



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. 2455/2014*, **

<i>Communication submitted by:</i>	Tatsiana Reviako (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	26 March 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 February 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2020
<i>Subject matter:</i>	Freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	2 (3) (a) and 19 (2)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Tatsiana Reviako, a national of Belarus born in 1968. She claims that the State party has violated her rights under articles 2 (3) (a) and 19 (2) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 5 August 2013, the author was distributing leaflets on which was written¹ "Ales Belyatski. Human rights defender behind bars" in the centre of Minsk, when she was apprehended by the police. Later the same day, the police drew up a record of an administrative offence.

* Adopted by the Committee at its 129th session (29 June–24 July 2020).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, 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 did not seek prior authorization from the city executive authorities, arguing that her actions did not constitute a demonstration or picket.



2.2 On 6 August 2013, the Court of the Soviet District in Minsk found the author guilty of an administrative offence under article 23.34 (1) (on breaching the order of organizing and holding mass events) of the Code of Administrative Procedure and Enforcement and fined her.²

2.3 On 12 August 2013, the author filed an appeal against that decision with the Minsk City Court, arguing that the lower court had failed to apply the Constitution and the Covenant (art. 19) or to justify why it had not done so. The author also argued that the district court had failed to consider whether the Public Events Act corresponded to the Constitution and whether it found the Act to be in line with the Constitution, to justify its decision. The author claimed that she had been exercising her freedom of expression on the basis of the Constitution and the Covenant and not on the basis of the Public Events Act, which the lower court considered to have been violated by her failure to seek prior authorization for the conduct of the picket. In her appeal, the author asked to have the administrative penalty imposed by the lower court revoked and the administrative case against her closed. On 27 August 2014, the Minsk City Court confirmed the decision of the district court.

2.4 On 30 September 2013, the author appealed the district and the city courts' decisions to the Chair of the Minsk City Court, invoking the same arguments. On 18 November 2013, the Chair of the Minsk City Court upheld the previous decisions.

2.5 On 29 November 2013, the author appealed to the Chair of the Supreme Court of Belarus under the supervisory review proceedings. On 11 January 2014, the Supreme Court refused to satisfy the author's request to revoke the administrative penalty and close the administrative case against her. According to the Supreme Court, mass events are regulated by a specialized law, not by the Constitution, and the author was obliged to abide by that law. Given that she failed to follow the procedure for requesting authorization established by the law, the lower courts legitimately found the author guilty of an administrative offence. The Court found ungrounded the author's claim that the Public Events Act was not in line with the Constitution.

Complaint

3.1 The author claims that the courts violated her rights under article 19 (2) of the Covenant by imposing the sanction and failing to justify the restriction for the purposes of article 19 (3) of the Covenant.

3.2 The author claims that the State party violated her rights under article 2 (3) (a) of the Covenant, since it failed to provide her with an effective remedy, as guaranteed by the Covenant.

State party's observations on admissibility

4. In a note verbale dated 15 April 2015, the State party submitted its observations, stating that the author had failed to exhaust domestic remedies as required by article 2 of the Optional Protocol.³ The State party contends that registration of the communication in violation of the requirements of article 2 of the Optional Protocol entails a violation, by the Committee, of article 5 of the Optional Protocol. The State party concludes that the author and the Committee failed to abide by the procedural rules established by the Covenant and its Optional Protocol, and, therefore, the State party will not engage in further correspondence concerning the present communication.

² She was fined 30 monthly calculation indices, which is equal to 3 million Belarusian roubles (approximately \$350).

³ The State party indicated that the author had not used her right to appeal the decision that had entered into force.

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

5. On 12 May 2015, the author submitted her comments on the State party's observations. She notes that she has exhausted all domestic remedies, bearing in mind that the supervisory review is not considered by the Committee to be an effective remedy.⁴

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol, and that the State party will not engage in further correspondence regarding this communication.

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'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 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.⁵ It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered, and by terminating its cooperation with the Committee on a communication, the State party is violating its obligations under article 1 of the Optional Protocol.

Issues and proceedings before the Committee

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.

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 takes note of the State party's statement that the author failed to exhaust all domestic remedies. The Committee notes the author's assertion that all available and effective domestic remedies have been exhausted and that supervisory review proceedings are not considered by the Committee as constituting an effective remedy.⁶ The Committee notes that the author filed two complaints against the district court's decision of 6 August 2013, on 30 September 2013 to the Chair of the Minsk City Court, and on 29 November 2013 to the Chair of the Supreme Court. The Committee also notes that the State party does not indicate which particular remedies were available to the author and could be effective in her case. Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee takes note of the author's submission that the State party violated its obligations under article 2 (3) (a) of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the

⁴ The author refers to *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008) and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008).

⁵ General comment No. 33 (2008), paras. 8 and 10; and, inter alia, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

⁶ For example, *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006), para. 6.3.

Optional Protocol.⁷ Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers that the author's claims under article 19 (2) of the Covenant have been sufficiently substantiated for the purposes of admissibility and proceeds with its examination on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol. The Committee notes that, in failing to respond to a communication, or responding incompletely, a State that is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication.⁸ In the absence of any explanations from the State party in respect of the merits, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

8.2 The Committee notes the author's allegations that the authorities violated article 19 (2) of the Covenant by restricting her rights thereunder, without justification. From the material before the Committee, it transpires that the author was apprehended and subsequently convicted and fined for distributing leaflets on the street. In the Committee's opinion, the above-mentioned actions of the authorities interfere with the author's right to impart information and ideas of all kinds, as protected under article 19 (2) of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011), according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the 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.⁹

8.4 The Committee recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.¹⁰ The Committee observes that the apprehension and administrative prosecution of the author for distribution of leaflets as a violation of the order of organizing a mass event do not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee notes that neither the State party nor the domestic courts provided any explanation for the restrictions in question. The Committee considers that, in the circumstances of the present case, the fine imposed on the author, although based on domestic law, cannot be seen as justified for the purposes of article 19 (3) of the Covenant.¹¹

8.5 The Committee notes that neither the State party nor the domestic courts have provided any explanation to justify the restrictions on the author's freedom of expression. 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. In line with these

⁷ For example, *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

⁸ General comment No. 33 (2008), para. 10.

⁹ General comment No. 34 (2011), para. 22.

¹⁰ For example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus*, para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹¹ For example, *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 8.3; *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 10.3; and *Misnikov v. Belarus* (CCPR/C/117/D/2093/2011), para. 9.3.

precedents, the Committee concludes that, in the present case, the State party has violated the author's rights under article 19 (2), read in conjunction with article 2 (3), of the Covenant.¹²

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 19 (2) of the Covenant. By failing to cooperate with the Committee, the State party has also violated article 1 of the Optional Protocol to the Covenant.

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 provide the author with adequate compensation and reimbursement of court expenses. 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.

¹² *Zdrestov v. Belarus* (CCPR/C/128/D/2391/2014), para. 8.4.