



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. 2855/2016*, **

<i>Communication submitted by:</i>	Sergei Govsha (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 May 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>	27 July 2022
<i>Subject matter:</i>	Refusal of authorities to authorize a public event (picket)
<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
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Sergei Govsha, a national of Belarus born in 1949. He claims that the State party has violated his rights under articles 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 21 November 2014, the author applied to the Baranovichi City Executive Committee to obtain an authorization to hold a peaceful public event (picket) on 10 December 2014, from 3 to 4 p.m. The event was to be held in the Old Park in the city of Baranovichi, at the location designated by the authorities for such events. The purpose of the event was to promote values as prescribed by the Universal Declaration of Human Rights and the Covenant, to mark the sixty-sixth anniversary of the Universal Declaration of Human Rights.

* Adopted by the Committee at its 135th session (27 June–27 July 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, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



The slogans of the event were, among others: “Freedom for political prisoners” and “Belarus is the only State in Europe where the Government applies the death penalty”.

2.2 By decision of the Vice-Chair of the Baranovichi City Executive Committee, the authorization was denied on 5 December 2014. Although required by the law on public events, no reasons were given for the refusal. On 16 January 2015, the author wrote to the Baranovichi City Executive Committee to request an explanation of the refusal. In the Executive Committee’s reply of 28 January 2015, the authorities referred to the requirements of article 5 of the Law on Mass Events and claimed that the author had not fulfilled the requirements for making medical and cleaning arrangements. The author submits that he had fulfilled all the requirements for such an application, including hiring medical and cleaning services for the duration of the event, and had annexed the contracts with the service providers.

2.3 On 29 December 2014, the author filed a complaint with the Baranovichi district court, claiming that the decision of the city authorities was unlawful. The court disagreed, on 27 January 2015, stating that the author had failed to fulfil all the requirements for public events, prescribed by law, such as providing necessary security measures during the event.

2.4 On 13 February 2015, the author filed an appeal of this decision with the Brest regional court. On 19 March 2015, the Brest regional court confirmed the lower court’s decision and rejected the author’s appeal. Similarly, the Supreme Court of Belarus rejected his appeal on 30 June 2015. The author then filed supervisory review appeals with the Prosecutor General’s Office, both of which were rejected, on 9 September 2015 and 4 November 2015.

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

Complaint

3.1 The author claims that his rights to freedom of expression and freedom of assembly have been restricted, in violation of articles 19 (2) and 21 of the Covenant, as he was denied authorization to organize a peaceful picket to promote values as prescribed by the Universal Declaration of Human Rights and to mark the sixty-sixth anniversary thereof.

3.2 The author requests the Committee to recommend to the State party that it align its legislation governing freedom of expression and peaceful assembly with the international standards set out in articles 19 and 21 of the Covenant, prevent similar violations from occurring in the future and provide the author with adequate financial and moral compensation.

State party’s observations on admissibility and the merits

4.1 In a note verbale dated 13 January 2017, the State party submitted its observations on admissibility and the merits. It notes that, on 5 December 2014, the Baranovichi City Executive Committee refused the author’s request to conduct a picket as he had failed to comply with the provisions of the Law on Mass Events of Belarus, which regulates the holding of public events. The State party observes that, in a letter of 28 January 2015, the Baranovichi City Executive Committee provided further explanations to the author as to the reasons for denying the authorization of the picket. In this context, the State party notes that the author failed to indicate the measures taken to ensure the public order and safety of the event, the medical services available during the event and the cleaning of the location afterwards.

4.2 The State party submits that the Baranovichi district court rejected the author’s appeal on 27 January 2015. On 19 March 2015, the Brest regional court also dismissed the author’s cassation appeal, upholding the lower court’s decision. Thus, the decision of the Baranovichi district court entered into force on 19 March 2015.

4.3 Subsequently, the author appealed the court rulings of 27 January 2015 and 19 March 2015 to the Chair of the Brest regional court under the supervisory review procedure. The Brest regional court dismissed the author’s application under the supervisory review procedure on 29 April 2015. The author further appealed to the Supreme Court of Belarus; that appeal was also rejected, on 30 June 2015, by the Vice-Chair of the Court. The author’s

appeals to the Brest Regional Prosecutor's Office and to the Prosecutor General's Office were also rejected.

4.4 Referring to the admissibility of the communication, the State party notes that the author had not exhausted all available domestic remedies as his appeals for supervisory review to the Supreme Court and to the Prosecutor General's office were not examined by the Chair of the Supreme Court and the Prosecutor General themselves, but by their deputies.

Author's comments on the State party's observations on admissibility and the merits

5. On 7 June 2017, and with reference to the State party's observations on the supervisory review, the author submitted that he had appealed the decisions under the proceedings to the Chair of the Supreme Court of Belarus and to the Prosecutor General; however, the appeals were rejected by their Vice-Chairs, which was not contested by the State party. In this context, he notes that the Chair of the Supreme Court has five deputies and the Prosecutor General has four deputies. The author argues that the State party failed to explain which of the deputies should have been addressed in order for the appeal to be reviewed personally by the Chair of the Supreme Court or by the Prosecutor General. The author submits that, in the absence of any explanation by the State party in this regard, he does not consider the supervisory review procedures to be an effective remedy.

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 argument that the author failed to seek a supervisory review by the Chair of the Supreme Court or by the Prosecutor General of the decisions of the domestic courts. In this context, the Committee considers that filing requests for supervisory review with the president of a court directed 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. The Committee also notes the author's argument that he did indeed appeal, unsuccessfully, the decisions under the supervisory review proceedings, namely to the Chair of the Supreme Court of Belarus and to the Prosecutor's General Office, and provided all relevant materials in that regard. The Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹ The Committee notes that, in the present case, the author has exhausted all available domestic remedies, including those that constitute supervisory review proceedings. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee notes that the author's claims as submitted raise issues under articles 19 and 21 of the Covenant, considers that the author has sufficiently substantiated the claims for the purposes of admissibility, and proceeds with its consideration of the merits.

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; and *Belsky v. Belarus* (CCPR/C/134/D/2755/2016), para. 6.3.

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, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims that his rights to freedom of expression and freedom of assembly have been restricted, in violation of articles 19 and 21 of the Covenant, as he was denied authorization to organize a peaceful picket to promote the values of the Universal Declaration of Human Rights and the Covenant. The Committee considers that the issue before it is to decide whether the prohibition on holding a public picket imposed on the author by the Baranovichi City Executive Committee amounts to a violation of his rights under articles 19 and 21 of the Covenant.

7.3 The Committee notes the author's claim that his right to freedom of peaceful assembly has been restricted unlawfully, as he was not granted authorization to hold a peaceful picket to promote the values of the Universal Declaration of Human Rights and the Covenant. The issue before the Committee is therefore to determine whether the prohibition on holding a peaceful assembly for the above-mentioned purpose imposed on the author by the city authorities amounts to a violation of article 21 of the Covenant.

7.4 In its general comment No. 37 (2020), the Committee 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 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.² The Committee notes that the requirements for participants or organizers to either arrange for or contribute towards the costs of policing, security, medical assistance and cleaning, and other public services associated with peaceful assemblies, are generally not compatible with article 21 of the Covenant.

7.5 The Committee recalls that the right 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. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors or online, in public or 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 of the Covenant whether they are stationary, such as pickets, or mobile, such as processions or marches. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience, and no restriction to this right is permissible, unless it is imposed in conformity with the law and is necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), 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. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.

7.6 In the present case, the Committee must consider whether the restrictions imposed on the author's right of peaceful assembly, although the peaceful picket was planned to take place in a location in the Old Park that had previously been identified by the City Executive Committee as the specifically designated area in the city for the organization of peaceful assemblies, are justified under any of the criteria set out in article 21 of the Covenant. In the light of the information available, the author's applications to hold a peaceful picket were refused because the author had failed to submit information about ensuring medical services during and the cleaning of the location after the events. In this context, the Committee notes that neither the Baranovichi City Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice, the author's picket would have violated

² Para. 55.

the interests of national security or public safety, public order (*ordre public*), 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. The State party also failed to show that any alternative measures were taken to facilitate the exercise of the author's rights under article 21.

7.7 In the absence of any further explanations by the State party, the Committee concludes that the State party has violated the author's rights under article 21 of the Covenant.

7.8 The Committee notes the author's claim that his right to freedom of expression has been restricted unlawfully, as he was refused authorization to hold a peaceful picket to promote the values of the Universal Declaration of Human Rights and the Covenant. The issue before the Committee is therefore to determine whether the prohibition on holding a peaceful assembly for the above-mentioned purpose imposed on the author by the city authorities amounts to a violation of article 19 of the Covenant.

7.9 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.³ It notes that article 19 (3) of the Convention 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 for respect of the rights or reputation of others or for the protection of national security, public order (*ordre public*) or 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. The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.

7.10 The Committee observes that limiting the holding of a picket to certain predetermined locations does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. In the present case, the peaceful picket was planned to take place in a location in the Old Park that had previously been identified by the City Executive Committee as the specifically designated area in the city for the organization of peaceful assemblies. However, in spite of this, the City Executive Committee refused to authorize the picket because the author had failed to obtain the relevant support from city service providers. The Committee notes that neither the State party nor the national courts have provided any explanation as to why the restriction imposed was necessary for a legitimate purpose, the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected. The Committee considers that, in the circumstances of this case, the restrictions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant.

7.11 In the absence of any further information or explanation by the State party, the Committee concludes that the rights of the author 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 author's 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 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 to, *inter alia*, take appropriate steps to provide the author 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 it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications, and thus the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2), with

³ Para. 2.

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.
