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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2330/2014[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communication submitted by:* Svetlana Goldade, not represented by counsel

*Alleged victims:* The author, Anatoly Poplavny and Leonid Sudalenko

*State party:* Belarus

*Dates of communication:* 11 April 2013 (initial submission)

*Document references:* Special Rapporteur’s rule 92 decision, transmitted to the State party on 10 January 2014 (not issued in document form)

*Date of adoption of Views:* 6 November 2020

*Subject matter:* Sanction for participating in a peaceful assembly

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issues:* Freedom of expression; freedom of assembly

*Articles of the Covenant:* 19 and 21, read alone and in conjunction with 2 (2) and (3)

*Articles of the Optional Protocol:* 2 and 5(2)(b)

1. The author of the communication is Svetlana Goldade, a citizen of Belarus born in 1946. She submits the communication on her own behalf and on behalf of Anatoly Poplavny and Leonid Sudalenko, Belarusian citizens born in 1958 and 1966, respectively. She claims that they are victims of violations by the State party of their rights under articles 19 and 21, read alone and in conjunction with 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

 The facts as submitted by the author

2.1 On 10 July 2012, the author and the two other alleged victims filed an application to the Gomel City Executive Committee, a local municipal authority for a city of approximately 500,000 inhabitants, for a picket which was supposed to take place on 4 August 2012 on a square close to the department store “Gomel” to protest against the criminal prosecution of the human rights defender Aleksander Belyatsky and several other political activists.

2.2 On 19 July 2012, the Executive Committee refused to allow the picket on the grounds that the authors did not fulfil the requirements of the Executive Committee’s decision No. 299 dated 2 April 2008 “On mass events in the city of Gomel”. This decision requires organisers to hold public events in a single remote location and, prior to the event, to conclude service contracts with the local police so that they can maintain public order and safety during the event, with the local hospital so they can have medical professionals present for medical emergencies, and with the local road maintanence entity to clean after the event. The author claims that the application was refused because the protest was planned to take place at a location different from the standing one as designated by the Executive Committee, and because the author and the alleged victims had failed to contract the police or medical and cleaning services prior to the planned event.

2.3 On 31 July 2012, the author and the alleged victims submitted an appeal against the decision of the Executive Committee to the Central District Court of Gomel. On 23 August 2012, the Central District Court of Gomel dismissed their appeal and upheld the decision of the Executive Committee as lawful.

2.4 On an unspecified date, the author and the alleged victims filed a cassation appeal to the Gomel Regional Court, which was rejected on 4 October 2012. On unspecified dates, they petitioned the chairpersons of the Gomel Regional Court and the Supreme Court of Belarus seeking a supervisory review of the ruling by the Central District Court of Gomel. On 21 January 2013 and 18 March 2013 respectively, both courts rejected their petitions.

2.5 The author submits that she has exhausted all available and effective domestic remedies. She refers to the Human Rights Committee’s jurisprudence[[3]](#footnote-4) and notes that she did not file an application for supervisory review to the Prosecutor’s Office, since it did not constitute an effective domestic remedy.

 The complaint

3.1 The author claims that the decision of the Gomel City Executive Committee of 2 April 2008 No. 299 “On mass events in the city of Gomel” unduly restricts her and the alleged victims’ freedom of expression and the right of peaceful assembly by imposing on the organizers of public events an obligation to conclude service contracts with the local police, medical personnel and local road maintanence entity, and by designating a single remote location for all public events held in Gomel, a city of 500,000 inhabitants. She also claims that the authorities and courts did not specify a legitimate aim for the restriction of her and the alleged victims’ rights, and considers that the prohibition of peaceful assembly by the local authorities was not necessary in the interests of national security, public order or public health or rights and freedoms of others, thus violating her and the alleged victims’ rights under articles 19 and 21, both read alone and in conjunction with article 2 (2) and (3), of the Covenant.

3.2 The author refers to the Committee’s views in *Shumilin v. Belarus,* where the Committee requested that the State party reviews its legislation, in particular the Law on Mass Events, as well as its application, to ensure its conformity with the requirements of article 19 of the Covenant, and submits that this recommendation still has not been implemented by Belarus. [[4]](#footnote-5)

 State party’s observations on admissibility

4.1 By a note verbale dated 26 March 2015, the State party submitted its observations on admissibility of the communication. The State party submits that while it recognizes the Committee’s competence to receive and consider communications from victims claiming violations of their rights under the Covenant, it does not recognize the Committee’s competence to consider communications from third parties who represent alleged victims. The State party argues that article 1 of the Optional Protocol does not give the right to the author of a communication to represent interests of other victims mentioned in the communication.

4.2 The State party rejects the author’s assertion that she has exhausted all available domestic remedies as required by article 2 of the Optional Protocol. The State party submits that the Optional Protocol does not contain a condition of “effectiveness” of domestic remedies, thus all available domestic remedies shall be fully exhausted before a communication can be submitted to the Committee.

4.3 The State party submits that since the communication had been registered in violation of the provisions of the Optional Protocol, it will stop its cooperation with regard to it.

 Author’s comments on the State party’s observations on admissibility

5.1 By a letter dated 14 May 2015, the author provided her comments on the State party’s observations on admissibility. She notes that in line with the Committee’s jurisprudence, a person submitting a communication before the Committee may indicate indefinite number of victims. The author refers to the Committee’s views in *Kalyakin v. Belarus*, where the Committee found a violation of the author’s rights, as well the rights of 20 other victims under the Covenant.[[5]](#footnote-6)

5.2 With regard to the exhaustion of domestic remedies, the author notes that the remedies should not only be available, but also effective. She submits that she has not complained to a prosecutor’s office because she does not consider the supervisory review procedure to be an effective remedy.

5.3 As for the arguments referring to the competence of the Committee to consider the communication, the author submits that, by becoming a State party to the Optional Protocol, Belarus has recognized not only the Committee’s competence to issue decisions regarding the existence or absence of violations of the Covenant but also, in accordance with article 40 (4) of the Covenant, to transmit its reports, and such general comments as it may consider appropriate, to the States parties. The role of the Committee ultimately includes interpreting the provisions of the Covenant and developing jurisprudence tehreon. By refusing to recognize the standard practices, methods of work and precedents of the Committee, Belarus in fact refuses to recognize its competence to interpret the Covenant, which contradicts the objective and the aim of the Covenant. The State party is obliged not only to implement the decisions of the Committee, but also to recognize its standards, practices, methods of work and precedents. The above argument is based on the most important principle of international law, *pacta sunt servanda,* according to which every treaty in force is binding upon the parties to it and must be observed by them in good faith.

 Issues and proceedings before the Committee

 Lack of cooperation by the State party

6.1 The Committee notes the State party’s assertion that the communication has been registered in violation of the provisions of the Optional Protocol, and that it will stop its cooperation with regard to this communication.

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 article 1). Implicit in a State party’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. It is for the Committee to determine whether a case should be registered. By failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring outright that it will not accept the Committee’s determination of the admissibility and of the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol.[[6]](#footnote-7)

 Consid erations 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.

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 notes that the author has not complained under the supervisory review procedure to the Prosecutor General of Belarus. In this connection, it notes the State party’s assertion that the author has failed to exhaust all available domestic remedies and that the Optional Protocol does not contain a condition of “effectiveness” of domestic remedies, thus all available domestic remedies shall be fully exhausted before a communication can be submitted to the Committee. The Committee also notes the author’s argument that she submitted an appeal against the decision of the Gomel City Executive Committee to the Central District Court of Gomel, which was dismissed on 23 August 2012. She further filed a cassation appeal to the Gomel Regional Court, which was rejected on 4 October 2012, and petitioned the Gomel Regional Court and the Supreme Court of Belarus for a supervisory review, which also were rejected on 21 January 2013 and 18 March 2013 respectively. The Committee further notes the author’s submission that she has not submitted a petition under the supervisory review procedure to the prosecutor’s office because she does not consider it to be an effective remedy.

7.4 The Committee recalls its jurisprudence, according to which a petition to a prosecutor’s office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[[7]](#footnote-8) Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.5 The Committee takes note of the author’s submission that the State party violated its obligations under article 2 (2), read in conjunction with articles 19 and 21 of the Covenant. The Committee reiteares that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.[[8]](#footnote-9) The Committee notes, however, that the author has already alleged a violation of his rights under articles 19 and 21, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21 of the Covenant, to be distinct from examination of the violation of the author’s rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author’s claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol

7.6 In the absence of any information provided by the State party on the facts of this communication, the Committee considers that the author has sufficiently substantiated her claims under articles 19 and 21, read alone and in conjunction with article 2 (3), of the Covenant, for the purposes of admissibility and proceeds with their consideration of the merits.

 Consideration of the merits

8.1 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.

8.2 The Committee notes the author’s claim that her and the alleged victims’ right of peaceful assembly under article 21 of the Covenant was violated by the refusal of the municipal authorities to allow the picket to be held. In its general comment № 37 (2020) on the right of peaceful assembly, the Committee states that peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.[[9]](#footnote-10) Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city. The Committee further notes that the requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21.[[10]](#footnote-11)

8.3 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual’s views and opinions and is indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience, and no restriction to this right is permissible, unless it (a) is imposed in conformity with the law; and (b) is necessary in a democratic society, in the interests of national security or public safety, public order (ordre public), protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual’s right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[[11]](#footnote-12)

8.4 In the present case, the Committee must consider whether the restrictions imposed on the author’s and the alleged victims’ right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In light of the information available on file, the Committee notes that neither the municipal authorities nor the domestic courts have provided any justification or explanation as to how, in practice, the author’s and the alleged victims’ protest would have violated the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others, as set out in article 21 of the Covenant. The State party also failed to show that any alternative measures were taken to facilitate the exercise of the author’s rights under article 21.

8.7 In the absence of any explanation by the State party regarding the matter, the Committee concludes that, in the present case, the State party has violated the author’s and the alleged victims’ rights under article 21, read alone and in conjunction with article 2 (3), of the Covenant.

8.8 The Committee also notes the author’s claim that her and the alleged victims’ right to freedom of expression has been restricted unlawfully, as they were refused authorization to hold a picket to protest against the criminal prosecution of several political activists. The Committee considers that the legal issue before it is to decide whether the prohibition on holding a public picket imposed on the author by the city executive authorities of the State party amounts to a violation of article 19 of the Covenant.

8.9 The Committee recalls 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 constituted a foundation stone for every free and democratic society.[[12]](#footnote-13) It notes that article 19 (3) of the Convention allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary (a) for respect of the rights or 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.[[13]](#footnote-14) The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author’s rights under article 19 of the Covenant were necessary and proportionate.[[14]](#footnote-15)

8.10 The Committee notes that the refusal to authorize the picket was based on the decision of the Gomel City Executive Committee of 2 April 2008 No. 299 “On mass events in the city of Gomel”. The Committee observes, however, that neither the State party nor the national courts have provided any explanations as to how such restrictions, namely limiting peaceful assemblies to a certain predetermined location and requiring that the organizers conclude service contracts with a number of government agencies in order to hold a peaceful assembly, were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. In the absence of any explanation by the State party, the Committee concludes that the rights of the author and the alleged victims under article 19 (2), read alone and in conjunction with article 2 (3), of the Covenant have been violated.

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 the author’s and the alleged victims rights under articles 19 (2) and 21, read alone and in conjunction with article 2 (3), of the Covenant. The Committee reiterates its conclusion that the State party has also violated 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 and the victims 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 provide the author and the victims with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation and the implementation thereof in order to make it compatible with its obligations to adopt measures able to give effect to the rights recognized by articles 19 and 21 of the Covenant.

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.

1. \* Adopted by the Committee at its 130th session (12 October – 6 November 2020). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication:

 Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Shuichi Furuya, Bamariam Koita, Duncan Laki Muhumuza, David Moore ,Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. [↑](#footnote-ref-3)
3. *Tulzhenkova v.* Belarus (CCPR/C/103/D/1838/2008). [↑](#footnote-ref-4)
4. *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 11. [↑](#footnote-ref-5)
5. *Kalyakin v. Belarus* (CCPR/C/112/D/2153/2012), para. 9.5. [↑](#footnote-ref-6)
6. See, for example, *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. [↑](#footnote-ref-7)
7. See *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko* *v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v.* *Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para 9.3. [↑](#footnote-ref-8)
8. See *Zhukovsky v. Belarus* (CCPR/C/127/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/2955/2017), para. 6.4; Zhukovsky *v. Belarus* (CCPR/C/127/3067/2017), para. 6.6. [↑](#footnote-ref-9)
9. General comment No. 37 (2020) on the right of peaceful assembly, para. 55. [↑](#footnote-ref-10)
10. Ibid., para 64. [↑](#footnote-ref-11)
11. *Poplavny v*. *Belarus* (CCPR/C/115/D/2019/2010), para. 8.4. [↑](#footnote-ref-12)
12. General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2. [↑](#footnote-ref-13)
13. Ibid., para. 34. [↑](#footnote-ref-14)
14. *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3. [↑](#footnote-ref-15)