



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2076/2011

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	Jan Derzhavtsev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	9 March 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 September 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	29 October 2015
<i>Subject matter:</i>	Right to freedom of expression; right of peaceful assembly
<i>Procedural issues:</i>	State party's lack of cooperation; exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; peaceful assembly
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

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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 (115th session)

concerning

Communication No. 2076/2011*

Submitted by: Jan Derzhavtsev (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 9 March 2011 (initial submission)

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

Meeting on 29 October 2015,

Having concluded its consideration of communication No. 2076/2011, submitted to it by Jan Derzhavtsev 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

1.1 The author is Jan Derzhavtsev, a Belarusian national born in 1950. He claims to be a victim of a violation by Belarus of his rights under articles 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992.

1.2 On 12 January 2012, pursuant to rule 97, paragraph 3, of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

The facts as presented by the author

2.1 On 22 November 2010, the author was apprehended by police officers while standing on Lenin Street, in the town of Vitebsk, holding a banner reading “Just boycott”.

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

His aim was to express his opinion on the presidential elections in Belarus to be held on 19 December 2010. According to the author, only two persons took part in the picket, neither of whom obstructed the movement of pedestrians or public transport, and the safety of those passing by was ensured by the author, who had organized the event.

2.2 On the same day, the author's case was heard by the Zheleznodorozhnyi District Court in Vitebsk, which ordered the author to pay a fine of 350,000 Belarusian roubles.

2.3 The author filed appeals against the District Court's decision with the Regional Court in Vitebsk and with the Supreme Court of Belarus, on 25 November 2010 and 5 January 2011, respectively. Both appeals were dismissed with the arguments that the author had not received authorization to hold a meeting and that the meeting had not been held in a place designated for mass events.

2.4 The author points out that in the Constitution of Belarus the right to publicly express opinion is guaranteed, under article 33, as is the right to seek and impart information, under article 34.

2.5 The author adds that the current legislation in Belarus does not prohibit campaigning in support of participating in or boycotting elections. Moreover, there is no legal obligation to participate in elections.

2.6 In the author's view, the existing legislative restrictions imposed on citizens substantially limit the effective realization of the right to freedom of expression, including the right to share one's own opinion. Thus he chose to express his opinion in support of boycotting the elections in a public place where he could draw the utmost attention to his civic and political views.

The complaint

3.1. The author claims to be a victim of a violation by Belarus of his rights under articles 19 (2) and 21 of the Covenant.

3.2 He claims that the interruption of his protest by the police, his apprehension and the subsequent administrative fine imposed on him restricted arbitrarily his freedom of expression and his right of peaceful assembly in violation of articles 19 (2) and 21 of the Covenant, because he was deprived of the opportunity to express his civil and political views and prevented from attracting citizens' attention to his support for boycotting the Presidential elections. He also claims that during the event in question, he did not violate the rights of other individuals or their freedom of movement; moreover, there were only two participants in the picket. He stresses that no delays or other inconveniences were caused by his protest. He maintains that the authorities did not justify why the restriction was necessary in a democratic society in the interest of national security or public order, for the protection of public health and morals or the protection of the rights and freedoms of others.

3.3 Pursuant to articles 1 and 2 of the Optional Protocol, the author requests the Committee to find that the facts before it disclose a violation of articles 19 (2) and 21 of the Covenant. He also suggests that the Committee remind the State party of its obligation to ensure that similar violations do not occur in the future and to provide him with an effective remedy.

State party's observations on admissibility

4.1 In a note verbale dated 26 September 2011, the State party submits, inter alia, that it believes that there are no legal grounds for the consideration of the present communication, insofar as it was registered in violation of article 1 of the Optional Protocol. It maintains that not all available domestic remedies have been exhausted, as required by article 2 of the

Optional Protocol, since no appeal was filed to the prosecutor's office for a supervisory review. In addition, the State party submits that the author did not avail himself of the possibility to apply directly to the President of the Supreme Court, pursuant to the revised article 12.11 of the procedure and execution code for administrative offences, for a review of the courts' decisions against him.

4.2 In a note verbale dated 25 January 2012, the State party submits that upon becoming a party to the Optional Protocol, it 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 the State party's authorities as "invalid". The State party considers that the present communication and several other communications before the Committee were registered in violation of the Optional Protocol.

Author's comments on the State party's observations

5.1 In a letter dated 4 January 2012, the author reiterates his initial claims and refers expressly to article 21 of the Covenant, claiming that his right to peaceful assembly has been violated.

5.2 Further, the author recalls that he appealed unsuccessfully the decision of the District Court to the Supreme Court under the supervisory review procedure. The Supreme Court, as a supervisory body, examined his appeal in a perfunctory manner, which made him believe that the supervisory review procedure in Belarus cannot be considered as constituting an effective domestic remedy. He does not consider the supervisory review that is initiated by the General Prosecutor's Office to be an effective domestic remedy either and for that reason he has not attempted to exhaust such a remedy.

5.3 The author further asserts that his illegal removal from the location where the picket was held prevented him from exercising his right to peaceful assembly. He reiterates that the assembly was peaceful and aimed at informing the inhabitants of Vitebsk of the author's opinion on the upcoming presidential elections.

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 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.

6.2 The Committee recalls that, under article 39 (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 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.¹ It is 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.²

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol to the Covenant.

7.2 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.

7.3 The Committee has noted the State party’s objection to the admissibility of the communication on the ground that the author has not complained to the prosecutor’s office under the supervisory review procedure and has not applied to the Chairperson of the Supreme Court with a request to review the courts’ decisions against the author, which have obtained the force of *res judicata*. The Committee recalls its jurisprudence, according to which a petition to a prosecutor’s office to initiate supervisory review of a judgement having the force of *res judicata* does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.³ It also considers that filing requests for supervisory review to the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.⁴ The State party has not shown, however, whether and in how

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

² See also communications No. 1949/2010, *Kozlov et al. v. Belarus*, Views adopted on 25 March 2015, paras. 5.1 and 5.2, No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1 and 8.2, No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1 and 5.2, and No. 1984/2010, *Pugach v. Belarus*, Views adopted on 15 July 2015, paras. 5.1 and 5.2.

³ See communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4, and No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para. 7.3.

⁴ See 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., Nos.

many cases petitions for review submitted to the president of the Supreme Court under article 12.11 of the procedure and execution code for administrative offences have been successful in cases concerning the right to freedom of expression and/or assembly. The Committee further notes that the State party has not refuted the author's explanation that he appealed twice to the Supreme Court under the supervisory review proceedings without success.⁵ In such circumstances the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.

7.4 The Committee considers that the author has sufficiently substantiated his claims under articles 19 (2) and 21 of the Covenant for purposes of admissibility. It declares the communication admissible with regard to those provisions of the Covenant and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2 The issue before the Committee is whether the apprehension of the author by police officers while standing on Lenin Street, together with one other person, and holding a banner reading "Just boycott", with the purpose of expressing his civic and political position regarding the upcoming presidential elections, and the subsequent administrative fine imposed against him by a court constituted a violation of his rights under articles 19 (2) and 21 of the Covenant.

8.3 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 the freedoms of opinion and expression, in particular paragraph 2, 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.

8.4 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 that it is indispensable in a democratic society. This right includes the right to organize and participate in peaceful assemblies and demonstrations to show support or disapproval of a particular cause.

8.5 The Committee notes that the refusal to permit the author, along with others, to peacefully express his opinion by holding a picket aimed at drawing public attention to his political position in favour of boycotting the presidential elections amounted to a restriction on the exercise by the author of the right to impart information and of the freedom of assembly. Therefore, the Committee must verify whether the restrictions imposed on the author's rights described in the present communication can be justified under article 19 (3) and the second sentence of article 21 of the Covenant.

8.6 The Committee recalls that the rights set out in article 19 (1) of the Covenant are not absolute, and that article 19 (3) allows certain restrictions, but only as provided by law and

1919-1920/2009, *Protsko and Tolchin*, Views adopted on 1 November 2013, para. 6.5., No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3, and No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility, 26 July 2011, para. 6.2.

⁵ See para. 2.3 above.

as necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or of public order, or of public health or morals. The Committee observes that any restrictions on the exercise of the rights provided for in article 19 (2) must conform to the strict tests of necessity and proportionality and must be directly related to the specific need on which they are predicated.⁶ It 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, 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 to facilitate 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 In this connection, the Committee notes that the State party has submitted no observations on the merits of the present communication and that, in these circumstances, due weight must be given to the author's allegations. The Committee notes that the author was apprehended while expressing his opinion on a political topic and fined because prior authorization for the alleged picket had not been obtained from the local authorities. The Committee considers that the authorities have thus restricted the author's right to hold and impart his political views regarding boycotting the presidential elections, as well as his right to engage in peaceful assembly, together with others, at a location of his choice. The Committee notes from the materials on file that the State party's authorities and courts have not explained how exactly, in practice, the restrictions imposed on the author's rights to freedom of expression and of peaceful assembly were justified under article 19 (3) and the second sentence of article 21 of the Covenant.⁷ In this connection, the Committee recalls that it is for the State party to demonstrate that the restrictions imposed were necessary in the case in question.⁸

8.8 In the circumstances of the present case, and in the absence of any other pertinent information from the State party to justify the restriction for purposes of article 19 (3) and the second sentence of article 21 of the Covenant, the Committee concludes that the author's rights under article 19 (2) and article 21 of the Covenant have been violated.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by Belarus of articles 19 (2) and 21 of the Covenant.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide reimbursement of any legal costs incurred by the author, together with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the Committee reiterates that the State party should review its legislation, in particular the Law on Mass Events of 30 December 1997, as it has been applied in the present case, with a view to

⁶ See Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 22.

See also, for example, *Turchenyak et al. v. Belarus*, para. 7.7.

⁷ See, for example *Turchenyak et al. v. Belarus*, para. 7.8.

⁸ *Ibid.*

ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.⁹

11. 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 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, *Sekerko v. Belarus*, para. 11, *Turchenyak et al. v. Belarus*, para. 9, and communication No. 1790/2008, *Govsha et al. v. Belarus*, Views adopted on 27 July 2012, para. 11.