



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. 2720/2016*, **

<i>Communication submitted by:</i>	Vitaly Amelkovich (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	5 June 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 1 February 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matters:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression
<i>Procedural issue:</i>	State party's failure to cooperate
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Article of the Optional Protocol:</i>	None

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The communication was examined pursuant to the procedure for repetitive communications, set out in rule 105 of the Committee's rules of procedure. The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1. The author of the communication is Vitaly Amelkovich, a national of Belarus born in 1980. He claims that the State party has violated his rights under articles 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 17 February 2011, the author submitted an application with the Slutsk District Executive Committee, requesting authorization to hold a peaceful assembly (picket) on 5 March 2011 in the city stadium of Slutsk. The purpose of the picket was to publicly express his and other participants' support for political detainees in Belarus. In accordance with the Public Events Act of 30 December 1997, the author undertook a written obligation concerning the organization and conduct of the picket.

2.2 On 25 February 2011, the Slutsk District Executive Committee declined to authorize the picket, on the ground that there were no political detainees in Belarus.

2.3 On 23 March 2011, the author appealed the decision of the Slutsk District Executive Committee to Slutsk District Court, Minsk region. With reference to articles 23, 33 and 35 of the Constitution and articles 19 and 21 of the Covenant, he argued that the denial of authorization to hold the picket could not be considered as a permissible restriction on his right to peaceful assembly and the right to freedom of expression that was necessary in a democratic society in the interests of public order (*ordre public*) or the protection of the rights and freedoms of others.

2.4 On 19 April 2011, the author's appeal was dismissed by Slutsk District Court. The court determined that the Slutsk District Executive Committee's denial of authorization to hold the picket on 5 March 2011 was lawful.

2.5 On 27 April 2011, the author filed a cassation appeal with the Judicial Chamber on Civil Cases of Minsk Regional Court against the decision of Slutsk District Court. With reference to articles 23, 33 and 35 of the Constitution and articles 19 and 21 of the Covenant, he again argued that the decision was unlawful and violated his right to freedom of expression, as well as his right to peaceful assembly.

2.6 On 2 June 2011, the Judicial Chamber on Civil Cases of Minsk Regional Court upheld the decision of Slutsk District Court, based on the same grounds and arguments. Under article 432 of the Civil Procedure Code, the ruling of the cassation court is final and becomes enforceable from the moment of its adoption.

2.7 The author did not file an application with the Prosecutor's Office and the higher courts under the supervisory review procedure, since he did not consider that this constituted an effective remedy. He adds that the decision to consider a request for supervisory review does not depend on the will of the person affected but is purely at the discretion of a limited number of high-level judicial officers. When such a review takes place, it is limited to issues of law and does not permit any review of facts and evidence. The author submits, therefore, that he has exhausted all available and effective domestic remedies.

The complaint

3. The author claims to be a victim of a violation by Belarus of the right to freedom of expression and the right to peaceful assembly under articles 19 (2) and 21 of the Covenant, because it remains unclear for what legitimate aim these rights were restricted. He argues that the Slutsk District Executive Committee has not explained why such restrictions were necessary for one of the legitimate aims provided for in articles 19 and 21 of the Covenant. He adds that, in his view, it was not necessary for the local authorities to prohibit the holding of a peaceful assembly in the interests of national security, public order, the protection of public health or the protection of the rights and freedoms of others.

Lack of cooperation by the State party

4. On 1 February 2016 and 16 January, 3 July and 9 October 2017, the Committee requested the State party to provide information and observations on the admissibility and the merits of the present communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the substance of the author's claims. It reiterates that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.¹

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2 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.

5.3 The Committee takes note of the author's assertion that all available and effective domestic remedies have been exhausted. The Committee also notes that the author did not file applications under the supervisory review procedure, since he did not consider that an effective remedy. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee considers that the author has sufficiently substantiated the claims under articles 19 (2) 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

6.1 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.

6.2 From the material before the Committee, it transpires that the author's application to hold a public event was declined on the ground that there were no political detainees in Belarus.

6.3 The Committee notes the author's claim that his right to freedom of expression under article 19 (2) of the Covenant has been restricted arbitrarily. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it is stated 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. The Committee recalls that article 19 (3) of the Covenant allows for restrictions on these rights only as are provided by law and are 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. 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.

¹ *Samathanam v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

6.4 The Committee notes that neither the State party nor the national courts have provided any explanation to justify the restrictions on the author's freedom of expression. The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant.

6.5 The Committee also notes the author's claim that his right to freedom of assembly under article 21 of the Covenant was violated by the refusal of the local authorities to allow the picket to be held. In this context, 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.² This right allows for the possibility of organizing and participating in a peaceful assembly, whether moving or stationary, 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 imposed in conformity with the law and is 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 to 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 to it. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.³

6.6 The Committee notes, in the light of the information available on file, that the national authorities and the courts have not provided any justification or explanation for the prohibition of the author's right to freedom of assembly, except for a broad statement that there were no political detainees in Belarus. Both articles 19 and 21 cover situations where controversial ideas are conveyed, and restrictions must be justified by the authorities on the grounds elaborated in the Covenant.

6.7 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.⁴ In the absence of any explanation by the State party regarding the matters at stake, the Committee concludes that, in the present case, the State party has violated the author's rights under articles 19 (2) and 21 of the Covenant.

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

8. 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 provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee reiterates that the State party should revise its normative framework, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 (2) and 21 of the Covenant may be fully enjoyed in the State party.

9. 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

² *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

³ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

⁴ *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012); *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012); *Korol v. Belarus*; *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 8.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 10.3.

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.
