



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. 2391/2014*, **

<i>Communication submitted by:</i>	Leonid Zdrestov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	21 March 2014 (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 19 May 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	13 March 2020
<i>Subject matter:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Freedom of expression
<i>Article of the Covenant:</i>	19 (2) and (3)
<i>Articles of the Optional Protocol:</i>	1, 2 and 5 (2) (b)

1. The author of the communication is Leonid Zdrestov, a national of Belarus born in 1953. He claims to be a victim of a violation by Belarus of his rights under article 19 (2) and (3) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 15 July 2013, the author submitted an application to the Administration of the Octyabrsky district of Vitebsk with a request to hold, on 17 and 18 August 2013, a one-person picket in Soviet Army Park, aimed at informing inhabitants of the Vitebsk region about the systematic violation of his rights by various State agencies.

2.2 On 5 August 2013, the Administration refused to authorize the picket on the grounds that the author did not fulfil the requirements of paragraph 3 of decision No. 881 of 10 July

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication:
Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



2009 of the Vitebsk City Executive Committee on public events in Vitebsk and the Public Events Act, because he had failed to attach to his request for authorization contracts with the respective services for maintenance of the public order and provision of medical services during the event and for the cleaning of the area after the event.

2.3 On 10 August 2013, the author appealed against the decision of the Administration to the Ochyabrsky District Court of Vitebsk. On 6 September 2013, the Court dismissed his appeal. It stated that article 2 of the Public Events Act covered one-person pickets and, therefore, the requirements of the law were applicable to the author. On 18 September 2013, the author filed a cassation appeal against the decision of the Court to the Vitebsk Regional Court, which was rejected on 4 December 2013.

2.4 On 15 October 2013, the author submitted a supervisory review request to the President of the Vitebsk Regional Court. His request was rejected on 21 November 2013. On 16 December 2013, the author submitted a supervisory review request to the Supreme Court. On 13 February 2014, a deputy-president of the Supreme Court rejected his request.

Complaint

3. The author claims to be a victim of a violation by Belarus of his rights under article 19 (2) and (3) of the Covenant. He argues that the State party wrongly applied the Public Events Act to his request for a one-person picket, which does not constitute a mass event. He further claims that his right to freedom of expression was violated owing to restrictions that were not necessary under article 19 (3) of the Covenant.

State party's observations on admissibility and the merits

4. By note verbale of 15 April 2015, the State party submitted its observations, stating that the author failed to exhaust domestic remedies as required by article 2 of the Optional Protocol. It contends that the registration of the communication in violation of the requirements of article 2 of the Optional Protocol entails a violation, by the Committee, of article 5 of the Optional Protocol. The State party concludes that the author and the Committee have failed to abide by the procedural rules established in the Covenant and its Optional Protocol and, therefore, the State party will engage in no further correspondence concerning the communication.

Author's comments on the State party's observations

5. On 19 May 2015, the author submitted his comments on the State party's observations. He notes that he has exhausted all domestic remedies, having applied twice to courts under the supervisory review procedure, which, in any event, is not considered by the Committee to be an effective remedy.¹

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, and that the State party will engage in no further correspondence regarding 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 (Optional Protocol, preamble and art. 1). 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 the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a

¹ The author refers to communications *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008) and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008).

communication and in the expression of its Views.² It is up to the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by ending cooperation with the Committee regarding a communication, the State party is violating its obligations under article 1 of the Optional Protocol.

Issues and proceedings before the Committee

Consideration 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 takes note of the State party's statement that the author failed to exhaust domestic remedies. The Committee notes however, that the author filed two requests for supervisory review, on 15 October 2013 and on 16 December 2013, and that the State party does not indicate which particular remedies were available to the author and could be effective in his case. Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the communication. The Committee therefore declares the author's claims admissible and proceeds with its 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 his freedom of expression has been restricted arbitrarily because he was refused permission to hold a picket and to publicly express his opinion about the violation of his rights by different authorities. The Committee considers that the legal issue before it is to decide whether the prohibition on holding a picket that was imposed on the author by the executive authorities of the State party amounts to a violation of article 19 of the Covenant. It transpires from the material before the Committee that the author's application was considered by the courts as an application to hold a public event, and that the application was refused on the basis that the author had not secured the required security measures, or medical and cleaning services, to hold the picket. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification under domestic law, amount to a restriction of the author's rights, in particular the right to impart information and ideas of any kind, as protected under article 19 of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.³ The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as are provided by law and are necessary for respect of the rights or reputations of others, and for the protection of national security or of public order (*ordre public*), or of 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 those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁴

² 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.

³ General comment No. 34, para. 2.

⁴ *Ibid.*, para. 22.

8.4 The Committee recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.⁵ The Committee observes that requesting the organizer of a one-person picket to conclude service contracts with a number of government agencies in order to hold the picket does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee notes that neither the State party nor the national courts provided any explanations for the restrictions in question. The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, cannot be seen as justified for the purposes of article 19 (3) of the Covenant. 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.⁶ In line with these precedents, the Committee concludes that, in the present case, the State party has violated the author's rights under article 19 (2) of the Covenant.

9. 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 article 19 (2) of the Covenant and under article 1 of the Optional Protocol to the Covenant.

10. 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 reimbursement of his court expenses, and to take steps to prevent similar violations occurring in the future. In that connection, the Committee reiterates that the State party should revise its normative framework, consistent with its obligation under article 2 (2) of the Covenant, in particular decision No. 881 of the Vitebsk City Executive Committee and the Public Events Act, as it has been applied in the present case, with a view to ensuring that the rights under article 19 of the Covenant may be fully enjoyed in the State party.

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 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.

⁵ See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

⁶ See, for example, *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 8.3; *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 10.3; and *Misnikov v. Belarus* (CCPR/C/117/D/2093/2011), para. 9.3.