



International Covenant on Civil and Political Rights

Distr.: General
27 August 2014

Original: English

Human Rights Committee

Communication No. 1986/2010

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

<i>Submitted by:</i>	Pavel Kozlov (represented by counsel, Roman Kislyak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	26 June 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 September 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	24 July 2014
<i>Subject matter:</i>	Right to impart information; fair trial
<i>Substantive issues:</i>	Right to freedom of expression; right to an independent and impartial tribunal
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	14; 19
<i>Articles of the Optional Protocol:</i>	2; 5, paragraph 2 (b)

GE.14-14858



* 1 4 1 4 8 5 8 *

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



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 (111th session)

concerning

Communication No. 1986/2010*

Submitted by: Pavel Kozlov (represented by counsel, Roman Kislyak)

Alleged victim: The author

State party: Belarus

Date of communication: 26 June 2008 (initial submission)

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

Meeting on 24 July 2014,

Having concluded its consideration of communication No. 1986/2010, submitted to the Human Rights Committee by Pavel Kozlov 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 Pavel Kozlov, a Belarus national born in 1936. He claims to be a victim of violations, by Belarus, of his rights under articles 14 and 19 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as submitted by the author

2.1 The author is a retired court expert on vehicles and other transportation means. In 2004 and 2005, he wrote letters to different government agencies in Belarus criticizing

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu. The text of a joint opinion by Committee members Dheerujall Seetulsingh and Walter Kälin (dissenting) is appended to the present Views.

officials of the State-owned closed joint stock insurance society “Promtransinvest” (hereinafter, Promtransinvest) because of what he perceived as a lack of responsibility and monitoring, the unsustainable spending of the insurance payments of the members of the society, possible corruption and harm to the rights of individuals involved in traffic accidents.

2.2 The author submits that, in one of those letters, dated 18 January 2005, addressed to the Minister for Finance of Belarus, he criticized the Deputy Director of Promtransinvest, Ms. T., indicating in particular that she was “empty-headed, not a business-oriented person, and at a general level of an eighth-grade student with the knowledge of an insurance agent”. On 11 March 2005, based on the above expressions, the Lenin District Court in Brest convicted him of committing slander, an administrative offence under article 156.2 of the Code of Administrative Offences and sentenced him to pay an administrative fine of 24,000 roubles (equal to some 12 United States dollars at the time of writing).

2.3 In its decision, the district court considered that the allegations by the author that Ms. T. was at a general level of an eighth-grade student with the knowledge of an insurance agent did not correspond to the reality and was derogatory; the phrase “empty-headed” was humiliating. The Court based its conclusions on a letter from Ms. T.’s employer presented by her that listed her professional qualities and the fact that she had completed university studies.

2.4 On 12 October 2006, the author appealed the district court’s judgement to the President of the Brest Regional Court. In a subsequent and additional filing to his appeal, dated 20 October 2006, the author explicitly claimed that the first instance judgement violated his rights under article 19 of the Covenant. On 30 October 2006, the Regional Court rejected the appeal, agreeing with the district court’s conclusions that the expressions used by the author in his letter were in fact, “derogatory and humiliating” for Ms. T. On 8 November 2006, the author appealed the district court judgement to the President of the Supreme Court of Belarus. On 26 January 2006, a Deputy President of the Supreme Court rejected the appeal, reasoning that the author was “disseminating fabrications that were harmful to Ms. T.’s honour and dignity”.

2.5 The author contends that he has exhausted all available and effective domestic remedies in relation to his claim under article 19 of the Covenant, and that no remedies exist in relation to his claim under article 14 of the Covenant (see para. 3.2 below).

The complaint

3.1 The author submits that the expressions he used in his letter, considered by the courts as constituting slander were simply his opinion, views and criticism directed at an official of a State-owned entity. The courts could not justify the limitations imposed on his right of the freedom of expression and, thus, the fine imposed on him constitutes a violation of his rights under article 19 of the Covenant.

3.2 The author also maintains that he was denied justice, since from the beginning of the proceedings, the courts were biased and sided with the authorities and failed to assess impartially the facts of the case. He submits that the courts are de facto under the subordination of the executive branch. The author submits that several government officials from the Ministry of Finance and the Ministry of the Interior were present during the court trial and the courts clearly took the side of the authorities against the author. Accordingly, he claims that his rights under article 14 of the Covenant were violated.

State party’s observations on admissibility

4.1 On 26 October 2010, the State party challenged the admissibility of the communication, arguing that the communication to the Committee was brought by a third

party, and not the individual himself, as required by article 1 of the Optional Protocol to the Covenant. The State party further requested the Committee to “clarify the relations” between the author’s counsel and the author himself.

4.2 On 6 January 2011, the State party submits, with regard to the present communications and several other communications before the Committee, that the author has not exhausted all available domestic remedies in Belarus, including “the appeal to the Prosecutor’s office against a judgment having force of *res judicata* as an act of supervision”. It further submits that, while being a party to the Optional Protocol, it did not give its consent for the extension of the Committee’s mandate; that it considers the above communications as registered with violations of the provisions of the Optional Protocol; that there are no legal grounds for their consideration by the State party; and that “any references in this connection to the Committee’s long-standing practice are unlawfully bound”.

4.3 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 he has not requested the procurator to initiate supervisory review proceedings concerning decisions which had entered into force.

4.4 On 25 January 2012, the State party submitted with regard to the present communication together with around sixty other communications that, when becoming a party to the Optional Protocol, it had recognized the competence of the Committee under article 1, but that recognition of competence was done in conjunction with other provisions of the Optional Protocol, 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 obligations regarding recognition of the Committee’s rules of procedure and its interpretation of the provisions of the Optional Protocol, which “could only be efficient when done in accordance with the Vienna Convention on the Law on Treaties”. It submits that, “in relation to the complaint procedure the States parties should be guided first and foremost by the provisions of the Optional Protocol”, and that “references to the Committee’s longstanding practice, methods of work, case law are not subject of the Optional Protocol”. It also submits that “any communication registered in violation of the provisions of the Optional Protocol to the Covenant on Civil and Political Rights will be viewed by the State party as incompatible with the Protocol and will be rejected without comments on the admissibility or on the merits”. The State party also maintains that decisions taken by the Committee on rejected communications will be considered by its authorities as “invalid”.

Issues and proceedings before the Committee

State party’s lack of cooperation

5.1 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 obligations regarding the 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 adopted by the Committee in this case, it will be ignored as “invalid” by the authorities of the State party.

5.2 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 Committee’s competence to receive and consider communications from individuals claiming to be victims of violations of their 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.¹ 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.²

Consideration of admissibility

6.1 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 case is admissible under the Optional Protocol to the Covenant.

6.2 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.

6.3 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 on the ground that the author has not requested the Office of the Procurator-General to have his 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 it to review 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.³ 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.

6.4 The Committee takes note of the author's claim that his rights under article 14 of the Covenant have been violated as the State party's courts are not independent, were biased and failed to assess his case impartially as a result of the presence of several government officials during the court trial. However, in the absence of further explanations or evidence in support of that claim, the Committee finds it insufficiently substantiated, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol

6.5 The Committee considers that the author has sufficiently substantiated his claim under article 19 of the Covenant, for purposes of admissibility, declares it admissible and proceeds to its examination on the merits.

¹ See, inter alia, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

² See, for example, communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, para. 8.2; and No. 1948/2010, *Turchenyak et al v. Belarus*, Views adopted on 24 July 2013, para. 5.2.

³ Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

Consideration of merits

7.1 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.

7.2 The issue before the Committee is whether the administrative fine imposed on the author on 11 March 2005 for his letter to the Minister for Finance of Belarus, dated 18 January 2005, in which, inter alia, he expressed his view of Ms. T., constitutes a violation of the author's rights to freedom of expression, as protected under article 19 of the Covenant.

7.3 Article 19, paragraph 2, of the Covenant requires States parties to guarantee the right to freedom of expression. The Committee recalls that the right to freedom of expression is of paramount importance in any democratic society, and any restrictions on the exercise of that right must meet a strict test of justification.⁴ The Committee recalls in that respect that it is only subject to the specific conditions laid down in article 19, paragraph 3, of the Covenant that restrictions to the right to freedom of expression may be imposed, i.e., the restrictions must be provided by law; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict test of necessity and proportionality.⁵

7.4 The Committee notes that the State party has submitted no observations on the merits of the present communication and, therefore, did not seek to identify which of those purposes are applicable, much less the necessity thereof in the particular case. It may, however, be noted that the State party's district court considered the statements by the author to be derogatory and humiliating. Article 19, paragraph 3 (a), allows restrictions which are provided by law and necessary for respect of the rights or reputation of others. However, as the Committee has consistently found, the State party must demonstrate in specific and individualized fashion why the specific action taken was necessary and proportionate.⁶ The Committee also refers to its general comment No. 34 (2011) on freedoms of opinion and expression, according to which, defamation laws must be crafted with care to ensure that they comply with paragraph 3, and they do not serve, in practice, to stifle freedom of expression.⁷

7.5 The Committee notes that the author was fined for writing a letter to the Ministry of Finance in which he described Ms. T. as "empty-headed", "not business-oriented", and "at a general level of an eighth-grade student with the knowledge of an insurance agent". In order to determine whether the imposition of a fine for using those expressions constitutes a justifiable restriction with the purpose of protecting Ms. T.'s rights and reputation, the Committee takes account of the form and context of the expression at issue as well as the means of its dissemination⁸ and recalls that public interest in the subject matter of a criticism is a factor to be taken into account when considering allegations of defamation.⁹ The Committee notes in that respect that the expressions used by the author formed part of a letter calling the Ministry of Finance's attention to the alleged irresponsible management

⁴ See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005, para. 7.3.

⁵ See communication No. 1815/2008, *Adonis v. the Philippines*, Views adopted on 26 October 2011, para. 7.8.

⁶ See communication No. 926/2000, *Shin v. Republic of Korea*, Views adopted on 16 March 2004, para. 7.3; general comment No. 34 (2011) on freedoms of opinion and expression, para. 35.

⁷ See general comment No. 34 (see note 6 above), para. 47.

⁸ *Ibid.*, para. 34.

⁹ *Ibid.*, para. 47.

of a State-owned insurance company, and was aimed to attract the government official's attention to the "unsustainable" use of the payments of the agency's members and harm to the rights of individuals involved in traffic accidents. In his letter, the author expressed criticism not only regarding Ms. T., but also with regard to several other persons. The expressions used by the author, although being abusive and insulting, therefore, must be considered as part of a context in which the critique of the company, of which Ms. T. was the Deputy Director, was the main issue. Since the company was owned by the State party, the critique of the perceived lack of responsibility and monitoring of the company was a matter of public interest.

7.6 The Committee also notes that the author sent his letter to the Minister of Finance only without making it public through media or otherwise and, therefore, any damage to Ms. T.'s reputation was only of a limited nature. The Committee further observes that the State party has advanced no justification that, under those circumstances, fining the author on charges of slander was necessary. Neither has the State party explained why no other means were available to reply to the author's criticism and protect Ms. T.'s reputation. The Committee recalls in that respect that to meet the test of necessity any restriction on the right to freedom of expression which seeks to protect the reputation of others must be shown to be appropriate to achieve its protective function; must be the least intrusive instrument among those which might achieve their protective function; and must be proportionate to the interest to be protected.¹⁰ Taking into account the nature of the penalty imposed on the author in the present case and considering the impact and the context of the remarks found to be derogatory, as well as the public interest in the issues raised by the author, the restriction of his right to freedom of expression has not been shown to be a proportionate measure to protect the honour and the reputation of others.¹¹

7.7 In the circumstances and in the absence of any information in that regard from the State party to justify the restriction for purposes of article 19, paragraph 3, the Committee concludes that the author's rights under article 19, paragraph 2, of the Covenant have been violated.

8. 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 information before it discloses a violation by the State party of the author's rights under article 19, paragraph 2, of the Covenant.

9. 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 present value of the fine and any legal costs incurred by the author, together with compensation. The State party is also under the obligation to take steps to prevent similar violations in the future.

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 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.

¹⁰ Ibid., para. 34.

¹¹ Ibid., para. 47.

Appendix

Joint opinion of Committee members Dheerujall Seetulsingh and Walter Kälin (dissenting)

While we agree with finding a violation of article 19 of the Covenant in this case, we are of the opinion that the Committee should not, in paragraph 7.5 and the first sentence of paragraph 7.6 of the present Views, have engaged in trying to justify the author's choice of wording to express his criticism. Arguments such as that the author was criticizing several persons and not just Ms. T., or that using what the Committee calls "abusive and insulting" language vis-à-vis superiors is necessarily less damaging than the use of such language by a private person in the media, are not entirely convincing. Rather, the Committee should have limited itself to highlighting the fact that the State party has not shown any argument why sentencing the author to pay an administrative fine was necessary under article 19, paragraph 3, of the Covenant.
