



# International Covenant on Civil and Political Rights

Distr.: General  
13 May 2022

Original: English

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2737/2016\*, \*\*

<i>Communication submitted by:</i>	Viktor Parfenenka (represented by counsel, Oleg Ageev)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 October 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 23 February 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	15 March 2022
<i>Subject matter:</i>	Refusal of accreditation as a journalist for foreign mass media
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	19 (2) read separately and in conjunction with 2 (3)
<i>Article of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Viktor Parfenenka, a national of Belarus born in 1966. He claims that the State party has violated his rights under article 19 (2), read alone and in conjunction with article 2 (3) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel, Oleg Ageev.

#### Facts as submitted by the author

2.1 The author is a foreign correspondent of the radio station Białoruskie Radio Racja registered in Białystok, Poland. He publishes his journalistic works on the Internet on the Białoruskie Radio Racja website.<sup>1</sup> Despite numerous requests, he has not been able to obtain

\* Adopted by the Committee at its 134th session (28 February–25 March 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, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyber.

<sup>1</sup> [www.racyja.com](http://www.racyja.com).



accreditation in Belarus as a journalist working for foreign media. In March 2014, he again submitted a request for accreditation as a foreign correspondent of the radio station to the Ministry of Foreign Affairs in Belarus with the aim of exercising his profession on the territory of Belarus. On 13 May 2014, the Ministry of Foreign Affairs commission that deals with the accreditation of foreign mass media journalists rejected his request, basing its decision on the regulations of 25 December 2008 governing the procedure of accreditation of journalists working for foreign media, according to which accreditation shall be refused if a foreign media journalist has previously carried out journalistic activities in Belarus on behalf of a foreign media outlet, without receiving prior accreditation from the Ministry of Foreign Affairs. The decision of the Commission stated that the author had been publishing journalistic works on the website of the radio station in violation of article 35, paragraph 4, of the law on the mass media of 17 July 2008 and paragraphs 9 and 10 (4) of the regulations on the procedure of accreditation in Belarus of journalists working for foreign media.<sup>2</sup>

2.2 On 26 May 2014, the author appealed the decision of the Ministry of Foreign Affairs, which responded on 19 June 2014 refusing to review his complaint. On 10 July 2014, the author appealed the actions of the Ministry to the Council of Ministers. The Council of Ministers did not review his complaint on the merits and, on 12 July 2014, transferred it back to the Ministry of Foreign Affairs. On 23 July 2014, the Ministry rejected the author's appeal on the basis of its decision of 19 June 2014. On an unspecified date in July 2014, the author once again attempted to obtain accreditation from the Ministry. His request was rejected on 11 September 2014.

2.3 On 5 November 2014, the author filed a complaint against the refusal of accreditation with the Lenin District Court in Minsk. He relied, *inter alia*, on a constitutional provision which guarantees the right of citizens to obtain, keep and disseminate full, reliable and timely information regarding the activities of State bodies (article 34, paragraph 1, of the Belarus Constitution). According to paragraph 3 of article 34 of the Constitution, access to information can only be limited by law in order to protect the honour and personal dignity, personal and family life of citizens and the full realization of their rights. In addition, article 35 of the Law on Mass Media, which establishes the accreditation procedure for journalists with State bodies, does not contain any grounds for limitation of journalists' access. The author claimed that the refusal to grant him accreditation was a violation of his constitutional right to access to information and a violation of domestic law.

2.4 On 14 November 2014, the Lenin District Court in Minsk issued a ruling refusing to hear the case, given that the author had no right to judicial review, since his complaint fell outside the jurisdiction of the Court.

2.5 In December 2014, the author filed a private cassation complaint to the Minsk City Court against the refusal of the District Court to hear the case. The author stated that the rejection of his accreditation application violated his freedom of expression and the Court's refusal to open a civil case against the Ministry violated his right to an effective remedy. On 15 January 2015, the City Court rejected the author's appeal, upholding the lower court's decision.

2.6 In March 2015, the author lodged an appeal under the supervisory review procedure with the City Court, which was rejected on 2 April 2015. On an unspecified date, the author appealed under the supervisory review procedure to the Supreme Court but his appeal was rejected on 29 May 2015. Thus, he contends that he has exhausted all available and effective domestic remedies.

### **Complaint**

3.1 The author claims to be a victim of violations by Belarus of his rights under article 19 (2), read alone and in conjunction with article 2 (3) of the Covenant.

---

<sup>2</sup> Unofficial translation: paragraph 9 of the regulations states that foreign mass media journalists cannot carry out journalistic activities without an accreditation card. Paragraph 10 (4) states that accreditation is refused if a journalist working for a foreign mass media outlet has previously carried out journalistic activities on the territory of Belarus without accreditation from the Ministry of Foreign Affairs or without an accreditation card.

3.2 The author claims that the refusal of accreditation by the Ministry of Foreign Affairs amounts to a denial of access to information and of exercising his right to obtain and impart information and is a de facto prohibition of his exercising his profession as a journalist. He also maintains that the authorities have not justified the denial on the basis of protection of the rights or reputation of other persons, nor on the basis of protection of national security, public order, health or morals. He therefore claims that the denial violates his rights under article 19 of the Covenant. Since the Ministry of Foreign Affairs and the courts refused to hear his complaint and did not refer him to another avenue for redress, the State party also violated its obligations under article 19, read in conjunction with article 2 (3) of the Covenant.

3.3 The author requests the Committee to recommend to the State party to provide him with an effective remedy, including an independent review of his application for accreditation, and bring the provisions of the Law on Mass Media<sup>3</sup> and the regulations of 25 December 2008 on the procedure of accreditation of journalists working for foreign media into line with its international obligations under the Covenant, in order to avoid similar violations occurring in the future.

#### **State party's observations on admissibility**

4. By note verbale of 27 April 2016, the State party submitted its observations on admissibility, stating that the author's submission was inadmissible for non-exhaustion of all available domestic remedies. It notes in particular that at the time of the submission of his communication to the Committee, the author had not complained to "the oversight bodies controlling public authorities under the Council of Ministers" and under the supervisory review procedure to the Prosecutor-General. The State party concludes that the author's communication should not be considered admissible in accordance with article 2 of the Optional Protocol to the Covenant.

#### **Author's comments on the State party's observations**

5. On 13 June 2016, the author commented on the State party observations. He notes that review by way of supervision is not an effective remedy. He further clarifies that Belarusian legislation does not provide for a mechanism to apply to the Prosecutor-General specifically concerning cases of refusal of accreditation as a foreign mass media journalist or foreign correspondent. According to the author, all available effective remedies have been exhausted and there are no other mechanisms of legal protection in case of refusal by the Ministry of Foreign Affairs of accreditation as a foreign mass media journalist.

#### **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 author's claims under article 19 (2), read alone and in conjunction with article 2 (3) of the Covenant. It notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol, as the author has failed to complain to "the oversight bodies controlling public authorities under the Council of Ministers" and to request the Office of the Prosecutor-General to have his case considered under supervisory review proceedings. In that regard, the Committee notes that the author has appealed the actions of the Ministry of Foreign Affairs to the Council of Ministers to no avail. It further observes that, in any event, the State party has not explained which oversight bodies it is referring to, whether they are

<sup>3</sup> Article 35 (4) of the Law on Mass Media prohibits the carrying out of journalistic activities for foreign mass media without accreditation.

independent from the executive authority and whether there have been similar cases of journalists working for foreign mass media resolved by them. Moreover, the Committee recalls that article 5 (2) (b) of the Optional Protocol, by referring to “all available domestic remedies”, refers in the first place to judicial remedies.<sup>4</sup> The Committee also recalls its jurisprudence, according to which a petition for a supervisory review to a prosecutor’s office, dependent on the discretionary power of the prosecutor, allowing for review of court decisions that have taken effect, does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>5</sup> Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author’s claims under article 19 (2), read alone and in conjunction with article 2 (3) of the Covenant regarding the restriction of his freedom of expression are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee 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 he was refused accreditation by the Ministry of Foreign Affairs as a journalist working for a foreign media outlet, which is a de facto prohibition of his exercising his profession of a journalist.

7.3 The issue before the Committee is whether the refusal of the author’s accreditation as a journalist working for a foreign media outlet amounts to a violation of his right under article 19 of the Covenant, namely to seek, receive and impart information.

7.4 The Committee recalls, first, that the right to freedom of expression is not absolute and that its enjoyment may be subject to limitations. Pursuant to article 19 (3) of the Covenant, however, only such limitations are permissible as are provided for by law and that are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee reiterates in this context that the right to freedom of expression is of paramount importance in any democratic society and that any restrictions imposed by the State party on the exercise of the rights protected under article 19 (2) of the Covenant, must conform to the strict test of necessity and proportionality.<sup>6</sup> The Committee recalls that a State party must demonstrate in specific and individualized fashion why the specific action taken was necessary and proportionate.<sup>7</sup> With respect to accreditation schemes for journalists, the Committee recalls that such schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes shall be applied in a manner that is non-discriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.<sup>8</sup> The relevant criteria for accreditation shall be specific, fair and reasonable, and their application shall be transparent.<sup>9</sup>

7.5 The Committee has to consider whether those grounds are sufficiently precise to justify the author’s denial of accreditation, as provided by law and as necessary and proportionate for the grounds set out in subparagraphs (a) and (b) of article 19 (3) of the Covenant. The Committee notes the author’s explanation that article 35 (4) of the Law on Mass Media prohibits the carrying out of journalistic activities for foreign mass media

<sup>4</sup> *R.T. v. France*, communication No. 262/1987, para. 7.4; *Schmidl v. Czech Republic* (CCPR/C/92/D/1515/2006), para. 6.2; and *Staderini and De Lucia v. Italy* (CCPR/C/127/D/2656/2015), para. 8.3.

<sup>5</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; and *Koktish v. Belarus*, (CCPR/C/111/D/1985/2010), para. 7.3.

<sup>6</sup> *Velichkin v. Belarus* (CCPR/C/85/D/1022/2001), para. 7.3; and *Koktish v. Belarus*, para. 8.3.

<sup>7</sup> *Shin v. Republic of Korea*, communication No. 926/2000, para. 7.3; and *Koktish v. Belarus*, para. 8.3. See also Human Rights Committee, general comment No. 34 (2011), para. 35.

<sup>8</sup> General comment No. 34 (2011), para. 44.

<sup>9</sup> *Gauthier v. Canada* (CCPR/C/65/D/663/1995), para. 13.6; and *Koktish v. Belarus*, para. 8.3.

without accreditation and that paragraphs 9 and 10 (4) of the regulations on the procedure of accreditation in Belarus of journalists working for foreign mass media state that accreditation is refused if a journalist working for a foreign mass media has previously carried out journalistic activities on the territory of Belarus on behalf of the foreign mass media without accreditation of the Ministry of Foreign Affairs or without an accreditation card. The restrictions imposed on him appear therefore to have been provided under the law. The Committee recalls, however, that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.<sup>10</sup> For the purposes of article 19 (3) of the Covenant, a norm must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.<sup>11</sup> A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution but must provide sufficient guidance to those charged with their execution to enable them to ascertain the basis for restricting the rights protected under article 19.<sup>12</sup>

7.6 In the present case, the State party has submitted no observations on the merits of the present communication and has not sought to justify the reasons for the refusal of accreditation based on the application of the law, or identify which of the above-mentioned purposes justified the decision, or whether the refusal was necessary or proportionate in the circumstances of the case. In the absence of any information from the State party on the legal grounds for denying accreditation to the author, or on the necessity or proportionality of the refusal, the Committee concludes that the State party has failed to show, for the purposes of article 19 (3) of the Covenant, that the refusal of accreditation was necessary and proportionate for respect of the rights or reputations of others, for the protection of national security or of public order (*ordre public*) or of public health or morals. The Committee, therefore, finds that the denial of accreditation of the author constitutes a violation of article 19 (2) of the Covenant.

7.7 The Committee further observes that the national courts refused to examine the author's complaint concerning the denial of accreditation on the grounds that such complaints fall outside the jurisdiction of the courts. In that connection, the Committee notes the State party's failure to provide avenues for recourse, either to the courts or to other authorities, to determine the legality of the author's exclusion, or its necessity, for the purposes spelled out in article 19 of the Covenant. The Committee recalls that, under article 2 (3) of the Covenant, States parties have undertaken to ensure that any person whose rights are violated shall have an effective remedy and that any person claiming such a remedy shall have his or her right thereto determined by competent authorities. Accordingly, whenever a right recognized by the Covenant is affected by the action of a State agent, there must be a procedure established by the State allowing the person whose right has been affected to claim before a competent body that there has been a violation of his or her rights.<sup>13</sup>

7.8 In the light of the above and in the absence of any information from the State party as to the merits of the present communication, the Committee concludes that the author's rights under article 2 (3), read in conjunction with article 19 (2) 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 article 19 (2), read alone and in conjunction with article 2 (3) 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. That 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 and an independent review of the application to grant him accreditation in full respect of his rights under article 19 (2). The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. To that end, the State party should review its

<sup>10</sup> See, for example, *Korneenko v. Belarus* (CCPR/C/95/D/1553/2007), para. 8.3.

<sup>11</sup> General comment No. 34 (2011), para. 25.

<sup>12</sup> *Ibid.*

<sup>13</sup> See, for example, *Gauthier v. Canada*, para. 13.7; and *Koktish v. Belarus*, para. 8.6.

legislation, particularly the Law on Mass Media and the regulations of 25 December 2008 on the procedure of accreditation of journalists working for foreign media.

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 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 disseminate them widely in the State party's official languages.

---