

ICCPR Case Digest

CCPR/C/113/D/1949/2010

Communication
No. 1949/2010

Submission: 15.03.10
View Adopted: 25.03.15

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Freedom of expression and opinion cannot be restricted without any justifications from the State party

Substantive Issues

- Fair trial
- Freedom of expression
- Freedom of assembly
- Discrimination on the grounds of political or other opinion

Relevant Articles

- Art. 14 (1)
- Art. 19 (2)
- Art. 21
- Art. 26

Violations

- Art. 19 (2)
- Art. 21

Facts

The authors are 5 Belarus national. On 28 August 2009, the authors requested, to the Brest City Executive Committee, the permission to carry out a picket to raise awareness to the “indifferent attitude of State officials towards citizens’ petitions”. The Brest City Executive Committee refused to allow this event, stating that public event can only be held in one specified location: the Lokomotiv stadium.

The authors claimed violation of their rights of freedom of expression and resulted in discrimination of their opinion before the Leninsky District Court, on 15 October 2015. Few weeks later, this Court held public hearings. It refused to summon officials of the Brest City Executive Committee as witnesses, as requested by the authors. Successively, the Leninsky District rejected the authors’ appeal on 9 November 2009. Then, the authors filed a cassation appeal against this decision before the Judicial Chamber for Civil Cases. On 24 December 2009 the Chamber quashed the position stated by the Leninsky District Court. In reaction, the Chairperson and the Presidium of the Brest City Executive Committee entered a protest resulting in the Presidium quashing the decision of the 24 December 2009 to order a new examination of the appeal.

Finally, the Judicial Chamber for Civil Cases rejected once again the authors’ cassation appeal, on 18 February 2010. This last trial was the last possibility for the authors to claim any violations at the domestic level.

The author submits communication alleging to be a victim of violations of rights under article 14 (1), article 19 (2), article 21 and article 26 of the Covenant.

Committee's View

Consideration of admissibility

The Committee notes that the State party failed to provide information to the Committee on the admissibility and merits of the communication.

The last trial before the Judicial Chamber for Civil Cases of the Brest Regional Court was the last possibility for the authors to claim any violations at the domestic level. Moreover, the Committee states that this case is not under the consideration of another international judicial mechanism.

Regarding the admissibility of the allegations under article 14 (1), the Committee declares that the authors failed to demonstrate how the process of the trial was unfair. Therefore, it considers this part of the communication as inadmissible.

Regarding the admissibility of the allegations under article 26, the Committee notes that the authors did not sufficiently demonstrate why this decision is discriminatory on the ground of their opinion. Therefore the Committee concludes that this part of the communication is inadmissible. Finally, the Committee observed that the consideration of admissibility based on allegations of violations under article 19 and article 21 were fulfilled since the claim was sufficiently substantiated.

Consideration of merits

In regard to the author's claim under article 21 that their right of peaceful assembly was violated because the national authorities did not provide any justifications and reasons for the rejection of their request. The Committee underlined that this right "is a fundamental right that is essential for public expression [...] in a democratic society". It recalled that when a State imposes restrictions it is under the obligation to justify the limitation of this right. This restriction should be necessary and proportionate to the objective pursued. In that case, the State did not provide any explanations; therefore, the Committee concluded that the state violated rights under article 21 of the Covenant (see Communication No. 1948/2010, [Turchenyak et al v. Belarus](#), Views adopted on 24 July 2013, para 7.4).

Concerning the allegation of violation of the article 19 paragraph 2 of the Covenant, the authors claim that freedom of expression and freedom of opinion have been violated. For the same reasons than regarding violation of article 21, the State did not provide any explanations on the reasons of the denial of their right to hold a picket. Thus the Committee found violations of the author's right under article 19 (2).

Therefore the Committee in final remarks concluded that the State party has violated the author's rights under article 19 (2) and article 21 of the Covenant.

Recommendation

The Human Rights Committee therefore decided:

- a. The State party is under an obligation to provide the authors with an effective remedy, including reimbursement of any legal costs incurred by them, together with compensation. With a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party
- b. The State party should also review the national legislation as it has been applied in the present case.
- c. The State party is also under the obligation to take steps to prevent similar violations in the future.

Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: 25 September 2015