



# 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. 2495/2014\*, \*\*

<i>Communication submitted by:</i>	Mikhail Zhuravlev (represented by counsel, Pavel Levinov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	14 June 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 (now rule 92), transmitted to the State party on 22 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Imposition of a fine for distributing a foreign newspaper; lack of a fair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies; State party's failure to cooperate
<i>Substantive issues:</i>	Freedom of expression; fair trial
<i>Articles of the Covenant:</i>	2 (1), 5 (1), 14 (1) and 19 (2)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication:  
Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin  
Fathalla, Schuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini  
Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène  
Tigroudja and Gentian Zyberi.



1. The author of the communication is Mikhail Zhuravlev, a national of Belarus born in 1951. He claims that the State party has violated his rights under articles 2 (1), 5 (1), 14 (1) and 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

### **The facts as submitted by the author**

2.1 On 6 October 2012, the author was distributing copies of the newspaper *Vitebskiy Kurier* through mailboxes at the buildings on Prospekt Pobedy in Vitebsk. The newspaper, registered in the Russian Federation, was banned in Belarus.<sup>1</sup> He had 241 copies of the newspaper in his possession when he was apprehended by several police officers and taken to a police station. The police officers confiscated the newspapers and recorded an administrative offence having been committed under article 22.9 (2) of the Code on Administrative Offences, prohibiting unlawful distribution of printed materials.

2.2 On 22 October 2012, the Pervomayskiy District Court found that the author had violated article 17 (5) of the Law on Mass Media of 17 July 2008, according to which the products of foreign-registered mass media can only be distributed in Belarus after receiving permission from the national mass media regulation agency. Since the *Vitebskiy Kurier* had not been granted such permission, the Court found the author guilty of an administrative offence under article 22.9 (2) of the Code on Administrative Offences and fined him 2,500,000 old Belarusian roubles (approximately \$294), which represented 1.5 times his monthly retirement pension.

2.3 On 30 October 2012, the author filed an appeal to the Vitebsk Regional Court, arguing that the District Court had failed to respect the Constitution and the Covenant (art. 19), which guarantee the right to freedom of expression, especially since there was no evidence to suggest that the newspaper the author had been distributing created a danger to national security, public order or the rights and freedoms of others. On 14 November 2012, the Vitebsk Regional Court confirmed the decision of the District Court, finding the arguments of the author ungrounded.

2.4 The author appealed against the two court decisions under supervisory review proceedings to the Chair of the Vitebsk Regional Court, the Chair of the Supreme Court and the Prosecutor General, on the basis of the same arguments. On 18 December 2012, 20 March 2013 and 20 May 2013, respectively, they confirmed the decision of the District Court. The author submits that he has thus exhausted all domestic remedies.

### **The complaint**

3.1 The author argues that the State party has given precedence to its national legislation over its international obligations under the Covenant, in violation of the latter's article 2 (1).

3.2 The author states that his administrative conviction and the restrictions imposed on his freedom to impart information amounted to an act aimed at limiting his freedom of expression to a greater extent than is provided for in the Covenant, thus violating article 5 (1).

3.3 The author claims a violation of his right to freedom of expression under article 19 (2) of the Covenant, arguing that he was fined for distributing newspapers that did not pose a threat to national security, public order or the rights and freedoms of others. The author requests as a remedy compensation for material and non-pecuniary damage.

3.4 The author argues that the application of national legislation without regard to the State party's obligations under the Covenant has also resulted in a violation of articles 26 and 27 of the Vienna Convention on the Law of Treaties.<sup>2</sup> He contends that his rights to be heard by a competent, independent and fair tribunal, as enshrined in article 14 (1) of the Covenant, have been violated.

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<sup>1</sup> The courts' decisions submitted to the Committee do not refer to any ban and the author does not provide details on whether the newspaper was indeed banned in Belarus.

<sup>2</sup> The author refers to *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.4.

### **State party's observations on admissibility**

4.1 On 26 March 2015, the State party submitted its observations noting the violation of article 5 of the Optional Protocol and arguing that the communication was not submitted by the author but by a third party on his behalf and that the author had failed to exhaust all domestic remedies by not filing a request with a prosecutor to initiate a supervisory review of his case.

4.2 The State party submits that, due to the author's failure to comply with the provisions of the Optional Protocol, it refrains from any further communication on the present case.

### **Author's comments on the State party's observations on admissibility**

5.1 In a letter dated 8 May 2015, the author commented on the State party's observations. He submits that, when the Vitebsk Regional Court rejected his appeal on 14 November 2012, he made an effort to appeal these decisions under a supervisory review to the Chair of the Vitebsk Regional Court, the Chair of the Supreme Court and the Prosecutor General. However, all three institutions maintained the decision of the court of first instance. Thus, the author argues, he has exhausted all available domestic remedies, including those within the framework of a supervisory review.

5.2 Referring to the State party's arguments relating to his counsel, the author notes that he has duly submitted his power of attorney in which it is indicated that he is a retired person with a disability.

### **Lack of cooperation by the State party**

6.1 The Committee notes the State party's assertion that the communication was registered by the Committee in violation of the provisions of the Optional Protocol and submitted by the author in violation of the right of submission and that, accordingly, it would refrain from any further correspondence on the present communication with the Committee.

6.2 The Committee observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.<sup>3</sup> It is up to the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by dissociating itself with the Committee's determination on the admissibility or the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.

### **Issues and proceedings before the Committee**

#### *Considerations of admissibility*

7.1 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.

<sup>3</sup> See, e.g., *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

7.2 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.

7.3 The Committee takes note of the State party's argument that the author has failed to request the prosecutor's office to initiate a supervisory review of the decisions of the domestic courts. In this context, the Committee recalls its jurisprudence, according to which a petition to a prosecutor's office requesting a review of court decisions that have entered into force does not constitute an effective remedy to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>4</sup> At the same time, the Committee takes note of the author's argument that he indeed appealed, unsuccessfully, these decisions under a supervisory review, namely to the Chair of the Vitebsk Regional Court, the Chair of the Supreme Court and to the Prosecutor General, and provided all the relevant materials in this regard. The Committee notes that, in the present case, the author has exhausted all available domestic remedies, including those that constitute supervisory review proceedings, and, therefore, considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 Regarding the author's claim under article 5 (1) of the Covenant, the Committee observes that this provision does not give rise to any separate individual right. Accordingly, this part of the communication is incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.<sup>5</sup>

7.5 Regarding the author's claim under article 2 (1) of the Covenant, the Committee recalls that the provisions of article 2, which lay down the general obligations of States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol.<sup>6</sup> The Committee therefore considers that the author's contentions in that regard are inadmissible under article 3 of the Optional Protocol.

7.6 With respect to the allegations under article 14 (1) of the Covenant, the Committee observes that these claims refer primarily to the appraisal of evidence adduced during the court proceedings and the interpretation of laws, matters falling in principle to the national courts, unless the evaluation of evidence was manifestly arbitrary or constituted a denial of justice.<sup>7</sup> In the present case, the Committee is of the view that the author has failed to demonstrate, for purposes of admissibility, that the conduct of the proceedings in his case was arbitrary or amounted to a denial of justice. The Committee consequently considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

7.7 The Committee considers that the author has sufficiently substantiated the remaining claim under article 19 of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

#### *Considerations of the merits*

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

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<sup>4</sup> See, e.g., *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; and *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

<sup>5</sup> See, e.g., *X v. Colombia* (CCPR/C/89/D/1361/2005), para. 6.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.3.

<sup>6</sup> See, e.g., *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.4; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 9.3.

<sup>7</sup> 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; and *Cuartero Casado v. Spain* (CCPR/C/84/D/1399/2005), para. 4.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 9.5.

8.2 The Committee notes the author's allegations that the authorities violated his rights under article 19 of the Covenant. From the material before the Committee, it transpires that the author was convicted and fined for distributing copies of an unregistered newspaper, the *Vitebskiy Kurier*, in violation of the Law on Mass Media of 17 July 2008.

8.3 The Committee has to consider whether the restrictions imposed on the author's freedom to impart information are justified under any of the criteria set out in article 19 (3) of the Covenant. The Committee recalls in that respect its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression was essential for any society and a foundation stone for every free and democratic society (para. 2). It notes that article 19 (3) allows restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputation of others; or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest to be protected.<sup>8</sup>

8.4 The Committee observes that, in the present case, the prohibition of the distribution of printed materials because they were not registered in Belarus and the imposition of a significant fine on the author raise serious doubts as to the necessity and proportionality of the restrictions on the author's rights under article 19 of the Covenant. The Committee further observes that the State party has failed to invoke any specific grounds to support the necessity of the restrictions imposed on the author as required under article 19 (3) of the Covenant.<sup>9</sup> Nor did the State party demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the case, the limitations imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.<sup>10</sup>

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 19 of the Covenant. The State party has also breached its obligations under article 1 of the Optional Protocol.

10. Pursuant to 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, inter alia, to take appropriate steps to reimburse the current value of the fine and any legal costs incurred by the author in relation to the domestic proceedings. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 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 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.

<sup>8</sup> See the Committee's general comment No 34 (2011) on the freedoms of opinion and expression, para. 34.

<sup>9</sup> See, e.g., *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

<sup>10</sup> See, e.g., *Svetik v. Belarus*, para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.