



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2434/2014*, **

<i>Communication submitted by:</i>	Fedor Mirzayanov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	27 September 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the committee's rules of procedure (now rule 92), transmitted to the State party on 21 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Sanction for participating in a peaceful assembly
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly; arbitrary detention; cruel and inhuman treatment
<i>Articles of the Covenant:</i>	7; 9 (1), (3) and (4); 10; 14 (1), (2), (3) (d) and (e), (5) and (7); and 19 and 21, read in conjunction with 2
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Fedor Mirzayanov, a national of Belarus born in 1990. He claims that the State party violated his rights under articles 7; 9 (1), (3) and (4); 10; 14 (1), (2), (3) (d) and (e), (5) and (7); and 19 and 21, read in conjunction with 2, of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



The facts as submitted by the author

2.1 The author was a student at the Belarusian State University at the time of the events in question. On 19 December 2010, he participated in a public gathering in Oktyabrskaya Square in Minsk. The purpose of the gathering was to express discontent about the presidential elections, held on the same day, which were deemed undemocratic by the participants. The author attended the gathering to support Yaroslav Romanchuk, an opposition presidential candidate. He was unaware that no prior authorization had been obtained from the authorities to hold the gathering.

2.2 More than 10,000 people participated in the gathering. Despite the peaceful nature of the gathering, the police used disproportionate force to disperse the crowd. More than 700 people were arrested, of whom more than 600 were detained and charged under article 23.34 of the Code of Administrative Offences (violation of the established procedure for conducting mass events). Furthermore, criminal proceedings were brought against dozens of participants under articles 293 (participation in mass riots) and 342 (organization and preparation of activities seriously undermining public order) of the Criminal Code. In 2011, many of those participants, including the author, were convicted and sentenced to between three and six years in prison.

2.3 At approximately 10.30 p.m. on 19 December 2010, the author was detained by the police in Oktyabrskaya Square. On 20 December 2010, Zavodskoy District Court found the author guilty under article 23.34 of the Code of Administrative Offences and sentenced him to 15 days of administrative detention. According to the Court's decision, the author participated in an unauthorized gathering, yelling "long live Belarus" and "get out", and did not comply with the police's order to stop his "unlawful actions". On 23 December 2010, the author appealed the decision of Zavodskoy District Court, however, his appeal was rejected.

2.4 On 19 January 2011, the author was served with a subpoena to appear before an investigator of the State Security Committee on 26 January 2011. However, on 25 January 2011, the author was arrested at his home by the police on suspicion of having committed a crime under article 293 (1) (2) of the Criminal Code (participation in mass riots). On 27 January 2011, the Minsk City Deputy Prosecutor sanctioned the author's arrest and his transfer to a pretrial detention facility. On 31 January 2011, the author was formally charged with the crime along with four other people, including an opposition presidential candidate, Andrei Sannikov.

2.5 While in detention, the author was subjected to psychological pressure by the police to testify against opposition presidential candidates. He was placed in a "torture cell", as it was referred to by inmates, in which he was held with 21 other inmates in unsanitary conditions, without natural light or ventilation. The cell measured 12 square metres and was nominally for 13 persons. The temperature in Minsk in June reached 32 degrees Celsius, however, it was much higher inside his cell. He was allowed out of his cell to walk only once a day, to shower once every 10 days and to sleep for no more than three or four hours a night. His cellmates had flu, scabies and pediculosis. After the author's cellmates learned about an article published on one of the opposition's websites describing the "torture cell", he started receiving death and rape threats from his cellmates, which were ignored by the detention facility administration. The author complained about the ill-treatment and conditions of his detention to the trial court and to the Minsk City Prosecutor in his motion for a supervisory appeal, however, no investigation was launched into his claims.

2.6 On an unknown date, the author appealed the order sanctioning his arrest to the Central District Court of Minsk. On 14 March 2011, the Court denied his appeal. The hearing was closed to the public and held without the author being present. His detention was subsequently extended twice, namely on 2 March 2011 by the Minsk City Deputy Prosecutor and on 18 April 2011 by the Partizanskiy District Court of Minsk.

2.7 In January 2011, the author was expelled from university for having taken part in the unauthorized gathering on 19 December 2010.

2.8 On 14 May 2011, the Partizanskiy District Court of Minsk found the author, along with three co-defendants, guilty of participation in mass riots, in particular, of committing

interpersonal violence by throwing pieces of glass at the police, and causing riotous damage and the destruction of property. He was sentenced under article 293 (2) of the Criminal Code to three years in prison.

2.9 On 15 July 2011, the Minsk City Court upheld the author's sentence on cassation appeal. On 13 September 2011, the author was granted a presidential pardon.

2.10 On an unknown date, the author submitted a motion for a supervisory appeal to the Deputy Chair of the Supreme Court. On 20 January 2012, his motion was denied.

2.11 On 28 December 2012, the author submitted a motion for a supervisory appeal to the Minsk City Prosecutor. On 18 February 2013, his motion was denied.

2.12 The author contends that he has exhausted all available domestic remedies.

The complaint

3.1 The author claims that his arrest and subsequent prosecution, through administrative and criminal proceedings, for participating in a peaceful gathering on 19 December 2010 were in violation of articles 19 and 21, read in conjunction with article 2, of the Covenant.

3.2 He claims that the State party violated his rights under article 9 (1), (3) and (4) of the Covenant because he was not informed of the reasons for his arrest on 25 January 2011; there were no grounds for his detention as there was no evidence that he could abscond or obstruct the administration of justice; the decisions to extend his detention were insufficiently reasoned; and his complaints and motions to release were all rejected in a perfunctory manner. He further claims that his arrest was not sanctioned by a judge, and when he appealed his arrest to the court, the hearing was held behind closed doors and without the author being present.

3.3 The author claims that he was subjected to psychological pressure aimed at coercing him to testify against opposition presidential candidates in violation of article 7 of the Covenant. Moreover, the conditions of his detention violated his rights under article 10 of the Covenant.

3.4 With regard to the violation of article 14 (1), the author claims that he was denied a fair and public trial before an independent and impartial court. He submits that judges in Belarus lack impartiality and independence from the executive branch, which has been confirmed by the Special Rapporteur on the independence of judges and lawyers (see E/CN.4/2001/65/Add.1) and the Office for Democratic Institutions and Human Rights.¹ The author submits that in the present case the courts completely lacked impartiality and independence due to the statements made, long before the trial, by the highest ranked officials that the events of 19 December 2010 should be qualified as mass riots. The author further claims that his trial was not public as his mother and uncle, as well as journalists and human rights defenders, were not allowed to attend several hearings, allegedly due to lack of space. In fact, more than 30 police officers in civilian clothing were present in the courtroom, occupying the area in which relatives of the victims could have been accommodated. Entrance to the court building was controlled by dozens of State security service agents who checked everyone who entered the building and recorded their names for unspecified purposes.

3.5 With regard to article 14 (2) of the Covenant, the author claims that, before the trial even started, the President of Belarus, the Minister of the Interior, the Minister of Justice and a Supreme Court justice all repeatedly stated that the events of 19 December 2010 should be qualified as riots and that all those arrested, including the author, were guilty of crimes. The author also submits that, during the trial, all the defendants were handcuffed inside metal cages, which made them appear as dangerous criminals in the eyes of the court and the public.

¹ See *Trial Monitoring in Belarus (March–July 2011)* (Warsaw, 2011).

3.6 The author claims that the State party violated his rights under article 14 (3) (d) and (e) of the Covenant, because the cassation court heard his appeal while he was not present² and because, during the trial, a number of witnesses were not called to testify in person. The prosecution simply read out their testimonies given during the pretrial investigation, thus preventing the defence from examining these witnesses. Those testimonies were later used by the court to substantiate its verdict.

3.7 The author further claims that the Minsk City Court violated his rights under article 14 (5) of the Covenant because the cassation appeal of his sentence was very formal in nature without any consideration of the facts or the sufficiency of the evidence. Moreover, the decision of the Court did not address the claims made in the cassation appeal and the hearing was held without the author being present.

3.8 Finally, the author claims that, in violation of article 14 (7) of the Covenant, he was punished twice, by way of administrative and criminal proceedings, for his participation in the mass gathering of 19 December 2010.

State party's observations on admissibility

4.1 In a note verbale dated 18 August 2014, the State party submitted its observations on admissibility of the communication. The State party submitted that, while it recognized the Committee's competence to receive and consider communications from nationals of Belarus who allege violations of their rights under the Covenant, it drew the Committee's attention to the unacceptability of ignoring and/or arbitrarily interpreting the Optional Protocol when registering and considering individual communications.

4.2 The State party expresses its concern at the fact that the Committee systematically violates the responsibilities entrusted to it under the Optional Protocol, by registering and considering individual communications from persons who have not exhausted all domestic remedies (arts. 2 and 5 (2) (b) of the Optional Protocol) and from third parties, including those who are not subject to the jurisdiction of Belarus (arts. 1 and 2 of the Optional Protocol).

4.3 The State party considers it unacceptable that the Committee adopts Views on individual communications that are registered in violation of the Optional Protocol pursuant to "an established practice and rules of procedure". It notes that the rules of procedure established by the Committee pursuant to article 39 (2) of the Covenant serve as the internal rules of the Committee, are not legally binding for State parties and cannot be used to justify the Committee's violations of the provisions of the Optional Protocol. All actions of the Committee within the framework of powers delegated to it, including the registration of communications, must conform fully to the provisions of the Optional Protocol. Actions taken outside of the framework of those powers (*ultra vires*) do not create any legal consequences for States parties.

4.4 The State party submits that, in spirit of adhering in good faith to the Optional Protocol, it exercises its right to not recognize the Views adopted as a result of the Committee's unlawful actions. By exceeding the powers bestowed upon it by the Covenant and the Optional Protocol, broadly interpreting its mandate and baselessly adopting the functions and powers of an international judicial body, the Committee undermines its own credibility and contradicts the goals of the Covenant and the Optional Protocol.

4.5 The State party notes that, in accordance with the provisions of the Covenant, the Committee is not granted unlimited powers of interpretation. The Committee may interpret the Covenant exclusively in relation to specific situations submitted to it for its consideration. At the same time, the most significant interpretations are those that are made by the States parties ("authentic interpretation").

4.6 The State party submits that the above-mentioned facts call for a reform of the Committee and more transparency in its work. The State party therefore urges the Committee to stop registering individual communications in violation of the Optional

² The author submits that domestic law does not require a defendant to be present during an appeal hearing.

Protocol and adopting Views thereon. The State party also calls for a stop to the practice of misinforming the international community about the State party's alleged refusal to cooperate.

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

5.1 In a letter dated 19 February 2015, the author provided his comments on the State party's observations on admissibility. He rejects the State party's position that he has not exhausted all available domestic remedies. Although he appealed his administrative arrest, his appeal was rejected. He also appealed his arrest in the criminal case and the verdict of the trial court. He further submitted motions for a supervisory appeal of his conviction to the Deputy Chair of the Supreme Court and the Minsk City Prosecutor, however, his appeals were denied. He argues that all effective domestic legal remedies in his case have been exhausted. He notes that, in accordance with domestic law, a verdict enters into force after a cassation appeal. According to him, any subsequent appeal would be discretionary in nature. In any event, supervisory appeals have been recognized by the Committee as an ineffective remedy.³

5.2 With regard to the State party's argument that the present communication was submitted by a third party, the author submits that the communication was sent by his father whose name and contact details were indicated in the first paragraph of the communication.⁴

Issues and proceedings before the Committee

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that it adopts Views on individual communications that are registered in violation of the Optional Protocol, pursuant to "an established practice and rules of procedure", and that the State party will exercise its right not to recognize the Views adopted by the Committee.

6.2 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 art. 1 of the Optional Protocol). Implicit in a State party'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 thereof, to forward its Views to the State party and to 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 a communication and in the expression of its Views. 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 should be registered and by declaring outright 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.⁵

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

³ *Iskiyaev v. Uzbekistan* (CCPR/C/95/D/1418/2005), para. 6.1.

⁴ The communication was signed and submitted on behalf of the author himself, however, his father's name and address were provided for all subsequent correspondence.

⁵ See, for example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010), para. 8.2, and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

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 notes the State party's assertion that the author has failed to exhaust all domestic remedies. The Committee also notes the author's claim that, although he appealed his administrative arrest, his appeal was rejected. The documents submitted show that the author's appeal was rejected due to non-payment of court fees. The Committee recalls that article 14 (5) of the Covenant provides that anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law.⁶ Since the author was charged with an administrative offence, the Committee must first determine if article 14 (5) applies in the present case. The Committee notes that the author was sentenced to 15 days of administrative detention for violating the established procedure for conducting mass events under article 23.34 (1) of the Code of Administrative Offences. It further notes that the legal rules infringed by the author are directed not towards a given group possessing a special status in the manner, for example, of disciplinary law, but towards anyone who, in his or her individual capacity, participates in an unsanctioned mass event. The rules proscribe conduct of a certain kind and make the resultant requirements subject to a determination of guilt and a punitive sanction. In its jurisprudence,⁷ the Committee has referred to paragraph 15 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it referred to sanctions for acts that were criminal in nature that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity. Therefore, the general character of the rules and the purpose of the penalty, being both a deterrent and punitive in nature, establish that the charges in question were, in terms of article 14 of the Covenant, criminal in nature.

7.4 The Committee observes that, on 23 December 2010, the author submitted an appeal to the decision of the Zavodskoy District Court dated 20 December 2010. However, on 5 January 2011, that is on the day that the author completed his 15-day sentence, the Court rejected the author's appeal due to non-payment of court fees. In these circumstances, since the author was facing, although in administrative proceedings, charges of a criminal nature and there was no effective review by a higher court of the sanctioning decision, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.5 With regard to the author's criminal conviction, the Committee notes the argument that he appealed his arrest in the criminal case and the verdict of the trial court, and submitted motions for a supervisory appeal of his conviction to the Deputy Chair of the Supreme Court and the Minsk City Prosecutor. The Committee recalls its jurisprudence, according to which a petition to a prosecutor's office requesting 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 (2) (b) of the Optional Protocol.⁸ It also considers that requests that depend on the discretionary power of a judge for a supervisory review 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.⁹ In the present case, the Committee notes that the State party has not provided any further information as to the effectiveness of the supervisory review process. Accordingly, the Committee

⁶ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 45.

⁷ *Osiyuk v. Belarus* (CCPR/C/96/D/1311/2004), paras. 7.3–7.4.

⁸ See, for example, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 9.3.

⁹ See, for example, *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919/2009 and 1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2; and *Jamshidian v. Belarus* (CCPR/C/121/D/2471/2014), para. 8.7.

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

7.6 With regard to the State party's argument of submissions by third parties, the Committee recalls that, normally, the communication should be submitted by an individual personally or by that individual's representative.¹⁰ In the present case, the author provided his father, Rim Mirzayanov, with a duly signed power of attorney, clearly delegating the power to act as his representative in the present case before the Committee. The Committee therefore concludes that the communication was submitted in accordance with the rules.

7.7 The Committee notes the author's claim under article 7 of the Covenant that he was subjected to psychological pressure by the police to testify against opposition presidential candidates, and received death and rape threats from his cellmates after they learned about an article published with the author's assistance on one of the opposition's websites describing the "torture cell". In the absence of any further information in support of the author's allegations, the Committee considers that the author has failed to sufficiently substantiate his claim for the purposes of admissibility, and therefore declares this claim inadmissible under article 2 of the Optional Protocol.

7.8 The Committee also notes the author's claim that the conditions of his detention violated his rights under article 10 of the Covenant. However, from the information before it, the Committee notes that the author did not raise this claim before the domestic authorities. In these circumstances, the Committee considers that the author has not exhausted all available domestic remedies concerning his claim under article 10 of the Covenant and finds it inadmissible under article 5 (2) (b) of the Optional Protocol.

7.9 The Committee further notes the author's claim that, in violation of article 14 (7) of the Covenant, he was punished twice, by way of administrative and criminal proceedings, for his participation in the mass gathering of 19 December 2010. The Committee observes that, while the author's administrative responsibility was engaged for his participation in an unauthorized gathering, his criminal prosecution was triggered by his actions during the gathering, namely allegedly throwing pieces of glass at the police and the destruction of property, classified by the investigation and the court as participation in a mass riot. The Committee considers that the author has insufficiently substantiated his claim of a violation under article 14 (7) of the Covenant, for the purposes of admissibility, and therefore considers it inadmissible under article 2 of the Optional Protocol.

7.10 The Committee considers that the author has sufficiently substantiated the claims under articles 9 (1), (3) and (4); 14 (1), (2), (3) (d) and (e) and (5); 19; and 21 of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that the State party has violated his rights under articles 19 and 21 of the Covenant by imposing an unjustified restriction thereon. The issue before the Committee is whether the author's rights under articles 19 and 21 were violated when he was arrested by the police in a public space while participating in a public gathering, found guilty of an administrative offence for violating the established procedure for conducting a mass event and sentenced to 15 days of administrative detention. The Committee observes that the State party has submitted no observations on the merits of the communication and that, in those circumstances, due weight must be given to the author's allegations.¹¹ In the light of the material before it, the Committee considers that the State party imposed limitations on the author's rights, in particular on his right to impart information and ideas of all kinds, as provided for under article 19 (2) of the Covenant, and

¹⁰ Rule 99 (b) of the Committee's rules of procedure.

¹¹ See, for example, *Samathanam v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

his right of peaceful assembly, as provided for under article 21. The Committee must therefore determine whether the restrictions imposed on the author's rights can be justified under article 19 (3) and the second sentence of article 21.

8.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and that such freedoms are essential for any society (para. 2). They constitute the foundation stone for every free and democratic society (ibid.). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as are provided by law and are necessary (a) for respect of the rights and reputation of others and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions 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.¹² The Committee also recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.¹³

8.4 The Committee notes that the author was sanctioned for participating in a public gathering on the basis of the finding by the police and the district court that he had violated the procedure for organizing and conducting a mass event established by domestic legislation. The Committee notes the author's explanation that he attended the gathering to support an opposition presidential candidate. The Committee notes that neither the State party nor the domestic courts have provided any explanations as to why such a restriction was justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant, and whether the penalty imposed – 15 days of administrative detention – even if based on law, was necessary, proportionate and in compliance with any of the legitimate purposes listed in that provision.

8.5 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.¹⁴ It concludes that, in the present case, the rights of the author under article 19 of the Covenant have been violated.

8.6 The Committee recalls 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 in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound 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 (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right of assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations on it.¹⁵ The State party is thus under an obligation to justify the limitation on the right protected by article 21 of the Covenant.¹⁶

8.7 In the present case, the Committee must consider whether the restrictions imposed on the author's right of peaceful assembly are justified under any of the criteria set out in

¹² General comment No. 34, para. 22. See also, for example, *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.7; *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.3.

¹³ See, for example, *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3; and *Poplavny and Sudalenko v. Belarus*, para. 8.3.

¹⁴ See, for example, *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 8.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010), para. 10.3.

¹⁵ See, for example, *Melnikov v. Belarus* (CCPR/C/120/D/2147/2012), para. 8.5.

¹⁶ *Poplavny v. Belarus*, para. 8.3; and *Poplavny and Sudalenko v. Belarus*, para. 8.5.

the second sentence of article 21 of the Covenant. The Committee notes that, in the light of the information available on file, the national authorities and the district court have not provided any justification or explanation as to how, in practice, the public gathering 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.

8.8 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.¹⁷ It concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.

8.9 The Committee notes the author's claim that he was not informed of the reasons for his arrest on 25 January 2011, there were no grounds for his detention in the absence of evidence that he could abscond or obstruct the administration of justice, and that the subsequent decisions to extend his detention were insufficiently reasoned. The Committee notes the author's claim that these claims were brought to the attention of the relevant authorities and courts of the State party but were rejected by them in a perfunctory manner. The Committee recalls in that regard that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, and a lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.¹⁸ That means, *inter alia*, that remand in custody on criminal charges must be reasonable and necessary in all circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.¹⁹ The State party has not demonstrated that those risks existed in the present case. In the absence of any further information, therefore, the Committee concludes that there has been a violation of article 9 (1) of the Covenant.

8.10 The Committee also notes the author's claim that his arrest was sanctioned by a prosecutor, who was not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that the above-mentioned provision entitles a detained person charged with a criminal offence to judicial control of his or her detention. It is inherent in the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with.²⁰ The Committee is, therefore, not satisfied that the prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized by law to exercise judicial power within the meaning of article 9 (3) of the Covenant,²¹ and concludes that the facts as submitted reveal a violation of the author's rights under article 9 (3) of the Covenant. In the light of this finding, the Committee decides not to examine separately the claims raising issues under article 9 (4) of the Covenant.

8.11 The Committee further notes the author's claim that he was denied a fair and public trial before an independent and impartial court, in violation of article 14 (1) of the Covenant, and that his right to be presumed innocent until proved guilty according to law has not been respected by the authorities in his case, in violation of article 14 (2) of the Covenant. The Committee notes the author's claim that the trial was not public as his mother and uncle, as well as journalists and human rights defenders, were not allowed to attend several hearings. The Committee also notes the author's claim that, before the start of the trial, the President of Belarus, the Minister of the Interior, the Minister of Justice and a Supreme Court justice all repeatedly stated that the events of 19 December 2010 should be qualified as mass riots and that all of those arrested, including the author, who throughout the trial were handcuffed in a metal cage, were guilty of crimes. In the absence of any observations by the

¹⁷ See, for example, *Sudalenko v. Belarus*; *Poplavny v. Belarus*; *Derzhavtsev v. Belarus* (CCPR/C/115/D/2076/2011); *Korol v. Belarus*; *Androsenko v. Belarus*; *Poplavny and Sudalenko v. Belarus*; and *Koreshkov v. Belarus*.

¹⁸ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 12.

¹⁹ See, for example, *Van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

²⁰ See, for example, *Kulomin v. Hungary* (CCPR/C/50/D/521/1992), para. 11.3; and *Platonov v. Russian Federation* (CCPR/C/85/D/1218/2003), para. 7.2.

²¹ General comment No. 35 (2014), para. 32.

State party to counter these claims, the Committee decides that due weight must be given to the author's allegations. Accordingly, the Committee concludes that the facts before it constitute a violation of article 14 (1) and (2) of the Covenant.

8.12 The Committee finally notes the author's allegation of a violation of his rights under article 14 (3) (d) of the Covenant during the cassation appeal. The State party presented no specific observations on this part of the communication. The Committee finds that article 14 (3) (d) of the Covenant, which provides the accused with a right to be tried in his or her presence, applies to the present case, as the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence.²² The Committee recalls that under article 14 (3) (d) accused persons are entitled to be present during their trial and that proceedings without the accused being present may only be permissible if it is in the interest of the proper administration of justice, such as when accused persons decline to exercise their right to be present having been informed of the proceedings sufficiently in advance.²³ In the absence of any other relevant information on file, the Committee concludes that the facts as described by the author disclose a violation of article 14 (3) (d) of the Covenant.

8.13 Having concluded that, in the present case, there has been a violation of article 14 (1), (2) and (3) (d) of the Covenant, the Committee decides not to examine separately the author's claims under article 14 (3) (e) and (5).

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under articles 9 (1) and (3), 14 (1), (2) and (3) (d), 19 and 21 of the Covenant. The Committee reiterates its conclusion that the State party has also violated its obligations under article 1 of the Optional Protocol.

10. Pursuant to 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 take appropriate steps to review the author's conviction and to provide him with adequate compensation, including reimbursement of any legal costs or other fees incurred, and appropriate measures of satisfaction. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 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 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 the official languages of the State party.

²² *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 10.6.

²³ General comment No. 32 (2007), para. 36.