



International Covenant on Civil and Political Rights

Distr.: General
30 September 2020

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2482/2014*, **

<i>Communication submitted by:</i>	Dmitry Koreshkov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	23 May 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 26 November 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2020
<i>Subject matter:</i>	Sanction for holding an unauthorized picket; freedom of expression
<i>Procedural issues:</i>	Lack of cooperation from the State party; admissibility
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	19 and 2 (2) and (3)
<i>Articles of the Optional Protocol:</i>	1 and 3

1. The author of the communication is Dmitry Koreshkov, a national of Belarus born in 1976. He claims that the State party has violated his rights under article 19 of the Covenant, read in conjunction with article 2 (2) and (3). The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 11 November 2013, the author was arrested by the police for hanging a banner in front of the building of the Gomel Regional Executive Committee in protest against the sale of alcoholic beverages near schools. The author had not requested authorization from the city authorities to hold a picket before hanging the banner, based on his previous

* Adopted by the Committee at its 129th session (29 June–24 July 2020).

** 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, Furuya Shuichi, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



unsuccessful experience. On the same day, the police drew up a record of an administrative offence under article 23.34 (1) of the Code of Administrative Offences (on violation of the procedure for organizing or holding mass events) for holding an unauthorized picket and brought the case before Gomel Central District Court. On 9 January 2014, the court found the author guilty of a violation of article 23.34 (1) of the Code of Administrative Offences and fined him 1,300,000 roubles (equivalent to about US\$ 100).

2.2 On 20 January 2014, the author appealed to the Gomel Regional Court. On 31 January 2014, the Regional Court dismissed his appeal. On 11 February 2014, the author filed a supervisory review request with the Chair of the Gomel Regional Court, which was rejected on 19 March 2014.

2.3 On 11 March 2014, the author was arrested by the police for holding a banner in front of the embassy of the Russian Federation in Minsk, protesting against the war in Ukraine. On the same day, Minsk Central District Court found the author guilty of a violation of article 23.34 (1) of the Code of Administrative Offences for holding a picket without seeking authorization, as required under the Public Events Act. Since it was a repeated violation within one year, the Court sentenced him to 15 days of administrative arrest.

2.4 On 27 March 2014, the author appealed to Minsk City Court. On 1 April 2014, Minsk City Court rejected his appeal. On 7 April 2014, the author filed a supervisory review request before the Chair of Minsk City Court. His request was rejected on 8 May 2014.

2.5 The author submits that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that the sanctions imposed on him amounted to a violation of his rights under article 19 of the Covenant, read in conjunction with article 2 (2) and (3), and that qualifying his acts of freedom of expression under the Public Events Act unduly restricted his rights. He maintains that the restrictions imposed were not necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals. According to him, the courts did not assess how his acts had endangered national security, public order or public health or the rights and freedoms of others.

3.2 The author requests that the Committee find a violation of article 19 of the Covenant, read in conjunction with article 2 (2) and (3), and that it recommend that the State party align the Public Events Act of 1997 with the requirements of article 19 of the Covenant.

Lack of cooperation by the State party

4. On 26 November 2014, 26 February 2016 and 26 January 2017, the Committee requested the State party to provide information and observations on the admissibility and the merits of the present communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the merits of the author's claims. It recalls that, under article 4 (2) of the Optional Protocol, States parties should examine in good faith all allegations brought against them and make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.¹

¹ See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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.

5.3 The Committee notes the author's claim that he had exhausted all available and effective domestic remedies. In the absence of the State party's observations to the contrary, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

5.4 The Committee notes the author's allegation that his rights under article 19 of the Covenant, read in conjunction with article 2 (2), have been violated. The Committee recalls 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.² The Committee notes, however, that the author has already alleged a violation of his rights under article 19, resulting from the interpretation and application of the existing laws of the State party. The Committee does not consider that an examination of whether the State party also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with article 19, to be distinct from the examination of the violation of the author's rights under article 19 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant and are therefore inadmissible under article 3 of the Optional Protocol.

5.5 The Committee also considers that the author has failed to substantiate his claims raised under article 19 of the Covenant, read in conjunction with article 2 (3), and therefore declares this part of the communication inadmissible.

5.6 The Committee finds the author's claims under article 19 of the Covenant sufficiently substantiated for the purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

6.1 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.

6.2 The Committee notes the author's claims that his freedom of expression has been restricted arbitrarily because he was sanctioned for holding pickets on 11 November 2013 and on 11 March 2014. The Committee considers that the legal issue before it is to decide whether the sanctions imposed on the author amount to a violation of article 19 of the Covenant. It transpires from the material before the Committee that the author's acts were qualified by the courts as a public event and that he was fined because of his failure to seek prior authorization from the city authorities to hold a picket. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification, amount to a limitation of the author's rights, in particular the right to impart information and ideas of all kinds, as protected under article 19 (2) of the Covenant.³

6.3 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 were indispensable conditions for the full development of the person, and that

² For example, *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4.

³ For example, *Misnikov v. Belarus* (CCPR/C/117/D/2093/2011), para. 9.2.

they were essential for any society, constituting the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows for certain restrictions, but only such as are provided by law and are necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Any restriction on the exercise of the freedoms of opinion and expression 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 (para. 22).

6.4 The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate.⁴ The Committee observes that nothing on file suggests that the domestic authorities reviewed the author's case in the light of the standards of necessity and proportionality under article 19 of the Covenant. Similarly, no explanation has been provided by the State party as to how the author's actions were endangering the rights or reputation of others, national security or public order (*ordre public*), or public health or morals and why the restrictions imposed on him were necessary. The Committee considers that, in the circumstances of the present case, the sanctions imposed on the author, although based on domestic law, cannot be considered to be justified for the purposes of article 19 (3) of the Covenant. The Committee therefore concludes that, in the present case, the State party has violated the author's rights under article 19 (2) of the Covenant.

7. 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 article 19 (2) of the Covenant.

8. 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, including reimbursement of the value of the fine imposed and any legal costs incurred by him. The State party is also under an obligation to take all steps necessary to prevent similar violations occurring in the future. In that connection, the Committee notes that the State party should review its normative framework on public events, consistent with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under article 19 may be fully enjoyed in the State party.

9. 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.

⁴ 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.