



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. 2867/2016*,**

<i>Communication submitted by:</i>	Vladimir Katsora and Vladimir Nepomnyashchikh (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	13 October 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 23 November 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Refusal of authorities to authorize the holding of pickets; freedom of expression
<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 read alone and in conjunction with 2 (2) and (3)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The authors of the communication are Vladimir Katsora, born in 1957, and Vladimir Nepomnyashchikh, born in 1952, both nationals of Belarus. They claim that the State party has violated their rights under articles 19 and 21, read alone and in conjunction with article 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The authors are not represented by counsel.

Facts as submitted by the authors

2.1 On 26 November 2015, the authors sought authorization from the Gomel City Executive Committee to hold a picket in Gomel on 20 December 2015. The picket, consisting of up to 10 persons, was to be held at Rebellion Square in the centre of Gomel, with the aim

* Adopted by the Committee at its 131st session (1–26 March 2021).

** 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, Imeru Tamerat Yigezu and Gentian Zyberi.



of protesting against the destruction of old banknotes after the currency redenomination planned for 2016, in view of the possibility of there being inflation in the future. In accordance with the Public Events Act, the authors provided a written undertaking concerning the organization and conduct of the picket.

2.2 On 8 December 2015, the Gomel City Executive Committee denied authorization to hold the picket, on the grounds that the authors' application did not fulfil the requirements of Gomel City Executive Committee decision No. 775, of 15 August 2013, on public events in Gomel City – specifically, on the grounds that: (a) Rebellion Square was not an area that the Gomel City Executive Committee had designated for the holding of public events; and (b) prior to holding the public event in question, the organizers had not concluded contracts with service providers to ensure the presence of medical services during the event and the cleaning of the area after the event had taken place.

2.3 On 17 December 2015, the authors appealed this decision to the Central District Court in the city of Gomel. With reference to articles 23, 33 and 35 of the Constitution of Belarus and articles 19 and 21 of the Covenant, they argued in the appeal that the said decision was unlawful and violated their rights to freedom of expression and of peaceful assembly.

2.4 On 26 January 2016, the authors' appeal was rejected by the Central District Court, which concluded that the decision of the Gomel City Executive Committee of 8 December 2015 had been taken in accordance with the law in force in Belarus.

2.5 On 3 February 2016, the authors submitted a cassation appeal to Gomel Regional Court. On 17 March 2016, their appeal was rejected. On 31 March 2016, they appealed under the supervisory review procedure to the Chairperson of Gomel Regional Court. That appeal was rejected on 6 May 2016. Their appeal of 20 May 2016 submitted to the Chairperson of the Supreme Court under the supervisory review procedure was rejected on 5 July 2016. Their appeal of 12 July 2016 submitted to the Gomel Regional Prosecutor under the supervisory review procedure was rejected on 12 August 2016. Their appeal of 22 August 2016 submitted to the Prosecutor General under the supervisory review procedure was rejected on 26 September 2016.

Complaint

3.1 The authors claim to be victims of a violation by Belarus of the rights to freedom of expression and of peaceful assembly under articles 19 and 21 of the Covenant, read alone and in conjunction with article 2 (2) and (3) of the Covenant. They argue that the restrictions prescribed in decision No. 775 on public events in Gomel City violate the very essence of these rights.

3.2 The authors ask that the country's Public Events Act and Gomel City Executive Committee decision No. 775 on public events in Gomel City be brought into line with the State party's international obligations under articles 19 and 21 of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 23 January 2017, the State party submitted its observations on admissibility and the merits. Regarding admissibility, it observes that although the authors submitted supervisory review appeals to the Chairperson of the Supreme Court and to the Prosecutor General, those officials did not consider their appeals. The authors received responses from the Deputy Chairperson of the Supreme Court and a Deputy Prosecutor General. Therefore, the authors have not exhausted all domestic remedies.

4.2 With regard to the merits, the State party observes that the authors' argument on the unlawfulness of the requirement for the organizers of peaceful mass events to conclude contracts with medical and cleaning services is incorrect. Such requirement is based on article 5 of the Public Events Act. The State party observes that there are no grounds for the authors' claim that the organizers faced a disproportionate burden by having to pay for such services, as they had not contracted any service providers.

4.3 The authors' claim that the restrictions in question are not justified and are not necessary for protection of the rights and interests of others is not in line with international principles or domestic legal provisions. Holding pickets in various locations involves not

only participants' rights, but also the rights of persons who do not participate in such events. Measures should be put into place to protect public security, as well as rights of the participants and other persons. The authors' claims under articles 19 and 21 and article 2 (2) and (3) of the Covenant are unsubstantiated. The domestic requirements for the organization of public events are aimed at enabling the fulfilment of constitutional rights and freedoms by people in compliance with articles 19 and 21 of the Covenant and cannot be viewed as a restriction of the respective rights.

Author's comments on the State party's observations

5.1 On 27 February 2017, the authors submitted their comments on the State party's observations. They claim that the fact that the Chairperson of the Supreme Court and the Prosecutor General, to whom their supervisory review appeals were directed, entrusted their consideration to their deputies, does not mean that the authors have failed to exhaust domestic remedies. The Chairperson of the Supreme Court has five deputies and the Prosecutor General has four deputies. The State party does not explain which of them needs to be addressed in order for the Chairperson of the Supreme Court and the Prosecutor General to consider an appeal personally. The authors submit that their example indicates that supervisory review appeals to the Chairperson of the Supreme Court and the Prosecutor General are not effective.

5.2 The authors note the State party's argument that their rights under articles 19 and 21 were not violated because domestic law is compliant with international provisions allowing restrictions. They submit, however, that the State party could not show why restricting their rights was necessary under the legitimate aims provided for in articles 19 and 21 of the Covenant.

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 observation that the authors failed to exhaust domestic remedies because their supervisory review appeals were not considered personally by the Chairperson of the Supreme Court and the Prosecutor General. The Committee also notes the authors' argument that their appeals were directed to the said officials and that they could not choose who would then review their appeals. The Committee recalls its jurisprudence according to which a petition to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of a court decision that has taken effect, does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹ It also considers that filing requests for supervisory review to the chairperson of a court 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.² In the absence of this being shown in the

¹ *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; *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.

² *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

present case, the Committee considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the authors' submission that the State party violated their rights under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant. The Committee reiterates 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.³ However, the Committee notes that the authors have already alleged a violation of their rights under articles 19 and 21, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant, to be distinct from examination of the violation of the authors' rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the authors' claims in that regard are incompatible with article 2 of the Covenant and are thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee notes the authors' claims under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant. In the absence of any pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers that the authors have sufficiently substantiated their remaining claims raising issues under articles 19 and 21 of the Covenant for the purposes of admissibility of the communication and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claims that their rights to freedom of expression and of assembly have been restricted, in violation of both article 19 and article 21 of the Covenant, as they were denied authorization to organize a picket to be held on 20 December 2015 at Rebellion Square in the centre of Gomel to protest against the destruction of old banknotes after the currency redenomination planned for 2016, in view of the possibility of there being inflation in the future. It also notes the authors' claims that the authorities failed to explain why restrictions on holding the picket were necessary in the interests 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, as required by articles 19 and 21 of the Covenant, and that the restrictions are therefore unlawful.

7.3 The Committee notes the authors' claim that their right to peaceful assembly under article 21 of the Covenant was violated by the refusal of the Gomel City Executive Committee to allow the picket in the location proposed by the authors. The Committee also notes the claim that predetermining the locations for public events and obliging the organizers to conclude paid contracts with medical and cleaning services restricts the very essence of the rights under article 21. In its general comment No. 37 (2020), 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.⁴ 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 also notes that requirements for participants or organizers either to arrange for or to contribute to the costs

³ *Zhukovsky v. Belarus* (CCPR/C/127/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/3067/2017), para. 6.6.

⁴ See para. 55.

of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies, are generally not compatible with article 21 of the Covenant.⁵

7.4 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual's views and opinions and is indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including 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,⁶ 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, the protection of public health or morals or the 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.⁷ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.⁸

7.5 In the present case, the Committee must consider whether the restrictions imposed on the authors' right of peaceful assembly were justified under any of the criteria set out in the second sentence of article 21 of the Covenant. According to the information available on file, the authors' request to hold the picket was refused because the location chosen was not among those permitted by the city's executive authorities, and the authors failed to submit contracts taken out with the respective city service providers to ensure medical services during the event and the cleaning of the area after the event had finished. In this context, the Committee notes that neither the Gomel City Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice, the authors' event would have violated the interests 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, as set out in article 21 of the Covenant.

7.6 In the absence of any further explanation by the State party on the matter, the Committee concludes that the State party has violated the authors' rights under article 21 of the Covenant.

7.7 The Committee also notes the authors' claim that their right to freedom of expression has been restricted unlawfully, as they were refused authorization to hold the picket to publicly express their opinion about the destruction of old banknotes after the currency redenomination planned for 2016, in view of the possibility of there being inflation in the future. The issue before the Committee is, therefore, to determine whether the prohibition on holding a public picket, imposed on the authors by the city's executive authorities in the State party, amounts to a violation of article 19 of the Covenant.

7.8 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.⁹ It notes that article 19 (3) of the Covenant allows for certain restrictions on freedom of expression, including on 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, 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 be proportionate to the interest being protected.¹⁰ The Committee recalls that the onus is on the State party to

⁵ *Ibid.*, para. 64.

⁶ *Ibid.*, para. 22.

⁷ *Ibid.*, para. 36.

⁸ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

⁹ See para. 2.

¹⁰ *Ibid.*, para. 34.

demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.¹¹

7.9 The Committee observes that limiting public events, including pickets, to certain predetermined locations and requesting the organizers to conclude paid contracts with medical and cleaning services 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 have provided any explanation as to why the restrictions imposed were necessary for a legitimate purpose.¹² The Committee considers that the restriction imposed on the authors, though based on domestic law, does not appear to have been justified for the purposes of article 19 (3) of the Covenant. Accordingly, the Committee concludes that the rights of the authors 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 authors' 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 authors 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 authors with adequate compensation. 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 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.

¹¹ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹² See the Committee's general comment No. 34 (2011), para. 22.