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**Human Rights Committee**

**Communication No. 1830/2008**

**Views adopted by the Committee at its 106th session (15 October-  
2 November 2012)**

<i>Submitted by:</i>	Antonina Pivonos (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	25 August 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 December 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	29 October 2012
<i>Subject matter:</i>	Imposition of a fine for non-compliance with the legal requirements on the organization of a picket.
<i>Substantive issues:</i>	Freedom of expression.
<i>Procedural issue:</i>	Exhaustion of domestic remedies.
<i>Articles of the Covenant:</i>	19, paragraph 2, and 21
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b).

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (106th session)**

concerning

#### **Communication No. 1830/2008\***

*Submitted by:* Antonina Pivonos (not represented by counsel)

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 25 August 2008 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 29 October 2012,*

*Having concluded* its consideration of communication No. 1830/2008, submitted to the Human Rights Committee by Mrs. Antonina Pivonos under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author is Mrs. Antonina Pivonos, a Belarusian national born in 1946. She claims to be a victim of violations by Belarus of her rights under articles 19, paragraph 2, and 21, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

#### **The facts as presented by the author**

2.1 On 25 March 2008, at around 10.00 a.m., the author, together with Mrs. E. Zaleskaya and Mr. B. Khamaida, was standing next to a building located on Lenin Street in the city of Vitebsk. The author was holding a tapestry in her hands, while the other two were wearing white-and-red flags on top of their clothes. She explains that she wanted to

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev and Mr. Krister Thelin.

present a prayer from the Bible that she had embroidered on the tapestry to Mr. B. Khamaida, on the occasion of the 90th anniversary of the establishment of the Belarus People's Republic.

2.2 When the author unrolled the tapestry with the embroidered prayer, at around 10.40 a.m., she was apprehended by police officers of the Zheleznodorozhny District Department of Internal Affairs of Vitebsk, and accused of having violated the procedure on organizing or conducting pickets.

2.3 The same day, 25 March 2008, the Zheleznodorozhny District Court of Vitebsk established that the author had violated the provisions of the Law on Mass Events concerning the organization of pickets, thereby committing an administrative offence under article 23.34, paragraph 1, of the Belarus Code on Administrative Offences,<sup>1</sup> and sentenced her to pay a fine of 70,000 roubles.<sup>2</sup>

2.4 The author submits that, in court, she explained that her meeting with her two acquaintances, Mrs. Zalesskaya and Mr. B. Khamaida, was of a peaceful nature. She also pointed out that by discussing the 90th anniversary of the establishment of the Belarus People's Republic, they did not obstruct the movement of pedestrians or automobiles, did not interfere with the activities of any institutions or organizations, and did not chant any slogans or appeals. She also affirmed that her activities in no way disturbed public order and no complaints were made whatsoever.

2.5 The author maintains that her actions were wrongly defined as a picket; in the absence of any well-founded explanations justifying the court's conclusion, the penalty imposed on her cannot be justified by the need to protect national security or public order, public health or morals, or for respect of the rights and reputations of others.

2.6 The author submits that she has exhausted all domestic remedies: on 30 March 2008, she appealed the decision of the Zheleznodorozhny District Court of Vitebsk to the Vitebsk Regional Court, which rejected her appeal on 16 April 2008. On 22 April 2008, she filed an appeal to the Supreme Court, which was rejected on 11 June 2008.

### **The complaint**

3. The author claims that the above-mentioned facts demonstrate that she is a victim of violations of her right to freedom of expression, guaranteed under article 19, paragraph 2, of the Covenant and her right to peaceful assembly, guaranteed under article 21 of the Covenant.

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

4.1 On 19 February 2009, the State party challenged the admissibility of the communication, arguing that the author had failed to exhaust domestic remedies, since her case had not been examined by the Chairman of the Supreme Court of Belarus or by the Prosecutor's Office under the supervisory review procedure. Under article 12.11, paragraphs 3 and 4, of the Belarus Code of Administrative Offences (B.C.A.O.), final judicial decisions can be reviewed within six months under the supervisory review proceedings upon the referral of a case in question to the court by the officials listed in article 12.11, paragraphs 3 and 4, of the said Code.

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<sup>1</sup> Article 23.34, paragraph 1, of the Belarus Code on Administrative Offences: Violation of the procedure on organization or conduct of street processions or pickets.

<sup>2</sup> Approx. 21 euros. The Court also ordered the confiscation of the tapestry displaying a prayer from the Bible.

4.2 The State party submits that according to article 12.11, paragraphs 3 and 4, of the B.C.A.O., upon the author's request, the Chairman of the Supreme Court or the Prosecutor General can initiate supervisory review of the case and notes that the author did not avail herself of these avenues for appeal.

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

5. On 12 April 2009, the author notes *inter alia* that the administrative proceedings initiated against her were of a political nature and that she has exhausted all available and effective remedies by appealing the decision of the Zheleznodorozhny District Court of Vitebsk to the Vitebsk Regional Court on 30 March 2008 and by submitting a further appeal to the Supreme Court of Belarus on 22 April 2008. An appeal submitted by an individual under the supervisory proceedings, according to her, would not have resulted in the review of the court decisions in question.

#### **Additional observations by the State party**

6.1 On 26 May 2009, the State party noted that article 35 of the Constitution guarantees the freedom to hold assemblies, gatherings, street processions, demonstrations and pickets which do not disrupt public order and do not violate the rights of other citizens. The procedure for holding such events is provided by law. In this respect, the provisions of the Law on Mass Events are aimed at creating the conditions for the realization of citizens' constitutional rights and freedoms and the protection of public safety and public order during the holding of such events on streets and squares and in other public locations. The State party further recalls that the author was lawfully found guilty of having committed an administrative offence under article 23.34, paragraph 1, of the B.C.A.O. and a fine of 70,000 roubles was imposed on her by the Zheleznodorozhny District Court of Vitebsk on 25 March 2008. The said decision was later upheld by the Vitebsk Regional Court and by the Supreme Court.

6.2 The State party adds that, according to article 19, paragraph 2, of the Covenant, every individual has the right to freedom of expression; this right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his own choice. However, article 19, paragraph 3, of the Covenant, imposes special duties and responsibilities on the rights holder and thus the right to freedom of expression may be subjected to certain restrictions that shall be provided by law and are necessary: (a) for the respect of the rights or reputation of others; and (b) for the protection of national security or public order, or of public health or morals. Article 21 of the Covenant recognizes the right to peaceful assembly. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

6.3 The State party explains that as a party to the Covenant, it has incorporated the provisions of articles 19 and 21 into the domestic legal system. In conformity with article 23 of the Constitution, restrictions upon the rights and freedoms of individuals are only permitted in the instances specified by law, in the interest of national security, public order, protection of public health and morals, and of the rights and freedoms of other persons. The analysis of article 35 of the Constitution, which guarantees the right to "freedom of public events", clearly demonstrates that the Constitution establishes the legislative framework for the procedure for holding such events. Organization and holding of assemblies, gatherings, street marches, demonstrations and pickets is regulated by the Law on Mass Events of 7 August 2003. Freedom of expression, as guaranteed under the Constitution, may be subject to restrictions only in instances provided by law, in the interest of national security, public

order, protection of public health and morals, and of the rights and freedoms of other persons. Therefore, the restrictions provided for under Belarusian law are in conformity with the State party's international obligations, and are aimed at protecting national security and public order – in particular, this concerns the provisions of article 23.34 of the B.C.A.O. and article 8 of the Law on Mass Events.

#### **Author's further submission**

7.1 By letter of 23 July 2009, the author rejected the State party's arguments that the administrative sanction imposed on her for violation of the procedure for organizing and holding a picket was lawful and was in conformity with the permissible restrictions set out in article 19 and article 21 of the Covenant, as: the encounter on 25 March 2008 was of a peaceful nature; the attire (white-and-red flag worn over clothes and the embroidered tapestry) was not prohibited by national law; during the encounter, there were no slogans expressing a stance favourable to the overthrow of the regime in power, incitement to mass riots or to other unlawful actions; the police officers breached the author's rights of peaceful assembly and freedom of expression; the State party did not indicate that the encounter caused disturbances to public health or morals or impeded the protection of the rights and freedoms of others; nor did the State party indicate that the encounter endangered national security, public order, or the health and wellbeing of the population.

7.2 The author further submitted that the participants during the encounter merely discussed the anniversary and in no way disturbed the movement of means of transport or pedestrians, did not interfere with the activities of any institutions or organizations, did not chant any slogans or appeals and did not impart any information to the population.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's argument that the author failed to file an application for supervisory review to the Chairman of the Supreme Court of Belarus and to the Prosecutor's Office, with a supervisory review complaint, and that, therefore, she had not exhausted the available domestic remedies. The Committee notes, however, that the State party has not shown whether or in how many cases supervisory review procedures were applied successfully in cases concerning freedom of expression. The Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions which have entered into force do not constitute a remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.<sup>3</sup> In light of this, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol, from examining the present communication.

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<sup>3</sup> See, for example, communication No. 1814/2008 *P. L. v. Belarus*, decision of inadmissibility of 26 July 2011, para. 6.2.; communication No. 1784/2008 *Schumilin v. Belarus*, Views of 23 July 2012, para. 8.3.

8.4 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, her claims under article 19, paragraph 2, and article 21, of the Covenant. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

*Consideration of the merits*

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's claims that the fine imposed on her when trying to present a gift to an acquaintance, on the street, and the confiscation of the gift in question (an embroidered tapestry) constitutes an unjustified restriction on her freedom to impart information, as protected by article 19, paragraph 2, of the Covenant. It further notes the State party's contention that the author was administratively sanctioned in accordance with the requirements of national legislation for having breached the procedure for the organization and holding of a picket. The Committee considers that, irrespective of the definition of the author's encounter on 25 March 2008 by the national courts, the above actions by the authorities amount to de facto limitations of the author's rights, in particular of her right to impart information and ideas of all kind, as protected by article 19, paragraph 2, of the Covenant. The Committee has thus to consider whether the restrictions imposed on the author's right to freedom of expression are justified under any of the criteria set out in article 19, paragraph 3. The Committee observes that article 19, paragraph 3, of the Covenant provides for certain restrictions only as provided by law and necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. It recalls that according to its general comment No. 34, freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.<sup>4</sup> Any restrictions on the exercise of such freedoms must conform to strict tests of necessity and proportionality and "be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."<sup>5</sup>

9.3 The Committee recalls that it is for the State party to show that the restrictions on the author's right under article 19 are necessary and that even if a State party may introduce a system aiming to strike a balance between an individual's freedom to impart information and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant. The Committee notes the State party's explanation that the Law on Mass Events is aimed at creating the conditions for the enjoyment of citizens' constitutional rights and freedoms and the protection of public safety and public order during the holding of public events on streets, squares and other public locations. The Committee notes, however, that regardless of the kind of event at issue, the State party has not supplied any specific indication as to how the restrictions imposed on the author's rights under article 19 of the Covenant, in light of her concrete acts (as described in paragraphs 2.1 and 2.2 above), and the confiscation of her tapestry, were justified under article 19, paragraph 3, of the Covenant. The Committee therefore considers that, in the circumstances of the case, the State party has not shown how the fine imposed on the author was justified under any of the criteria set out in article 19,

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<sup>4</sup> See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40*, vol. I (A/66/40 (Vol. I)), annex V.

<sup>5</sup> *Ibid.*, para. 22.

paragraph 3. It therefore concludes that the author's rights under article 19, paragraph 2, of the Covenant have been violated.

9.4 In view of this conclusion, the Committee decides not to examine separately the author's claim under article 21 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the return of the confiscated property or its value, reimbursement of the present value of the fine and any legal costs incurred by the author, together with compensation. The State party is also under obligation to take steps to prevent similar violations in the future.

12. 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 or not 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 in case a violation has been established, 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 Belarusian and Russian in the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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