



International Covenant on Civil and Political Rights

Distr.: General
18 November 2014

Original: English

Human Rights Committee

Communication No. 1987/2010

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

Submitted by:

Anatoly Stambrovsky (not represented by
counsel)

Alleged victim:

The author

State party:

Belarus

Date of communication:

30 May 2010 (initial submission)

Document references:

Special Rapporteur's rule 97 decision,
transmitted to the State party on 24 September
2010 (not issued in a document form)

Date of adoption of Views:

24 October 2014

Subject matter:

Right to impart information

Substantive issues:

Freedom of expression

Procedural issue:

Exhaustion of domestic remedies

Article of the Covenant:

19, paragraph 2

Article of the Optional Protocol:

5, paragraph 2 (b)

GE.14-22285 (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. 1987/2010*

Submitted by: Anatoly Stambrovsky (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 30 May 2010 (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. 1987/2010, submitted to the Human Rights Committee by Anatoly Stambrovsky 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 Anatoly Stambrovsky, a Belarusian national born in 1937. He claims to be a victim of a violation by Belarus of his rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights.¹

The facts as presented by the author

2.1 On 12 March 2009, the author submitted an application to the Vitebsk City Executive Committee requesting permission to hold a one-person picket in the pedestrian area of two intersecting streets in Vitebsk from 1 p.m. to 1.50 p.m., on 3 April 2009, with the purpose of drawing public attention to violations of the law by the national authorities. On 18 March 2009, the author's request was rejected. The Executive Committee noted that

* The following members of the Committee participated in the examination of the present communication: Lahzari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerajlall 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.

the author would hinder the traffic, the circulation of people, public security and public order. In addition, given that the location suggested by the author for his picket was not among the permitted locations, the permission was refused in accordance with decision No. 820 of 24 October 2003 of the Vitebsk City Executive Committee regarding the procedure for organization and conduct of public gatherings in Vitebsk, which determines that public gatherings can only be organized in a few specified locations in Vitebsk.

2.2 On 31 March 2009, the author appealed the Executive Committee's decision to the Oktyabrskiy District Court in Vitebsk, claiming violation of his constitutional right to freedom of expression. On 23 April 2009, the Court considered the decision of the Vitebsk City Executive Committee to be in compliance with the provisions of the Law on Mass Events (1997) and rejected the author's appeal.

2.3 On 23 April 2009, the author filed a cassation complaint to the Vitebsk Regional Court, indicating that the decision of the District Court was unlawful and violated his right to freedom of expression. He argued that the District Court gave precedence to the provisions of the Law on Mass Events over the constitutional provision guaranteeing his right to freedom of expression. On 28 May 2009, the Regional Court upheld the District Court's decision of 23 April 2009 and dismissed the author's complaint.

2.4 On 1 October 2009, the author submitted a complaint under the supervisory review procedure to the Vitebsk Regional Court, but it was rejected on 11 December 2009. On 12 January 2010, he submitted another complaint under the supervisory review procedure to the Supreme Court of the Republic of Belarus; but again in vain.

The complaint

3. The author claims a violation, by the State party, of his rights under article 19, paragraph 2, of the Covenant, as the refusal to permit him to hold a picket prevented him from publicly expressing his opinion and the reasoning of the local authorities that he would be hindering the traffic was "invented" and unlawful, since a single individual standing on a pedestrian zone of two intersecting streets could not possibly do that.

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, inter alia its concern about unjustified registration of communications submitted by individuals under its jurisdiction who, it considers, have not exhausted all available domestic remedies in the State party, including appealing to the Procurator's Office for supervisory review of a judgement having the force of res judicata, in violation of article 2 of the Optional Protocol. It submits that the present communication and several other communications were 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 on it.

4.2 By letter of 19 April 2011, the Chairperson of the Committee informed the State party that, in particular, it is implicit in article 4, paragraph 2, of the Optional Protocol to the Covenant that a State party must provide the Committee with all the information at its disposal. Therefore, the State party was requested to submit further observations as to the admissibility and the merits of the case. The State party was also informed that, in the absence of observations from the State party, the Committee would proceed with the examination of the communication based on the information available to it.

4.3 On 30 September 2011, the State party was again invited to submit its observations on admissibility and merits.

4.4 By note verbale of 5 October 2011, the State party submits, inter alia, with regard to the present communication, that it believes that there are no legal grounds for its consideration, insofar as it is registered in violation of article 1 of the Optional Protocol. It maintains that all available domestic remedies have not been exhausted as required by article 2 of the Optional Protocol since no appeal was filed with the Procurator's offices for a supervisory review.

4.5 On 25 October 2011, the State party was again invited to submit its observations on admissibility and merits, and was informed that, in the absence of further information, the Committee would examine the communication based on the information available on file. A similar reminder was sent to the State party on 5 December 2011.

4.6 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 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 accordance with the Vienna Convention on the Law of 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 and case law are not subjects of the Optional Protocol. It also 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". The State party considers that the present communication as well as several other communications before the Committee were registered in violation of the Optional Protocol.

Issues and proceedings before the Committee

Lack of cooperation from the State party

5.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligation to recognize the Committee's rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and that any decision taken by the Committee on the present communication will be considered "invalid" by its authorities.

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 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). 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 the communication, and in the expression of its Views.² 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 should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.³

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 With regard to the requirement set out in article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the State party has challenged the admissibility of the communication on grounds of non-exhaustion of domestic remedies as 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.⁴ Moreover, on 12 January 2010, the author appealed to the Supreme Court of Belarus for a supervisory review, but the request was rejected on 19 February 2010. Consequently, it considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the communication.⁵

6.4 Accordingly, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication, declares it admissible and proceeds to its examination on the merits.

Consideration of merits

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

² See, inter alia, communication No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

³ See also communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1 and 8.2; and communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1. and 5.2.

⁴ Communication No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para 8.4.

⁵ See, for example, communications No. 1785/2008, *Oleshkevich v. Belarus*, Views adopted on 18 March 2013, para. 7.3; communication No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2; No. 1839/2008, *Komarovsky v. Belarus*, Views adopted on 25 October 2013, para. 8.3; and No. 1903/2009, *Youkko v. Belarus*, Views adopted on 17 March 2014, para. 8.3.

7.2 The first issue before the Committee is whether the prohibition on holding a picket in April 2009, with the purpose of drawing public attention to violations of the law allegedly committed by the national authorities, constitutes a violation of the author's rights under article 19, paragraph 2, of the Covenant.

7.3 The Committee recalls that article 19, paragraph 2, of the Covenant requires States parties to guarantee the right to freedom of expression, including the freedom to impart information. 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.⁶ Any restrictions on the exercise of these freedoms must conform to strict tests of necessity and proportionality.⁷ Restrictions must 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.⁸

7.4 The Committee notes that the refusal to permit the holding of a picket aimed at drawing public attention to alleged violations of the law by the authorities, amounted to a restriction on the exercise of the author's right to impart information. Therefore, the issue before it is to verify whether the restrictions imposed on the author's rights in the present communication are justified under any of the criteria as set out in article 19, paragraph 3, of the Covenant.

7.5 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 reputations 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 if the State imposes a restriction, it is for the State party to demonstrate that the restriction on the rights under article 19, paragraph 2, of the Covenant was necessary in the case in question, and that even if, in principle, States parties may introduce a system aimed at reconciling an individual's freedom to impart information with the general interest of maintaining public order in a certain area, the system must not operate in a way that is incompatible with the object and purpose of article 19 of the Covenant.⁹

7.6 The Committee notes that the State party has submitted no observations on the merits of the present communication. However, the Committee points out that the author was refused permission by the State party's local authorities to hold a picket on 3 April 2009, thereby restricting his right to impart his opinions regarding the authorities of the State party. It further notes that the national authorities refused to allow the author to hold the picket at the location of his choice and, thus, restricted his right to impart his concerns, solely on grounds that the author would be hindering the traffic, movement of pedestrians, as well as public security and public order and that, according to Vitebsk City Executive Committee decision No. 820 of 24 October 2003, particular places had been designated for such mass events and the location suggested by the author for his picket was not among the permitted ones. In that connection, the Committee notes, however, that the national authorities have not explained how in practice the author, during a picket conducted only by him, in a pedestrian zone, would hinder the traffic, movement of pedestrians, as well as public security and public order in the respective location and how exactly the restrictions

⁶ See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

⁷ Ibid., para. 22.

⁸ Ibid., para. 22. See also, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus* (see footnote 3), para. 7.7.

⁹ See, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, para. 7.8.

imposed on the author's rights under article 19 of the Covenant were justified under article 19, paragraph 3, of the Covenant.¹⁰

7.7 In those 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, of the Covenant, 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 State party has violated 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 any legal costs incurred by him, together with compensation. With a view to ensuring that the rights under article 19 of the Covenant may be fully enjoyed in the State party, the State party should also review the national legislation as it has been applied in the present case. 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 when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

¹⁰ See, for example, *ibid.*, para. 7.8.