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Human Rights Committee

Communication No. 1976/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Petr Kuznetsov et al. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
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<i>Subject matter:</i>	Right to defend oneself through legal assistance of own choosing; right to impart information; right of peaceful assembly
<i>Substantive issues:</i>	Right to defend oneself by a lawyer of own choice; freedom of expression; peaceful assembly
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Articles of the Covenant:</i>	14 (para. 3 (d)); 19 and 21 in conjunction with 2
<i>Articles of the Optional Protocol:</i>	2 and 5 (para. 2 (b))



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 (111th session)

concerning

Communication No. 1976/2010*

Submitted by: Petr Kuznetsov et al. (not represented by counsel)

Alleged victims: The authors

State party: Belarus

Date of communication: 14 March 2010 (initial submission)

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

Meeting on 24 July 2014,

Having concluded its consideration of communication No. 1976/2010, submitted to the Human Rights Committee by Petr Kuznetsov; Yury Zakharenko; Anatoly Poplavny; Vasily Polyakov and Vladimir Katsora 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 authors are Petr Kuznetsov, born in 1981; Yury Zakharenko, born in 1959; Anatoly Poplavny, born in 1958; Vasily Polyakov, born in 1969; and Vladimir Katsora, born in 1957, all Belarusian nationals. They claim to be victims of a violation, by Belarus, of their rights under article 14, paragraph 3 (d), and articles 19 and 21 in conjunction with article 2, paragraph 2, of the International Covenant on Civil and Political Rights.¹

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, 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, Dheerujall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu. The texts of joint opinions by Committee members Gerald L. Neuman, Anja Seibert-Fohr, Yuji Iwasawa, Konstantine Vardzelashvili, Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia are appended to the present Views.

¹ The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as presented by the authors

2.1 On 7 May 2009, the authors held a picket in front of the Internal Affairs Department of the Regional Executive Committee in Gomel city. They stood in front of the building for 30 minutes, holding portraits of the former Minister of the Interior, Yury Zakharenko, who had disappeared 10 years earlier. At the end of the picket, the authors handed over a letter to the Internal Affairs Department, in which they pointed to the slow progress in the investigation of Mr. Zakharenko's disappearance and asked the authorities to duly investigate that crime. During the picket, police officers observed and recorded on a video the authors' activities, without, however, approaching them.

2.2 On 22 May 2009, the authors were summoned to the Internal Affairs Department of the Gomel Regional Executive Committee where they were charged for having committed an administrative offence under article 23.34, paragraph 1, of the Code of Administrative Offences of Belarus. Namely, they were accused of having conducted a public gathering in violation of the established procedure on organization of gatherings by the 1997 Law "On public events in the Republic of Belarus". Under that Law, organizers of public events are required to obtain from the local executive authorities permission to conduct a gathering 15 days before the holding of the event. The authors never requested permission, as, in accordance with the provisions of same Law, the Gomel City Executive Committee had issued Decision No. 299 of 2 April 2008 ("Regarding public gatherings in Gomel"), designating a single location in the outskirts of Gomel for the holding of public gatherings, but the authors did not wish to hold their picket there, as, according to them, it would have been meaningless.

2.3 On 25 June 2009, the Central District Court of Gomel found the authors guilty of having committed an administrative offence under article 23.24, paragraph 1, of the Code of Administrative Offences, for having conducted an unauthorized picket and imposed on Messrs. Kuznetsov, Zakharenko, Poplavny and Polyakov a fine in the amount of 350,000 Belarusian roubles and three days of administrative arrest on Mr. Katsora. On 26 June 2009, the authors appealed against the judgement of 25 June 2009 of the Central District Court of Gomel, but their appeal was dismissed by the Gomel Regional Court on 22 July 2009. In the appeal, the authors claimed, inter alia, that their constitutional right to peaceful assembly as well as their rights under article 21 of the Covenant had been violated, since the limitations imposed by the domestic legislation were not justified for the purposes of national security, public order, public health or morals, or protection of the rights and freedoms of others.

2.4 The authors appealed against the Regional Court's decision of 22 July 2009 to the Supreme Court, respectively on 27 and 30 July 2009, and on 3, 5 and 12 December 2009. On 30 September 2009, for one of the authors, and on 21 January 2010, for the others, the Supreme Court rejected the appeals and upheld the judgement of 25 June 2009 of the Central District Court of Gomel, stating in particular that the provisions of the Constitution and the Covenant guaranteed the right to freedom of assembly; while the procedure for the realization of that right was prescribed by the 1997 Law "On public events in the Republic of Belarus".

The complaint

3.1 The authors claim that their right to freedom of expression and assembly under articles 19 and 21 of the Covenant had been restricted arbitrarily, since neither Decision No. 299 of the Gomel City Executive Committee nor the courts had provided any justification for the restriction of their rights, other than the formal application of the domestic law. They claim that the restriction in question was not necessary for the respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals (art. 19, para. 3), or necessary 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 (art. 22, second sentence), and, therefore, it breached articles 19 and 21 of the Covenant.

3.2 The authors also maintain that by enacting domestic legislation which is not entirely clear and contradicts articles 19 and 21 of the Covenant, the State party has also violated its obligations under article 2, paragraph 2, of the Covenant. In particular, in addition to requiring prior authorization for all public gatherings and limiting the holding of such gatherings to one single location, Decision No. 299 of the Gomel City Executive Committee further requires organizers of public events to conclude contracts, at their own expense, with the departments of the interior — to assure the protection of public order; with medical institutions — to provide medical assistance; and with a cleaning enterprise, to ensure cleaning following the gathering. The authors maintain that the above requirements limit the very essence of the freedoms guaranteed both under articles 19 and 21, in conjunction with article 2, paragraph 2, of the Covenant.

3.3 The authors further claim that their right to a fair trial under article 14, paragraph 3 (d), of the Covenant was violated, as the Central District Court of Gomel refused to allow that they be represented by the lawyer of their choice during the first-instance proceedings, even though the lawyer they privately retained was present and willing to participate in the proceedings on 25 June 2009.

State party's observations on admissibility

4.1 By note verbale of 6 January 2011, the State party, inter alia, recalled that it had repeatedly expressed its legitimate concerns to the Committee regarding unjustified registration of individual communications. The majority of the State party's concerns related to the communications which had been submitted by individuals who had deliberately not exhausted all available remedies in the State party, including, inter alia, failure to appeal to the Prosecutor's Office under the supervisory review procedure against judgements having acquired the force of *res judicata*.² The State party also added that the present communication had been "registered in violation of the provisions of the Optional Protocol" and, therefore, there were no legal grounds for its consideration by the State party.

4.2 By letter of 19 April 2011, the Chair of the Committee informed the State party that, in particular, it was 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 22 September 2011, the State party was again invited to submit its observations on admissibility and merits.

4.4 On 5 October 2011, the State party submitted, inter alia, with regard to the present communication, that it believed that there were no legal grounds for its consideration, insofar as it was registered in violation of article 1 of the Optional Protocol. It maintained that all available domestic remedies had not been exhausted as required by article 2 of the Optional Protocol since no appeal had been filed with the Prosecutor's offices for a supervisory review.

² The State party explained that the basis for that requirement was article 2 of the Optional Protocol to the Covenant.

4.5 On 25 October 2011, the State party was again invited to submit its observations on admissibility and merits, and it 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 also sent to the State party on 5 December 2011.

Authors' comments on the State party's observations on the admissibility

5. On 30 November 2011, Mr. Kuznetsov stated that indeed he had not complained to the Prosecutor General's Office under the supervisory review proceedings as he deemed that remedy to be ineffective. He submitted that only appeals to courts were effective as they entailed the examination of the merits of a case. Complaining under the supervisory review proceedings to the Prosecutor General's Office would be ineffective as only a limited number of officials may decide to initiate such proceedings and it would not result in examination of the merits. Furthermore, if the supervisory proceedings were initiated, the examination would be limited only to the issues of applied legal norms and would not involve the review of facts and evidence of the case. The author recalled that according to the Committee's jurisprudence, if the examination of a case under the supervisory review proceedings was subject to a decision of a limited number of officials (e.g. by the Prosecutor General, the Chair of the Supreme Court), the obligation to exhaust domestic remedies ended with the exhaustion of remedies within the cassation proceedings. In addition, according to the Committee's jurisprudence, domestic remedies must be not only accessible, but also effective. He also mentioned that in its decision concerning communication No. 1814/2008, *Levinov v. Belarus*, the Committee had recalled that an appeal to the Prosecutor General with a request to have a protest motion filed under the supervisory proceedings did not constitute a remedy, which had to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. Therefore, the author maintained that he had exhausted all effective domestic remedies.

State party's further observations

6.1 By note verbale of 25 January 2012, the State party noted that by adhering to the Optional Protocol, it had recognized the Committee's competence under article 1 thereof to receive and consider communications from individuals subject to its jurisdiction who claimed to be victims of a violation by the State party of any of the rights set forth in the Covenant. That recognition of competence was made in conjunction with other provisions of the Optional Protocol to the Covenant, including those setting up criteria regarding the authors and the admissibility, in particular articles 2 and 5, paragraph 2, of the Optional Protocol. States parties had no obligation under the Optional Protocol in the recognition of the Committee's rules of procedure or its interpretation of the Optional Protocol's provisions.

6.2 According to the State party, in the context of the communication procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that reference to the Committee's long-standing practice, methods of work and case law was "not subject of the Optional Protocol". It also submitted that any communication registered in violation of the provisions of the Optional Protocol to the Covenant would be viewed by the State party as incompatible with the Optional Protocol and would be rejected without observations on the admissibility or on the merits. The State party further maintained that decisions taken by the Committee on such "declined communications" would be considered by its authorities as "invalid".

Issues and proceedings before the Committee

Lack of cooperation from the State party

7.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the authors' communication, insofar as it is registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding the recognition of the Committee's rules of procedure and regarding the Committee's interpretation of the Optional Protocol's provisions; and that if a decision is adopted by the Committee on the present communication, it will be ignored as "invalid".

7.2 The Committee recalls that under article 39, paragraph 2, of the Covenant it is empowered to establish its own rules of procedure, which the States parties have agreed to recognize. It also observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights 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). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (art. 5, paras. 1 and 4). It is incompatible with these 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.³ It is for 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 shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility or on the merits of such communication, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.⁴

Consideration of admissibility

8.1 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.

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

8.3 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 authors have not appealed to the Prosecutor General's Office under the supervisory review proceedings. The Committee recalls its jurisprudence, according to which the State party's supervisory review proceedings before the Prosecutor General's Office allowing the review of court decisions that have taken effect do not constitute a remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁵ Accordingly, the

³ See, inter alia, communication No. 869/1999, *Piandiong et al. v. The Philippines*, Views adopted on 19 October 2000, para. 5.1.

⁴ See communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1–8.2; and No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1–5.2.

⁵ See, for example, communications No. 1785/2008, *Oleshkevich v. Belarus*, Views adopted on 18 March 2013, para. 7.3; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012,

Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the communication.

8.4 The Committee takes note of the authors' submission that the State party violated its obligations under article 2, paragraph 2, of the Covenant, when read in conjunction with articles 19 and 21, since it had failed to adopt such laws or other measures as might be necessary to give effect to the rights recognized in articles 19 and 21 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down a general obligation for States parties, and that they do not give rise, when invoked separately, to a claim in a communication under the Optional Protocol.⁶ It also considers that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual who claims to be a victim. The Committee notes, however, that the authors have already alleged a violation of their rights under articles 19 and 21 resulting from interpretation and application of the existing laws of the State party, and the Committee does not regard that an examination of whether the State party also violated its general obligations under article 2, paragraph 2, of the Covenant, when read in conjunction with articles 19 and 21, would be distinct from the examination of a violation of the authors' rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the authors' claims in this regard are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

8.5 With regard to the authors' claim that their rights under article 14, paragraph 3 (d), of the Covenant have been violated as the Central District Court of Gomel refused to allow that they be represented by a lawyer of their choice during the first-instance proceedings, the Committee notes that the authors have not provided any detailed information thereon, or any evidence or copies of their complaints about such a refusal. Consequently, and in the absence of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate their claim for purposes of admissibility, and concludes that it is inadmissible under article 2 of the Optional Protocol.

8.6 The Committee considers that the authors' remaining claims under articles 19 and 21 of the Covenant are sufficiently substantiated, for purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

Consideration of merits

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

9.2 The Committee notes the authors' claim that the State party's authorities violated their right to freedom of expression under article 19, paragraph 2, of the Covenant, since four of the authors were fined 350, 000 Belarusian roubles and one detained for three days, for publicly holding portraits of the former Minister of the Interior, who had disappeared 10 years earlier and for having expressed, on 7 May 2009, during an unauthorized picket

para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of 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, *Youbko v. Belarus*, Views adopted on 17 March 2014, para. 8.3.

⁶ See communications No. 2202/2012, *Castañeda v. Mexico*, decision adopted on 29 August 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and No. 1887/2009, *Juan Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

which lasted for 30 minutes in front of the Internal Affairs Department of the Gomel Regional Executive Committee, their concern at the length of the investigation regarding that disappearance. The Committee also notes that the authors were sanctioned under article 23.34, paragraph 1, of the Code of Administrative Offences, for having participated in an unauthorized picket.

9.3 The Committee notes the authors' claim that in addition to the unclear provisions of the 1997 Law on public events, requiring prior authorization for all public gatherings and allowing the limitation of the permissible locations for the holding of such gatherings, the Gomel Executive Committee, through its Decision No. 299 also requires organizers of public events to hold mass events in one particular place on the outskirts of Gomel and to conclude contracts, at their own expense, with the departments of the interior for protection of the public order, with a medical establishment to provide medical assistance to the participants and with a cleaning enterprise, for subsequent cleaning of the location where the public gathering is to take place, before the conduct of the meeting. The authors maintain that the above requirements limit the very essence of the freedoms guaranteed, *inter alia*, under article 19 of the Covenant.

9.4 The first issue before the Committee is whether or not the application of article 23.34, paragraph 1, of the Code of Administrative Offences to the authors' case, resulting in a fine for four of the authors and the administrative arrest of one of them, constituted a restriction within the meaning of article 19, paragraph 3, of the authors' right to freedom of expression. The Committee notes that article 23.34, paragraph 1, of the Code of Administrative Offences establishes administrative liability for violation of the established procedure for organizing or conducting mass events. It also notes that, since the State party imposed a "procedure for holding mass events", it effectively established restrictions regarding the exercise of the freedom to impart information, guaranteed by article 19, paragraph 2, of the Covenant.⁷

9.5 The second issue is, therefore, whether in the present case such restrictions are justified under article 19, paragraph 3, of the Covenant, i.e. are provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society.⁸ 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".⁹

9.6 In the light of the above, the Committee notes that even if the limitations imposed on the authors' right to impart information in the present case were permitted under national law, the local authorities had not provided any explanation or justification as to why they were necessary for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant, and what dangers would have been created by the authors' public display of portraits of a disappeared former Minister of the Interior and expressing their concern about the delayed investigation in that connection. The Committee concludes that, in the absence of any pertinent information available in the decisions of the local authorities in the context

⁷ See communications No. 780/1997, *Laptsevich v. Belarus*, Views adopted on 13 April 2000, para. 8.1; and No. 1808/2008, *Kovalenko v. Belarus*, Views adopted on 17 July 2013, para. 8.3.

⁸ See Human Rights Committee, general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 2.

⁹ *Ibid.*, para. 22.

of the administrative proceedings against the authors and in the absence of any specific observations by the State party in this respect, the restrictions imposed on the exercise of the authors' right to freedom of expression cannot be deemed necessary for the respect of the rights or reputations of others; for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee, therefore, finds that the authors' rights under article 19, paragraph 2, of the Covenant have been violated in the present case.

9.7 The Committee notes the authors' claim that their right to freedom of assembly under article 21 of the Covenant was also violated as they were found guilty of having committed an administrative offence and fined and, in the case of one of the authors, detained, for violation of the established procedure for organizing or conducting a mass event. In this context, the Committee recalls that the rights and freedoms set forth in article 21 of the Covenant are not absolute but may be subject to limitations. The second sentence of article 21 of the Covenant requires that no restrictions may be placed on the exercise of the right to peaceful assembly other than those imposed (a) in conformity with the law; and (b) 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.¹⁰

9.8 In the present case, the Committee must consider whether the restrictions imposed on the author's right to freedom of assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes that in the light of the available information on file, the local authorities had not provided any justification or explanation as to how, in practice, the authors' actions regarding the disclosure of portraits of the disappeared Minister of the Interior and the length of the investigation thereon violated 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 as set out in article 21 of the Covenant. Accordingly, the Committee concludes that in the present case, the State party has also violated the authors' right under article 21 of the Covenant.

10. The Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation, by the State party, of the authors' rights under articles 19, paragraph 2, and 21 of the Covenant.

11. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including reimbursement of the value of the fine as at June 2009 to the authors who were fined, and 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 ensuring that the rights under articles 19 and 21, of the Covenant may be fully enjoyed in the State party.¹¹

¹⁰ See, inter alia, communications No. 1772/2008, *Belayzeka v. Belarus*, Views adopted on 23 March 2012, para. 11.7; and No. 1604/2007, *Zaleskaya v. Belarus*, Views adopted 28 March 2011, para. 10.6.

¹¹ 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 23 July 2013, para. 9; and No. 1790/2008, *Sergei Govsha, Viktor Syritysa and Viktor Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

Appendices

Appendix I

[Original: English]

Joint opinion of Committee members Gerald L. Neuman, Anja Seibert-Fohr, Yuji Iwasawa and Konstantine Vardzelashvili (concurring)

1. We concur with the Committee's conclusions on this communication, but disagree with part of the reasoning expressed in paragraph 8.4 which considers the author's claim that the State party violated its obligations under article 2, paragraph 2, of the Covenant when read in conjunction with articles 19 and 21, by failing to adopt such laws or other measures as may be necessary to give effect to the rights recognized in these articles. In that passage, the Committee holds open the possibility that an individual could invoke article 2, paragraph 2, of the Covenant in conjunction with another provision of the Covenant if the failure of a State party to observe its obligations under article 2, paragraph 2, is "the proximate cause of a distinct violation of the Covenant directly affecting the individual who claims to be a victim".^a

2. Instead of introducing the vague notions of "proximate cause" and "distinct violation" as prerequisites for making such claims, the Committee should have pursued its traditional approach and simply have regarded the authors' claim under article 2, paragraph 2, in conjunction with articles 19 and 21, as inadmissible on the ground that article 2, paragraph 2, can never be invoked in this manner, any more than it can be invoked in isolation. Article 2, paragraph 2, lays down an objective obligation of States parties to adopt legislative or other measures to give effect to rights recognized in the Covenant. But it does not provide individuals with a right to demand from a State party the adoption of legislation or other such measures. Accordingly, the Committee has consistently held that article 2, paragraph 2, lays down a general obligation for States parties without providing for a right which could be claimed in a communication under the Optional Protocol.^b This conclusion does not change when reading this provision in conjunction with a substantive right.

3. As this very case illustrates, and as numerous other cases confirm, the Committee can recognize that a law or practice has contributed to an individual violation of the Covenant without any need to bring article 2, paragraph 2, into the discussion. Individuals may be affected in their rights by a law that on its face violates a substantive right, or by the application of a law, or by the absence of a law. The Committee is competent to find a violation of the substantive rights in each of these cases and make an appropriate remedial recommendation. Adding a violation of article 2, paragraph 2, read in conjunction with the substantive provision would not add anything to the protection of the individual. The task of the Committee in evaluating a claim under the Optional Protocol is to examine the effect

^a The Committee then goes on to observe that the authors' objections to the State party's Law on Mass Events would not involve a distinct violation from the violations of articles 19 and 21 that the Committee finds in paragraphs 9.6 and 9.8 of its Views.

^b See communications No. 2202/2012, *Rodríguez Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4; cf. communication No. 1874/2009, *Mihoubi v. Algeria*, Views adopted on 18 October 2013 (concurring and dissenting opinions).

of laws and other measures on the rights of victims who bring communications before it. By considering violations of individual rights rather than of general obligations the Committee ensures that communications concern victims who have been concretely affected with regard to specific rights, rather than persons objecting abstractly to the way a State party implements the Covenant.

4. Changing the Committee's traditional approach in this respect, in order to make separate additional findings of a State's failure in its objective obligations, would not make a practical contribution to the protection of human rights, and would impede the Committee's exercise of its responsibilities under the Optional Protocol. Leaving open the possibility of finding conjoined violations involving article 2, paragraph 2, will lead the Committee to unproductive discussions that absorb limited time that would be better spent on more significant issues, or on giving more victims earlier decisions on their communications. Unfortunately, the phrasing of paragraph 8.4 would compound that problem, by offering the ambiguous standards of "proximate cause" and "distinct violation" as prerequisites for making such findings. The majority does not explain or give an example of a situation in which those prerequisites would be met. This language is very likely to produce disagreements that would better be avoided.

5. The Committee should instead have recognized that there are no such "distinct violations" of individual rights, and should have stated clearly that article 2, paragraph 2, cannot be invoked either in isolation or conjointly as a claimed violation in a communication.

Appendix II

[Original: Spanish]

Joint separate opinion of Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia

1. We agree with the decision of the Committee in *Kuznetsov et al.* (communication No. 1976/2010), in which the State of Belarus is found to be internationally responsible for a violation of articles 19 and 21 of the International Covenant on Civil and Political Rights.
 2. However, we do not concur with the Committee's statement that the authors' claim with regard to a violation of article 2, paragraph 2, read in conjunction with articles 19 and 21, is inadmissible in this case because an examination by the Committee of that argument "would [not] be distinct from the examination of a violation of the authors' rights under articles 19 and 21 of the Covenant".
 3. The events giving rise to the international responsibility of the State in this case are different and thus constitute separate violations of the Covenant that should bear a direct relationship to the reparation provided.
 4. The Committee has established that the rights enshrined in article 21 have been violated (paras. 9.4–9.8 of its Views). However, it should have also found that the State breached its obligations under article 2, paragraph 2 (read in conjunction with articles 19 and 21 in the present case), when the Gomel Executive Committee adopted Decision No. 299, which requires the organizers of an event to conclude contracts, at their own expense, with the corresponding departments of the interior (to ensure the protection of public order), with medical institutions (to provide medical assistance) and with a cleaning enterprise (to ensure that the area is cleaned up after the gathering).
 5. The conduct that gave rise to the international responsibility of the State was the adoption of Decision No. 299, which is clearly incompatible with the general obligation laid down in article 2, paragraph 2. Insofar as that decision was implemented in respect of the authors in order to prevent them from holding an event where they could express their opinions, the Committee should have found a violation of article 2, paragraph 2, read in conjunction with articles 19 and 21 of the Covenant, in the present case.
 6. Accordingly, rather than stating in general terms that the State "should review its legislation" (para. 11 of the Views), it would have been more appropriate for the Committee to indicate clearly that the State should repeal legislation that is incompatible with the Covenant (both the Law on Mass Events and Decision No. 299 of the Gomel Executive Committee) and ensure that the provisions that replace those instruments are fully consistent with the rights laid down in the Covenant.
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