



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1929/2010

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

<i>Submitted by:</i>	Sergey Lozenko (represented by counsel, Roman Kislyak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	13 June 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 February 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	24 October 2014
<i>Subject matter:</i>	Right to freedom of assembly and free speech
<i>Substantive issues:</i>	Arbitrary detention; fair and public hearing, by an independent and impartial tribunal; right to seek, receive and impart information; right of peaceful assembly
<i>Procedural issues:</i>	State party's failure to cooperate, non-exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	9, 14, 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 2 (b)

GE.14-22604 (E)



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## 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. 1929/2010\***

*Submitted by:* Sergey Lozenko (represented by counsel,  
Roman Kislyak)

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 13 June 2008 (initial submission)

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

*Meeting* on 24 October 2014,

*Having concluded* its consideration of communication No. 1929/2010, submitted to the Human Rights Committee by Sergey Lozenko 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 of the communication is Sergey Lozenko, a national of Belarus born in 1979. He claims to be a victim of violation by Belarus of his rights under article 9, paragraph 1, article 14, paragraph 1, article 19, paragraph 2, and article 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Roman Kislyak.

#### **Facts as presented by the author**

2.1 The author submits that on 19 August 2007, he participated in a meeting of the BNF political party (hereinafter – the BNF) in the city of Brest. The meeting was held in a bar, where the party was renting the upper floor of the building. The purpose of the meeting was

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

to meet a well-known writer and activist Pavel Severints and discuss his new book. The meeting was interrupted by the police, who entered the meeting room and detained 28 persons, including the author. He was later charged with an administrative offence. The police claimed that he had taken part in a meeting which had been held without obtaining prior authorization of the authorities.

2.2 The author submits that, later that same day, he was released without being provided with any documents justifying his detention. He claims that this violated the Procedural Code for the Enforcement of Administrative Penalties since his detention for five and a half hours has not been officially documented. He claims that some of the other participants at the same meeting had been released immediately without any charges.

2.3 On 7 September 2007, the author's case was heard by the Moscow District Court of the city of Brest. The court sentenced the author to an administrative fine in the amount of 62,000 Belarusian roubles. The court, in its decision, stated that the author had participated in an unauthorized public event, in violation of article 23.34, paragraph 1, of the Code of Administrative Offences of Belarus. The court also stated that the author was summoned to the court hearing, but failed to appear, and asked the court to consider the case in his absence.

2.4 The author submits that, on 18 September 2007, he appealed the decision to the Brest Regional Court, arguing that he was not participating in a "public event", but that rather, it was a meeting of the BNF, to meet with a well-known writer. The author further claims that his detention was arbitrary, because several people who were arrested were released without any charges. The author further submits that he was informed of the time and place for the administrative hearing, but the notice was given to him by a police officer, instead of a court clerk. The author submits that this proves that courts in Belarus are not independent, and therefore he did not participate in the court hearing.

2.5 The author further submits that, on 11 October 2007, the Brest Regional Court upheld the decision of the first instance court. The regional court confirmed that the author was participating in an unauthorized public event, which was proved by testimonies of two witnesses. Instead of a stated reason of a meeting of the political party, the participants were collecting signatures to repeal the Law on Freedom of Conscience and Religion. On 11 April 2008, the author complained against this decision under the supervisory review proceedings to the Chair of the Supreme Court of Belarus, who rejected his appeal on 17 May 2008. The author therefore contends that he has exhausted all available and effective domestic remedies.

### **The complaint**

3.1 The author claims that his detention was arbitrary as it was not documented anywhere, in violation of article 9, paragraph 1, of the Covenant. He further claims that not everyone was charged with an administrative offence, and only those who were members of opposition parties or opposition activists were targeted.

3.2 The author claims that he was not properly informed of the date of the hearing of his case since it was the police officers who were responsible for delivering the court correspondence rather than the court staff. He claims that this shows lack of independence of the judiciary from the executive authorities. He claims that the court was not independent or impartial, in violation of his rights under article 14, paragraph 1, of the Covenant.

3.3 The author was convicted for violating the Law on Public Events. He claims that section 3, paragraph 2, of that law states that it does not apply to public events organized and conducted by trade unions, political parties, unions of employees and religious and other organizations. The author claims that the interruption of the meeting by police

officers and subsequent administrative charges violated his rights under articles 19 and 21 of the Covenant.

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

4.1 On 8 July 2010, the State party challenged the admissibility of the communication arguing that the communication was brought to the Committee by a third party, and not the individual himself, as required by article 1 of the Optional Protocol to the Covenant. The State party submits that the Committee does not have the competence to consider communications submitted by third parties.

4.2 Regarding the merits of the communication, the State party submits that the author was arrested on 19 August 2007 only because he was participating in an unauthorized gathering, in violation of article 23.34, paragraph 1, of the Code of Administrative Offences. The State party submits that the author failed to follow relevant laws and regulations, which require the organizers to obtain an authorization before holding a "mass event or protest".

4.3 The State party therefore submits that the actions by the police officers to disrupt the unauthorized event were fully justified. The State party submits that, during the arrest, the police officers did not use physical force, and no one was tortured or subjected to cruel, inhuman or degrading treatment.

4.4 Furthermore, the State party contends that the Procedural Code for the Enforcement of Administrative Penalties allows the author to file a complaint against an administrative judge or any relevant representative of the agency that is tasked with investigating the administrative offence. According to article 12.11 of the code, the author has a right to file a formal complaint within six months of the decision regarding the administrative offence.<sup>1</sup> That right ensures full protection of rights and freedoms of all citizens. Moreover, the author can always file a complaint with the prosecutor's office, which was not done in this case. The State party contends that those remedies have not been exhausted by the author. The State party therefore claims that the Committee has no basis to consider the present communication, and that due care should be exercised by the Committee while registering new individual complaints.

4.5 On 4 September 2010, the State party reiterates its position regarding the fact that the present communication was submitted by a third party and therefore should not be considered by the Committee. The State party further submits that the confidential correspondence intended for the author is received by Ms. X. Based thereon, the State party submits that it will "suspend further consideration" of the present communication.

4.6 On 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 claim to be victims of a violation by the State party of any rights protected by the Covenant. It notes, however, that that recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing 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 nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in

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<sup>1</sup> From the materials on file, it transpires that, in his appeal to the Chair of the Supreme Court of 11 April 2008, the author specifically invoked article 12.11 of the Procedural Code on the Enforcement of Administrative Penalties (see para. 2.5 above).

accordance with the Vienna Convention of the Law on Treaties. It submits 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, case law are not subjects of the Optional Protocol. It further submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications will be considered by its authorities as "invalid".

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

#### *The State party's lack of cooperation*

5.1 The Committee notes the State party's observation that the registration of communications submitted by a third party (lawyers, other persons) on behalf of individuals claiming a violation of their rights constitutes an abuse of the mandate of the Committee and of the right to submit a communication.

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 the 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 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 of the Optional Protocol). The Committee recalls its practice, as reflected in rule 96 (b) of its rules of procedure, that individuals may be represented by a person of their choice, provided that the representative is duly authorized. Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination thereof, to forward its Views to the State party and 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 a communication, and in the expression of its Views.<sup>2</sup> It is for the Committee to determine whether a communication should be registered. The Committee observes that, by refusing the right of an individual to be represented and by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or on the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.

#### *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.

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<sup>2</sup> See, inter alia, communications No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1; and No. 1948/2010, *Denis Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 5.2.

6.3 The Committee further notes that the State party has challenged the admissibility of the communication on the grounds of non-exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol on the ground that the author has not appealed to the Procurator's Office under the supervisory review procedure. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, allowing 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.<sup>3</sup> 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.

6.4 The Committee takes note of the author's claim that his rights under article 9, paragraph 1, and article 14, paragraph 1, of the Covenant have been violated since his arrest "was not documented anywhere", and the notice to appear in court was delivered to him by a police officer, not a court clerk, showing that the State party's courts are not independent. However, in the absence of further explanations or evidence in support of those claims, the Committee finds them insufficiently substantiated, for purposes of admissibility, and declares them inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant for purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

#### *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 author being prevented from participating in a gathering which took place in a meeting room situated on the first floor of a bar, and being subsequently apprehended and sentenced to an administrative fine, constituted a violation of the author's rights under articles 19 and 21 of the Covenant.

7.3 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 refers to its general comment No. 34 (2011) on freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society.<sup>4</sup>

7.4 The Committee also notes that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, being essential for public expression of one's views and opinions and indispensable in a democratic society.<sup>5</sup> This right includes the right to organize and participate in a peaceful assembly and manifestation with the intent to support or disapprove one or another particular cause.

7.5 The Committee takes a note of author's claims that he was detained during his participation in a meeting of a political party and charged for committing an administrative

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

<sup>4</sup> See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

<sup>5</sup> See communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.4.

offence. The issue before the Committee therefore is to consider whether the State party, by preventing the author from participating in a meeting under the auspices of a political party, detaining and charging him with an administrative offence and subsequently sentencing him to a fine, has unjustifiably restricted his rights as guaranteed in articles 19 and 21 of the Covenant.

7.6 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. It observes that any restriction on the exercise of the rights provided for in article 19, paragraph 2, must conform to the strict test of necessity and proportionality and must be directly related to the specific need on which they are predicated.<sup>6</sup> The Committee further 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.

7.7 The Committee notes the State party's argument that the author was arrested because he was participating in an unauthorized gathering, in violation of article 23.34, paragraph 1, of the Code of Administrative Offences, and that the actions by the police officers to put an end to the unauthorized event were justified since the organizers had not obtained authorization beforehand. It also notes, however, that the State party has failed to demonstrate that the author's detention and fine, even if based on law, were necessary, for one of the legitimate purposes of article 19, paragraph 3, of the Covenant. The State party further failed to justify why the authorization was needed for holding a meeting in a private space rented by the political party. In that connection, the Committee recalls that it is for the State party to demonstrate that the restrictions imposed were necessary in the case in question.<sup>7</sup>

7.8. In the circumstances described above and in the absence of any other pertinent information from the State party to justify the restriction for purposes of article 19, paragraph 3, the Committee concludes that the authors' rights under article 19, paragraph 2, of the Covenant were violated. For the same reason, namely, the absence of any pertinent information from the State party to justify restrictions under article 21, the Committee concludes that the author's rights under article 21 of the Covenant have also 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 facts before it disclose a violation by Belarus of article 19, paragraph 2, and article 21 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 any legal costs incurred by him, 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

<sup>6</sup> 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* (see note 6 above), para. 7.7.

<sup>7</sup> See, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus* (see note 6 above), para. 7.8.

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.

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