



## 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. 2856/2016

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| <i>Communication submitted by:</i>        | Roman Yurgel (not represented by counsel)  |
| <i>Alleged victim:</i>                    | The author   |
| <i>State party:</i>                       | Belarus  |
| <i>Date of communication:</i>             | 31 March 2016 (initial submission)   |
| <i>Document references:</i>               | Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 November 2016 (not issued in document form) |
| <i>Date of adoption of Views:</i>         | 23 June 2021   |
| <i>Subject matter:</i>                    | Freedom to impart information; imposition of a fine for participation in peaceful assembly   |
| <i>Procedural issue:</i>                  | Exhaustion of domestic remedies  |
| <i>Substantive issues:</i>                | Freedom of assembly; freedom of expression; effective remedy, fair trial, discrimination on political grounds  |
| <i>Articles of the Covenant:</i>          | 2(1), 2(3), 14 (1), 19 (2), 26   |
| <i>Articles of the Optional Protocol:</i> | 2, 3, and 5(2)(b)  |

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\* Adopted by the Committee at its 132nd session (28 June-23 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Kobayyah Kpatcha Tchamdja, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

1. The author of the communication is Mr. Roman Yurgel, a Belarusian national born in 1967. He claims that the State party has violated his rights under articles 14(1), 19 (2) read with article 2(1) and (3), and article 26 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 25 March 2014, the day of establishment of the Belarus People's Republic (BPR) in 1918, the author with two persons took photos holding the BPR's white-red-white flag and the national flag of Ukraine in three locations in the city of Grodno, namely in front of the monument commemorating the battle of Grunwald in Kolozski Park, in the vicinity of the Grodno Medical University, as well as on the 1<sup>st</sup> of May Street. The photos were posted online. A police record was drawn against the author, charging him with participating in an unauthorized mass event in violation of the article 23.34 of the Code on Administrative Offences (CAO), based on the Law on Public Events of 30 December 1997.

2.2 On 3 April 2014, the Court of Lenin District in Grodno found the author guilty of participating in an unauthorized picket and fined him to 3 750 000 BYR.<sup>1</sup> The Court established that on 25 March 2014, the author participated in three unauthorised meetings, as confirmed by witness testimony and physical evidence in the form of photos posted on the internet. The Court also noted that the author, during the preliminary investigation and during the court proceedings, did not deny the fact that on 25 March 2014, he was present in those locations with two other persons and that he took photos. The Court concluded that by doing this, the author tried to attract the attention of citizens to the event.

2.3 On 11 April 2014, the author appealed to the Grodno Regional Court denying his participation in unauthorised pickets and disagreeing with the police report. On 6 May 2014, the Court rejected his appeal, noting that the first-instance court correctly assessed the evidence and that the fine imposed was lawful.

2.4 The author claims that by appealing to the Grodno Regional Court, he has exhausted all domestic remedies.

#### **The complaint**

3.1 The author claims that the State party has violated his rights under article 14 (1) in conjunction with article 2 (1) and (3) of the Covenant, as in his view, he was not afforded a fair and impartial hearing. All administrative charges against him were based on police reports and on the photos from the Internet. Furthermore, he claims that the court proceedings were in violation of article 26 of the Covenant as he was discriminated on the basis of his political opinion and that no legal protection in the State party exists against discrimination on the grounds of political views.

3.2 The author also claims that his rights under article 19(2), in conjunction with article 2 (1) and (3) of the Covenant were violated by the State party since he was prevented from freely expressing his views.

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

4.1 By note verbale of 13 January 2017, the State party submitted its observations on admissibility and merits. It notes that on 3 April 2014, the Court of the Lenin District in Grodno found the author guilty of violating article 23.34 of the Code of Administrative Offences and imposed a fine at the amount of 3 750 000 Belarus roubles. The legality and relevance of the decision, according to the State party, was assessed and confirmed by the Grodno Regional Court on 6 May 2014 when it rejected author's appeal.

4.2 It further observes that the author has not appealed the decision under the supervisory review procedure to the Supreme Court, to the Prosecutor's office or to the Chairperson of the Supreme Court. The time limit for bringing a supervisory review request to the

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<sup>1</sup> The equivalent of approximately \$378 on the day of the court ruling.

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Prosecutor's office has lapsed on 7 November 2014 and this remedy is no longer available to the author. The supervisory appeal to the Chairperson of the Supreme Court is not limited in time and the author could have resorted to it.

4.3 The State party submits that in view of his failure to exhaust the available domestic remedies, the author's complaint should be treated as an abuse of right to submit a communication under article 3 of the Optional Protocol.

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

5. On 13 February 2017, the author maintains that the domestic remedies should be not only accessible, but also 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 and does not entail consideration of the case on its merits. He concludes that all available and effective domestic remedies have thus been exhausted in his case.

#### **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 the available domestic remedies, as he has failed to appeal to the Prosecutor General, and to the Supreme Court or its Chair under the supervisory review procedure. In this context, the Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, 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.<sup>3</sup> It also recalls that an appeal against a court decision which has acquired force of *res judicata* constitutes an extraordinary remedy and the State party must show that the remedy in question can bring effective relieve in the case at stake. In the present case, the State party has not submitted any information or explanation as to the effectiveness of the remedy in question. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 As to the alleged violations of article 14 (1), read in conjunction with articles 2 (1) and (3) and 26 of the Covenant, the Committee considers that the claim that the author was denied the right to a fair hearing because of his political stance is insufficiently substantiated for purposes of admissibility, and is thus inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further notes the author's claims under article 19 (2), read in conjunction with article 2(1) and (3), of the Covenant. In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

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<sup>3</sup> 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; *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.

6.6 The Committee finally notes that the author's remaining claims which raise issues under article 19(2) of the Covenant, have been sufficiently substantiated for the purposes of admissibility, it declares them admissible and proceeds with their consideration of the merits.

*Considerations of the merits*

7.1 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.

7.2 The Committee notes the author's claim that the courts failed to establish how the restriction on his right to freedom of expression fell within one of the permissible restrictions under article 19 (3) of the Covenant, and thus his rights under article 19 (2) of the Covenant were violated.

7.3 The Committee recalls in that respect its general comment No. 34 on the freedoms of opinion and expression, in which it points out, *inter alia*, that these freedoms are indispensable conditions for the full development of the person, are essential for any society and constitute the foundation stone for every free and democratic society.<sup>4</sup> 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 reputations of others, or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. It observes that any restriction on the exercise of the rights provided for in article 19 (2) 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>5</sup>, conform to the strict test of necessity and proportionality and be directly related to the specific need on which they are predicated.<sup>6</sup> The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.<sup>7</sup> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat to any of the enumerated grounds listed in article 19 (3) that has caused it to restrict freedom of expression, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>8</sup> The Committee recalls that it is therefore for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.<sup>9</sup>

7.4 The Committee notes that the author was fined by Court of Lenin District in Grodno for participating in unauthorized meetings, while holding the white-red-white flag and the national flag of Ukraine and taking photos which were later on posted on the internet. The Committee further notes that neither the State party nor the domestic courts have provided any explanation as to how the restrictions in question were justified for the purposes as set out in article 19 (3) of the Covenant, and whether the penalty imposed (i.e. the administrative fine), even if based on law, was necessary, proportionate and in compliance with any of the legitimate purposes listed in this provision.

7.5 In these circumstances and in the absence of any other pertinent information or explanations by the State party on file, the Committee concludes that the rights of the author under article 19 (2) 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 by the State party of the author's rights under article 19 (2) of the Covenant.

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<sup>4</sup> General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

<sup>5</sup> *Ibid.*, para. 34.

<sup>6</sup> See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 22. See also, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.7.

<sup>7</sup> *Ibid.*, para. 34.

<sup>8</sup> *Ibid.*, paras 35, 36.

<sup>9</sup> *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

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 provide him with adequate compensation and to take appropriate steps to reimburse any expenses incurred by the author, including reimbursement for the fine imposed and for court fees related to the case in question. The State party is also under an obligation to take all steps necessary to prevent similar violations 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 article 19.

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 disseminate them widely in the official languages of the State party.

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