled Belarusian TV aired the distorted information even before the investigation ended. The State party did not contest these allegations. The Committee recalls that the accused person's right to be presumed innocent until proved guilty by a competent court is guaranteed by the Covenant. The fact that, in the context of this case, the State media portrayed the author as guilty before trial is in itself a violation of article 14, paragraph 2, 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 reveal violations by the State party of articles 7, 9, 10, paragraph 1, and 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for Mr. Marinich's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.

13. Bearing in mind that, by becoming a State 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 and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its 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.]

[4] Communication No. 215/1986, *van Meurs v. The Netherlands*, Views adopted on 13 July 1990, para. 6.2.