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Communication No. 1785/2008

Views adopted by the Committee at its 107th session (11–28 March 2013)

<i>Submitted by:</i>	Andrei Olechkevitch (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 March 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 April 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	18 March 2013
<i>Subject matter:</i>	Fining of an individual for distributing leaflets, in violation of the right to impart information without unreasonable restrictions
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to impart information; permissible restrictions
<i>Article of the Covenant:</i>	Article 19 (paras. 2 and 3)
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))

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 (107th session)

concerning

Communication No. 1785/2008*

Submitted by: Andrei Olechkevitch (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 17 March 2008 (initial submission)

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

Meeting on 18 March 2013,

Having concluded its consideration of communication No. 1785/2008, submitted to the Human Rights Committee by Mr. Andrei Olechkevitch 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 is Mr. Andrei Olechkevitch, a Belarusian national born in 1974. He claims to be the victim of a violation by Belarus of his rights under article 19, paragraph 2, 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 not represented by counsel.

* The following members of the Committee took part in the consideration of this communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kalin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

The text of a separate opinion signed by Committee members Mr. Fabián Omar Salvioli, Mr. Yuval Shany and Mr. Víctor Manuel Rodríguez Rescia is appended to the present document.

The facts as submitted by the author

2.1 On 12 February 2008, when the author was distributing leaflets inviting residents of the city of Gomel to a meeting with Mr. Alexander Milinkevich, a former presidential candidate, he was arrested by the police and taken to the Gomel District Police Station,¹ where he was booked for an administrative offence under article 23.24 (part 1) of the Code of Administrative Offences (21 April 2006). The article prescribes penalties for violations of the regulations governing the organization and conduct of meetings, street rallies, demonstrations, other public events and pickets. These regulations are contained in the Public Events Act of 30 December 1997, article 8 of which prohibits the production and dissemination of information documents on such events before authorization to hold the event in question has been granted.

2.2 Given that the leaflets distributed by the author contained information on a public meeting with a politician, the police considered that the author was acting in breach of the law. That same day, the author was brought before the Gomel District Court. The Court ruled that, in distributing the leaflets, the author had breached the provisions of article 23.24 (part 1) of the Code of Administrative Offences concerning unauthorized meetings and fined him 1,050,000 Belarusian roubles (equivalent to approximately 500 US dollars at the time). The author notes that the amount of the fine exceeded the average monthly salary in Belarus.

2.3 The author points out that there is nothing in the administrative case file to indicate that the Court based its conclusion on anything other than the police record concerning his distribution of leaflets. Therefore, the only issue for the Court to examine was whether the distribution of leaflets about an upcoming meeting amounted to a breach by the author of the regulations governing the organization of a peaceful assembly. In his opinion, neither the police nor the Court made any effort to clarify, for the purposes of article 19 of the Covenant, why it was necessary in this case to restrict the author's right to impart information.

2.4 On 29 February 2008, the Gomel Regional Court, on appeal, upheld the District Court's decision without examining the author's acts in light of the Covenant, despite the author's explicit request to that effect in his appeal. In particular, in his appeal the author reminded the Court that the provisions of international treaties in force for Belarus prevailed in cases of conflict with the norms of national law; that, under the 1969 Vienna Convention on the Law of Treaties, national law could not be invoked to justify the non-application of provisions of international law; and that, under article 15 of the State party's law on international treaties, universally recognized principles of international law and the provisions of international agreements in force for Belarus were an integral part of national law. The author also noted that article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant enshrined the freedom to impart information.

¹ The author has provided a copy of the leaflet in question. It includes a photograph of Mr. Milinkevich and a message to Gomel residents explaining that a month earlier a request had been submitted to the Municipal Executive Committee for permission to organize a public meeting with Mr. Milinkevich at a local conference centre. According to the leaflet, the request was supported by more than 300 city residents but the municipal government refused permission under a "false" pretext. The leaflet explained that the meeting with Mr. Milinkevich would nevertheless take place on 15 February 2008, at 4 p.m. in the area between 94 and 98 Barykin Street and at 5.30 p.m. in Yanaki Kupaly Square. Mr. Milinkevich would present his proposed programme for tackling the social and economic problems created by the "short-sighted" policy of "current leaders" and would answer questions. The leaflet included a telephone number to call for further information. The incidents referred to in this communication are similar to those described in communication No. 1784/2008, *Schumilin v. Belarus*, Views of 23 July 2012.

2.5 The author refers to the Committee's jurisprudence in similar cases and emphasizes that the restriction of his right to impart information was not necessary for the protection of national security, public order, public health or morals, or the rights and freedoms of others. He notes that the rights guaranteed under article 19 are not absolute and may be restricted, but adds that the provisions of the State party's Public Events Act that restrict the right to impart information cannot be considered to conform to the State party's obligations under the Covenant, as they are not aimed at protecting national security or public safety or public order, and are not necessary to protect public health or morals or the rights and freedoms of others.

2.6 The author claims that he has exhausted available effective domestic remedies without submitting an appeal to the Supreme Court under the "supervisory review procedure" (*nadzor*), as this does not systematically lead to a re-examination of a case and is thus not effective.

The complaint

3. The author claims that the application of the Public Events Act in his case resulted in an unjustified restriction of his right to impart information under article 19, paragraph 2, of the Covenant.

State party's observations on the admissibility and the merits

4.1 On 2 June and 4 August 2008, the State party provided its observations on the admissibility and the merits of the communication. It explains that on 12 February 2008 the Gomel District Court found the author guilty under article 23.34 (part 1) of the Code of Administrative Offences and fined him. The Court determined that on 12 February 2008 the author and another individual had distributed leaflets inviting city residents to attend an unauthorized meeting on 15 February 2008. The police had seized 1,933 leaflets found in the two individuals' possession. The State party explains that Mr. Olechkevitch admitted his guilt in court and did not file an appeal with the procurator concerning the Court's decision. The Court's decision was upheld on appeal, on 29 February 2008, by the Gomel Regional Court. This decision became enforceable immediately, and further appeals were possible only under the supervisory review procedure.

4.2 The State party challenges the admissibility of the communication. It explains that under the Code of Administrative Procedure and Enforcement the author could have requested a supervisory review of the decision of the Gomel Regional Court by the president of the higher jurisdiction — in this case the President of the Supreme Court — but did not do so.

4.3 The State party explains that appeals under the supervisory review procedure, as outlined in article 12.14 of the Code of Administrative Procedure and Enforcement, involve verification of the legality of the decision being appealed, the grounds for the decision and its fairness in light of the arguments set out in the appeal. If the court finds grounds for improving the situation of the individual concerned, the previous decision may be re-examined in part, even if the person has not specifically requested this in the appeal. Thus, according to the State party, the author's contention that the supervisory review procedure is not effective is groundless.

4.4 On the merits, the State party rejects the author's allegations as groundless. It explains that, under article 23.34 of the Code of Administrative Offences, violating the regulations governing the organization and conduct of rallies, meetings, demonstrations or other public events constitutes an administrative offence punishable by a warning, a fine or administrative detention. The material on file, including the leaflets in question, makes it clear that the planned meeting was not authorized. The leaflets contained a call to city

residents to attend the meeting. Given that no authorization had been given to hold the event, the author's acts could only be considered as constituting a breach of the regulations on the organization of public events. The author violated article 8 of the Public Events Act, under which it is forbidden for anyone, without exception, to prepare and disseminate materials containing information about a public event until authorization to organize the event has been granted.

Author's comments on the State party's submission

5.1 On 17 September 2008, the author submitted his comments on the State party's submission. He explains that he did not file a complaint with the procurator's office because his complaint would not have led to the re-examination of his case, as such appeals are not effective and do not lead to the re-examination of the case. He notes that only effective and accessible remedies must be exhausted.

5.2 As to the State party's contention that he distributed leaflets inviting residents to attend a meeting before authorization to hold the event had been obtained, the author notes that, pursuant to article 8 of the Constitution, the State party accepts the universally recognized principles of international law and ensures that national law complies with them. He stresses that States parties must fulfil their international obligations in good faith, and points out that, under articles 26 and 27 of the Vienna Convention on the Law of Treaties, a party to an international agreement cannot invoke its national law to justify non-application of a treaty. He also notes that, under article 15 of the State party's law on international treaties, the universally recognized principles of international law and the provisions of the international treaties to which Belarus is a party constitute an integral part of national law.

5.3 Article 19, paragraph 2, of the Covenant guarantees freedom of expression, including the right to impart information. This right can only be restricted for the purposes listed in article 19, paragraph 3, of the Covenant. The grounds invoked by the courts to justify the administrative penalties imposed on him are not, according to the author, justifiable under any of the permissible restrictions, and thus his rights under article 19, paragraph 2, of the Covenant, have been violated.

Additional observations by the State party

6.1 In a note verbale dated 26 March 2009, the State party provided additional information. It notes, first, that the author is not correct in declaring that an appeal to the procurator's office does not lead to a re-examination of a case and that appeals to the Supreme Court under the supervisory review procedure are not effective. In support of its assertion, the State party provides statistical data indicating that in 2007 the Supreme Court examined appeals in 733 administrative cases, including those examined at the request of the procurator's office. The President of the Supreme Court quashed or modified the rulings in 116 cases (63 at the request of the procurator's office). In 2008, 171 such decisions were quashed or modified, of which 146 were re-examined at the request of the procurator's office. A total of 1,071 administrative cases were examined by the Supreme Court in 2008. Thus, in 2007, the Supreme Court quashed or modified decisions in 24.4 per cent of administrative cases appealed, and in 2008 the corresponding percentage was 29.6 per cent.

6.2 The State party next contends that the author's claim that the penalties imposed on him were not justified under article 19, paragraph 3, of the Covenant is groundless. The Public Events Act governs the organization and conduct of gatherings, meetings, demonstrations, street rallies, pickets, etc. Its preamble makes it clear that the aim is to establish the necessary conditions for the exercise by citizens of their constitutional rights and freedoms and the protection of public safety and public order during the conduct of such events on streets, in squares or in other public areas. The author violated the

restrictions enumerated in article 23.34 of the Code of Administrative Offences and article 8 of the Public Events Act, which are necessary for the protection of public safety and public order during the conduct of gatherings, meetings, street rallies, etc.

6.3 The State party adds that article 19 of the Covenant guarantees to all citizens of States parties to the Covenant the right to freely express their opinion. As a party to the Covenant, it fully recognizes and complies with its obligations thereunder. Article 33 of the Constitution guarantees freedom of opinion and beliefs and their free expression. Even if the right to freedom of expression is considered to be one of the core human rights, it is not absolute. Article 19 is not included in the list of articles in article 4 of the Covenant from which no derogation may be made. Thus, the exercise of this right may be restricted by the State, provided that the restrictions are provided for by law, have a legitimate aim and are necessary in a democratic society.

6.4 Pursuant to article 23 of the Constitution, restrictions of rights and freedoms are permitted only if they are provided for by law and are in the interest of national security, public order, or the protection of public morals or health or the rights and freedoms of others. Similarly, article 19, paragraph 3, of the Covenant provides that the rights enumerated in paragraph 2 of that article imply special obligations and responsibilities. The exercise of these rights can therefore be restricted, but the restrictions must be provided for by law and must be necessary for respect of the rights or reputations of others, or for the protection of public order, health or morals.

6.5 According to the State party, on the basis of the above-mentioned legal provisions, it can be concluded that the right to receive and impart information can be exercised only in a lawful manner, namely, in the framework of the existing legislation of a State party to the Covenant. Current Belarusian legislation provides the necessary conditions for the exercise of freedom of expression by citizens, and for the receipt and dissemination of information.

6.6 The State party contends that the author is misleading the Committee concerning the existing legislation. Pursuant to article 2.15 (part 2, point 7) of the Code of Administrative Procedure and Enforcement, procurators can, within the scope of their powers, introduce protest motions against court decisions on administrative cases that contradict existing legislation. Article 12.11 (point 1) of the Code provides that court decisions in administrative cases that have acquired the force of *res judicata* can be re-examined, notably following a protest motion introduced by a procurator. Under article 12.14 (point 2) of the Code, once the protest motion has been examined, the decision may be partly or totally revoked, and the case may be referred back for review. Article 12.11 (point 3) of the Code specifies a six-month time frame for filing a protest motion, starting from the date when the disputed decision becomes enforceable. Therefore, an appeal to the procurator's office may lead to a re-examination of the merits of an administrative case. In the present case, the author has knowingly refused to avail himself of all domestic remedies available to him.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

7.3 As to the issue of exhaustion of domestic remedies, the Committee has noted the author's explanation that he did not seek to have the decision of the Gomel District Court of 12 February 2008 or the decision, on appeal, of the Gomel Regional Court of 29 February 2008 examined under the supervisory review procedure, as in his view such a remedy is neither effective nor accessible. The Committee also notes the State party's objections in this respect, and in particular the statistics provided to demonstrate that supervisory review was effective in a number of instances. However, the Committee notes that the State party has not indicated whether the procedure has been successfully applied in cases concerning freedom of expression and has not specified the number of such cases, if any. The Committee recalls its jurisprudence, according to which procedures for the review of court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.² In light of this, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

7.4 The Committee considers that the author has sufficiently substantiated his claim of a violation of his rights under article 19, paragraph 2, of the Covenant. Accordingly, it declares the communication admissible, and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered this communication in light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 The issue before the Committee is whether the fine imposed on the author for distributing leaflets about the holding in Gomel of two unauthorized public meetings with a representative of the political opposition constitutes a violation of his rights under article 19, paragraph 2, of the Covenant.

8.3 In this connection the Committee recalls its general comment No. 34, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society. All restrictions imposed on freedom of expression must conform to the strict tests of necessity and proportionality, "must be applied only for those purposes for which they were prescribed" and "must be directly related to the specific need on which they are predicated".

8.4 The Committee has noted the State party's explanation that, under its Public Events Act, no information concerning a planned meeting can be disseminated before the meeting has been officially authorized by the competent authorities, and that the author's action constituted an administrative offence. The State party has also acknowledged that the right to freedom of expression may be restricted only in line with the requirements established in article 19, paragraph 3, of the Covenant, without, however, explaining how, in this particular case, the author's actions affected the respect of the rights or reputations of others, or posed a threat to national security, public order, or public health or morals.

8.5 The Committee recalls that it is up to the State party to demonstrate that the restrictions imposed on the right guaranteed by article 19 were necessary in the case in question,³ and that even if a State party is in a position to implement a system designed to

² See, inter alia, communication No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; communication No. 1814/2008, *P.L. v. Belarus*, decision on inadmissibility of 26 July 2011, para. 6.2.

³ See, for example, communication No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3.

achieve a balance between individuals' freedom to impart information and the general interest in preserving public order in a particular area, this system's functioning must be compatible with article 19 of the Covenant. As the Gomel Regional Court refused to examine the issue of whether restricting the author's right to impart information was necessary, and in the absence of any other pertinent information on file to justify the authorities' decisions in light of article 19, paragraph 3, the Committee considers that in the present case the restrictions imposed on the author's rights were incompatible with the State party's obligations under this provision of the Covenant. It therefore concludes that the author is the victim of a violation by the State party of his rights under article 19, paragraph 2, of the Covenant.

9. In light of the above, 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 the author's rights under article 19, paragraph 2, of the Covenant.

10. 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, in the form of the reimbursement of the present value of the fine and any legal costs incurred by the author, as well as compensation. The State party is also under an obligation to prevent similar violations in the future. To this end, the State party should review its legislation, particularly the Public Events Act, and its implementation, to ensure it is compatible with article 19 of the Covenant.

11. 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 or not there has been a violation of the Covenant 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 when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

[Adopted in English, French and Spanish, the French 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.]

Appendix

Separate opinion of Committee members Mr. Fabián Salvioli, Mr. Yuval Shany and Mr. Víctor Rodríguez Rescia (concurring)

1. We concur with the decision of the Human Rights Committee in the case of *Olechkevitch v. Belarus* (communication No. 1785/2008) concerning the violation of article 19 of the Covenant by the imposition on the author of the penalty prescribed in article 8 of the Public Events Act in the Republic of Belarus. The latter stipulates that no one has the right to announce in the mass media the date, place and time of a public event, or to prepare and distribute leaflets, posters and other materials for this purpose, before permission to hold the event has been granted.

2. However, for the reasons set out below, we consider that the Committee should have concluded that in the case at hand the State party has also committed a violation of article 2, paragraph 2, of the International Covenant on Civil and Political Rights; moreover, given the facts as established, the Committee should have considered the violation of article 19 in the light of article 21 of the Covenant.

3. The Committee has incomprehensibly restricted its own competence to determine violations of the Covenant in the absence of a specific legal claim. The Committee must carefully assess the evidence submitted by the parties; if the facts before the Committee reveal a violation of the Covenant, the Committee can and should — in accordance with the principle of *iura novit curiae* — examine the legal framework of the case. The legal basis for this position and explanation of why this does not mean that States will be left without a defence have already been provided in separate opinions whose basic thrust we endorse.¹

(a) Violation of article 2, paragraph 2, of the Covenant

4. The international responsibility of the State may be engaged by the action of the legislative branch or any other branch of government that has legislative power under the country's legal system. The failure to fulfil the obligation laid down in article 2, paragraph 2, of the Covenant engages such responsibility by virtue of an act (adopting incompatible legislation) or omission (not bringing national legislation into line with the provisions of the Covenant following its ratification).²

5. The State of Belarus ratified the Covenant on 12 November 1973, and, on 20 December 1997, adopted the Public Events Act, which sets out the penalties under the Code of Administrative Offences. Article 8 of the Act, which prohibits the production and dissemination of information on public events before permission to hold such events has been granted, undermines the right to impart information, as provided for in article 19 of the Covenant. In fact, article 8 of the Public Events Act facilitates the violation of article 19 by the State authorities by allowing them to impose broad restrictions on freedom of expression. It is therefore incompatible with the Covenant and violates the obligation to give effect to the rights recognized therein, as set forth in article 2, paragraph 2, read in conjunction with article 19.

¹ See communication No. 1406/2005, *Weerawansa v. Sri Lanka*, partially dissenting opinion of Mr. Fabián Salvioli.

² See communication No. 1838/2008, *Tulzhenkova v. Belarus*, individual opinion of Mr. Fabián Salvioli, paras. 5–8.

6. Mr. Olechkevitch sets out clearly his complaint about the application of the legislation to him in paragraphs 2.1 and 3 of the present communication. Moreover, the Committee takes note of the author's statement that "the provisions of the State party's Public Events Act that restrict the right to impart information cannot be considered to conform to the State party's obligations under the Covenant" (Committee's Views, para. 2.5).

7. The author could not have been clearer in his allegation, which the State had every opportunity to contest and refute in its reply and additional observations submitted to the Committee. We therefore consider that the Human Rights Committee should have indicated that the State party violated article 2, paragraph 2, of the Covenant, read in conjunction with article 19, in addition to, quite rightly, finding a separate violation of article 19.

(b) Violation of article 19 read in conjunction with article 21

8. Another factor to be taken into account is the general context in which the events took place: the leaflets had a purpose that the Committee cannot disregard in its analysis – to invite people to a public meeting. The basic objective of the restriction under article 8 of the 1997 Act, as applied to the author, was to prevent the meeting from being held. As a result, the author's enjoyment of the right of peaceful assembly, as guaranteed under article 21 of the Covenant, was violated. When a State party attempts to justify restrictions on freedom of expression, the burden of proof must be particularly high, so as to ensure that the restriction does not curb the enjoyment of one or more of the rights enshrined in the Covenant. This condition has not been met in the present case.

9. The right of peaceful assembly is guaranteed by article 21 of the International Covenant on Civil and Political Rights. The facts before the Committee reveal that prohibiting the distribution of leaflets in the present case gave rise to a violation of the right to freedom of expression (art. 19) and also of article 19 read in conjunction with article 21, since the right of peaceful assembly was also violated.

(c) Decision on the merits of the Olechkevitch case

10. Consequently, in our opinion, paragraph 9 of the Committee's Views should have read as follows:

In light of the above, 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 the author's rights under article 19 (para. 2), article 19 read in conjunction with article 21, and article 2 (para. 2) read in conjunction with article 19 of the International Covenant on Civil and Political Rights.

(d) Reparation in the Olechkevitch case: consolidation of progress in the Committee's jurisprudence

11. Paragraph 10 of the Committee's Views in the Olechkevitch case seeks not only to provide a general remedy for the author, but also specifies how to guarantee non-repetition, by indicating that the State party should review its legislation, particularly the Public Events Act, and its implementation, to ensure that it is compatible with article 19 of the Covenant. In cases like the present one, therefore, the Views consolidate the progress made by the Committee in the area of reparations since the adoption of the Views in the case of

Schumilin v. Belarus,³ which modified the position taken by the Committee in the Tulzhenkova case.⁴

[Done in Spanish. Subsequently to be issued also in Arabic, Chinese, English, French and Russian as part of the Committee's annual report to the General Assembly.]

³ Communication No. 1784/2008, *Schumilin v. Belarus*, para. 11.

⁴ Communication No. 1838/2008, *Tulzhenkova v. Belarus*.