



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1902/2009

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	Yuriy Bakur (represented by counsel, Raman Kislyak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	9 July 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 March 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	15 July 2015
<i>Subject matter:</i>	Freedom of expression; freedom of assembly
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Arbitrary arrest and detention; fair trial and witnesses; freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	7, 9, 14 (1), 19 (1) and (2), and 21
<i>Article of the Optional Protocol:</i>	2

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Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (114th session)

concerning

Communication No. 1902/2009*

Submitted by: Yuriy Bakur (represented by counsel, Raman Kislyak)

Alleged victim: The author

State party: Belarus

Date of communication: 9 July 2008 (initial submission)

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

Meeting on 15 July 2015,

Having concluded its consideration of communication No. 1902/2009, submitted to the Human Rights Committee 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 (4) of the Optional Protocol

1. The author of the communication is Yuriy Bakur, a Belarusian national born in 1984. He claims to be a victim of violations, by Belarus, of his rights under articles 7, 9, 14 (1), 19 (1) and (2), and 21 of the International Covenant on Civil and Political Rights. He is represented by counsel, Raman Kislyak. The Optional Protocol entered into force for Belarus on 30 December 1992.

The facts as presented by the author

2.1 On 19 August 2007 at 3 p.m., the author participated in a public meeting of the Belarusian Popular Front (BNF) political party in Brest city. The meeting was held in the building in which the office of BNF is located.¹ The purpose of the meeting was to

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ In this connection, see also paragraphs 3.5 and 4.2 below.

interview a well-known journalist, publicist and civil activist, Pavel Severints, and discuss his new book. At around 4 p.m., police officers entered the premises, interrupted and stopped the meeting, and apprehended 28 persons, including Mr. Bakur, the author of the present communication. Mr. Bakur was subsequently charged with the administrative offence of participating in an unauthorized meeting.

2.2 Mr. Bakur was released at 11 p.m. the same day without being provided with any documents confirming his detention. He claims that this violated the Executive Procedure Code of Belarus, as his deprivation of liberty for 6 hours and 30 minutes had not been officially documented. He claims that other participants in the meeting were released immediately, without any charges.

2.3 On 31 August 2007, Mr. Bakur's case was heard by the Moscow District Court in Brest. On 4 September 2007, the court ordered him to pay a fine in the amount of 93,000 Belarus rubles.

2.4 On 13 September 2007, Mr. Bakur appealed the decision before the Brest Regional Court, which upheld the decision of the first instance court on 4 October 2007.

2.5 On 3 April 2008, Mr. Bakur appealed to the President of the Supreme Court, under the supervisory review procedure; his appeal was rejected on 21 May 2008.

The complaint

3.1 The author claims to be a victim of violations by Belarus of his rights under articles 7, 9, 14 (1), 19 (1) and (2), and 21 of the Covenant.

3.2 He claims that his arrest and detention for 6 hours and 30 minutes on 19 August 2007 was never officially recorded by the law enforcement authorities. He also claims that his detention was arbitrary as it was not recorded, in violation of article 9 of the Covenant.

3.3 He further claims that the treatment that he was subjected to by the police during his detention amounts to degrading treatment in violation of article 7 of the Covenant. He claims that the fact that not all the participants in the meeting were charged with the same administrative offence violates his rights under article 19 (1) and (2) of the Covenant. He claims that the majority of those who were targeted were members of opposition parties or opposition activists, including one journalist.

3.4 The author also claims that, during the court hearing, he asked to call the organizer of the meeting as a witness and to have the video recordings made by the police during their intervention added as evidence. His requests were rejected by the court. He claims that the court proceedings were not independent or impartial, which violated his rights under article 14 (1) of the Covenant.

3.5 The author claims that he was convicted for violating the Law on Mass Events; he notes that section 3, paragraph 2, of said law states that it does not apply to public events organized and conducted by trade unions, political parties, unions of employees, religious and other organizations in their respective buildings as established by the law and the statutes of the organizations. He states that the meeting in which he participated was held in the offices of BNF, which can be confirmed by the lease contract of the building. The fact that the meeting was organized by BNF and was open to the public was confirmed by BNF.

3.6 The author claims that the stopping of the meeting by the police, his detention and subsequent administrative fine violated his right to freedom of assembly under article 21 of the Covenant and his right to receive information under article 19 (2) of the Covenant. The author claims that neither the police nor the courts provided any justification that the above-mentioned police intervention and subsequent actions against him could be considered as necessary in a democratic society.

State party's observations on admissibility and merits

4.1 By note verbale of 1 December 2009, the State party challenged the admissibility of the communication, arguing that the author had not exhausted the available domestic remedies. Under the Procedural Code regarding administrative offences, decisions that have entered into force can be appealed under the supervisory review procedure within six months of their entry into force, but the author did not avail himself of that possibility. It maintains that the author did not avail himself of his right to appeal under the supervisory review procedure before the Prosecutor's Office either. In that respect, the State party points out that over 10 months in 2009, the Prosecutor's Office had introduced more than 120 motions against court decisions which had already entered into force in administrative cases, for which reviews were granted by the Supreme Court. The State party notes that the author did not appeal the refusal of the Supreme Court to initiate the review of his case under the supervisory review procedure, however, he did not provide further explanations. The State party also submits that the Law on Mass Events does not contradict the provisions of the Covenant; it notes that the rights protected under articles 19 and 21 of the Covenant are not absolute and their enjoyment may be subject to limitations.

4.2 By note verbale of 6 April 2010, the State party submitted its observations on the merits. It states that the meeting in question was held in the "Vektor" bar located in the same building as the offices of BNF without prior authorization from the local authorities. It also states that the police action in stopping the meeting, apprehending the participants and subsequently fining the author were in compliance with the applicable law in Belarus in the interest of public order and to protect the rights and freedoms of others. The State party submits that, in putting an end to the meeting, the police officers did not use physical force or special equipment against the participants and those apprehended were not subjected to torture or other cruel, inhuman or degrading treatment or punishment whatsoever. The apprehension of the author of the present communication and the other participants was intended to stop their illegal activity, establish their identity and issue records regarding the administrative offences committed.

Author's comments on the State party's observations

5.1 The State party's observations on the merits were sent to the author on 22 July 2010 for his comments. The author was also reminded to submit his comments on the State party's observations on the admissibility of the communication. On 19 February 2013, a second reminder was sent to the author to submit his comments on the State party's observations on the admissibility and merits of the communication. On 20 January 2014, another letter was sent to the author, requesting that he submit his comments without further delay.

5.2 On 27 March 2014, the author reiterated his initial claims. Regarding the State party's observations challenging the admissibility of the communication, he submits that he has exhausted all available domestic remedies, including that provided by the Supreme Court and he does not consider the supervisory review procedure that may be initiated by the Prosecutor's Office as an effective domestic remedy. He submits that, further to the Committee's case law, he is not required to exhaust such a remedy.

5.3 Furthermore, the author submits that the State party's observations on the merits of the communication are general in nature and do not provide specific arguments as to the aim of stopping the meeting organized by BNF, charging him with an administrative offence and fining him for his participation in the meeting in question.

Issues and proceedings before the Committee

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 it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (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 (2) (b) of the Optional Protocol on the grounds that the author did not appeal the decision of the Supreme Court under the supervisory review procedure.² The Committee also notes that, on 3 April 2008, the author appealed to the President of the Supreme Court under the supervisory review procedure and his appeal was rejected on 21 May 2008. The Committee further notes the author's explanation that supervisory review procedures with the Supreme Court are ineffective in cases such as his.

6.4 The Committee recalls its jurisprudence³ in which it has stated that filing requests for supervisory review to the President of a court against court decisions which have entered into force and depending on the discretionary power of a judge constituted an extraordinary remedy, and that it is up to the State party to show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. The Committee also recalls its jurisprudence, according to which a petition to a Prosecutor's Office to initiate the procedure to review court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁴ Accordingly, the Committee considers that it is not precluded by said article from examining this part of the communication.

6.5 The Committee notes the author's general claim that his rights under article 7 of the Covenant have been violated due to the manner in which he was treated by the police during his apprehension. The Committee also notes that the State party maintains that no physical force or special equipment were used against the participants in the meeting and that those apprehended were not subjected to torture or other cruel, inhuman or degrading treatment or punishment. Therefore, in the absence of any pertinent information on file to support the author's claim, the Committee considers that the author has failed to substantiate his claims under article 7 of the Covenant for the purposes of admissibility. Accordingly, the Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further notes the author's claim that his rights under article 14 of the Covenant have been violated as the courts were not independent and impartial: his request to hear a witness — the organizer of the meeting (who was also detained at the time) — and

² See paragraph 4.1 above.

³ Communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3.; No. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5.; 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 26 July 2011, para. 6.2; No. 2021/2010, *E.Z. v. Kazakhstan*, decision of inadmissibility adopted on 1 April 2015, para. 7.3.

⁴ Communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para. 7.3.

to have the video recordings made by the police during their intervention included as evidence was refused. However, the Committee considers that, in the absence of any further information from the author, such alleged procedural shortcomings do not establish, in themselves, that the courts were not independent and impartial. Accordingly, the Committee considers this part of the communication inadmissible under article 2 of the Optional Protocol, as it is insufficiently substantiated.

6.7 Finally, the Committee considers that the author's remaining claims, which raise issues relating to articles 9 (2), 19 (1) and (2), and 21 of the Covenant, have been sufficiently substantiated for purposes of admissibility. It therefore declares those claims admissible and proceeds with the examination of the merits.

Consideration of the 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 (1) of the Optional Protocol.

7.2 The Committee notes, first of all, the author's claim under article 9 of the Covenant that his administrative apprehension, which lasted 6 hours and 30 minutes, was never recorded. The State party submitted that the author's apprehension was lawful and that it was aimed at stopping the meeting which was not authorized by the local authorities, identifying the participants and preparing an official record against them. The Committee notes that the State party has not refuted the author's specific claim that his apprehension was not recorded. The Committee recalls that an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with being against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law⁵, as well as elements of reasonableness, necessity and proportionality.⁶ The Committee notes that the State party failed to demonstrate that the grounds for the author's apprehension, namely, participation in a meeting held by a political party in private premises, were lawful, necessary and proportionate for the purposes of article 9 of the Covenant. In particular, the State party has not explained why it was necessary to detain the author after he had been identified and after the preparation of an official record. The Committee further notes that a person must not be arbitrarily detained because of the exercise of his freedom of expression.⁷ Accordingly, in the circumstances described above, and in the absence of any further pertinent information on file, the Committee considers that the author's rights under article 9 of the Covenant have been violated.

7.3 The second issue before the Committee is whether preventing the author from participating in a meeting organized by a political party in the building where said party's office is located, and apprehending and sentencing the author to an administrative fine constitutes a violation of the author's rights under articles 19 and 21 of the Covenant.

7.4 In that respect, the Committee recalls that article 19 (2) of the Covenant requires States 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

⁵ Communications No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.1; No. 305/1988, *Van Alphen v. Netherlands*, Views adopted on 23 July 1990, para. 5.8.

⁶ General comment No. 35 (2014) on liberty and security of person, para. 12.

⁷ General comment No. 34 (2011) on freedoms of opinion and expression, para. 23.

essential for any society and constitute the foundation stone for every free and democratic society.

7.5 The Committee also notes that the right of peaceful assembly, guaranteed under article 21 of the Covenant, is a fundamental human right, being essential for public expression of one's views and opinions and it is indispensable in a democratic society. This right includes the right to organize and participate in a peaceful assembly with the intention of supporting or expressing disapproval of a particular cause.

7.6 The Committee notes the author's claims that he was apprehended and detained for participating in a meeting organized by a political party and charged with committing an administrative offence. It further notes the author's argument that he was charged with an administrative offence for participating in a meeting organized by an opposition party, punished for expressing political views considered problematic by the authorities and forced to renounce his civil position, views and expressions. The issue before the Committee is to decide whether by preventing the author from participating in a meeting under the auspices of a political party, detaining him, charging him with an administrative offence and subsequently sentencing him to a fine the State party has unjustifiably restricted his rights as guaranteed by articles 19 and 21 of the Covenant.

7.7 The Committee recalls that article 19 (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 observes that any restrictions on the exercise of the rights under article 19 (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.

7.8 The Committee further notes that no restrictions may be placed on the right of peaceful assembly that is 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. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.⁸

7.9 The Committee notes the State party's argument that the author was apprehended because he was participating in an unauthorized gathering, in violation of the Code regarding 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. However, the Committee also notes that the State party failed to demonstrate that apprehending and fining the author, even if based on law, were necessary for one of the legitimate purposes of article 19 (3) of the Covenant. The State party further failed to justify why an authorization was needed to hold a meeting in a private space rented by the political party. In that connection, the Committee recalls that it is up to the State party to demonstrate that the restrictions imposed were necessary in the case in question.

7.10 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 (3) of the Covenant, the Committee concludes that the author's rights under article 19 (2) of the

⁸ See, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.4.

Covenant have been violated. Likewise, in the absence of any pertinent information from the State party to justify the restrictions imposed contrary to the provisions of article 21 of the Covenant, the Committee concludes that the author's rights under article 21 of the Covenant have been violated.

8. The Human Rights Committee, acting under article 5 (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 articles 9, 19 (2) and 21 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide Yuriy Bakur, the author of the present communication, with an effective remedy, including reimbursement of the amount of the fine and of any legal costs incurred by him, as well as an adequate compensation. The State party is also under the obligation to take steps to prevent similar violations in the future. In that connection, the Committee reiterates that the State party should review its legislation, in particular the Law on Mass Events of 30 December 1997.⁹

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 and 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.

⁹ See, for example, communications No. 1851/2008, *Vladimir Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; No. 1948/2010, *Turchenyak et al v. Belarus*, Views adopted on 24 July 2013, para. 9; No. 1790/2008, *Govsha, Syritsa and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.