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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2713/2015[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communication submitted by:* Leonid Markhotko (not represented by counsel)

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 19 June 2015 (initial submission)

*Document references:* Special Rapporteur’s rule 92 decision, transmitted to the State party on 28 December 2015 (not issued in document form)

*Date of adoption of Views:* 6 November 2020

*Subject matter:* Refusal of authorities to authorise holding pickets; freedom of expression

*Procedural issue:* Exhaustion of domestic remedies

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

*Articles of the Covenant:* 19(2), 21

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

1. The author of the communication is Mr. Leonid Markhotko, a national of Belarus born in 1954. He claims to be a victim of a violation by Belarus of his rights under articles 19(2) and 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

 The facts as submitted by the author

2.1 On 18 November 2014, the author applied to the District Executive Committee of the Salihorsk city with a request to hold a picket on 10 December 2014, from 17:00 to 19:00. The purpose of the picket was to attract the civil society’s attention to the International Human Rights Day, as well as to protest against human rights violations committed in Belarus. In his application, the author specified that approximately seven persons would participate in the picket intended to take place near the building of the District Executive Committee at the Central Square in Salihorsk. He also indicated the source of funding and requested the local authorities to ensure security, medical care and arrangement of cleaning services after the picket.

2.2 On 1 December 2014, the author’s application was rejected by the District Executive Committee on the following grounds: (a) the location of the picket was not among the locations specified for the conduct of such events as listed by the Salihorsk city Executive Committee’s decision No. 700 of 7 October 2004, on “Measures to prevent emergency situations and to ensure the rule of law during mass events”; (b) the author failed to indicate the concrete measures he, as an organizer, intended to take in order to ensure the security and public order during the picket, as required by decision No. 700.

2.3 On 29 December 2014, the author filed an appeal against the decision of the District Executive Committee with the Court of the Salihorsk District claiming a violation of his rights to freedom of expression and peaceful assembly as guaranteed by the Constitution of Belarus and articles 19 and 21 of the International Covenant on Civil and Political Rights. On 26 January 2015, the Court considered the decision of the Salihorsk District Executive Committee to be in compliance with the provisions of the Law on Mass Events and rejected the author’s appeal.

2.4 On 12 February 2015, the author filed a cassation appeal against the District Court decision with the Minsk Regional Court. On 12 March 2015, the Minsk Regional Court dismissed the appeal. The author has made no further appeals under the supervisory review procedure since he considers that the procedure does not constitute an effective remedy, given the established domestic practice in similar cases.

 The complaint

3. The author claims that his right to freedom of expression has been restricted, in violation of article 19 of the Covenant, by an unjustified refusal of the State party’s authorities to permit him to hold a picket. He further claims that his right to freedom of assembly under article 21 of the Covenant has been violated by the unjustified refusal of the authorities to authorize the picket. The author claims that the restrictions imposed by the State authorities on the exercise of his rights to freedom of expression and freedom of assembly were neither justified for purposes of national security, public safety or public order, or the protection of public health or morals, nor were they necessary for the protection of the rights and freedoms of others.

 State party’s observations on admissibility and merits

4.1 By note verbale of 24 February 2016, the State party submitted its observations on the admissibility and on the merits of the complaint and noted that the author had not exhausted all available domestic remedies since he did not appeal for supervisory review with the Supreme Court or the Office of the Prosecutor. The State party disagrees with the author’s argument that the supervisory review procedure does not constitute an effective remedy, and notes that in 2015, out of 197 appeals that had been introduced under the supervisory review procedure, 192 were granted for review by the Supreme Court.

4.2 The State party further notes that the author’s claims of a violation of articles 19 and 21 are unsubstantiated. The author’s appeals against the decision of the District Executive Committee with the Court of the Salihorsk District and the Minsk Regional Court were dismissed on 26 January and 12 March 2015 respectively. The State party explains that the refusal of the District Executive Committee to allow the author to hold a picket was based on Committee’s decision of 7 October 2004, which regulates the organization of mass events and allocates a designated area for such events in the city of Salihorsk. The decision of the Executive Committee is in line with article 9 of the Law on Mass Events which vests the authority to designate special areas for mass events with the local executive authorities.

4.3 The provisions of this Law on Mass Events, along with regulating the organization and conduct of meetings, rallies, street processions or demonstrations, pickets and other mass events in Belarus are aimed at creating conditions for the realization of the constitutional rights of citizens and their freedoms. These provisions also provide for maximizing public safety and order when carrying out mass events in the streets, squares and other public venues, as well as increasing personal responsibility of citizens who are organizing these events. The State party continues that the author failed to comply with this part of the Law, but also violates its articles 5[[3]](#footnote-4) and 10[[4]](#footnote-5) by failing to indicate the concrete measures he, as an organizer, intended to take in order to ensure the security and public order during the picket. Therefore, the State party concludes, that the Court’s decision to uphold the refusal by the District Executive Committee to conduct a mass event was correct.

4.4 The State party further submits that the national legislation that provides for the right to peaceful assembly and regulates the order and timeframe of organization of mass events is coherent with the provisions of the Constitution of the Republic of Belarus and does not contradict the international norms that allow each State to introduce restrictions to the rights and freedoms of a person that are necessary in a democratic society and in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

 Author’s comments on the State party’s observations

5.1 On 14 March 2016, referring to State party’s observations to the effect that the Law on Mass Events was aimed at creating conditions for the realization of the rights of citizens on conducting peaceful assemblies, the author draws the attention to the Committee’s case law: he observes that the restrictions imposed on the freedom of assembly on the basis of provisions of domestic law included the burdensome requirements of securing three separate written authorizations from three different administrative departments, which have rendered illusory his right to demonstrate.[[5]](#footnote-6)

5.2 The author further refers to the Committee’s case law where it was stated that 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 aim of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. Any restriction on the exercise of the right of peaceful assembly must conform to the strict tests of necessity and proportionality.[[6]](#footnote-7)

5.3 The author maintains that the domestic remedies should not only be accessible but should also be effective. Referring to the Committee’s jurisprudence, he points out that an appeal under the supervisory review procedure does not constitute an effective remedy. He adds that this procedure is subject to the discretion of a prosecutor or a judge and does not entail a consideration of the case on its merits. He concludes that all available and effective domestic remedies have thus been exhausted in his case.

5.4 Regarding the State party’s statistics in relation to the number of cases reviewed under the supervisory review procedure, the author believes that this argument is groundless since the State party failed to demonstrate how many of these cases were in relation to citizens’ rights on freedom of assembly.

5.5 The author asserts that all available and effective domestic remedies have been exhausted and the current case is admissible for consideration by the Committee under article 5 (2) (b) of the Optional Protocol.

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee takes note of the State party’s argument that the author has failed to exhaust all domestic remedies. It notes that the only remedies available to the author after his appeal was dismissed by the Minsk Regional Court would have been an appeal under the supervisory review procedure to the Prosecutor General or the Supreme Court. In this context, the Committee recalls its jurisprudence, according to which a petition to the Prosecutor’s Office requesting a review of court decisions that have taken effect does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. [[7]](#footnote-8)It also considers that filing requests for supervisory review to the chairperson of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. Given that the State party has not done so, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee also considers that the author has sufficiently substantiated his claim under articles 19 (2) and 21 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

7.1 The Committee has considered the present 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.

7.2 The Committee notes the author’s claims that his rights to freedom of expression and freedom of assembly have been restricted arbitrarily in violation of both article 19 (2) and article 21 of the Covenant, as he was denied authorization to organize a peaceful assembly – a picket – to attract the civil society’s attention to the International Human Rights Day, as well as to protest against the human rights violations committed in Belarus, and the restrictions imposed on the exercise of his rights were neither justified for purposes of national security, public safety or public order, or the protection of public health or morals, nor were they necessary for the protection of the rights and freedoms of others. The Committee considers that the issue before it is to decide whether the prohibition to hold a public picket imposed on the author by the Salihorsk District Executive Committee amounts to a violation of articles 19 and 21 of the Covenant.

7.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and as are necessary: (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*) or 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 the purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. The Committee recalls[[8]](#footnote-9) that it is for the State party to demonstrate that the restrictions imposed on the author’s rights under article 19 were necessary and proportionate.

7.4 The Committee notes the author’s claim that his right to freedom of assembly under article 21 of the Covenant was also violated by the refusal of the municipal authorities to allow him to hold the picket arguing that the location chosen by him was not among those permitted by the city executive authorities. 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)

7.5The Committee also recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, constitutes a fundamental human right that is essential for the public expression of an individual’s views and opinions and indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including the right to 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 is imposed in conformity with the law and is necessary in a democratic society, in the interests of national security or public safety, public order, 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 to impose unnecessary or disproportionate limitations on it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.

7.6 In the present case, the author chose one of the central squares in Salihorsk for his picket to publicly express his opinion by attracting attention to the commemoration of International Human Rights Day and protest against the human rights violations committed in Belarus. The Committee notes that the municipal authorities rejected the author’s request to organize a picket on the grounds that the planned location of the event was not the only one permitted under the District Executive Committee’s decision No. 700, and because the author had failed to indicate the concrete measures he, as an organizer, intended to take in order to ensure the security and public order during the picket. It also observes that from the material on file, it transpires that the national authorities have failed to demonstrate how a picket held in the location proposed by the author would jeopardize national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. It notes in particular that neither the decision of the Executive Committee to refuse the author’s request to hold a picket, nor the court decisions, provide any explanation as to why the restrictions imposed by decision No. 700 and applied in the author’s case were necessary and justified.

7.7 The Committee further notes that the *de facto* prohibition imposed by decision No. 700 of an assembly in any public location in the entire city of Salihorsk, with the exception of a single remote area, unduly limits the right of assembly and the freedom of expression. It also notes that requesting the author, as an organizer of a picket, to take concrete measures to ensure security and public order during the picket imposes a disproportionate burden on the right of peaceful assembly and the right to freedom of expression in the same context. In these circumstances, the Committee finds the formal application of decision No. 700 and the rejection by the State party’s authorities of the author’s request to hold a picket to be unjustified and concludes that the authors’ rights under articles 19 and 21 of the Covenant have been violated.

8. The 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 articles 19 (2) and 21 of the Covenant.

9. 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 provide the author with adequate compensation and to take steps to prevent similar violations occurring in the future.

10. 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 and 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. Regulates the application for holding a mass event and stipulates what should be reflected in this application, eg. the purpose, type, venue and route of the planned event, expected number of participants, measures taken to ensure public order and safety, provision of medical services and cleaning up after the event. [↑](#footnote-ref-4)
4. Regulates the procedure of holding the event and specifies that organisers of the event should ensure that event is organised in accordance with the purposes and other conditions indicated in the application. [↑](#footnote-ref-5)
5. Reference is made to *Vasily* Poliakov *v. Belarus* (CCPR/C/111/D/2030/2011) para 8.3. [↑](#footnote-ref-6)
6. Reference is made to Vladimir *Sekerko v. Belarus* (CCPR/C/109/1851/2008) para 9.6. [↑](#footnote-ref-7)
7. See, for example, *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; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3. [↑](#footnote-ref-8)
8. See, for example, Pivonos v. Belarus (CCPR/C/106/D/1830/2008), para. 9.3; and Olechkevitch v. Belarus (CCPR/C/107/D/1785/2008), para. 8.5. [↑](#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)