



## 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. 2093/2011\*, \*\*

<i>Communication submitted by:</i>	Valery Misnikov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	14 March 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 5 September 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matter:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	19 (2)
<i>Articles of the Optional Protocol:</i>	2, 5 (2) (b)

1. The author of the communication is Valery Misnikov, a national of Belarus born in 1953. He claims to be a victim of a violation by Belarus of his rights under article 19 (2) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.



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

2.1 On 25 November 2009, the author filed an application to the Vitebsk Executive Committee requesting to hold a picket on 10 December 2009. The purpose of the picket was to commemorate the anniversary of the Universal Declaration of Human Rights, conduct pro-human rights publicity and encourage the State to provide possibilities for the realization of civil and political rights by each and every citizen. In the application, the author guaranteed that the picket would not disturb public order or security nor would it interfere with pedestrian movement. The author also undertook to ensure medical care and the cleanliness of the area where the picket would take place.

2.2 On 4 December 2009, the application was rejected on the grounds of non-compliance with Vitebsk Executive Committee decision No. 881 of 10 July 2009 on the holding of public events in Vitebsk.<sup>1</sup> The decision stated that public gatherings may only be organized in a few specified locations in Vitebsk, but the location suggested by the author was not among them. Moreover, the author failed to submit contracts with: the Department of the Interior of the District Administration to ensure public order during the picket; the Vitebsk Central City Hospital to ensure medical care during the picket; and the Vitebsk Utilities Department to ensure the cleaning of the area where the picket would take place, as required by decision No. 881.

2.3 On 8 December 2009, the author appealed to the Oktyabrsky District Court, which dismissed his appeal on 21 December 2009. On 30 December 2009, the author filed a cassation appeal against the District Court decision before the Vitebsk Regional Court. The appeal was dismissed on 8 February 2010. On 27 April 2010, the author appealed that decision under the supervisory review procedure to the President of the Vitebsk Regional Court. That appeal was dismissed on 27 May 2010. The author then appealed to the Supreme Court of Belarus on 3 June 2010. On 9 July 2010, the Supreme Court rejected his appeal. In their decisions, the courts, in essence, repeated the same arguments as the Vitebsk Executive Committee regarding the requirements of decision No. 881 that was adopted in accordance with the Belarus Public Events Act of 30 December 1997.

2.4 The author contends that he has exhausted all available and effective domestic remedies.

### **The complaint**

3. The author claims that his freedom of expression has been restricted and that the State party has violated article 19 of the Covenant owing to the refusal of the State authorities to authorize his picket.

### **State party's observations**

4. In a note verbale dated 4 October 2011, the State party noted that the author has not exhausted all available domestic remedies as required by article 2 of the Optional Protocol as he failed to appeal to the Procurator's Office. Also, in the State party's opinion there are no legal grounds for considering the communication as it was registered in violation of article 1 of the Optional Protocol.

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<sup>1</sup> Decision No. 881 of Vitebsk Executive Committee is based on the Belarus Public Events Act of 30 December 1997.

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

5. In a letter dated 9 January 2012, the author submitted that the long years of practice as a lawyer had convinced him that appeals under the supervisory review procedure of the Supreme Court and of the Procurator's Office in Belarus were not effective remedies. The Supreme Court rejected his appeal after a formalistic review on points of law. Since the Procurator's Office is also a supervisory instance, it would have been similarly ineffective in considering his appeal.

**State party's further observations**

6. In a note verbale dated 25 January 2012, the State party submitted that upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any rights protected by the Covenant. It noted, however, that such recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. It maintained that, under the Optional Protocol, States parties had no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in accordance with the Vienna Convention on the Law of Treaties. It submitted that, in relation to the communications procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that references to the Committee's long-standing practice, methods of work and case law are not subject to the Optional Protocol. The State party also submitted that any communication registered in violation of the provisions of the Optional Protocol would be viewed as incompatible with the Optional Protocol and rejected without observations on admissibility or the merits and that any decision taken by the Committee on such communications would be considered by its authorities as "invalid". The State party reiterated its view that the present communication was registered in violation of the Optional Protocol.

**Issues and proceedings before the Committee***The State party's lack of cooperation*

7.1 The Committee notes the State party's assertion that there are no legal grounds for considering the author's communication insofar as it was registered in violation of the provisions of the Optional Protocol; it has no obligation to recognize the Committee's rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and any decision taken by the Committee in respect of the present communication will be considered "invalid" by its authorities.

7.2 The Committee recalls that, under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further 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 (Optional Protocol, preamble and art. 1). 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 a communication and in the expression of its Views.<sup>2</sup> It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.

*Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee takes note of the State party's objection that the author failed to request the Procurator's Office to initiate a supervisory review of the decisions of the domestic courts. The Committee recalls its jurisprudence, according to which a petition to the Procurator's Office for supervisory review of court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>3</sup> Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication. As the Committee finds no other grounds preventing it from considering the author's complaint, it declares the claims admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's allegations that his freedom of expression has been restricted arbitrarily because he was refused permission to hold a public picket and to publicly express his opinion. The Committee considers that the legal issue before it is to decide whether the prohibition to hold a public picket that was imposed on the author by the executive authorities of the State party amounts to a violation of article 19 of the Covenant. It transpires from the material before the Committee that the author's act was qualified by the courts as an application to hold a public event and it was refused on the basis that the location chosen was not among those permitted by the executive authorities of the town and the author has not secured the required security, medical and cleaning services to hold the picket. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification, amount to a limitation of the author's rights, in particular the right to impart information and ideas of any kind, under article 19 (2) of the Covenant.

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<sup>2</sup> See, for example, communications No. 1867/2009, No. 1936/2010, No. 1975/2010, Nos. 1977/2010-1981/2010 and No. 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 6.2.

<sup>3</sup> See communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para 8.4; and No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 6.3.

9.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions 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.<sup>4</sup> The Committee recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.<sup>5</sup> The Committee observes that limiting pickets to certain predetermined locations as well as requesting the organizer of a one-person picket to conclude service contracts with a number of government agencies in order to hold the picket do not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee notes that neither the State party nor the national courts provided any explanations for the restrictions. The Committee considers that, in the circumstances, the prohibitions imposed on the author, although based on domestic law, were not justified by the State party 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.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 19 (2) of the Covenant and under article 1 of the Optional Protocol to the Covenant.

11. 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 to, inter alia, take appropriate steps to provide the authors with adequate compensation and prevent similar violations in the future. In this connection, the Committee reiterates that the State party should revise its legislation to ensure that it is consistent with its obligations under article 2 (2) of the Covenant, in particular, decision No. 881 of the Vitebsk Executive Committee and the Public Events Act of 30 December 1997, as they have been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.<sup>6</sup>

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<sup>4</sup> See general comment No. 34 (2011), para. 22.

<sup>5</sup> See, for example, communications No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3; No. 1785/2008, *Olechkevitch v. Belarus*, Views adopted on 18 March 2013, para. 8.5; and No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para.7.3.

<sup>6</sup> See communications No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 9; No. 1790/2008, *Govsha, Syritya and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11; also, mutatis mutandis, communications No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10; and *Poplavny v. Belarus*, para. 10 .

12. 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 present 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.

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