United Nations CCPR/C/109/D/1851/2008

International Covenant on Civil and Political Rights

Distr.: General
5 November 2013

Original: English

Unedited Version

Human Rights Committee

Communication No. 1851/2008

Views adopted by the Committee at its 109th session (14 October – 1 November 2013)

Submitted by:	Vladimir Sekerko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communications:	17 September 2008 (initial submissions)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 15 December 2008 (not issued in document form)
Date of adoption of Views:	28 October 2013
Subject matter:	Denial of authorisation to organise a peaceful meeting.
Substantive issues:	Right of peaceful assembly; permissible restrictions.
Procedural issue:	Exhaustion of domestic remedies
Article of the Covenant:	21
Articles of the Optional Protocol:	5, paragraph 2 (b)

[Annex]

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 (109th session)

concerning

Communication No. 1851/2008*

Submitted by:	Vladimir Sekerko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communications:	17 September 2008 (initial submissions)

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

Meeting on 28 October 2013,

Having concluded its consideration of communication Nos. 1851/2008, submitted to the Human Rights Committee by Vladimir Sekerko 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

1.1 The author of the communication is Vladimir Sekerko, a Belarusian national, born in 1947. He claims to be a victim of a violation by Belarus of his rights under article 21 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"). The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

1.2 On 16 February 2009, the State party requested the Committee to examine the admissibility of the communication separately from its merits, in accordance with Rule 97, paragraph 3, of the Committee's rules of procedure. On 6 March 2009, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the admissibility of the communication together with its merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

The facts as presented by the author

2.1 The author, together with a group of Gomel city residents (hereinafter "the other applicants"), sought authorisation of the Gomel City Executive Committee to hold mass events in different parts of the city to protest against the abolition of social benefits to people in need. The actions foreseen by the author were to take place on a ground in front of the Palace of Culture of the Vipra Private Unitary Enterprise *(Дворец культуры Частного Унитарного Предприятия (ЧУП) «Випра»)* and on a ground in front of the "Rechitskiy" City Mall. The application was submitted as required by article 5 of the law "On Mass Events in the Republic of Belarus" of 30 December 1997 (the law "On Mass Events").

2.2 On 5 December 2007 the Gomel City Executive Committee denied the authorisation to hold the mass actions, noting that the application did not contain required details related to the planning and conduct of the events, in breach of article 5 of the law "On Mass Events".[1]

2.3 The author and the other applicants complained about the decision of the Gomel City Executive Committee of 5 December 2007 to the Tsentralny District Court of Gomel. In his complaint, the author pointed out that he had specified the required details concerning the planning and conduct of the event in a written undertaking appended to his application to the Gomel City Executive Committee. Therefore, the Gomel City Executive Committee restricted his right of peaceful assembly without due justification.

2.4 On 1 February 2008, the Tsentralny District Court of Gomel dismissed the author's and the other applicants' complaints, noting that the application contained only the undertaking to duly organise the events, whereas required details related to their planning and conduct were missing therefrom. However, the author argues that the underlying reason for the court decision was that he and the other applicants sought to conduct the events in locations unauthorised for meeting purposes, as, pursuant to decision No.318 of the Gomel Executive Committee of 11 April 2006, a single location was designated for holding mass events in a city of 500,000 inhabitants.[2] The author and the other applicants appealed to the Gomel Regional Court against the decision of the district court.

2.5 On 20 March 2008, the Gomel Regional Court upheld the decision of the Tsentralny District Court of Gomel. Under article 432 of the Belarusian Civil Procedure Code, the ruling of the appeal court is final and enters into force at the moment of its adoption. According to the ruling of the Gomel Regional Court, the Gomel City Executive Committee denied authorisation to the author and the other applicants on the ground that the written undertaking appended to their application to hold events did not contain details related to their planning and conduct, which is a mandatory, essential condition for granting authorisations.

2.6 The author contends that he has exhausted all available and effective domestic remedies.

[1] The fifth paragraph of article 5 of the Law on Mass Events reads: "The following is indicated in the application: purpose, kind, place of holding the mass event; date of its holding, time of its beginning and end; routes of movement; supposed number of participants; name, middle and last name of an organiser (organisers), his/her (their) place of residency and work (study); measures on securing the public order and safety at holding the mass event; measures connected with medical service, cleaning the territory after holding the mass event; date of submitting the application".

[2] Pursuant to decision No.318 of the Gomel Executive Committee of 11 April 2006, mass events shall be held on a ground in front of the Palace of Culture of the Vipra Private Unitary Enterprise.

The complaint

3.1 The author claims a violation of his right of peaceful assembly, guaranteed under article 21 of the Covenant. His rights were restricted on the ground that his application to hold a mass event was incomplete and that he intended to conduct one of the events in an unauthorised location. In his opinion, the national authorities, including the domestic courts, did not attempt to justify the restrictions or provide arguments as to the necessity of such restrictions 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.

3.2 The author maintains that the courts failed to assess the decision of the Gomel Executive Committee bearing in mind the Covenant's provisions. Pursuant to articles 26 and 27 of the Vienna Convention on the Law of Treaties of 1969, Belarus is bound by the Covenant, it should perform it in good faith and it may not invoke the provisions of its internal law as justification for its failure to perform the Covenant. According to article 15 of the Belarusian law "On International Treaties", universally recognised principles of international law and provisions of international treaties, in force in respect of Belarus, form integral part of domestic law. The author stresses that the domestic courts restricted his right of peaceful assembly on the ground that he had intended to conduct an event in an unauthorised location, in breach of a by-law. Such a restriction contradicts the essence of article 21 of the Covenant and the grounds for restriction specified therein.

State party's observations on admissibility

4.1 On 16 February 2009, the State party challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies, since his case has not been examined under the supervisory review proceedings through the Prosecutor's Office.

4.2 The State party further submits that the author has not asked the Chairperson of the Gomel Regional Court or the Chairperson of the Supreme Court of Belarus to initiate a supervisory review of the rulings of the Tsentralny District Court of Gomel and the Gomel Regional Court, in accordance with article 439 of the Code of Civil Procedure. Therefore, the author did not avail himself of all available remedies and there are no reasons to believe that the application of those remedies would have been unavailable or ineffective.

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

5. On 5 March 2009, the author recalled that under article 5, paragraph 2(b) of the Optional Protocol to the Covenant, individuals should exhaust all available domestic remedies before lodging a complaint with the Committee. He notes that the Committee has previously established that in States parties where the initiation of supervisory review proceedings was dependent on the discretionary power of a judge or prosecutor, the remedies to be exhausted were limited to the cassation appeal. He did not request the Gomel Regional Court or the Supreme Court to initiate supervisory review proceedings as such a request would not lead to a re-examination of the case. According to the Committee's jurisprudence, domestic remedies should be both available and effective. By lodging his cassation appeal, the author claims that he has exhausted available domestic remedies. The decision of the lower court became final and entered into force at the moment of the adoption of the appeal court ruling.

State party's observations on the merits

6.1 On 3 August 2009, the State party submitted its observations on the merits of the case. It reiterates the facts of the case and states that the Gomel City Executive Committee dismissed the author's and the other applicants' complaints as the written undertaking,

enclosed with their applications to hold mass events, did not contain all details required for the planning and conduct of such events. Under article 10 of the law "On Mass Events", this information is a mandatory and essential condition for granting authorisation to hold a mass event. Furthermore, the courts established that the author and the other applicants had failed to indicate the measures to be taken to guarantee public order and safety, medical care, and area cleaning, during and subsequent to the event, and to submit proofs of payment of the expenses related to the provision of these services. In addition, some of the applicants sought authorisation to conduct pickets in unauthorised locations. Under such circumstances, which are not conducive to ensuring public order and public safety, the Tsentralny District Court of Gomel rejected the author's and the other applicants' claims by a substantiated decision of 1 February 2008.

6.2 The organisation and conduct of mass events is governed by the law "On Mass Events" of 30 December 1997. The law aims to create conditions for the realisation of constitutional rights and freedoms of citizens, and the protection of public order and public safety when such events are carried out in public spaces. According to the law, "freedom of mass activities not violating the legal order and rights of other citizens of the Republic of Belarus is guaranteed by the State".

6.3 The right of peaceful assembly is enshrined in article 21 of the Covenant. The Republic of Belarus ratified the Covenant and incorporated its provisions, including articles 19 and 21, into domestic law. In particular, the right to freedom of thought and belief and the right to freedom of expression are guaranteed under article 33 of the Constitution. Article 35 of the Constitution guarantees the right to hold assemblies, meetings, street processions, demonstrations and pickets, provided that they do not violate the law and order or breach the rights of other citizens. At the same time, under article 23 of the Constitution, no restrictions may be placed on rights and freedoms of citizens other than those imposed in conformity with the law, in the interests of national security, public safety, the protection of public health or morals or the protection of the rights and freedoms of others.

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

7.1 On 5 October 2009, the author pointed out that the right protected under article 21 of the Covenant can be restricted only under the requirements listed therein. However, restrictions imposed by States parties on the exercise of the right of peaceful assembly shall not undermine the essence of this right. States parties shall ascertain that the limitations imposed are justified by one of the legitimate aims listed in article 21 of the Covenant.

7.2 The author notes that even assuming that the written undertaking enclosed with his application to hold a mass event did not provide all necessary information required under article 5 of the law "On Mass Events" and that he intended to hold a peaceful event in a location which was not authorised for meeting purposes, the authorities had an opportunity to define, in consultation with him, measures to protect his right. Pursuant to article 6 of the law "On Mass Events", the head or the deputy head of the local executive committee is entitled to change the date, time and location of the event, upon agreement with the organisers, to ensure the protection of the rights and freedoms of others, public safety and normal functioning of transport and organisations. The author reiterates that the Gomel City Executive Committee denied his request without any justification under article 21 of the Covenant. Therefore, his right of peaceful assembly was breached.

7.3 He adds that on 2 April 2008, the Gomel City Executive Committee adopted decision No. 299 "On Mass Events in Gomel", imposing a number of restrictions which apply to organisers of peaceful events other than city authorities. Such restrictions put in jeopardy the right of peaceful assembly itself. Thus, the authorities restrict events to a single venue, i.e. a ground in front of the Palace of Culture of the Vipra Private Unitary Enterprise on the city outskirts. Furthermore, the decision requires that the organisers

conclude agreements with the police, medical services and cleaning agencies prior to the conduct of any public event. Decision No. 299 substituted decision No. 318 of the Gomel City Executive Committee, which also restricted the right of assembly.

7.4 The author maintains that, in light of the above, the decision of the Gomel City Executive Committee of 2 April 2008 undermines the essence of the right provided for in article 21 of the Covenant and that he has been deprived of the right of peaceful assembly.

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 the communication is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee takes note of the State party's argument that the author could have requested the Prosecutor's Office, as well as the Chairperson of the Gomel Regional Court or the Chairperson of the Supreme Court, to initiate a supervisory review of the decisions of the Tsentralny District Court of Gomel and the Gomel Regional Court. However, the State party has not substantiated that such review procedures were in fact available and effective. In particular, it has not shown whether and in how many cases supervisory review procedures were applied successfully in cases concerning the right to peaceful assembly. The Committee recalls its previous jurisprudence, according to which the State party's supervisory review procedures against court decisions which have entered into force do not constitute a remedy, which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.[3] In the circumstances, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from examining the communication.

8.4 The Committee considers that the author has sufficiently substantiated his claim under article 21 of the Covenant, for purposes of admissibility. Accordingly, it declares this claim admissible and proceeds to its examination on the merits.

Consideration of the merits

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

9.2 The issue before the Committee is whether the denial of the required authorisation of mass events which the author had planned with a group of Gomel city residents constitutes a violation of his rights under article 21 of the Covenant.

9.3 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, which is essential for public

[3] See, for example, communication No. 1785/2008, *Olechkevitch v Belarus*, Views adopted on 18 March 2013, para 7.3; communication No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; communication No. 1841/2008, *P.L. v. Belarus*, Decision on inadmissibility of 26 July 2011, para. 6.2.

expression of one's views and opinions and indispensable in a democratic society.[4] This right entails the possibility to organise and participate in a peaceful assembly, including the right to a stationary assembly in a public location (a picket). No restrictions to this right are permissible unless (1) imposed in conformity with the law and (2) they are 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.

9.4 The Committee notes that since the State party imposed a procedure for organizing mass events and denied the author's application for authorisation of the planned mass events, it established a restriction on the exercise of the right to freedom of assembly. Therefore it must consider whether the respective restrictions imposed on the author's rights in the present communication are justified under the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes that if the State imposes a restriction, it is up to the State party to show that it is necessary for the aims set out in this provision.

9.5 The Committee has taken note of the State party's explanation that the author was denied authorisation to hold mass events as he had failed to provide all necessary information, as required by the law "On Mass Events", including with regard to measures to be taken to guarantee security and medical care to the participants of the events and to ensure that the area remained clean during and subsequent to the gathering. It has also noted the State party's statement that the missing information was not conducive to ensuring public order and public safety and that the law at issue is aimed at creating conditions for the realisation of citizens' constitutional rights and freedoms and the protection of public safety and public order when such events are held in public spaces.

9.6 The Committee recalls that when a State party imposes restrictions with the aim to reconcile an individual's right to assembly and the afore-mentioned interests of general concern, it should be guided by the objective to facilitate the right, rather than seeking unnecessary or disproportionate limitations to it.[5] Any restriction on the exercise of the right of peaceful assembly must conform to the strict tests of necessity and proportionality.

9.7 The Committee notes that the State party has failed to demonstrate that the denial of authorisation in the author's case, even if based on a law, was necessary, for one of the legitimate purposes of the second sentence of article 21 of the Covenant. In particular, the State party has not specified which required details related to the planning and conduct of the mass events might be missing, the absence of which would pose a threat to public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others. Neither has the State party demonstrated that, in the author's case, these purposes could only be achieved by the denial of the planned mass events. Since the State party has failed to show that the denied authorisation met the criteria set out in article 21 of the Covenant, the Committee concludes that the facts as submitted reveal a violation, by the State party, of the author's rights 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 21 of the Covenant.

[4] See, for example, communication No. 1948/2010, *Turchenyak and others v. Belarus*, Views adopted on 24 July 2013, para. 7.4.

[5] *Ibidem.*

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 reimbursement of the legal costs incurred by the author, as well as adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the Committee reiterates that State party should review its legislation, in particular, the law "On Mass Events" of 30 December 1997, as it has been applied in the present case, with a view to ensuring that the right under article 21 of the Covenant may be fully enjoyed in the State party. [6]

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 recognised 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 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.]

[6] See, for example, communication No. 1948/2010, *Turchenyak and others v. Belarus*, *idem*, para.9; communication No. 1790/2008, *Sergei Govsha, Viktor Syritsa and Viktor Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.