



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1990/2010

Decision adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Tatyana Yachnik (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	10 June 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 September 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	21 July 2014
<i>Subject matter:</i>	Right to freedom of religion
<i>Substantive issues:</i>	Right to freedom of religion and non-discrimination
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2, 18 (paras. 1 and 2) and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (para. 2 (b))



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)

concerning

Communication No. 1990/2010*

Submitted by: Tatyana Yachnik (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 10 June 2009 (initial submission)

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

Meeting on 21 July 2014,

Having concluded its consideration of communication No. 1990/2010, submitted to the Human Rights Committee by Tatyana Yachnik 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:

Decision on admissibility

1. The author of the communication is Tatyana Yachnik, a Belarusian national born in 1952. She claims to be a victim of violations by Belarus of her rights under article 2, article 18, paragraphs 1 and 2, and article 26 of the International Covenant on Civil and Political Rights.¹ The author is unrepresented.

Factual background

2.1 The author submits that in 1996, Belarus introduced a new type of passport, which is the national identity document, which assigned a personal identity number to every citizen. The author refused to apply for the new identity document, since she considered that the assignment of a personal number to her contradicted her religious beliefs. In substantiation, she explains that she is a devout Orthodox Christian and she considers that replacing her

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

¹ The Optional Protocol entered into force for the State party on 30 December 1992.

name with a number for the purposes of interaction with the State authorities and society is demeaning, equating an individual, created in the image of God, with a soulless object. She therefore considers that replacing her name with a number carries anti-Christian symbolism. The author also submits that the refusal to accept the new type of passport is not directed against the established order, nor was she trying to avoid fulfilling her legal or moral obligations regarding the State, or to violate the rights of others.

2.2 The author claims that she made her views known to the State institutions and asked to be issued a passport without a personal identity number, but her requests were rejected. She retained her passport,² issued under the 1974 law, which did not contain a personal identity number. On 29 October 2002, a decree of the Council of Ministers declared the 1974 type passports invalid. As a consequence, the author was left without a valid identity document.

2.3 The author submits that in October 2007, at the age of 55, she became eligible for retirement. She filed a request for retirement from her employment, in accordance with domestic legislation. The employer filed the documents necessary to grant her a pension with the Labour and Social Protection Department of the city of Brest, as required under Regulation No. 44,³ dated 23 May 1997, of the Ministry of Labour and Social Protection of Belarus.

2.4 On 6 December 2007, the Pension Commission of Leninsky District of Brest issued Protocol No. 224, refusing to grant the author a pension. The Commission reasoned that Regulation No. 44 required pension applicants to submit a passport or other document that confirmed their identity and place of residence. The Commission claimed that, since the author's old passport was no longer valid and she had not applied for a new passport, she did not have the necessary documents to receive her pension.

2.5 On an unspecified date, the author appealed the decision of the Pension Commission before the Labour, Employment and Social Protection Committee of the Brest Executive Committee. The Labour, Employment and Social Protection Committee, in its decision of 16 January 2008, rejected the author's appeal. It stated that "the right to receive a pension is closely related to the identity of a person", and that the Holy Synod of the Russian Orthodox Church, in its statement dated 22 February 2001, had explained that "personal identity documents have no religious significance" and cannot be deemed sinful.

2.6 The author's subsequent appeal to the Ministry of Labour and Social Protection was rejected on 22 July 2008. The Ministry reiterated the Labour, Employment and Social Protection Committee's position in that regard. It also reminded the author that her pension would start accruing only when she presented the complete set of documents, not upon reaching a certain age.

2.7 The author appealed the decision of the Pension Commission before Leninsky District Court. On 25 August 2008, the court rejected her appeal. The subsequent appeal before Brest Regional Court was also rejected, on 13 October 2008. Both the District and Regional courts stated that the author needed a valid passport to be able to apply for a pension.

2.8 The author submits that she appealed further under the supervisory review procedure to the President of Brest Regional Court, and to the President of the Supreme Court of Belarus. Both rejected her appeals, on 10 December 2008 and on 11 February 2009, respectively, and confirmed that the decision of the first instance court was lawful. The

² Ms. Yachnik's old-style passport was issued on 27 March 1977.

³ Regulation No. 44, "Order on submission and registration of documents necessary for granting a pension", adopted in accordance with the Law on Pensions.

author submits that the courts refused to apply the provisions of the Covenant, in violation of article 15 of the Law on international treaties of the Republic of Belarus, which states that the provisions of international treaties in force in Belarus constitute part of the applicable domestic law.

2.9 The author submits that many Belarusian citizens have refused to obtain a passport containing an identity number and that the Constitutional Court of Belarus had issued an opinion, dated 15 April 2004, stating that in order to avoid a conflict with the religious beliefs of some citizens, the issuance to such citizens of passports disclosing no identity number could be considered. In a letter to the Ministry of Labour and Social Protection, dated 15 January 2007, the Constitutional Court stated that the religious beliefs of citizens whose employers submitted pension applications could be taken into consideration.⁴ The author therefore contends that she has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that the refusal of the authorities to issue her a passport without a personal identity number was an affront to her religious beliefs, and the subsequent refusal to grant her a pension on the sole ground that she could not present a 1996 type passport constitutes coercion, violating her rights under article 18, paragraphs 1 and 2, of the Covenant.

3.2 She also submits that the authorities have the obligation to take into consideration the interests of individuals and to take measures to provide identity documents to those citizens who refuse to receive the 1996 type passports based on their religious beliefs. She claims that the State party has not created the conditions for the effective protection of believers against coercion and has therefore violated article 2, in conjunction with article 18, paragraphs 1 and 2, of the Covenant.

3.3 The author submits that she was effectively refused a pension because of her religious beliefs, which constitutes discrimination in violation of article 26 of the Covenant.

State party's observations on admissibility

4.1 On 6 January 2011, the State party submitted, with regard to the present communication and several other communications before the Committee, that the author had not exhausted all available domestic remedies in Belarus, including "appeal to the Prosecutor's office against a judgement having force of res judicata as an act of supervision". It also submits that, while being a party to the Optional Protocol, it did not give its consent for the Committee's mandate to be extended; that it considers the above communications to have been registered in violation of the provisions of the Optional Protocol; that there are no legal grounds for their consideration by the State party; and that

⁴ In the letter, the Constitutional Court of Belarus also informed the Ministry of Labour and Social Protection that Regulation No. 44, adopted by the Ministry itself, allows for pension applicants to replace passports that were lost with a letter from the Ministry of Internal Affairs confirming the identity of the applicants. The Constitutional Court also cited the decision of the Central Election Commission of Belarus that allows "old-style passports" to be accepted as identity documents during the voting process. The Constitutional Court further stated in that letter that the Ministry of Transportation of the Republic of Belarus allows travel on railway transportation with documents other than a passport, such as "official service identification, with picture and stamp and military identification". The Constitutional Court stated that the absence of valid passports does not stop employers from retaining income tax from the salaries they pay to their employees.

“any references in this connection to the Committee’s long-standing practice are unlawfully bound”.

4.2 On 5 October 2011, the State party challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies, as she had failed to request a prosecutor to initiate supervisory review proceedings concerning decisions that had acquired the force of *res judicata*.

Author’s comments on the State party’s submission

5. In her comments dated 25 November 2011 on the State party’s observations, the author reiterated her position that she had exhausted all available and effective domestic remedies. She considers the supervisory review procedure that is initiated by the Office of the Procurator-General to be ineffective, in line with the Committee’s established jurisprudence. She further submits that no right to individual petition to the Constitutional Court is provided by the State party’s law.

State party’s additional observations

6. By note verbale of 25 January 2012, the State party noted that by adhering to the Optional Protocol, it had recognized the competence of the Committee under article 1 thereof to receive and consider communications from individuals subject to its jurisdiction who claimed to be victims of a violation by the State party of any of the rights set forth in the Covenant. That recognition of competence was undertaken in conjunction with other provisions of the Optional Protocol to the Covenant, including those that established criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, States parties have no obligation to recognize the Committee’s rules of procedure or its interpretation of provisions of the Optional Protocol. According to the State party, that means that in the context of the communication procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that reference to the Committee’s long-standing practice, methods of work and case law “are not subject of the Optional Protocol”. The State party also submits that any communication registered in violation of the provisions of the Optional Protocol to the Covenant will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without observations on admissibility or on the merits. The State party also maintains that decisions taken by the Committee on “declined communications” will be considered by its authorities as “invalid”.

Issues and proceedings before the Committee

State party’s lack of cooperation

7.1 The Committee notes the State party’s assertion that there are no legal grounds for the consideration of the author’s communication, insofar as it is registered in violation of the provisions of the Optional Protocol; that it has no obligation regarding recognition of the Committee’s rules of procedure and regarding the Committee’s interpretation of the provisions of the Optional Protocol; and that if a decision is taken by the Committee on the present communication, it will be considered “invalid” by the authorities of the State party

7.2 The Committee recalls that under article 39, paragraph 2, of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1). Implicit in a State’s adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as

to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (art. 5, paras. 1 and 4). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.⁵ It is for the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility or the merits of that communication, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.⁶

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, 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 notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, as the author has not requested the Office of the Procurator-General to have her case considered under the supervisory review proceedings. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor's Office, allowing for review of court decisions that have taken effect, does not constitute a remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁷ Accordingly, 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.

8.4 The Committee takes note of the author's claim that the denial of a pension on the ground of her religiously motivated refusal to obtain a new-style passport violated her rights under articles 18, paragraphs 1 and 2, and 26 of the Covenant. The Committee considers, however, that the author has not demonstrated that she had no possibility of establishing her eligibility for a pension by presenting other documentary proof of identity without obtaining a new-style passport (see para. 2.4). The Committee therefore considers that the author has not sufficiently substantiated her claims for the purposes of admissibility and concludes that they are inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the decision be transmitted to the State party and to the author.

⁵ See, for example, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

⁶ See, for example, communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, para. 8.2; No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 5.2.

⁷ Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para 8.4.

Appendix

Joint dissenting opinion of Committee members Gerald L. Neuman and Yuval Shany

1. We regretfully disagree with the Committee's decision. We believe that on the state of the record, in the absence of comment from the State party, we should accept the author's allegation that she is being denied her pension because of her failure to present the new-style passport that her religious convictions prohibit her from using.
2. Among the rights protected by article 18 of the Covenant is the right to manifest one's religion or beliefs in practice. Unlike the right to hold a belief, the right to manifest a belief in practice is not absolute. Limitations on the right to manifest a belief in practice must be necessary to protect public safety, order, health, or morals or other fundamental rights and freedoms of others, and must be proportionate to the specific need on which they are predicated.
3. The religiously motivated refusal to carry or present a passport with a personal identity number is as much a manifestation of religious belief in practice as compliance with more widely observed religious prohibitions.
4. We would not conclude that article 18 requires the State party to provide the author with a passport that lacks a personal identity number. Documents such as passports are designed to facilitate identification of individuals in a variety of contexts. International experience confirms that including identifying numbers on passports improves their reliability and efficiency, and the need for such numbers on documents that may be used for international travel is even greater than in the internal context where governments have other forms of information about their own citizens. Under the circumstances, even without a response from the State party, we would not characterize the refusal to provide the author with a passport that lacks a personal identity number as a disproportionate limitation of the author's freedom to manifest her religion or belief, but rather as necessary for the protection of public safety and order within the meaning of article 18, paragraph 3.
5. The refusal to pay the author the pension that she has earned, however, appears to be a disproportionate interference with her freedom to manifest her religion in practice. While presentation of valid identity documents including personal identity numbers can be necessary for some purposes, here the State party has imposed the requirement to present a new-style passport on one of its own citizens as a condition for receiving a retirement pension after reaching the age of 55 while employed within its territory. For most of her working life, no such requirement applied. Neither the national courts nor the State party in its response have explained in factual terms why alternative means of demonstrating the author's identity would be insufficient. Furthermore, the Ministry of Labour and Social Protection has expressed additional disregard for the author's religious convictions by warning that if she does later submit the required documents, her pension will be paid only prospectively. In the circumstances, we would find that denying her the pension due to the lack of a new-style passport violated article 18 of the Covenant.