



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1933/2010

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

<i>Submitted by:</i>	Valery Aleksandrov (unrepresented)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	26 October 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rule 97, transmitted to the State party on 29 March 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2014
<i>Subject matter:</i>	Imposition of a fine for holding peaceful assemblies without prior authorization
<i>Substantive issues:</i>	Right to freedom of expression; permissible restrictions
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	19 (para. 2)
<i>Articles of the Optional Protocol:</i>	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. 1933/2010\***

*Submitted by:* Valery Aleksandrov (unrepresented)

*Alleged victim:* The author

*State party:* Belarus

*Date of communication:* 26 October 2009 (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. 1933/2010, submitted to the Human Rights Committee by Valery Aleksandrov under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Valery Aleksandrov, a Belarusian national born in 1963. He claims to be a victim of a violation by Belarus of his rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights (hereinafter “the Covenant”). The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented.

#### **The facts as presented by the author**

2.1 On 27 March 2009, Vitebsk Oktyabrsky District Court found the author guilty of an administrative offence under article 23.34, part 1, of the Code of Administrative Offences<sup>1</sup>

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\* 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, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

<sup>1</sup> Article 23.34, paragraph 1, of the Code of Administrative Offences reads: “Violation of the established procedure of organizing or conducting mass events or pickets. Violation of the established procedure of organizing or holding assemblies, meetings, rallies, demonstrations or other mass events

and fined him 70,000 Belarusian roubles. The court found that the author, together with two other persons, took part in an unauthorized mass event on 25 March 2009. More specifically, he participated in a street march that was moving along the pavement down Lenin street, from “Bistro” towards Independence Square, in Vitebsk, and sought to express his political opinion by carrying a white, red and white flag and scarf, two white and one red flowers, and lapel pins of the Belarus Popular Front opposition movement, to commemorate the anniversary of the foundation of the Belarus People’s Republic on 25 March 1918.

2.2 On 22 April 2009, Vitebsk Regional Court rejected the author’s appeal and upheld the District Court’s decision.

2.3 On 7 October 2009, the Supreme Court dismissed the author’s application for a supervisory review of the court decisions of 27 March and 22 April 2009.

2.4 The author submits that the decisions of the domestic courts are unlawful and unfounded as they amount to a violation of his legitimate rights and interests guaranteed by the Constitution and international law, for the following reasons. First, as established by the domestic courts, he and his two acquaintances were moving along the pavement down Lenin Street, from “Bistro” to Independence Square, during lunchtime, which does not breach chapter 4, paragraph 17.1, of the Traffic Rules of 1 January 2006.<sup>2</sup> Second, under article 33 of the Constitution, the right to freedom of thought and belief and the right to freedom of expression are guaranteed, and nobody shall be forced to express one’s beliefs or to withhold them. The author submits that the Constitution does not establish an obligation to obtain prior authorization from the Executive (Vitebsk City Executive Committee) in order to freely express opinion about a historical event, such as the foundation of the Belarusian State, and its commemoration. Similarly, the Constitution does not establish an obligation to obtain authorization to withhold one’s opinion. The author, however, silently expressed his opinion about the foundation of the Belarusian State, by his physical appearance and actions, as he deemed it inappropriate to forget the history of his country. Third, the domestic courts did not determine the roles of the three participants in the event and erred in qualifying it as a mass one, even though only three persons had participated. Fourth, as their moving along the pavement did not contravene the Traffic Rules or disturb the public order, the author claims that, in fact, he was found guilty for expressing his political opinion. At the same time, he maintains that the right to hold opinions without interference and the right to freedom of expression are guaranteed under article 19 of the Covenant.

### **The complaint**

3. The author claims that the facts as presented amount to a violation of his rights under article 19, paragraph 2, of the Covenant. He claims compensation for non-pecuniary damages and the reimbursement of the fine imposed on him as a result of the administrative proceedings.

### **The State party’s observations on admissibility and merits**

4.1 On 23 June 2010, the State party recalled the facts of the case and challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies as he had not applied for supervisory review of the domestic

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or pickets, is punishable by a warning, or a fine of up to 10 minimal wages, or by administrative arrest.”

<sup>2</sup> Chapter 4, paragraph 17.1, of the Traffic Rules reads: “Pedestrians have to move along the pavement, pedestrian or cycle tracks, or, in the absence thereof, on the roadside.”

courts' decisions in his case. The right to apply for a supervisory review of a *res judicata* court ruling in an administrative case is guaranteed under article 12.11 of the Code of Administrative Procedure. Such an application shall be made within six months after the ruling becomes final. An application for supervisory review is an effective remedy aimed at avoiding to the greatest extent possible instituting proceedings against citizens without justification. The author has not applied to the Office of the Procurator-General under the supervisory review procedure and hence has failed to avail himself of such a remedy.

4.2 Article 35 of the Constitution guarantees the right to hold assemblies, meetings, street marches, demonstrations and pickets, provided that they do not violate law and order or breach the rights of others. The procedure for organizing mass events is regulated under the Law on Mass Events of 30 December 1997. The Law aims to create conditions for the enjoyment of constitutional rights and freedoms of citizens, and the protection of public order and public safety when such events are carried out in public spaces.

4.3 The State party points out that the author himself has admitted that he participated in the street procession on 25 March 2009 in Vitebsk and carried a white, red and white flag, whereby he publicly expressed his social and political opinion and sought to attract attention. His argumentation that his moving along the pavement neither breached the Traffic Rules nor disturbed public order and that, therefore, it did not constitute an administrative offence is erroneous and contradicts the explanation contained in article 2 of the Law on Mass Events.

4.4 The State party adds that the author has not demonstrated that he had a valid authorization to organize and hold the event. He had not personally applied for such authorization. Neither was he formally accused of having organized a street march.

4.5 With reference to article 22 of the Constitution, the State party maintains that all citizens are equal before the law and are entitled, without discrimination, to equal protection of their rights and legitimate interests. The wish of a group of people to hold and participate in mass events should not violate the rights and freedoms of other citizens.

4.6 In conclusion, the State party submits that the author has not exhausted all available domestic remedies and that there are no reasons to believe that such remedies would be unavailable or ineffective. Therefore, the communication should be declared inadmissible under article 5 of the Optional Protocol.

4.7 As a general rule, the State party asks the Committee to consider individual communications more carefully before registering them, in particular in the event of abuse of the right of submission (article 3 of the Optional Protocol) or the authors' failure to exhaust all available domestic remedies (article 5 of the Optional Protocol).

4.8 By a note verbale of 25 January 2012, the State party reiterated its position of 23 June 2010 regarding the admissibility of the communication. It adds that it considers the communication to have been registered in violation of the Optional Protocol.

4.9 In particular, it submits that upon becoming a State party to the Optional Protocol, it recognized the competence of the Committee under article 1, but that recognition of competence was undertaken in conjunction with other provisions of the Optional Protocol, including those that established criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, State parties have no obligation regarding recognition of the Committee's rules of procedure and its interpretation of the provisions of the Optional Protocol, which "could only be efficient 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, case law are not subject of the Optional Protocol". It also submits that "any communication registered in violation of the provisions of the Optional Protocol to the Covenant on Civil and Political Rights will be viewed by the State Party as incompatible with the Protocol and will be rejected without comments on the admissibility or merits". The State party further maintains that decisions taken by the Committee on rejected communications will be considered by its authorities as "invalid".

### **Issues and proceedings before the Committee**

#### *State party's lack of cooperation*

5.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the author's communication insofar as it is registered in violation of the provisions of the Optional Protocol, because the author has failed to exhaust available domestic remedies; that it has no obligation to recognize the Committee's rules of procedure and its interpretation of the provisions of the Optional Protocol; and that the decision taken by the Committee on the communication will be considered by its authorities as "invalid".

5.2 The Committee recalls that article 39, paragraph 2, of the Covenant authorizes it to establish its own rules of procedure, which the States parties have agreed to recognize. 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). Implicit in a State's adherence to the Optional 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 a communication and in the expression of its Views.<sup>3</sup> It is for the Committee to determine whether a case should be registered. 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 Committee's determination of the admissibility and of the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol.

#### *Consideration of admissibility*

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

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

6.3 The Committee takes note of the State party's contention that the author should have requested the Office of the Procurator-General to initiate a supervisory review of the domestic courts' decisions. It also takes note of the author's explanation that his request to initiate supervisory review proceedings with the Supreme Court remained unsuccessful.

<sup>3</sup> See, for example, communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

The Committee recalls its jurisprudence, according to which the State party's supervisory review proceedings before the Office of the Procurator-General, allowing a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.<sup>4</sup> In the circumstances, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from examining the present communication.

6.4 The Committee considers that the author has sufficiently substantiated his claim under article 19, paragraph 2, of the Covenant, for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

#### *Consideration of the merits*

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

7.2. The Committee notes the author's claim that finding him guilty of having conducted a peaceful assembly without prior authorization constitutes an unjustified restriction on his right to freedom of expression, as protected by article 19, paragraph 2, of the Covenant. It also notes the State party's explanation that the restriction in question was imposed in accordance with the Law on Mass Events, in particular because the author had no valid authorization to hold the event; that the author's argumentation that the street march neither breached the Traffic Rules nor disturbed public order was incorrect; and that "the wish of a group of people to hold mass events should not violate the rights and freedoms of other citizens".

7.3 The Committee has to consider whether the restriction imposed on the author's right to freedom of expression was justified under any of the criteria set out in article 19, paragraph 3. The Committee recalls that article 19 provides for certain restrictions but only as 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. It recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.<sup>5</sup> Any restrictions to the exercise of such freedoms must conform to strict tests of necessity and proportionality and "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."<sup>6</sup> The Committee recalls that if the State imposes a restriction, it is up to the State party to show that this is necessary for the aims set out in this provision.

7.4 In this regard, the Committee notes the State party's explanation that the restriction imposed in the author's case was in accordance with the law. It points out, however, that the State party has not attempted to explain why it was necessary — under domestic law and for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant — to obtain authorization prior to holding a peaceful, silent, street march in which only three persons intended to participate. Neither has it explained how in practice, in the case at

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<sup>4</sup> 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, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.; No. 1839/2008, *Komarovsky v. Belarus*, Views adopted on 25 October 2013, para. 8.3; and No.1903/2009, *Youbko v. Belarus*, Views adopted on 17 March 2014, para. 8.3.

<sup>5</sup> See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

<sup>6</sup> *Ibid.* para. 22.

issue, the silent movement of the author and his two acquaintances along the pavement down a pedestrian street during lunchtime would have violated the rights and freedoms of others or would have posed a threat to public safety or public order (*ordre public*). In the absence of any other pertinent explanations from the State party, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as submitted reveal a violation, by the State party, of the author's rights under article 19, paragraph 2, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 19, paragraph 2, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, as well as adequate compensation and reimbursement of the fine imposed on the author as a result of the administrative proceedings. 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 article 19 of the Covenant may be fully enjoyed in the State party.<sup>7</sup>

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

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<sup>7</sup> See, for example, communications No. 1851/20008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; No. 1948/2010, *Turchenyak et al. v. Belarus*, para. 9; and No. 1790/2008, *Govsha, Syritsa and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.