



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. 2913/2016*, **

<i>Communication submitted by:</i>	Gennady Fedynich (represented by counsel, Leonid Sudalenko)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communications:</i>	20 September 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 30 December 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	18 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 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 Gennady Fedynich, a national of Belarus born in 1957. 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 represented by counsel.

Facts as submitted by the author

2.1 The author is the head of the Belarusian independent trade union of radio-electronics industry workers. On 15 May 2016, the author participated, with others, in an unauthorized protest and voiced his discontent over the refusal of the City Executive Committee to provide a venue for a meeting of the trade union. The peaceful meeting was held at 4 Kupala Street,

* 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, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Minsk. A police record was later filed against the author for violating the procedure for organizing and conducting public meetings under article 23.34 of the Code of Administrative Offences.

2.2 On 2 June 2016, the Central District Court of Minsk established that, on 15 May 2016, at 12.45 p.m., at 4 Kupala Street, the author had participated in an unauthorized protest and had shouted slogans to express his disagreement over the refusal of the City Executive Committee to allocate a venue for a meeting of the trade union of which he was the head, thus acting contrary to the provisions of the Law on Mass Events concerning the organization of a meeting. The Court ruled that the author had committed an administrative offence under article 23.34 (1) of the Code of Administrative Offences¹ and ordered him to pay a fine of 6,300,000 roubles.²

2.3 On 9 June 2016, the author appealed the decision to the Minsk City Court, which dismissed his appeal on 2 August 2016. The Court assessed all arguments presented by the parties and established that the author had participated in an unauthorized protest on 15 May 2016, at 12.45 p.m., at 4 Kupala Street, in violation of the Law on Mass Events. The decision of the Central District Court of Minsk entered into force on the same day.

2.4 The author submits that he has exhausted domestic remedies as, in line with the Committee's jurisprudence, supervisory review procedures against court decisions that have entered into force constitute extraordinary means of appeal dependent on the discretionary power of a judge or prosecutor and limited to issues of law only.³

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 or public order or the protection of public health or morals or the rights or the freedoms of others, as required by articles 19 (3) and 21 of the Covenant. The author therefore considers the restrictions and sanction imposed to be unlawful and disproportionate.

3.2 The domestic authorities wrongly considered that provisions of the Code of Administrative Offences superseded the Covenant. Article 27 of the Vienna Convention on the Law of Treaties provides that a party may not invoke the provisions of its internal law as justification for its failure to uphold the provisions of an international treaty.

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 3 March 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 Central District Court of Minsk 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 2 June 2016, the Central District Court appraised the author's actions and lawfully imposed a fine on him. The ruling of the first instance court was upheld on appeal by the Minsk City Court on 2 August 2016. The State party submits that the author did not appeal the decision of the Central District Court with the Prosecutor General or the Chair of the Supreme Court under

¹ Under that article, infringement of the established procedure for holding assemblies, rallies, marches, demonstrations, pickets and other mass events by a participant in such an event, as well as 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 by a participant in such an event or another person, if there are no constituent elements of a crime in these acts, shall incur a caution or a fine of up to 30 reference units, or administrative detention.

² At the time of the administrative hearing, this was equal to approximately \$316.

³ *Tulzhenkova v. Belarus*, [CCPR/C/103/D/1838/2008](#), para 8.3.

the supervisory review procedure and therefore failed to exhaust all available domestic remedies. In this context, the State party submits 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.

4.2 The State party notes that the author's claims of a violation of articles 19 and 21, in conjunction with article 2 (2) and (3), are unsubstantiated. The State party observes that articles 33 and 35 of the Constitution of Belarus provide for the right to peaceful assembly and to freedom of expression.

4.3 The State party observes that the provisions of its 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 rights and freedoms of citizens.

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

5.1 In a letter dated 10 May 2017, the author expressed disagreement with the State party's arguments that he had not exhausted all available domestic remedies by failing to appeal the decisions of the first instance court under the supervisory review procedure and, with reference to the Committee's jurisprudence, noted that the supervisory review was a common discretionary review process in former Soviet republics that the Committee had previously considered as not constituting an effective remedy for the purposes of the exhaustion of domestic remedies.⁴ He concluded that all available and effective domestic remedies had been exhausted in his case.

5.2 The author contests the State party's argument that the provisions of the Law on Mass Events are in conformity with articles 19 and 21 of the Covenant, and notes that the State party has failed to implement numerous recommendations of the European Commission for Democracy through Law of the Council of Europe and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe to bring its legislation into line with international standards on the freedoms of expression and assembly.

5.3 The author submits that the State party failed to implement the decisions of the Human Rights Committee and did not revise the Law on Mass Events to bring it into line with its international obligations. The author concludes that, in his case, national legislation on the organization of mass events and the practical implementation thereof led to the violation of his rights under 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 observation that the author has not exhausted the available domestic remedies as he did not appeal the decision of the Central District Court of Minsk with the Prosecutor General or the Chair of the Supreme Court under the supervisory review procedure. The Committee also takes note of the author's argument that the supervisory review is a discretionary review process that does not constitute an effective remedy for the purposes of exhaustion of domestic remedies. In this context, the Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office that is 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

⁴ *Iskiyaev v. Uzbekistan*, CCPR/C/95/D/1418/2005, para 6.1.

purposes of article 5 (2) (b) of the Optional Protocol.⁵ It also considers that filing with the Chair of a court requests for a supervisory review of 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.⁶ In the absence of further 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 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 also 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 takes note of the author's claims that the State party violated his 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.⁷ The Committee notes, however, that the author has already alleged a violation of his 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 the examination of the above-mentioned violation of the author's rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author's 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 author's claims under articles 19 and 21, 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.

6.6 The Committee notes that the author's claims as submitted raise issues under articles 19 and 21 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, 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 assembly have been restricted in violation of both article 19 and article 21 of the Covenant, as he was sentenced to pay a fine for participating in an unauthorized peaceful meeting to protest against the refusal of the City Executive Committee to allocate a venue for a meeting of the trade union of which he is the head. It also notes the author's claims that the authorities failed to explain why the restrictions imposed on his rights for participating in the protest meeting 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, as required by

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 *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.

⁷ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4; *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.

articles 19 (3) and 21 of the Covenant, and the author therefore considers the restrictions and sanction imposed to be unlawful and disproportionate.

7.3 The Committee notes the author's claim that his right to peaceful assembly under article 21 of the Covenant was violated as he was brought before domestic courts and given a substantial administrative fine for participating in an unauthorized peaceful protest. It recalls that, in its general comment No. 37 (2020) on the right of peaceful assembly, it stated that peaceful assemblies could in principle be conducted in all spaces to which the public had access or should have access, such as public squares and streets.⁸

7.4 The Committee recalls that the right to 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 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.⁹ The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,¹⁰ 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*), protection of public health or morals or 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.¹¹ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.¹²

7.5 In the present case, the Committee must consider whether the restrictions imposed on the author's right to peaceful assembly are 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 author was sentenced by the Central District Court of Minsk to a significant administrative fine for participating in a peaceful protest in violation of the provisions of the Law on Mass Events. In this context, however, the Committee notes that the domestic courts did not provide any justification or explanation as to how, in practice, the author's protests violated 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. In this respect, the State party refers only to the fact 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 rights and freedoms of citizens (para. 4.3 above), but does not explain why, in the present case, such constitutional rights and freedoms of citizens were violated by the peaceful protest in which the author participated.

7.6 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.¹³

7.7 The Committee notes the author's claim that his freedom of expression was restricted unlawfully in that he was found guilty of an administrative offence and given a significant administrative fine for participating in a peaceful meeting and shouting slogans to protest against the refusal of the City Executive Committee to provide a venue, in Minsk, for a meeting of the trade union of which he is the head. The issue before the Committee is

⁸ Para. 55.

⁹ General comment No. 37 (2020), para. 6.

¹⁰ *Ibid.*, para. 22.

¹¹ *Ibid.*, para. 36.

¹² *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

¹³ See also *Malei v. Belarus* (CCPR/C/129/D/2404/2014), para. 9.7; *Tolchina et al. v. Belarus* (CCPR/C/132/D/2857/2016), para. 7.6; *Zavadskaya et al v. Belarus* (CCPR/C/132/D/2865/2016), para. 7.6; *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.6; and *Sadykov v Kazakhstan* (CCPR/C/129/D/2456/2014), para. 7.7.

therefore to determine whether the sanction imposed on the author by domestic authorities, for participating in a peaceful protest with an expressive purpose, amounts to a violation of article 19 of the Covenant.

7.8 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.¹⁴ 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.¹⁵ 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.¹⁶

7.9 The Committee observes that sentencing the author to an administrative fine for participating in a peaceful, albeit unauthorized, meeting 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 as required under article 19 (3) of the Covenant.¹⁷ The State party also failed to demonstrate that the measures selected were the least intrusive in nature or 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.¹⁸

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, *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 and 21 of the Covenant may be fully enjoyed in the State party.

¹⁴ Para. 2.

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

¹⁶ See also *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹⁷ See also *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

¹⁸ 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* (CCPR/C/87/D/1009/2001), para. 7.5.

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.
