



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. 2961/2017*, **

<i>Communication submitted by:</i>	Grygory Gryk (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	30 January 2017 (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 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2022
<i>Subject matter:</i>	Imposition of a fine for participating in an unsanctioned peaceful meeting; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of opinion and expression
<i>Articles of the Covenant:</i>	2 (2)–(3), 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Grygory Gryk, a national of Belarus born in 1966. He claims that the State party has violated his rights under articles 19 and 21, 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 author is not represented by counsel.

Facts as submitted by the author

2.1 The author submits that, on 20 September 2015, M.I.V., an associate of the presidential candidate Tatyana Korotkevich, submitted a written notification to the Baranovich City Executive Committee stating that the author would be conducting a one-

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

** 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, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobaujah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi.



person picket in the city park located on Komsomolskaya Street in Baranovichi in support of Ms. Korotkevich's candidature in the upcoming presidential elections.

2.2 On 27 September 2015, at 2.20 p.m., the author conducted his planned picket, carrying a photo of Ms. Korotkevich with a text reflecting her campaign promises. On 7 October 2015, a police record was filed against the author for violating the procedure for organizing and conducting public meetings under article 23.34 (2) of the Code of Administrative Offences.¹

2.3 On 28 October 2015, the Baranovichi District Court established that, on 27 September 2015, at 2.20 p.m. at the entrance to the city park on Komsomolskaya Street in Baranovichi, the author had organized and held an unauthorized picket, in violation of the provisions of the Law on Mass Events concerning the organization of public meetings. The Court ruled that the author had committed an administrative offence under article 23.34 (2) of the Code of Administrative Offences and ordered him to pay a fine of 4,500,000 roubles.²

2.4 On 28 November 2015, the author appealed the decision before the Brest Regional Court; his appeal was rejected on 23 December 2015. On 16 February 2016 and on 3 May 2016, the author appealed under the supervisory review procedure to the President of the Brest Regional Court and the President of the Supreme Court; the appeals were rejected on 2 March and 13 July 2016, respectively.

2.5 The author submitted that the court decisions against him were unlawful because, under article 23.34 (2) of the Code of Administrative Offences, the responsible subject is the organizer of a public event.³ He maintained that he was not the organizer of the demonstration, stating that the name of the organizer was clearly stated in the written notification submitted to the City Executive Committee.

Complaint

3.1 The author claims a violation of his rights under articles 19 and 21, in conjunction with article 2 (2) and (3), of the Covenant, on the ground that the authorities failed to explain why the restrictions imposed on his right to hold a peaceful protest were necessary in the interests of national security or public safety, public order or the protection of public health or morals or the rights and freedoms of others. The author therefore considers that, by imposing a significant fine on him for holding a picket and expressing his views, the State party acted in violation of the Covenant.

3.2 The author refers to article 33 of the law on international treaties, which states that the international treaties to which Belarus is a party and that have entered into force are part of the domestic legislation. He also refers to article 7 of the Constitution of Belarus, which declares the principle of the supremacy of the law and states that legislation should be compatible with internationally recognized human rights principles. He claims that Belarus failed to take the measures necessary to give effect to the rights recognized in articles 19 and 21 of the Covenant. He refers to articles 26 and 27 of the Vienna Convention on the Law of Treaties and contends that Belarus cannot rely on a provision of domestic legislation as a justification for not implementing an obligation under the Covenant. The author also refers to the Committee's jurisprudence in which the Committee found that a State party giving priority to the application of its national law over its obligations under the Covenant was incompatible with the Covenant.⁴

¹ Under that article, infringement of the established procedure for organizing or holding assemblies, rallies, marches, demonstrations, pickets and other mass events or public calls for the organization or holding of assemblies, rallies, marches, demonstrations, pickets and other mass events in breach of the established procedure for organizing or holding them, if there are no constituent elements of a crime in these acts, is subject to a fine of between 20 and 40 reference units or administrative detention, if committed by an organizer of such an event, or a fine of between 20 and 100 reference units, if the offender is a legal person.

² At the time of the administrative hearing, this was equal to approximately \$259.

³ As noted in paragraph 2.1 above, M.I.V. was the organizer of the picket.

⁴ *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.4

3.3 The author asks the Committee to find his complaint admissible, consider it on the merits and find a violation of the mentioned articles of the Covenant, and urge the State party to bring the Law on Mass Events into line with articles 19 and 21 of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 20 April 2017, the State party submitted its observations on admissibility and the merits of the complaint and noted that the author had been convicted by the Baranovichi District Court for violating the provisions of the Law on Mass Events concerning the organization of meetings, thereby committing an administrative offence under article 23.34 of the Code of Administrative Offences. The State party observes that, on 28 October 2015, the District Court sanctioned the author's actions and imposed a fine according to the relevant provisions of the law. The ruling of the first instance court was upheld on appeal by the Brest Regional Court on 23 December 2015. The author's further appeals, to the President of the Brest Regional Court and the President of the Supreme Court, were dismissed on 2 March and 13 July 2016, respectively. In this context, the State party observes that the author's right to a fair trial and public hearing by a competent, independent and impartial court was fully respected.

4.2 Referring to the admissibility of the communication, the State party notes that the author has not exhausted all available domestic remedies given that he did not appeal to the Supreme Court or the Office of the Prosecutor General for a supervisory review.

4.3 Commenting on the effectiveness of the supervisory review procedure, the State party notes that, in 2016, out of 302 appeals in administrative cases that had been introduced under the supervisory review procedure, 266 were granted a review. In this context, the State party notes that the Committee should consider the present communication as an abuse of the right of submission and find it inadmissible under article 3 of the Optional Protocol.

4.4 The State party observes that the author's claims under articles 19 and 21, in conjunction with article 2 (2) and (3), of the Covenant are groundless and concludes that the provisions of the Law on Mass Events, in addition to regulating the organization and conduct of meetings in Belarus, are aimed at creating conditions for the realization of the constitutional right of citizens to peaceful assembly and freedom of expression.

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

5.1 In a letter dated 8 June 2017, the author commented on the State party's observations on admissibility and the merits and explained that he had not filed an application with the Office of the Prosecutor General under the supervisory review procedure because the State party had failed to explain which of the four deputies should have been addressed in order for the appeal to be reviewed by the Prosecutor General. In this context, the author does not consider the supervisory review procedure to be an effective remedy that needs to be exhausted.

5.2 With regard to the State party's statistics in relation to the number of cases reviewed under the supervisory review procedure, the author believes that the State party failed to demonstrate how many of those cases involved the right to freedom of expression and freedom of assembly.

5.3 The author reiterates his claims that his right to freedom of expression and freedom of assembly were violated because the authorities failed to demonstrate that the restrictions imposed on his rights were necessary to achieve one of the purposes listed 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 takes note of the State party's observations, in which the State party contends that the author has not exhausted the available domestic remedies as he did not appeal to the Supreme Court or the Office of the Prosecutor General for a supervisory review. In this regard, the Committee notes the State party's comments on the effectiveness of the supervisory review procedure, according to which, in 2016, out of 302 appeals in administrative cases that had been introduced under the procedure, 266 were granted a review. The Committee also takes note of the author's argument that the supervisory review procedure is not an effective remedy and that the State party's statistics on the number of cases reviewed under the procedure do not demonstrate how many of those cases involved the right to freedom of expression and freedom of assembly. In this context, 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.⁵ The Committee notes that the author has indeed appealed to the President of the Supreme Court (see para. 4.1 above). In the absence of further explanations by the State party in the present case, and noting that the State party did not explain how many of the above-mentioned cases that were granted a review under the supervisory review procedure concerned the right of individuals to freedom of expression and freedom of assembly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication in relation to the author's claims under articles 19 and 21, read alone and in conjunction with article 2 (2) and (3), of the Covenant. The Committee sees no grounds to consider the communication to be an abuse of the right of submission on the grounds invoked by the State party and, accordingly, finds that it is not prevented by the requirements of article 3 of the Optional Protocol from examining the complaint.

6.4 The Committee notes the author's allegations that his freedom of assembly under article 21, in conjunction with article 2 (2) and (3), of the Covenant have been violated as he was convicted for holding a picket in support of a candidate in a presidential election. The Committee considers, however, that the facts as presented by the author relate only to article 19 and do not raise issues under article 21 of the Covenant, as the author was the only participant in the picket. The notion of an assembly to be protected under article 21 implies that there is more than one participant in the gathering, while a single protester enjoys comparable protections under the Covenant, for example under article 19.⁶ In the Committee's view, the author has not advanced sufficient elements to show that an assembly within the meaning of article 21 in fact took place. Consequently, the Committee concludes that the author's claim is incompatible *ratione materiae* for the purposes of admissibility and therefore finds it inadmissible under article 3 of the Optional Protocol.

6.5 The Committee takes note of the author's claims that the State party violated his rights under article 19, 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.⁷ 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, and the Committee does not consider examination of whether the

⁵ *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.

⁶ Human Rights Committee, general comment No. 37 (2020), para. 13.

⁷ *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

State party has also violated its general obligations under article 2 (2), read in conjunction with article 19, of the Covenant, to be distinct from examination of the above-mentioned violation of the author's rights under article 19 of the Covenant. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.6 The Committee notes the author's claims under article 19, read in conjunction with article 2 (3), of the Covenant. In the absence of any further pertinent information, the Committee considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes that the author's claims as submitted raise issues under article 19 of the Covenant, considers 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.

7.2 The Committee notes the author's claim that his freedom of expression has been restricted unlawfully in that he was found guilty of an administrative offence and sanctioned to pay a significant administrative fine for participating in a one-person picket and holding a photo of Ms. Korotkevich in support of her candidacy in presidential elections. The issue before the Committee is therefore to determine whether the sanction imposed on the author by domestic authorities, for participating in a peaceful picket with an expressive purpose, amounts to a violation of article 19 of the Covenant.

7.3 The Committee recalls its general comment No. 34 (2011) on the freedoms of opinion and expression, 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.⁸ It notes that 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 for respect of the rights or reputation of others or for the protection of national security or public order (*ordre public*) 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.⁹ 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.¹⁰

7.4 The Committee observes that sentencing the author to an administrative fine for participating in a peaceful, albeit unauthorized, picket with an expressive purpose raises serious doubts as to the necessity and proportionality of the restrictions on the author's rights under article 19 of the Covenant. The Committee observes in this regard that the State party has failed to invoke any specific grounds to support the necessity of such restrictions and the sanction imposed, as required under article 19 (3) of the Covenant.¹¹ The State party also failed to demonstrate that the measures selected were the least intrusive in nature or were proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the case, the restrictions imposed on the author and the sanction imposed, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 of the Covenant have been violated.¹²

⁸ Para. 2.

⁹ General comment No. 34 (2011), para. 34.

¹⁰ See, for example, *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹¹ See, for example, *Zalenskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

¹² See also *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.5; *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 13.4; and *Shchetko and Shchetko v. Belarus*

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 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, *inter alia*, to provide the author with adequate compensation, including to reimburse the fines and any legal costs incurred by him. 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 requires the State party to 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 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.

(CCPR/C/87/D/1009/2001), para. 7.5.