



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2929/2017*, **, ***

<i>Communication submitted by:</i>	Leonid Sudalenko (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	31 December 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 January 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	20 October 2023
<i>Subject matter:</i>	Illegal surveillance and arbitrary detention for customs control; human rights and fight against extremism
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary detention; liberty and security of person; fair trial – examination of evidence; right to privacy
<i>Articles of the Covenant:</i>	9 (1), 14 (1) and 17
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is Leonid Sudalenko, a national of Belarus born in 1966. He claims that the State party has violated his rights under articles 9 (1), 14 (1) and 17 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

1.2 The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** An individual opinion by Committee member Rodrigo A. Carazo (partially dissenting) is annexed to the present Views.



party continues to be subject to the application of the Optional Protocol in respect of the present communication.¹

Facts as submitted by the author

2.1 The author is a human rights defender, who helps citizens of Belarus claim their civil and political rights at the national and international levels. His activities are under scrutiny by the authorities. The Committee has repeatedly found violations of his rights.²

2.2 On 24 May 2015, the author was crossing the country's international border at the Kamenny Log checkpoint, in his car. A frontier officer scanned his passport, lowered his eyes, became nervous and called for his supervisor, who took the author's passport and left. The author and his car underwent an in-depth search. The author was requested to take off his trousers and socks. No other person crossing the border underwent a similar control.

2.3 On 25 August 2015, the author was on a train from Vilnius to Minsk. At the international border crossing at Gudogay checkpoint, at 6.30 p.m., the Minsk Regional Customs Office and Military Unit No. 2044 of Smorgonsk Frontier Group carried out a customs and frontier control of the passengers. The author passed the customs control. However, an officer from Military Unit No. 2044, upon scanning the author's passport, hesitated, called for his supervisor and pointed to something on the scanner's monitor. The supervisor took the author's passport and left without an explanation.

2.4 After a while, an officer from the Minsk Regional Customs Office approached the author and asked him to get off the train at Molodechno station for an in-depth personal customs search. The author's objections that he had already been through the customs control and his suggestion for another check to be carried out on the train or on arrival in Minsk were disregarded. Also disregarded was the author's remark that under article 117 of the Customs Code of the Customs Union of the Eurasian Economic Union, a personal customs control was an extraordinary measure which could only be used if sufficient data were available leading to a suspicion that the person was transporting prohibited goods and had refused to voluntarily surrender them. The customs officer was unable to explain which prohibited goods the author was suspected of transporting and which items he had to surrender in order to avoid being taken off the train for the customs control.

2.5 Upon the train's arrival at Molodechno station, around ten State agents encircled the author, insisting that he leave the train for the customs control. As the author attempted to argue the illegality of their demands, he was violently grabbed under the armpits and by his legs and carried off the train. No other passenger had to undergo the thorough customs control.

2.6 At around 9 p.m., the author was forcibly taken to the Minsk Regional Customs Office at Molodechno station, where he underwent a customs control consisting of a search of his person and his luggage, which lasted for two hours. He was not allowed to leave and was guarded by officers of Military Unit No. 2044 of Smorgonsk Frontier Group. Finally, customs control reports were written which stated that no prohibited goods had been identified in his possession. At around 11 p.m., he was allowed to leave. He found himself in an unfamiliar town at night and had to buy a ticket to Minsk for 154,500 Belarusian roubles.³

2.7 Comparing this incident to the one on 24 May 2015, the author assumed that modifications had been made to his personal data in the electronic frontier control system that allowed his movements across the country's international borders to be tracked and his identification by frontier officers.

2.8 On 17 September 2015, the author filed a civil suit against the Minsk Regional Customs Office and Military Unit No. 2044 of Smorgonsk Frontier Group to Gomel District Court of the Gomel Region, requesting compensation for damage to his health, and material

¹ See, for example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; and *Shchiryakova et al. v. Belarus* (CCPR/C/137/D/2911/2016, 3081/2017, 3137/2018 and 3150/2018).

² The author refers to the Committee's Views No. 1354/2005, No. 1750/2008, No. 1992/2010, No. 2114/2011 and No. 2139/2012.

³ Around US\$ 235.

and moral damage. He claimed that public authorities were tracking his movements across the country's international borders and that modifications had been made to his personal data in the electronic frontier control system that allowed for his repeated illegal detention, which amounted to illegal and arbitrary interference with his privacy.

2.9 The author relied on the following evidence, which was also submitted to the Committee.⁴ A decision on the customs control of 25 August 2016, signed by a customs shift manager, stated that the author's in-depth customs control was carried out in order to verify whether he was carrying foreign bank cards, foreign currency, magnetic data carriers with information about illegal activities, printed products or extremist literature. An assignment issued by the border patrol for customs services on 25 August 2016 required a search for electronic data carriers containing extremist information. A briefing note written by the border patrol chief on 26 August 2016 stated that the author had been identified by the border patrol and handed over to customs authorities. A report by a customs officer to his supervisor dated 1 September 2016 stated that the author had been searched at the request of the frontier patrol for electronic data carriers containing extremist information.

2.10 On 11 February 2016, Gomel District Court rejected the author's civil claim. This judgment was upheld on 12 April 2016 by the Judicial Panel on Civil Affairs of Gomel Regional Court. The author's supervisory review appeals against these judgments were dismissed by the Chair of Gomel Regional Court and a Deputy Chair of the Supreme Court on 20 May 2016 and 13 July 2016 respectively. His supervisory review appeals to prosecutorial authorities, namely the Public Prosecutor's Office of Gomel Region and the Prosecutor General's Office of Belarus, were dismissed on 19 August 2016 and 25 October 2016 respectively. Neither the judicial nor the prosecutorial authorities examined the written evidence submitted by the author and they concluded, without any grounds, that the author being taken off the train for a thorough customs control had been legal.

2.11 On 26 September 2015, the author complained about illegal modifications to his personal data in the electronic frontier control system to the Chair of the State Frontier Committee. On 13 October 2015, the Director of the Frontier Control Department within the State Frontier Committee responded that, in accordance with the law on information, informatization and protection of information, the issues raised by the author could not be commented on. The author interprets this response as a tacit confirmation of his claims of illegal modifications to his personal data.

2.12 The author notes that domestic legislation does not provide the possibility for citizens to refer matters to the Constitutional Court directly. Therefore, he contends that he has exhausted all available domestic judicial remedies.

Complaint

3.1 The author asserts that being forcibly and violently removed from the train and forcibly transferred to the Minsk Regional Customs Office in Molodechno violated his right to liberty and security of person under article 9 (1) of the Covenant. For two hours he was arbitrarily detained, despite the fact that he was not suspected of having committed any offence, and had already undergone customs control. In addition, no response was provided to his questions about the type of prohibited goods he was suspected of hiding from customs control.

3.2 The author states that his civil claim lodged with Gomel District Court on 17 September 2015 included several documents (see para. 2.11 above) which demonstrated that information was being collected about his private life and his movements across the country's international borders and that his personal data in the electronic frontier control system had been modified, repeatedly allowing arbitrary detention of the author and arbitrary interference with his privacy. The judicial authorities did not provide a legal assessment of this evidence, merely claiming that removing him from the train was legal. Therefore, the

⁴ It appears from the case file that these documents were obtained by Gomel District Court from the Gomel Customs Office at the author's request. The documents formed part of a separate administrative case against the author for disobedience to public officials.

author claims a violation of his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with article 14 (1) of the Covenant.

3.3 Citing article 17 of the Covenant, the author alleges a violation of his right not to be subjected to arbitrary or unlawful interference with his privacy. According to the author, the facts described in his communication revealed that his personal data had been modified in the frontier control information system without a prior judicial decision, allowing his movements to be tracked across the country's international border and his identification by frontier agents. Such modifications of personal data are not provided for by domestic legislation and the author does not know what measures he can take in order to ensure that his personal data are not modified compared to other citizens. He argues that such interference with his privacy is unnecessary in a democratic society given that he is a law-abiding citizen who has never been suspected of having committed any offence. In addition, the author claims unnecessary and disproportionate interference with his privacy, because his personal search and the search of his belongings were conducted without sufficient grounds.

State party's observations on admissibility and the merits

4.1 On 17 March 2017, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party informs the Committee that on 24 May 2015, the author entered the customs zone of the Eurasian Economic Union through the green channel at the Kamenny Log roadway checkpoint. In the course of the customs control, which included a search of the author's luggage, his car and his person, the following items were found: a notebook and fact sheets entitled "Local executive authorities of the Republic of Belarus: 15 years online" (in Russian), "Belarusian Not-for-Profit Law Forum" (in Belarusian and English), "Unedited draft report of the Working Group on the Universal Periodic Review" (in English) and "Thematic section 4" (in Belarusian). In order to verify whether these items contained calls for, or propaganda on, extremist activities, prohibited under article 14 of the law "on combating extremism", the Kamenny Log customs unit of the Ashmyany Customs Office ordered a customs assessment and the collection of samples. On 14 September, two expert assessments by the Grodno Regional Expert Commission concluded that there were no signs of extremism in the items transported by the author, and they were returned to the author by the Gomel Customs Office. The author complained about the acts of the Kamenny Log customs unit to the State Customs Committee of the Ashmyany Region, which, on 7 August 2015, confirmed the legality of those acts. This decision was upheld on 19 October 2015 by the Judicial Panel on Civil Affairs of Grodno Regional Court.

4.3 On 25 August 2015, the author was arriving from Lithuania on the Vilnius-Minsk train. When crossing the country's international border at the Gudogay checkpoint, officers of the State Frontier Committee requested the Ashmyany Customs Office to conduct a customs control of the author, who had raised their suspicions. During the frontier control, the author was nervous, had little luggage and had spent little time abroad. The authorities had reasons to suspect that he could have been hiding goods transported in violation of the customs law.

4.4 Under article 117 (6) of the Customs Code of the Customs Union of the Eurasian Economic Union, a personal customs control is conducted by customs officers of the same sex in the presence of two witnesses of the same sex in an isolated area which satisfies sanitation and hygiene requirements. Since there was no such area on the train, Ashmyany customs officers decided to transfer the author to the Minsk Regional Customs Office in Molodechno. Given that the author did not wish to leave the train voluntarily, he was forcibly taken to the customs office in Molodechno, where he underwent a personal customs control.

4.5 Under article 95 (1) and (2) of the Customs Code, customs controls are carried out in accordance with the customs legislation of the Customs Union and of States parties to the Union. They are carried out by customs authorities empowered to conduct such controls as part of their work duties. Individuals who cross the border may be subject to a customs control.

4.6 Under article 94 (1) and (2) of the Customs Code, customs authorities are guided by the principle of selectivity and choose the forms of customs control that are sufficient to

ensure compliance with legislation of the Customs Union and of its States parties. Risk management is performed when selecting subjects and the forms of customs control.

4.7 Under article 117 (1) of the Customs Code, a personal customs search is an extraordinary measure adopted following a written decision by the chief of the customs authority, or his or her authorized deputy, or individuals acting in their capacity, provided that there are sufficient grounds to believe that the individual who is crossing the border and has entered the customs control zone or a transit zone of an international airport is concealing and is not voluntarily surrendering goods transported in violation of customs legislation of the Customs Union.

4.8 Damage caused to a citizen or a legal entity by illegal acts or inaction of State authorities, local governments and self-government bodies or officials thereof is subject to compensation from the treasury of Belarus or the treasury of the administrative or territorial unit concerned (art. 938 of the Civil Code).

4.9 On 17 September 2015, the author brought a claim before Gomel District Court against the Minsk Regional Customs Office of the State Customs Committee, Military Unit No. 2044 of Smorgonsk Frontier Group of the State Frontier Committee and the public treasury department in the Gomel Region of the finance ministry's Main State Treasury, requesting compensation for damage to his health in the amount of 1,653,000 roubles, for material damage in the amount of 154,500 roubles, for moral damage in the amount of 999 million roubles, and for legal costs. On 11 February 2016, Gomel District Court rejected the author's claim.

4.10 The procedure for appealing against judicial decisions that have not come into force is established in articles 399 and 400 of the Civil Procedure Code. The legality and the substantiation of the judgment adopted by Gomel District Court on 11 February 2016 was verified by Gomel Regional Court, which, on 12 April 2016, upheld this judgment. It came into force on 12 April 2016.

4.11 A judgment in force may be revised under the supervisory review procedure established in articles 436 and 437 of the Civil Procedure Code. The author's supervisory review appeals were rejected by the Chair of Gomel Regional Court on 20 May 2016, by the Deputy Chair of the Supreme Court on 13 July 2016, by the Public Prosecutor's Office of Gomel Region on 19 April 2016 and by the Deputy Prosecutor General on 25 October 2016.

4.12 Given that the acts of the frontier and customs authorities were recognized as legal, there were no grounds for satisfying the author's claims for compensation under article 938 of the Civil Code.

4.13 The State party also observes that the frontier authorities have not taken any decisions impeding the author from crossing the country's international borders. According to the electronic frontier control system, he has crossed the border 227 times.

4.14 In view of the above, the State party believes that the author's claims under articles 9 (1), 14 (1) and 17 of the Covenant are not well substantiated. His rights under articles 9 (1) and 17 have not been violated because the customs control was conducted by a competent authority in accordance with domestic legislation. His right to a fair and public hearing by a competent, independent and impartial tribunal established by law has been fulfilled, as well as his right to have the judgment reviewed by a higher tribunal according to law, in accordance with article 14 of the Covenant.

4.15 In addition, the State party argues that under article 439 of the Civil Procedure Code, it is possible for the author to challenge judicial acts before the Chair of the Supreme Court and the Prosecutor General of Belarus under the supervisory review procedure. Therefore, the State party considers that the author has not exhausted all available domestic remedies and his communication should be considered inadmissible under article 2 of the Optional Protocol.

Author's comments on the State party's observations

5.1 In his response to the State party's observations of 10 March 2017, the author confirms that he has crossed the country's international border 227 times since 1 January 2008. He

notes that he always has little hand luggage and stays abroad for short periods of time. He refutes the State party's affirmation that he was nervous when he was crossing the border on 25 August 2015. As soon as his passport was scanned, the frontier officer called for his supervisor, who left with the author's passport. He returned with a written instruction to search the electronic media in the author's possession and to verify the presence on it of extremist information.

5.2 The author insists that he has provided written evidence to judicial authorities which proves that public authorities are collecting information about his movements across the border and that his personal data in the electronic frontier control system have been modified (see para. 2.11 above). These documents show that frontier officers identified the author and "called him an extremist" immediately after scanning his passport. The author notes that the State party does not provide any comments in relation to this evidence.

5.3 The author responded to the State party's argument about failure to exhaust domestic remedies by stating that his supervisory review appeals to the Chair of the Supreme Court and to the Prosecutor General had been rejected by their deputies. The author believes that he cannot be blamed for failing to exhaust domestic remedies because these officials delegated the examination of his complaints to their deputies. The Chair of the Supreme Court and the Prosecutor General have five and four deputies, respectively. The State party did not explain which deputy the author had to address in order to ensure that his appeals would be examined by the Chair of the Supreme Court, or by the Prosecutor General. In the absence of explanations by the State party, the author considers supervisory review appeals to judicial and prosecutorial authorities to be ineffective remedies. In addition, he claims that the supervisory review procedure is not effective because supervisory review appeals are examined by a limited number of persons, exclusively in accordance with the personal opinions of the judge or the prosecutor, and because this procedure only includes examination of the legal issues and not any review of the facts or the evidence.

5.4 The author underlined that the judicial and prosecutorial authorities had not assessed evidence submitted by him (see para. 2.11 above), therefore no effective remedies had been made available for him to prove to an independent and impartial tribunal the arbitrariness of the interference with his liberty and security of person and the illegality of the interference with his privacy. Therefore, he claims that the interpretation of his rights and obligations in the civil process did not respect the guarantees of fair trial by a competent, independent and impartial tribunal under article 14 (1) of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee notes the State party's argument that the author failed to seek a supervisory review of the impugned decisions by the Chair of the Supreme Court and the Prosecutor General. The Committee takes note of the author's arguments that he has lodged supervisory review appeals with these officials but his appeals have been dismissed by deputies of the Supreme Court and the Prosecutor General, and that, in any event, supervisory review cannot be considered an effective remedy due to the inherent limitations of this procedure. In this context, the Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy, and the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. The Committee further recalls its jurisprudence according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the

prosecutor, requesting a review of court decisions that have taken effect, constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁵ In the present case, the author appealed, unsuccessfully, under the supervisory review proceedings, to the Chair of Gomel Regional Court, the Chair of the Supreme Court, the Public Prosecutor's Office of Gomel the Region and the Prosecutor General's Office. The State party does not provide any information to demonstrate that further supervisory review appeals before judicial and prosecutorial authorities would constitute an effective domestic remedy in the circumstances of the case. Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee notes that the author claims a violation of article 9 (1) of the Covenant because he was taken off the train in a violent and forcible way and was forcibly transferred to the Minsk Regional Customs Office in Molodechno where he was arbitrarily detained for two hours although he was not suspected of having committed any offence and had already undergone customs control. The Committee notes the State party's observation that on 25 August 2015, the author was on the Vilnius–Minsk train, crossing the international border at the Gudogay checkpoint, when officers of the State Frontier Committee requested the Ashmyany Customs Office to conduct a customs control of the author, on suspicion that he was transporting goods in violation of the customs law. The Committee further notes that the customs officers made a decision to transfer the author to the Minsk Regional Customs Office in Molodechno, since the sanitation and hygiene requirements in Ashmyany Customs Office for conducting a customs control, as prescribed under article 117 (b) of the Customs Code of the Customs Union of the Eurasian Economic Union could not be met, and that the officers were obliged to use force due to the author's resistance. The Committee recalls that detention during immigration controls is not arbitrary provided that it is reasonable, necessary and proportionate to the circumstances.⁶ However, in the absence of any other pertinent information, the Committee considers that the author has failed to sufficiently substantiate his claim under article 9 (1) for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also notes the author's claim that his rights under article 14 (1) of the Covenant have been violated, since the courts of the State party failed to duly assess the facts of the case and therefore failed in their duty of impartiality and independence. The Committee observes, however, that the information it has before it is that the national court did appraise the author's claims and, in this context, recalls that it is generally for the courts of States parties to review the facts and the evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise violated its obligation of independence and impartiality.⁷ In the present case, the Committee is of the view that the author has failed to demonstrate, for the purposes of admissibility, that the conduct of the proceedings in his case was clearly arbitrary or amounted to a manifest error or denial of justice, or to provide evidence that the courts otherwise violated their obligation of independence and impartiality. In the absence of any other pertinent information, the Committee considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers the author's claims under article 17 of the Covenant sufficiently substantiated for the purposes of admissibility and proceeds with its examination of the merits.

⁵ *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3; *Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; and *Belenky v. Belarus* (CCPR/C/135/D/2860/2016), para. 8.3.

⁶ See the Committee's general comment No. 35 (2014), para. 18.

⁷ See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26. See also, inter alia, *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 6.3; *Cuartero Casado v. Spain* (CCPR/C/84/D/1399/2005), para. 4.3; *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010), para. 9.5; and *Berlinov v. Belarus* (CCPR/C/133/D/2708/2015), para. 6.4.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes that the author claims violation of his right to privacy under article 17 of the Covenant due to, first, the alleged illegal modification of his personal data in the electronic frontier control system without a prior judicial decision, which allows frontier agents to identify him and track his movements across the country's international borders, as well as the absence of legal remedies that would allow for rectification of the data, and second, the fact that, as a result of the modification of his data, he was subjected to an arbitrary search of his person and his belongings.

7.3 The Committee recalls that article 17 of the Covenant provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy.⁸ The term "unlawful" means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of the law, which itself must comply with the provisions, aims and objectives of the Covenant.⁹ The expression "arbitrary interference" is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.¹⁰ The Committee interprets the requirement of reasonableness to imply that any interference with privacy and family life must be proportionate to the legitimate end sought and be necessary in the circumstances of any given case.¹¹

7.4 The Committee recalls that every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.¹²

7.5 The Committee notes the author's claims that he was subjected to surveillance and unlawful modifications to his personal data in the electronic system used by the frontier patrols due to two similar incidents at the country's international border where, upon scanning his passport, the frontier patrol requested the extraordinary measure of a thorough personal customs control aimed at searching for extremist materials, notwithstanding the fact that the author had no criminal record. The Committee notes that the State party does not refute the author's claims about unlawful modifications to his personal data in the electronic frontier control system, resulting in the possibility of frontier and customs authorities subjecting him to arbitrary detention and personal searches. Neither does the State party refute the author's arguments about the unavailability of legal remedies for him to request elimination of these modifications. In the light thereof and in the absence of any clarifications from the State party with regard to the applicable legal framework and the safeguards in place against abusive and arbitrary collection, access and usage of personal data by frontier patrols, the Committee concludes that there has been a violation of the author's right to privacy under article 17 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of article 17 of the Covenant.

⁸ See the Committee's general comment No. 16 (1988), para. 1.

⁹ *Ibid.*, para. 3; and *Madhewoo v. Mauritius* (CCPR/C/131/D/3163/2018), para. 7.3.

¹⁰ See the Committee's general comment No. 16 (1988), para. 4.

¹¹ *Toonen v. Australia* (CCPR/C/50/D/488/1992), para. 8.3; *Vandom v. Republic of Korea* (CCPR/C/123/D/2273/2013), para. 8.8; and *Madhewoo v. Mauritius*, para. 7.4.

¹² See the Committee's general comment No. 16 (1988), para. 10. See also Human Rights Council resolution 42/15, in which the Council noted with appreciation the Committee's general comment No. 16 (1988), recalled that any interference with the right to privacy should be consistent with the principles of legality, necessity and proportionality, and called upon States to ensure transparency and accountability for State surveillance and collection of personal data (see in particular the preamble, and operative paras. 2 and 6).

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to provide the author with adequate compensation for moral and material damage caused to him, including reimbursement of transport, medical and legal expenses incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant. The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. Since, 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 and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, 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 the official languages of the State party.

Annex

[Original: Spanish]

**Individual opinion of Committee member Rodrigo A. Carazo
(partially dissenting)**

1. Despite its established jurisprudence in this regard, the Committee is retreating from its previous position by considering in this case that the author's being forced to remove his trousers on a public road on one occasion and his being brutally and violently handled by 10 law enforcement officers on two separate occasions does not constitute a violation of his right to security of person (art. 9 (1) of the Covenant). The author – who, at the time, had already been identified by officials of the State party as a human rights defender – was subjected to arbitrary detention, a measure that was disproportionate for a supposed customs inspection and did not yield any results. Yet, the Committee chooses to consider that the detentions in those circumstances were proportionate and necessary.

2. Despite the fact that the State party persistently violates the due process rights enshrined in article 14 of the Covenant, the Committee gives more weight in this case to the State party's simple, unsubstantiated statement that the proceedings complied with the requirements of article 14 (see para. 4.14) than to the author's claim that the trial authorities failed to evaluate the evidence he submitted (see paras. 2.10 and 5.4), which is included in the Committee's file (see para. 2.9). I am of the opinion that, for a number of reasons relating to case law and specific evidence, the Committee should have found that the procedural safeguards under article 14 of the Covenant were not respected.

3. The author is a human rights defender in his country in relation to whom the Committee has found a violation of Covenant rights in five Views – two additional procedures are pending – and who has professionally supported at least 18 other cases in which violations of the Covenant were found. It is for this reason that the author, on the two occasions noted in this case, was brutally and violently detained and was not afforded due process in the State party. The Committee omitted to point out this fact, thus disregarding the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted in 1998 by the General Assembly of the United Nations.
