



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2112/2011^{*}, ^{**}

<i>Communication submitted by:</i>	K.A. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	20 November 2009 (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 22 August 2011 (not issued in document form)
<i>Date of adoption of the decision:</i>	3 November 2016
<i>Subject matter:</i>	Criminal proceedings due to membership in an unregistered organization
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of opinion and expression
<i>Articles of the Covenant:</i>	2 (1) and 22
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is K.A., a national of Belarus born in 1989. He claims to be a victim of violations by Belarus of his rights under articles 2 (1) and 22 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992.

* Adopted by the Committee at its 118th session (17 October-4 November 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 Salvio, Yuval Shany and Margo Waterval.



The facts as submitted by the author

2.1 The author has been an active member and a leader of the unregistered youth organization Youth Front since 2006.

2.2 On 18 September 2007, officers of the State Security Agency (KGB) Directorate of Gomel Region searched the author's apartment and subsequently interrogated the author about the activities of Youth Front. On 19 September 2007, the Directorate initiated criminal proceedings against the author as a suspect under article 193-1 of the Criminal Code of Belarus.¹

2.3 In the ruling declaring the author a suspect, the author, who was a leader of the Zhlobin city branch of Youth Front, was charged with unlawfully arranging the activities of Youth Front, a public association that had not been duly registered² in Gomel Region. In particular, he was charged with discrediting the work of government bodies and agencies, destabilizing the sociopolitical order, involving young individuals in the radical propaganda activities of Youth Front and participating in unauthorized public protests. The author, together with a number of other members of Youth Front, had painted the association's logo and slogans of a subversive nature on building facades in order to popularize the association's ideology and to create the illusion in society of mass resistance to the current Government. The author carried out a number of public protests by hanging posters with the Youth Front logo and by distributing leaflets of a subversive nature. Furthermore, he regularly published on the Internet articles and reports about Youth Front activities in Gomel Region.³

2.4 On 22 September 2007, afraid of criminal prosecution, the author left Belarus for Lithuania, where he is currently living and studying at the European Humanities University.

2.5 On 24 April 2009, the author petitioned the Prosecutor General of Belarus, requesting that the criminal proceedings against him be discontinued. In his petition, the author confirmed that he was a member of Youth Front and stated that his membership in that organization was an exercise of the inalienable right to freedom of association guaranteed by article 22 of the Covenant.

2.6 On 19 June 2009, the author received a reply from the Prosecutor's Office of Gomel Region informing him that the criminal proceedings that had been initiated were in full compliance with criminal law and criminal procedure law and that the author, as a member of an unregistered organization, had been lawfully charged under article 193-1 of the Criminal Code.

2.7 On 8 October 2009, the author was informed that the criminal proceedings had been discontinued owing to the statute of limitations. The author submits that there was no point in appealing the reply from the Prosecutor's Office to the Prosecutor of Gomel Region because the criminal proceedings against him had been discontinued and he was no longer being charged under article 193-1 of the Criminal Code.

¹ Article 193-1, on illegal organizations or activities of public associations, religious groups or foundations or participation in their activities, stipulates that anyone who organizes activities in the framework of a suspended, dissolved or unregistered association may face a fine, be arrested for up to six months or be subjected to a sentence restricting his or her freedom of up to two years.

² According to the author, Youth Front attempted, unsuccessfully, to register in December 2001, May 2007, June 2009 and April 2010.

³ According to the ruling declaring the author a suspect.

The complaint

3.1 The author claims that he is a victim of violations by Belarus of his rights under articles 2 (1) and 22 (1) of the Covenant, as he was charged with having committed a crime under article 193-1 of the Criminal Code exclusively owing to his membership in an unregistered youth organization. He claims that he is unable to return to Belarus for fear of being charged again with a violation of article 193-1 of the Criminal Code. He states that the initial charges against him were dropped only owing to the statute of limitations and that if he returns to Belarus he could be charged again, at any moment, and be convicted. The author adds that he does not intend to discontinue his activities as a member of Youth Front because those activities do not run contrary to the principles of the United Nations.

3.2 The author argues that article 193-1 of the Criminal Code as such violates articles 2 (1) and 22 (1) of the Covenant because it criminalizes the activities of individuals who are members of an organization or association merely because the organization has not been registered. He adds that Youth Front unsuccessfully tried to obtain registration in December 2001, May 2007, June 2009 and April 2010. The author maintains that the only effective remedy for him, as well as for any other national of Belarus acting on behalf of an unregistered organization and charged under article 193-1 of the Criminal Code, would be to repeal the provision in question.

3.3 As for the “victim status” claimed under article 1 of the Optional Protocol, the author specifically refers to the Committee’s jurisprudence in *Toonen v. Australia*, in which an individual challenged two provisions of the Tasmanian Criminal Code that criminalized homosexual contacts. In that case, there were neither charges nor a conviction, only a mention by the author that he was subjected to police intimidation after he had been banned from putting up a stand in a public square. Due to “the threat of enforcement and the pervasive impact of the continued existence” of the provisions of the Criminal Code “on the administrative practices and public opinion”, the author was deemed by the Committee to be a victim of a violation. Subsequently, the Committee found a violation requiring the offending law to be repealed.⁴

State party’s observations on admissibility

4.1 On 14 December 2011, the State party challenged the admissibility of the communication based on the fact that the author has not exhausted all available domestic remedies. Furthermore, the State party claims that the communication should not have been registered at all since the legal grounds for considering the admissibility and the merits of the communication were lacking. It maintains that any decision taken by the Committee on such “illegally registered communications” will be considered “not valid”.

4.2 In a note verbale dated 25 January 2012, the State party submits that, upon becoming a party to the Optional Protocol, it had recognized the Committee’s competence, under article 1 thereof, 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 set forth in the Covenant. That recognition of competence was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding the petitioners and the admissibility of their communications, in particular articles 2 and 5 of the Optional Protocol. The State party maintains that States parties have no obligation, under the Optional Protocol, to recognize the Committee’s rules of procedure nor its interpretation of the provisions of the Optional Protocol. The State party submits that, in the context of the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that the Committee’s long-standing practice,

⁴ See communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, paras. 5.1 and 11.

methods of work and case law are not subjects of the Optional Protocol. It also submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or the merits, and that any decisions taken by the Committee on such rejected communications will be considered by its authorities as “invalid”.

Author’s comments on the State party’s observations

5. On 6 February 2012, the author submitted that, by not specifying what domestic remedies were still available and were yet to be exhausted in his specific situation, the State party has effectively confirmed that such remedies do not exist. He reiterates his argument that there was no point in appealing against the reply dated 19 June 2009 of the Prosecutor’s Office of Gomel Region, as the criminal proceedings against him under article 193-1 of the Criminal Code had been discontinued by the KGB Directorate of Gomel Region on 8 October 2009. The author recalls that he is unable to return to Belarus for fear of being charged again with a crime under article 193-1 of the Criminal Code and that, for this reason, he has to remain in Lithuania. He states that he does not intend to discontinue his activities as a member of Youth Front, an unregistered public association, and that there are no effective remedies in case of a criminal prosecution under article 193-1 given that mere membership in an unregistered organization and involvement in activities on its behalf constitute sufficient grounds for criminal prosecution.

Issues and proceedings before the Committee

Lack of cooperation by the State party

6.1 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; that the State party is under no obligation to recognize the Committee’s rules of procedure or the Committee’s interpretation of the Optional Protocol’s provisions; and that any decision taken by the Committee on the communication will be considered “invalid” by State party’s authorities.

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 to the individual (art. 5 (1) and (4)). It is incompatible with those 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.⁵ It is up to the Committee to determine whether a case 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 the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.

⁵ 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.

Consideration of admissibility

7.1 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.

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 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the State party challenged the admissibility of the present communication on the ground of non-exhaustion of domestic remedies. It notes the author's submission that the State party has not specified which domestic remedies he failed to exhaust concerning his claim that the criminal charges against him for his membership and activities in the unregistered association Youth Front amount to a violation under articles 2 (1) and 22 of the Covenant. In that regard, the Committee notes that the author has acknowledged that: (a) the criminal proceedings against him were discontinued by the KGB Directorate of Gomel Region in 2009; (b) he has never been brought before a judge or convicted; and (c) at the time of his initial submission he was no longer being charged under article 193-1 of the Criminal Code. Given the circumstances, the Committee considers that the author could not be deemed a victim within the meaning of article 1 of the Optional Protocol and that it is also precluded by article 5 (2) (b) of the Optional Protocol from considering that part of the communication.

7.4 The Committee also notes the author's claim that article 193-1 of the Criminal Code as such violates articles 2 (1) and 22 of the Covenant because it criminalizes the activities of individuals who are members of an organization or association merely because the organization has not been registered. It also notes that the author contends that he would be at risk of a new criminal prosecution and conviction for being a member of an unregistered association should he return to the State party owing to the continuing existence of the above-mentioned article of the Criminal Code. In that regard, the Committee takes note of the author's affirmation that, although living abroad, he does not intend to stop being a member of the organization or to be involved in related activities. It also notes, however, that in this particular case the author has provided only a statement, not information, on the nature of the activities of the association and the author's possible future involvement in those activities. In the light of the above, the Committee considers the author's claims under articles 2 (1) and 22 (1) of the Covenant inadmissible under article 2 of the Optional Protocol, as they are insufficiently substantiated.

8. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1, 2 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author of the communication.