



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. 2847/2016^{*,**}

<i>Communication submitted by:</i>	Vitaliy Gulyak (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	12 March 2015 (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 8 November 2016
<i>Date of adoption of Views:</i>	27 July 2022
<i>Subject matter:</i>	Refusal to authorize public meetings; imposition of a fine for conducting an unauthorized single-person picket
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5(2)(b)

1. The author of the communication is Vitaliy Gulyak, a national of Belarus born in 1983. He claims that the State party has violated his rights under articles 19 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 not represented.

The facts as submitted by the author

2.1 The author submits that the authorities of Volkovysk city refused to grant him authorisation to hold public events on two occasions, after which he held an unauthorised single-person picket and was convicted of an administrative offence for breaching the established procedure for holding public events.

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Ineru Tamerat Yigezu and Gentian Zyberi.

Circumstances relating to the author's requests for authorisation to hold a public event

2.2 On 9 January 2014, the author requested the Volkovysk District Executive Committee (the Executive Committee) to issue an authorization for holding a street procession planned for 25 January 2014, from 12 to 3 p.m., in the city park. The purpose of the street procession was to support the European integration of Ukraine.

2.3 On 17 January 2014, the Executive Committee refused to grant authorization on the grounds that the acting legislation did not envisage holding a street procession in a park. It noted, in particular, that in article 2 of the Public Events Act a street procession was defined as the organised mass movement of a group of citizens along a street, boulevard, avenue or square; therefore, the city park could not be a permissible venue for a street procession.

2.4 On 27 January 2014, the author requested the Executive Committee to authorize the holding of a picket on 19 February 2014, from 12 to 6 p.m., in the city park, with up to 10 participants. The purpose of the picket was to express solidarity with the people of Ukraine in their desire to live in a free state, against murder, violence and brutality.

2.5 On 10 February 2014, the Executive Committee rejected the request on the grounds that the author failed to comply with the requirements of the Public Events Act and did not provide in his request the information on the list of measures to ensure public order, safety, medical services during, and the cleaning of the location after the event.

2.6 The author challenged the refusals of the Executive Committee of 17 January and 10 February 2014 before the Volkovysk District Court (the District Court), complaining that they constituted a violation of his rights to freedom of expression and peaceful assembly guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant.

2.7 On 19 March 2014, the District Court rejected the complaint, having found that the impugned decisions were in conformity with the relevant provisions of the domestic legislation.

2.8 The author submitted a cassation appeal before the Grodno Regional Court, which was rejected on 12 May 2014. He further appealed through the supervisory review procedure to the Chair of the Grodno Regional Court. His appeal was rejected on 12 July 2014. The author submitted another supervisory review appeal before the Chair of the Supreme Court of Belarus. On 12 December 2014, the Deputy Chair of the Supreme Court rejected his appeal as unfounded.

The author's participation in a single-person picket

2.9 At about 5 p.m. on 13 March 2014, the author stood in a public square in Volkovysk, holding a Ukrainian flag and poster in his hands in protest against deployment of the Russian troops in Ukraine. According to the author, he did not apply for authorization of the event, as the city authorities had already refused his prior requests on two occasions.

2.10 On an unspecified date after the event, the author was charged with a breach of the established procedure for conducting public events, an administrative offence under article 23.34 (1) of the Code of Administrative Offences, as he had not obtained a prior authorization for the single-person picket with the city authorities. On 17 March 2014, the District Court found the author guilty as charged and ordered him to pay an administrative fine in the amount of 1 300 000 Belorussian rubles¹.

2.11 The author challenged the decision of the District Court before the Grodno Regional Court, complaining that the imposition of the administrative fine for holding the single-person picket constituted an unnecessary limitation on his right to freedom of expression and assembly, as his action had not posed any threat to national security, public order, health and morals or rights and interests of the others. On 10 April 2014, the Grodno Regional Court rejected the appeal and upheld the decision of the District Court. The author further appealed before the Chair of the Grodno Regional Court. His appeal was rejected on 29 May 2014. He

¹ Equivalent to approximately 130 USD at the material time.

then appealed before the Chair of the Supreme Court of Belarus. The appeal was rejected on 29 October 2014 by the Deputy Chair of the Supreme Court.

2.12 The author submits that he has exhausted all available domestic remedies.

The complaint

3.1 The author complains that his rights to freedom of expression and assembly have been restricted in violation of articles 19(2) and 21 of the Covenant, as he was denied authorization to organize peaceful assemblies and was fined for holding a peaceful single-person picket. He submits that the restrictions on his rights were unnecessary, noting that neither the city authorities nor the courts in his case considered whether the restrictions on his rights were justified by reasons of national security or public safety, public order, or protection of public health or morals, or whether they were necessary for the protection of the rights and freedoms of others. He argues that the domestic courts in his case relied solely on the provisions of the national legislation and disregarded his complaints about incompatibility of the restrictions on his rights with articles 19 and 21 of the Covenant.

3.2 The author requests the Committee to find a violation of articles 19 and 21 of the Covenant and to recommend to the State party to align its domestic legislation with international standards on the freedom of peaceful assembly and expression.

State party's observations on admissibility and merits

4.1 By note verbale of 6 January 2017, the State party submitted its observations on admissibility and merits, noting, in what concerns the admissibility of the communication, that the author failed to exhaust all available domestic remedies, as he did not appeal the decisions in his case through the supervisory review procedure before the Prosecutor's Office, nor his case has ever been examined by the Chair of the Supreme Court of Belarus.

4.2 The State party further argues that the author's allegations as to the non-compliance of the domestic legislation on mass events with international standards are unsubstantiated. The State party observes in this respect that the provisions of the national legislation on the right to peaceful assembly and freedom of expression are aimed at creating conditions for the exercise of the constitutional rights and freedoms, as well as at ensuring public safety and order during mass events; they do not contradict articles 19 and 21 of the Covenant that allow States to introduce restrictions to these rights and freedoms 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 27 December 2018, the author submitted his comments, stating that the supervisory review procedure does not constitute an effective domestic remedy, as it does not entail a fresh examination of the case; its outcome depends on the sole discretion of the relevant prosecutor or judge. Furthermore, a recourse to the supervisory review procedure requires the payment of a court fee, which constitutes an additional obstacle. Referring to the circumstances of his particular case, the author notes that he appealed the impugned decisions in his case under the supervisory review procedure before the Grodno Regional Court and the Supreme Court of Belarus. Both his supervisory review appeals were rejected.

5.2 Commenting on the State party's arguments that the relevant provisions of the domestic legislation are consistent with articles 19 and 21 of the Covenant, the author submits that the State party in its observations failed to substantiate the necessity of the restrictions imposed on his rights by the domestic authorities in the particular circumstances of 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 notes the State party's argument that the author has failed to seek a supervisory review of the impugned decisions in his case by the Prosecutor's Office or by the Chair of the Supreme Court of Belarus. The Committee however notes the author's argument corroborated by the materials on file that he indeed appealed, unsuccessfully, the decisions in his case under the supervisory review procedure, namely to the Chair of the Grodno Regional Court and the Chair of the Supreme Court of Belarus. In this context, the Committee considers that filing requests for supervisory review with the president 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. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.² The Committee notes that in the present case, the author has exhausted all available domestic remedies, including those that constitute supervisory review procedure, and therefore, 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 further notes the author's allegations that his right to freedom of assembly under article 21 of the Covenant has been restricted arbitrarily, since he was fined for holding an unauthorized picket. The Committee notes in this respect that the author was the only participant of the picket. The notion of an assembly to be protected under article 21 implies that there is more than one participant in the gathering, while a single protester enjoys comparable protections under the Covenant, for example under article 19.³ In the Committee's view, the author has not advanced sufficient elements to show that an assembly within the meaning of article 21 in fact took place. Accordingly, in the circumstances of the present case, the Committee considers that the author has failed to sufficiently substantiate this particular claim for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.⁴

6.5 Regarding the author's claim under article 19(2) of the Covenant about the administrative sanction imposed on him for holding an unauthorised picket and his respective claim under articles 19(2) and 21 of the Covenant about the refusal by the authorities of the State party to grant him authorisation for holding peaceful assemblies, the Committee finds them sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds with their examination 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 claims that his rights to freedom of expression and assembly have been restricted in violation of both article 19 (2) and article 21 of the Covenant, as he was denied authorisation to organise peaceful assemblies, namely a street procession and picket, aimed at expressing support to the European integration of Ukraine and solidarity with the people of Ukraine in their desire to live in a free state, against murder, violence and brutality. The Committee further notes the author's claim under article 19 (2)

² *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.

³ General comment No. 37 (2020), para. 13.

⁴ *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4; *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7; *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 9.7; and *Levinov v. Belarus* (CCPR/C/123/D/2235/2013), para. 5.7.

of the Covenant that his right to freedom of expression have been unnecessarily restricted, as he was sentenced to pay an administrative fine for participation in a single-person picket, the purpose of which was to protest against deployment of the Russian troops in Ukraine. It also notes the author's claims that the authorities failed to explain why the restrictions imposed on his rights were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others, as required, respectively, by article 19 (3) and the second line of article 21 of the Covenant.

7.3 The Committee takes note of the author's claim of a violation of his right under article 21 of the Covenant on account of the unjustified refusals by the Volkovysk city authorities to issue authorisation for holding peaceful assemblies. The issue before the Committee is therefore to determine whether the prohibition to hold the peaceful assemblies imposed on the author by the city authorities amounts to a violation of article 21 of the Covenant.

7.4 In its general comment No. 37 (2020), the Committee stated 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.⁵ Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed or of 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 21.⁶

7.5 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for public expression of an individual's views and opinions and indispensable in a democratic society. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.⁷ The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,⁸ 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.⁹ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.¹⁰

7.6 In the present case, the Committee must consider whether the restrictions imposed on the author's 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 author's applications seeking authorization from the city authorities for holding a street procession and picket were refused on the grounds that, respectively, the venue chosen for the street procession, namely the city park, was not permissible under the relevant provisions of the Public Events Act, and that the author failed to provide information on measures taken to ensure public order, safety, medical services during and the cleaning of the location after the planned event. In this context, the Committee notes that neither the Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice,

⁵ General comment No. 37 (2020), para. 55.

⁶ *Ibid.*, para. 64.

⁷ *Ibid.*, para 6.

⁸ *Ibid.*, para. 22.

⁹ *Ibid.*, para 36.

¹⁰ See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

the author's public events 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.

7.7 In the absence of any further explanations by the State party, the Committee concludes that the State party has violated the author's rights under article 21 of the Covenant.¹¹

7.8 The Committee further notes the author's claim that his right to freedom of expression has been restricted in violation of article 19 (2) of the Covenant, as his requests for authorization of the peaceful assemblies with expressive purposes were refused and he was later sanctioned for holding an unauthorized one-person picket. The issue before the Committee is therefore to determine whether the restrictions imposed on the author's freedom of expression can be justified under any of the criteria set out in article 19 (3) of the Covenant.

7.9 The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.¹² 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 being protected.¹³ The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.¹⁴

7.10 The Committee observes that, in the present case, the sanctioning of the author's peaceful picket because he did not obtain prior authorization from the local authorities and, notably, the imposition of a fine on the author raise serious doubts as to the necessity and proportionality of the restrictions on the author's rights protected under article 19 of the Covenant. The Committee further observes, in what concerns the refusal by the domestic authorities to grant authorisation for holding the peaceful assemblies with an expressive purpose, that limiting holding of a public assembly to certain predetermined locations does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. In the present case, the street procession and peaceful picket were both planned to take place in the city park. However, the Executive Committee refused to issue authorization on the grounds that a park could not be regarded as a permissible venue for holding a street procession, as it was not indicated as such by the relevant provision of the Public Events Act (see para. 2.3). Regarding the picket, the Executive Committee refused to authorize it because the author failed to provide information on the list of measures to ensure public order, safety, medical services during, and the cleaning of the location after the event (para 2.5). The Committee also observes that the State party has failed to invoke any specific grounds to support the necessity of the restrictions imposed on the author as required under article 19 (3) of the Covenant.¹⁵ Nor has the State party demonstrated that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the case, the sanctions and limitations imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. In the absence of any further information

¹¹ See, e.g., *Vladimir Malei v. Belarus* (CCPR/C/129/D/2404/2014), para 9.7; *Tolchina v Belarus* (CCPR/C/132/D/2857/2016), para 7.6; *Zavadskaya et al v. Belarus* (CCPR/C/132/D/2865/2016), para 7.6; *Popova v Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.6; and *Sadykov v Kazakhstan* (CCPR/C/129/D/2456/2014), para. 7.7.

¹² General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

¹³ *Ibid.*, para. 34.

¹⁴ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹⁵ See, e.g., *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

or explanation by the State party, the Committee concludes that the rights of the author under article 19 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 by the State party of the author's rights under articles 19 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 provide the author with adequate compensation, including reimbursement of the fine imposed on him and any legal cost incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications, and thus the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

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.
