



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1999/2010

Views adopted by the Committee at its 112th session (7-31 October 2014)

<i>Submitted by:</i>	Valentin Evrezov, Vladimir Nepomnyaschikh, Vasiliy Polyakov, Valery Rybchenko (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 May 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 November 2010 (not issued in document form)
<i>Date of adoption of views:</i>	10 October 2014
<i>Subject matter:</i>	Freedom of expression
<i>Substantive issue:</i>	Freedom to impart information, right to peaceful assembly, right to a fair and public hearing
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2; 14; 19; and 21
<i>Articles of the Optional Protocol:</i>	2; and 5, para. 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 (112th session)

concerning

Communication No. 1999/2010*

Submitted by: Valentin Evrezov, Vladimir Nepomnyaschikh,
Vasily Polyakov, Valery Rybchenko
(not represented by counsel)

Alleged victims: The authors

State party: Belarus

Date of communication: 15 May 2010 (initial submission)

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

Meeting on 10 October 2014,

Having concluded its consideration of communication No. 1999/2010, submitted to the Human Rights Committee by Valentin Evrezov, Vladimir Nepomnyaschikh, Vasily Polyakov and Valery Rybchenko 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 authors of the communication and the State party,

Adopts the following:

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

1. The authors of the communication are Valentin Evrezov, born in 1954; Vladimir Nepomnyaschikh, born in 1952; Vasily Polyakov, born in 1969; and Valery Rybchenko, born in 1963; all Belarus nationals. They claim to be victims of violations by Belarus of their rights under articles 19 and 21, in conjunction with article 2, paragraph 2, of the International Covenant on Civil and Political Rights. Messrs. Polyakov and Evrezov also claim to be victims of violations of their rights under article 14, paragraphs 3 (a), (b), (d) and (e), of the Covenant. The authors are not represented by counsel. The Optional Protocol entered into force for Belarus on 30 December 1992.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanut, Cornelis Flinterman, Yuji Iwasawa, Walter Kaelin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujall B. Seetulsingh, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlatescu.

The facts as presented by the authors

2.1 The authors submit that, on 16 September 2009 at 4.45 p.m., as part of a group of about 16 persons, they were walking in the centre of Gomel, Belarus, heading towards Revolutsiya Square, where they intended to hold a demonstration on the occasion of the anniversary of the disappearance of the opposition leaders Viktor Goncharov and Anatoly Krasovsky. The members of the group were carrying photographs of the disappeared politicians and other posters.

2.2 On their way to the square, the participants were stopped by a group of men in civilian clothes and were forced to board a bus. They were brought to the Zheleznodorozhny District police department, where the police wrote up an official record of an administrative offense for each participant in the demonstration, in accordance with article 23.34, paragraph 1, of the Code of Administrative Offenses, for violating the established order for conducting a mass event. The authors submit that they were detained before the demonstration had even begun, and well before they had approached the place where it was to take place.

2.3 The Zheleznodorozhny District Court issued individual decisions (on 15 October 2009 for Mr. Evrezov, on 13 October 2009 for Messrs. Polyakov and Nepomnyaschikh and on 19 October 2009 for Mr. Rybchenko), ruling that the authors were guilty of breaching the established order for conducting a mass event, and sentenced them to administrative fines (875,000 Belarusian roubles for Messrs. Evrezov and Nepomnyaschikh, 1,400,000 roubles for Mr. Polyakov and 700,000 roubles for Mr. Rybchenko). One witness testified during the administrative hearing that none of the participants in the march carried or displayed any posters or photographs, but that the court decided to believe the police officers who claimed that the authors were carrying posters.

2.4 The authors appealed against the decisions of the first instance court before the Gomel Regional Court, which rejected the appeals and confirmed the decisions (on 20 November 2009 for Mr. Evrezov, on 11 November 2009 for Messrs. Nepomnyaschikh and Polyakov and on 18 November 2009 for Mr. Rybchenko). The Gomel Regional Court agreed with the district court in its finding that the authors had indeed violated the Law on Mass Events. That Law includes the prohibition of unauthorized gatherings, including any group of citizens marching in the same direction and holding posters and photographs.

2.5 The authors submit that they appealed against the above decisions before the Supreme Court. Their appeals were rejected by the President of the Supreme Court under the supervisory review proceedings (on 18 March 2010 for Mr. Evrezov, on 29 January 2010 for Messrs. Nepomnyaschikh and Polyakov and on 16 April 2010 for Mr. Rybchenko). The Supreme Court upheld the lower courts' decisions and stated that the authors had indeed participated in a "mass event" by walking in a group and holding photographs and posters. The Supreme Court also concluded that the authors had not sought the prior permission from the authorities to hold a public event, as required by the Law on Mass Events.

2.6 The authors submit that they did not request the Prosecutor General to review the relevant court decisions under the supervisory review proceedings, since they consider that such an application does not constitute an effective remedy. The authors note that the national law of the State party does not provide for complaints to the Constitutional Court from individuals alleging violations of their constitutional rights. The authors therefore contend that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The authors submit that the restrictions on their rights to participate in a peaceful demonstration and their freedom to express their opinions violated their rights under

articles 19 and 21 of the Covenant. In the absence of any justification by the authorities, the authors believe that the restrictions of their rights were not necessary for the protection of national security or of public order, or of public health or morals, or for respect of the rights or reputations of others. They submit that the requirement imposed under domestic legislation (to request permission from the municipal authorities for the conduct of any public gathering 15 days in advance), is arbitrary and unjustified under articles 19 and 21 of the Covenant.

3.2 The authors submit that the higher courts refused to consider the violations of the provisions of the Covenant, on which they relied in their appeals. They point out that article 33 of the Law on International Treaties stipulates that the international treaties to which Belarus is a party and which have entered into force are integral part of the domestic legislation. They claim that Belarus failed to undertake the necessary measures to give effect to the rights recognized in articles 19 and 21 of the Covenant. The authors refer to the Committee's Views,¹ in which the State party submitted that the author had been convicted not because the domestic court had intentionally precluded the application of the Covenant, but because, in the light of the security situation of the State party, it had been a matter of necessity to give priority to the provisions of its National Security Law over certain rights of individuals as embodied in the Covenant. In that case, the Committee found it incompatible with the Covenant that the State party had given priority to the application of its national law over its obligations under the Covenant. The authors maintain that, in the present case, under article 9 of its Law on Mass Events, Belarus gives precedence to its internal legislation over the Covenant, by leaving to the discretion of municipal officials the determination of mandatory places for the conduct of public gatherings,² and by requiring organizers to obtain prior permissions without justifying why such a requirement is necessary for the purposes of articles 19 and 21 of the Covenant, and has thus violated those articles, as well as article 2, paragraph 2, of the Covenant.

3.3 Furthermore, two of the authors, namely, Messrs. Evrezov and Polyakov, submit that the first instance court violated their procedural rights in that it failed to inform them promptly and in detail of the nature and cause of the charges against them; failed to provide them with adequate time and facilities for the preparation of their defence and the opportunity to communicate with their counsels; did not summon them to court and instead reviewed the administrative offence charges in their absence, thereby denying them the right to defend themselves in person or through legal assistance of their own choosing; and denied them the right to present evidence of their innocence, to question police witnesses against them and to call their own witnesses, in violation of article 14, paragraphs 3 (a) (b) (d) and (e), of the Covenant.

State party's observations on admissibility

4.1 In a note verbale dated 6 January 2011, the State party conveyed, with regard to the present communication and several other communications before the Committee, its concern about the unjustified registration of communications submitted by individuals under its jurisdiction whom it considers have not exhausted all available domestic remedies in the State party, including appealing to the Prosecutor's Office to initiate a supervisory review of a judgement having the force of *res judicata*, in violation of article 2 of the Optional Protocol. The State party claims that the registration of communications submitted

¹ Communication No. 628/1995, *Tae Hoon Park v. Republic of Korea*, Views adopted on 20 October 1998, para. 10.4.

² Decision No. 299 dated 2 April 2008 of the Gomel Executive Committee, on public gatherings in Gomel, Belarus, which determines that public gatherings can only be conducted in one location on the outskirts of the town.

by a third party, such as advocates, lawyers or other persons on behalf of an individual claiming violation of his or her rights, is an abuse of the Committee's mandate and of the right to submit communications, and is in violation of article 3 of the Optional Protocol. It submits that, as a party to the Optional Protocol, it recognizes the competence of the Committee under article 1, but it did not consent to the extension of the Committee's mandate, in particular regarding the Committee's interpretation of the provisions of the Convention and of the Optional Protocol (preamble and art. 1), and notes that such an interpretation should be undertaken strictly in accordance with articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties. It submits that the present communication and several other communications have been registered in violation of the provisions of the Optional Protocol, that there are no legal grounds for the State party to consider those communications and that any decision taken by the Committee on such communications will be considered legally invalid. It further states that any references in that connection to the Committee's long-standing practice are not legally binding for it.

4.2 On 5 October 2011, the State party challenged the admissibility of the communication, reiterating that the authors had failed to exhaust all available domestic remedies, as they had not requested the Prosecutor's Office to initiate supervisory review proceedings concerning decisions that has entered into force.

4.3 In a note verbale dated 25 January 2012, the State party submitted that, upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee 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 rights protected by the Covenant. It noted, however, that that recognition had been undertaken 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 maintained that, under the Optional Protocol, States parties had no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when in accordance with the Vienna Convention on the Law of Treaties. It submitted that, in relation to the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law were not subject to the Optional Protocol. It also submitted that any communication registered in violation of the provisions of the Optional Protocol would be viewed by the State party as incompatible with the Optional Protocol and would be rejected without comment on the admissibility or the merits, and any decision taken by the Committee on such rejected communications would be considered by its authorities as invalid. The State party considered that the present communication, as well as several other communications before the Committee, were registered in violation of the Optional Protocol.

4.4 On 19 July 2012, the State party submitted that it had discontinued proceedings with respect to the present communication and would disassociate itself from any views that might be adopted by the Committee.

Authors' observations on admissibility

5.1 On 30 November 2011 and 21 March 2012, Mr. Evrezov³ submitted his comments on admissibility. He reiterated the position he had taken in his initial submission that the supervisory review proceedings were discretionary, that the decision to initiate such proceedings was limited to State officials, such as the Prosecutor General or the Chairman

³ The other authors have not commented on the State party's position.

of the Supreme Court, and that such proceedings could not be considered an effective domestic remedy.⁴

5.2 Mr. Evrezov also submits that, by accepting the Committee's competence in dealing with individual communications, the State party also undertook obligations to provide an effective remedy in the case of a violation of the rights set forth in the Covenant, and to comply with not only the provisions of the Covenant, but also those of the Optional Protocol and the Committee's general comments.⁵

Issues and proceedings before the Committee

The State party's lack of cooperation

6.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the authors' 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 Optional Protocol's provisions; and that, if a decision is adopted by the Committee in this case, it will be ignored as invalid by its authorities.

6.2 The Committee recalls that, under article 39, paragraph 2, of the International Covenant on Civil and Political Rights, it is empowered to establish its own rules of procedure, which the States parties have agreed to recognize. 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 their rights set forth in the Covenant (preamble and art. 1). Implicit in a State's adherence to the 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 these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.⁶ It is up to 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 outright that it will not accept the Committee's determination of the admissibility and of the merits of the communications, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.⁷

Consideration of admissibility

7.1 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.

⁴ See communication No. 1812/2008, *Levinov v. Belarus*, Views adopted on 26 July 2011.

⁵ Despite two reminders, dated 30 September 2011 and 25 October 2011, the State party failed to submit its observations on merits of the communication.

⁶ See, for example, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

⁷ 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.

7.2 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.

7.3 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 grounds that the authors have not requested the Prosecutor's Office to have their cases considered under the supervisory review proceedings. The Committee recalls its jurisprudence, according to which the State party's supervisory review proceedings before the Prosecutor General's Office, allowing the review of court decisions that have taken effect, do not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁸ Accordingly, it considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining this part of the communication.

7.4 The Committee notes of the authors' submission that the State party violated its obligations under article 2, paragraph 2, of the Covenant, in conjunction with articles 19 and 21, on the grounds that it failed to give precedence to the Covenant over the internal legislation, which imposes unjustified restrictions to the rights under the articles 19 and 21. The Committee recalls in this connection, however, its general comment 31, according to which article 2 allows a State party to give effect to the Covenant rights in accordance with its own domestic constitutional structure, and that it does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee therefore considers the authors' claims that the State party must afford the Covenant precedence over domestic law to be incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

7.5 The Committee considers that the authors have sufficiently substantiated their claims under articles 19 and 21, and under article 14, paras. 3 (a), (b), (d) and (e), of the Covenant, regarding Messrs. Evrezov and Polyakov, for the purposes of admissibility. Accordingly, it declares them admissible and proceeds to their examination on the merits.

Consideration of the merits

8.1 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.

8.2 The first issue before the Committee is to establish whether the prevention of the authors to hold a demonstration to commemorate Belarusian opposition figures and their subsequent apprehension and sentencing to an administrative fine constituted a violation of the authors' rights guaranteed under articles 19 and 21 of the Covenant.

8.3 The Committee recalls that article 19, paragraph 2, of the Covenant requires State parties to guarantee the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print. The Committee recalls that 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.⁹

⁸ See communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

⁹ See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

8.4 The Committee notes that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of one's views and opinions and indispensable in a democratic society.¹⁰ That right entails a possibility of organizing and participating in a peaceful assembly and manifestation with the intent to support or disapprove one or another particular cause.

8.5 The Committee notes the authors' allegations that they were detained on the way to the place where the demonstration was to take place and charged with committing an administrative offence. The Committee also notes that the Supreme Court upheld the decisions of the lower court that the authors were in violation of the Law on Mass Events for walking in a group and holding photographs and posters without obtaining prior permission from the authorities to hold a public event.

8.6 The Committee observes that any restrictions on the exercise of the rights guaranteed under articles 19 and 21 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.¹¹ The prevention of the authors to hold a demonstration, their subsequent apprehension and sentencing to an administrative fine merely for walking in a group of individuals holding photographs and posters clearly constitutes a violation of their rights guaranteed under articles 19 and 21 of the Covenant. It is therefore for the State party to demonstrate that the restrictions imposed were necessary in the case in question.

8.7 The Committee recalls that article 19, paragraph 3, of the Covenant allows certain restrictions, but only as provided by law and necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee notes that no restrictions may be placed on the right guaranteed under article 21 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 (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

8.8 In the circumstances described above, and in the absence of any information in that regard from the State party to justify the restriction for the purposes described in article 19, paragraph 3, and article 21, the Committee concludes that the authors' rights under article 19, paragraph 2, and article 21 of the Covenant have been violated.

8.9 Regarding the claims made by two of the authors, namely, Messrs. Evrezov and Polyakov, under article 14, paragraphs 3 (a), (b), (d) and (e), of the Covenant, the Committee recalls its previous jurisprudence that those provisions set out guarantees in relation to criminal trials and criminal appeals.¹² The provisions of article 14, paragraph 1, however, outline a series of rights which are required in both civil and criminal proceedings. The Committee notes the claims of Messrs. Polyakov and Evrezov that they were not informed about the time and date of their respective administrative hearings and were therefore unable to defend themselves personally or through a lawyer. The authors also claim that they were not informed of the nature of the charges against them, nor did they have sufficient time to prepare their defence. The Committee also notes the claims of Messrs. Evrezov and Polyakov that they were unable to call any of the 16 witnesses in their

¹⁰ See communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013.

¹¹ See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 22. See also, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.7.

¹² See, for example, communication No. 1001/2001, *Gerardus v. Sri Lanka*, decision adopted on 1 November 2002, para. 7.3.

defence. The Committee recalls that the Covenant gives everyone the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that the equality of arms is an indispensable aspect of the fair trial principle.¹³ That principle of equality of arms also demands that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.¹⁴ The Committee refers to its general comment No. 32, according to which courts must make information regarding the time and venue of the oral hearings available. Under those circumstances, and in the absence of any observations from the State party on the present specific claims, the Committee decides that due weight must be given to the authors' allegations. Accordingly, the Committee concludes that the rights of Messrs. Evrezov and Polyakov under article 14, paragraph 1, of the Covenant have been violated.

9. 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 authors' rights under article 19, paragraph 2, article 21 and article 14, paragraph 1, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including reimbursement of any legal costs incurred by them, together with compensation, with a view that the rights under articles 19 and 21 can be fully enjoyed by the authors. The State party is also under the obligation to take steps to prevent similar violations in the future.

11. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee 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 where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present 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.

¹³ See, for example, communication No. 307/1988, *Campbell v. Jamaica*, Views adopted on 24 March 1993, para. 6.4.

¹⁴ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 13. See also communication No. 846/1999, *Jansen-Gielen v. the Netherlands*, Views adopted on 3 April 2001, para. 8.2.