



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. 2857/2016*, **

<i>Communication submitted by:</i>	Ekaterina Tolchina et al. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	25 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 July 2021
<i>Subject matters:</i>	Refusal of the authorities to authorize meetings; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression; effective remedy
<i>Articles of the Covenant:</i>	19, 21 and 2 (2)–(3)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The authors of the communication are Ekaterina Tolchina, Zinaida Shumilina, Vladimir Katsora, Viktor Kozlov, Anatoly Poplavnyi, Eduard Neliubovich, Leonid Sudalenko, Andrey Tolchin, Vladimir Nepomnyashchikh and Vladimir Shitikov, all nationals of Belarus born in 1975, 1952, 1957, 1949, 1958, 1962, 1966, 1959, 1952 and 1946 respectively. They claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are not represented by counsel.

* 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, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as submitted by the authors

2.1 On 25 June 2014, the authors applied for authorization by the Gomel City Executive Committee to hold peaceful rallies on 27 July 2014 at 18 different locations in Gomel: near the Dashenjka shop (42a Minskaya Street); near the Gomel department store (60 Sovetskaya Street); near the Mir cinema (51b Ilyich Street); near secondary school N2 (53 Ilyich Street); near the ice skating arena (110 Mazurova Street); near the Prudkovskiy market (3 Kamenshchikova Street); in Uprising Square; near the sculpture of Andrei Gromyko in Pioneers Square; near the Hippo hypermarket (18 Kosarev Street); near the Pyaterochka department store (65 Rechitskiy Avenue); near the Mart Inn shop (143 Barykin Street); near the October cinema (127 Barykin Street); near the Chernomorskiy shop (13 Chernomorskiy Street); near the Pavel Sukhoy State Technical University (Barykin Street); near a branch of Belarusbank (40a Zhukov Street); near the Rodnaya Storona shop (22 October Avenue); near the main medical centre in Gomel (182A Bochkin Street); and near the Chernomorskiy market (Chernomorskiy Street). The purpose of the rallies was to express solidarity with the people of Ukraine in their desire for independence.

2.2 On 17 July 2014, the Gomel City Executive Committee refused to authorize pickets on the following grounds: (a) the locations of the proposed pickets were not among those listed for the conduct of such events in its decision No. 775 of 15 August 2013 on mass events in Gomel; and (b) the authors had failed to submit the contracts with the respective city service providers in order to ensure the provision of medical services during the events and the cleaning of the locations thereafter.

2.3 On 21 July 2014, the authors appealed against the decision of the Gomel City Executive Committee with the Court of the Central District of Gomel, claiming a violation of their rights to freedom of expression and to freedom of peaceful assembly, which are guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. On 22 September 2014, the Court found the decision of the Executive Committee to be in compliance with the provisions of the law regulating public events and rejected the appeal.

2.4 The authors filed a cassation appeal against the decision of the Court of the Central District of Gomel with the Gomel Regional Court, which was rejected on 28 October 2014.

2.5 The authors' additional appeals under the supervisory review procedure to the Chair of the Gomel Regional Court on 2 September 2015 and to the Chair of the Supreme Court on 10 October 2015 were rejected on 6 October and 25 November 2015 respectively.

2.6 The authors also filed an application for supervisory review to the Prosecutor General's Office, which was rejected by the Prosecutor General of Gomel Region and by the Deputy Prosecutor General of Belarus on 20 January 2016 and 11 March 2016 respectively.

Complaint

3.1 The authors claim that the domestic authorities' refusal to grant permission to hold peaceful rallies amounts to a violation of their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant.

3.2 The authors claim that neither the Gomel City Executive Committee nor the courts considered whether the limitations imposed on their rights under decision No. 775 were justified for the purposes of protecting national security, public safety, the public order, public health or morals, or whether they were necessary for protecting the rights and freedoms of others. They allege that decision No. 775, by restricting the holding of all public events in Gomel to a single, remote, location and by requiring the signature of contracts with city service providers beforehand, unnecessarily limits the very essence of the rights guaranteed under articles 19 and 21 of the Covenant.

3.3 The authors submit that, by ratifying the Covenant, the State party has undertaken, under article 2 thereof, to respect and ensure all individual rights listed in the Covenant and to adopt such laws or measures as may be necessary to give effect to the rights recognized in the Covenant. The authors claim that the State party is not fulfilling its obligations under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant, since the law regulating public events contains vague and ambiguous provisions. For example, article 9 of

the law gives the heads of local executive committees the right to designate specific areas for the organization of peaceful assemblies, without justification.

3.4 In this context, the authors request the Committee to recommend to the State party that it align its legislation, particularly the law regulating public events and decision No. 775 of the Gomel City Executive Committee, with the international standards set out in articles 19 and 21 of the Covenant.

State party's observations on admissibility and the merits

4.1 By a note verbale dated 13 January 2017, the State party submitted its observations on admissibility and the merits. It notes that, pursuant to the Optional Protocol, individuals who claim that any of their Covenant rights have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee.

4.2 The State party notes that, on 17 July 2014, the Gomel City Executive Committee refused the authors' request to conduct rallies on 27 July 2014 at different locations, as they failed to comply with certain provisions of the law regulating public events of 30 December 1997 and decision No. 775 of 15 August 2013 of the Gomel City Executive Committee on the holding of public events in Gomel.

4.3 The decision of the Gomel City Executive Committee was upheld by the Court of the Central District in Gomel. The authors' appeal was then rejected by the Gomel Regional Court. Additional appeals made under the supervisory review procedure were also dismissed.

4.4 The State party submits that the rallies were prohibited because the authors had failed to submit the contracts with the respective city service providers aimed at ensuring the availability of medical services during the events and the cleaning of the locations thereafter, as required by article 3 of decision No. 775.

4.5 The State party concludes that not all available domestic remedies have been exhausted since the authors' requests under the supervisory review procedure have not been examined by the Prosecutor General or the Chair of the Supreme Court.

Author's comments on the State party's observations

5.1 On 10 May 2017, the authors noted that an appeal under the supervisory review procedure does not constitute an effective remedy because it is subject to the discretion of a prosecutor or a judge and does not entail a consideration of the merits of a case. Thus, they appealed unsuccessfully under the supervisory review procedure, including to the Chair of the Supreme Court and to the Prosecutor General.

5.2 Referring to the State party's observations on the provisions of the law, the authors draw the Committee's attention to the fact that the State party failed to comply with the recommendations of international organizations to amend the law regulating public events and to bring it into line with international standards.¹ The authors note that the State party has also failed to comply with the Committee's Views calling upon Belarus to review its national legislation and make it compatible with its obligations.

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.

¹ The authors refer to the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

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 observations, which imply that the authors have not exhausted the available domestic remedies as their claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court. The Committee also takes note of the authors' argument that they indeed appealed the court decisions in their case, under the supervisory review procedure, to the Chair of the Supreme Court and to the Prosecutor General, to no avail. 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.² It also considers that filing requests for supervisory review to the Chair of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute 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.³ In the absence of further information or explanations by the State party in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee takes note of the authors' claims that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2), 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.⁴ The Committee notes, however, 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 the 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 the 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 also takes note of the authors' claims under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant. In the absence of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate their claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 In conclusion, the Committee notes that the authors' claims as submitted raise issues under articles 19 (2) and 21 of the Covenant, consider these claims sufficiently substantiated for the purposes of admissibility 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 made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

² See *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 See *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.

⁴ See *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.

7.2 The Committee notes the authors' claims that their rights to freedom of expression and freedom of assembly have been restricted in violation of articles 19 and 21 of the Covenant, as they were denied authorization to organize peaceful rallies aimed at supporting the people of Ukraine in their desire for independence. It also notes the authors' claims that the authorities failed to explain why the restrictions imposed on their rights to hold a rally were necessary in the interests of protecting national security or public safety, the public order, public health, morals or the rights and freedoms of others, as required by articles 19 (3) and 21 of the Covenant, and therefore consider the restrictions unlawful.

7.3 The Committee notes the authors' claim that their right to freedom of peaceful assembly, guaranteed by article 21 of the Covenant, was violated by the refusal of the Gomel City Executive Committee to allow them to hold peaceful rallies. It recalls its general comment No. 37 (2020), in which it 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. Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or 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.⁵ Moreover, 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

7.4 The Committee also recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for the public expression of an individual's views and opinions and indispensable in a democratic society.⁷ 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.⁸ The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience⁹ and no restriction to this right is permissible, unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society, in the interests of protecting national security or public safety, the public order, public health or morals or 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.¹⁰ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.¹¹

7.5 In the present case, the Committee must consider whether the restrictions imposed on the authors' right to freedom of peaceful assembly are justified under any of the criteria set out in article 21 of the Covenant. In the light of the information available on file, the authors' applications to hold peaceful rallies were refused because the locations chosen did not correspond to the single location designated by the city executive authorities and because the authors failed to submit the contracts with the respective city service providers to ensure the availability of medical services during the events and the cleaning of the locations thereafter. 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' protest would have violated the interests of protecting national security or public safety, the public order, public health or morals or the rights and freedoms of others, as set

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

⁶ *Ibid.*, para. 64.

⁷ General comment No. 34 (2011), para. 2.

⁸ General comment No. 37 (2020), para. 6.

⁹ *Ibid.*, para. 22.

¹⁰ *Ibid.*, para. 36.

¹¹ See, e.g., *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

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 authors' rights under article 21.

7.6 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. In the absence of any additional explanations by the State party, 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 peaceful rallies to publicly express their solidarity with the people of Ukraine in their desire for independence. The issue before the Committee is therefore to determine whether the prohibition imposed on the authors by the municipal authorities 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 the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.¹² Article 19 (3) of the Covenant 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, 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

7.9 The Committee observes that allowing rallies to be held only in certain predetermined locations does not appear to meet the standards of necessity and proportionality set out in article 19 of the Covenant. It notes that, in the present case, neither the State party nor the national courts have provided any explanation as to why the restriction imposed was necessary for a legitimate purpose.¹⁵ The Committee considers that, in the circumstances of the case, the restrictions imposed on the authors, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant. In the absence of any further information or explanation by the State party, 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 violations 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 or 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

¹² General comment No. 34 (2011), para. 2.

¹³ *Ibid.*, para. 34.

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

¹⁵ General comment No. 34 (2011), para. 22.

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.
