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Human Rights Committee

Communication No. 2133/2012

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

<i>Submitted by:</i>	Marina Statkevich and Oleg Matskevich (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	7 October 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 February 2012 (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 to 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 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. 2133/2012*

Submitted by: Marina Statkevich and Oleg Matskevich
(not represented by counsel)

Alleged victims: The authors

State party: Belarus

Date of communication: 7 October 2010 (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. 2133/2012, submitted to it by Marina Statkevich and Oleg Matskevich under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The authors are Marina Statkevich and Oleg Matskevich, both Belarusian nationals, born in 1962 and 1967, respectively. They claim to be victims of a violation by Belarus of their rights under articles 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992.

1.2 On 21 June 2013, 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 submitted by the authors

2.1 On 25 November 2009, the authors requested the Minsk Regional Executive Committee (Borisov District Executive Committee) to authorize them to hold a picket 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 Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

commemorate the sixty-first anniversary of the adoption of the Universal Declaration of Human Rights. The picket was supposed to take place on 10 December 2009 in the centre of the town of Borisov, in front of a shopping centre, from 10 a.m. to noon. The authors planned to have about 10 participants and pledged in writing to ensure public security, medical assistance and clean-up afterwards. The authors explained that their intention was to inform citizens, inter alia, of their rights guaranteed by the Universal Declaration.

2.2 Five days before the planned event, the authors were informed that, in a decision dated 4 December 2009, the Minsk Regional Executive Committee (Borisov District Executive Committee) had refused to authorize the picket. According to the decision, the application did not comply with the requirements of article 6 of the Law on Mass Events. It was also noted that the authors had failed to demonstrate that they could ensure public safety and order, medical assistance and clean-up following the picket. Moreover, it was indicated that the participation of citizens in securing public safety was permissible only in line with the provisions of the Law on Ensuring Public Safety by Citizens. The decision of the Executive Committee did not specify which specific provisions of that law had been infringed by the authors.

2.3 On an unspecified date, the authors complained to the court of the Borisov District of the Minsk Region against the refusal of the Executive Committee to authorize the picket.

2.4 On 11 January 2010, the District Court rejected their complaint, upholding the decision of the Executive Committee of 4 December 2009. According to the court's decision, pursuant to the provisions of the Law on Mass Events, a request to hold a mass event must be submitted no later than 15 days before the intended date and the authors had failed to comply with that requirement; according to the Law, the authors should have submitted their request by 24 November 2009. Further, the court noted that the authors had not submitted documents demonstrating that they had concluded the necessary agreements concerning, respectively, security services, medical services, cleaning services, etc. as required by articles 5 and 6 of the Law. The court further stated that the form of the planned picket did not comply with the authors' intended aim as indicated in their application, i.e., "to inform citizens, inter alia, of their rights guaranteed by the Universal Declaration". According to article 2 of the Law on Mass Events, a picket is a public expression by a citizen or a group of citizens of public/political, collective, personal or other interests or a protest (without processional movement), including by means of a hunger strike, regarding certain problems, with or without the use of placards, banners or other means. The court noted in addition that according to Minsk Regional Executive Committee (Borisov District Executive Committee) by-law decision No. 197 of 26 February 2009 concerning the determination of a permanent location for the conduct of mass events, public gatherings that are not organized by the local authorities or public institutions can only take place behind the western stands of the city stadium. As the authors' suggested location for their picket was not the designated location, the court dismissed their complaint.

2.5 On an unspecified date, the authors appealed against the decision of the Borisovsk District Court to the Minsk Regional Court. On 15 February 2010, the Minsk Regional Court upheld the lower court's decision.

2.6 On an unspecified date, the authors appealed the decision of 15 February 2010 of the Minsk Regional Court within the supervisory review procedure before the same court. In a letter dated 7 May 2010, the Chair of the Minsk Regional Court informed them that their appeal had been rejected, as the court found no grounds for a review of the case. The authors then requested the Supreme Court of Belarus to review their case within the supervisory review procedure. In letter dated 11 June 2010, the Deputy Chair of the Supreme Court informed them that their appeal had been rejected. The authors contend that they have thus exhausted all available domestic remedies.

2.7 On 11 December 2012, the authors added that, on 19 July 2012, they requested the Minsk Regional Executive Committee (Borisov District Executive Committee) to authorize them to hold a peaceful meeting in the form of a picket under the slogan “Freedom for Alesya Belyatsky!” The Executive Committee refused to authorize the picket as the authors’ application did not comply with the requirements set out in Minsk Regional Executive Committee (Borisov District Executive Committee) by-law decision No. 851 of 13 July 2010 concerning the holding mass events on the territory of the Borisovsk District”. The authors appealed the negative decision to the Borisovsk District Court, but their appeal was rejected. They appealed the Borisovsk District Court’s decision within the cassation proceedings to the Minsk Regional Court, but again in vain. Accordingly, the authors noted that the State party was continuing to be in breach of its obligations under articles 19 and 21 of the Covenant.

The complaint

3.1 The authors claim that the State party has violated their rights under article 19 (2) of the Covenant, as their right to freedom of expression was restricted arbitrarily, given that the decision of the Minsk Regional Executive Committee (Borisov District Executive Committee) of 4 December 2009 limiting the exercise of their rights was neither justified for purposes of national security, public safety or public order, or the protection of public health or morals, nor was it necessary for the protection of the rights and freedoms of others. They further maintain that article 5 of the Law on Mass Events is unclear and that the Law does not specify that it was necessary to present documents demonstrating that they had concluded agreements concerning security services, medical services, cleaning services, etc. together with their request to authorize a picket.

3.2 The authors also claim that their right to peaceful assembly was likewise restricted without justification, in violation of their rights under article 21 of the Covenant.

State party’s observations on admissibility

4.1 In a note verbale of 14 January 2013, the State party submitted that it considers that the registration of the present communication on behalf of the authors was in violation of article 2 of the Optional Protocol to the Covenant. It considers that the authors have not exhausted all available domestic remedies, as required by article 2 of the Optional Protocol, as they have not exercised the right to lodge an appeal to the Prosecutor General under the supervisory review procedure. Referring to articles 2 and 5 (2) (b) of the Optional Protocol, the State party further notes that the authors have failed to demonstrate that the right to appeal under the supervisory review procedure, including to the Prosecutor General, is not a domestic remedy or is not available for the authors.

4.2 With reference to the Committee’s previous jurisprudence, the State party calls upon the Committee to adhere to the provisions of the Optional Protocol, especially with regard to the issue of admissibility of communications. In this respect, the State party recalls that article 5 (2) (b) of the Optional Protocol states that the individual must have exhausted all available domestic remedies and that this “shall not be rule where the application of the remedies is unreasonably prolonged”. The State party further notes that it considers that Committee’s Views finding that a supervisory review is a discretionary review process and, as such, is not an effective remedy to be insufficiently substantiated, *inter alia*, in terms of the Belarusian national legislation and domestic remedies.

4.3 In view of the explanations given to the Committee by the State party in previous cases, the State party considers that there are no legal grounds for the consideration of the present communication, either on admissibility or on the merits. Guided by articles 2 and 5 (2) (b) of the Optional Protocol, the State party has discontinued proceedings with respect to the present communication and will dissociate itself from the Views that might be

adopted by the Committee on the merits of the communication that do not meet the necessary requirements laid down in the Optional Protocol.

Authors' further comments

5. On 12 March 2013, the second author submitted that the authors did not appeal within the supervisory review procedure, *inter alia*, to the Office of the Prosecutor General as submitting such an appeal would not guarantee that the substance of a case would be re-examined. Review of a case within this procedure is arbitrary and dependent on the discretionary power of an official who decides whether a review is necessary. Moreover, even if an appeal were to be reviewed within the supervisory review procedure, such review would not result in the re-examination of a case on the merits. In this connection, the authors maintain that pursuant to article 2 of the Optional Protocol, only effective and available domestic remedies must be exhausted. In addition, according to the Committee's jurisprudence, it may be sufficient for complainants to have availed themselves of the remedy available within cassation court proceedings to demonstrate the exhaustion of domestic remedies. The Committee has repeatedly examined the State party's argument and has concluded that it is not necessary for the purposes of article 5 (2) (b) of the Optional Protocol to exhaust the remedies available within the supervisory review procedure.¹

State party's further observations

6. In a note verbale dated 24 December 2013, the State party submitted that, in view of the explanations provided to the Committee in the present case, the State party has discontinued proceedings regarding the present communication and will dissociate itself from the Views that might be adopted on it by the Committee.

Issues and proceedings before the Committee

The State party's lack of cooperation

7.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the authors' communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has discontinued proceedings regarding the present communication; and that the State party will dissociate itself from any decision taken by the Committee on the present communication.

7.2 The Committee 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 Optional Protocol, art. 1). 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.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

¹ The authors refer to communications No. 1838/2008, *Tulzhenkova v. Belarus*, Views adopted on 17 January 2012 and No. 1784/2008, *Shumilin v. Belarus*, Views adopted on 5 September 2012.

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

determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.³

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the case is admissible under the Optional Protocol.

8.2 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.

8.3 With regard to the requirement set out in article 5 (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 authors have not appealed to the Prosecutor's Office under the supervisory review procedure and have failed to prove that an appeal within this procedure is not a domestic remedy or is not available to them. The State party asserts that a particular exceptional remedy is available to the authors; the Committee considers that in the present case it falls on the State party to demonstrate the effectiveness of that remedy. Moreover, in this regard, the Committee recalls its jurisprudence, according to which a petition to a Prosecutor's Office to initiate supervisory review against a judgement having the force of *res judicata* does not constitute an effective remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁴ Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.4 The Committee considers that the authors have sufficiently substantiated their claims under article 19 (2) and article 21 of the Covenant for purposes of admissibility. It declares the communication admissible with regard to these provisions of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

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

9.2 The Committee notes the authors' claims that their rights to freedom of expression and freedom of assembly have been restricted arbitrarily in violation of both article 19 (2) and article 21 of the Covenant, as they were denied authorization to organize a peaceful assembly – a picket – to commemorate the sixty-first anniversary of the adoption of the Universal Declaration of Human Rights, and the restrictions imposed on the exercise of their rights was neither justified for purposes of national security, public safety or public order, or the protection of public health or morals, nor was it necessary for the protection of the rights and freedoms of others. The Committee observes that the picket in question was supposed to take place on 10 December 2009 in the centre of town in front of a shopping centre, from 10 a.m. to noon. The authors planned to have about 10 participants and assured the authorities in writing that they would ensure public security, medical assistance and clean-up afterwards. In this connection, the Committee notes the authors' explanation that

³ 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; and No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1. and 5.2.

⁴ Communications No. 1873/2009, *Alekseev v. the 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.

their intention was to inform citizens, inter alia, of their rights as guaranteed by the Declaration.

9.3 In this context, the Committee recalls that the rights and freedoms set forth in articles 19 and 21 of the Covenant are not absolute, but may be subject to restrictions in certain situations. The Committee also notes that as the State party has imposed a procedure for organizing mass events, it has effectively established restrictions on the exercise of the rights to freedom of expression and assembly and that the Committee must therefore consider whether the restrictions imposed on the authors' rights as explained in the present communication can be justified under the criteria set out in article 19 (3) and the second sentence of article 21 of the Covenant.⁵

9.4 The Committee recalls, first, that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including the right to a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within the sight and hearing of their target audience and no restriction to this right is permissible unless it is (a) imposed in conformity with the law; and (b) necessary in a democratic society, in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others. The Committee recalls that when a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, the State party 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.⁶

9.5 In the present case, 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 authors' allegations. The Committee notes that the authors were refused permission by the State party's local authorities to hold a picket on 10 December 2009 on the grounds that their application did not conform to a number of requirements prescribed by the Law on Mass Events and Minsk Regional Executive Committee (Borisov District Executive Committee) by-law decision No. 197 of 26 February 2009. In these circumstances, and in the absence of any explanations from the State party or other pertinent information on file, the Committee finds the decisions of the State party's authorities denying the authors' right to assemble peacefully at the public location of their choice to be disproportionate and unjustified. The Committee notes, on the basis of the material on file, that in their replies to the authors, the national authorities failed to demonstrate how a picket held in the said location would jeopardize national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others and how exactly the restrictions imposed on the authors' right to freedom of peaceful assembly were justified under 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 are necessary and proportionate in the case in question.⁸ Accordingly, the Committee concludes that the authors' right under article 21 of the Covenant has been violated.

⁵ See, for example, communication No. 1790/2008, *Govsha et al. v. Belarus*, Views adopted on 27 July 2012, para. 9.2.

⁶ See, for example, *Kozlov et al. v. Belarus*, para. 7.4.

⁷ See, for example, *Turchenyak et al. v. Belarus*, para. 7.8 and *Kozlov et al. v. Belarus*, para. 7.5.

⁸ See, for example, *Turchenyak et al. v. Belarus*, para. 7.8.

9.6 As to the authors' claim that they were also denied the right to impart information, in the framework of the above-mentioned assembly, in violation of article 19 of the Covenant, the Committee recalls that freedom of opinion and freedom of expression constitute the foundation of every free and democratic society.⁹ Any restrictions on their exercise must conform to the strict tests of necessity and proportionality and "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".¹⁰ In the absence of any explanations by the State party and for the reasons, *mutatis mutandis*, stated in paragraph 9.5 above, the Committee concludes that there has been a violation of article 19 (2) of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under article 19 (2) and article 21 of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obliged, *inter alia*, to reimburse any legal costs incurred by the authors, together with adequate compensation. The State party is also under the 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 applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant are fully enjoyed in the State party.¹¹

12. 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 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 general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

¹⁰ *Ibid.*, para. 22. See also communications No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 7.8; No. 1999/2010, *Evrezov et al. v. Belarus*, Views adopted on 10 October 2014, paras. 8.6-8.8; and No. 1976/2010, *Kuznetsov et al. v. Belarus*, Views adopted on 24 July 2014, paras. 9.6-9.8.

¹¹ See, for example, communication No. 1851/20008, *Vladimir Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; *Turchenyak et al. v. Belarus*, para. 9; and *Govsha et al. v. Belarus*, para. 11.