



# International Covenant on Civil and Political Rights

Distr.: General  
30 September 2020

Original: English

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2461/2014\*, \*\*

<i>Communication submitted by:</i>	Mikhail Timoshenko et al. (represented by Mikhail Timoshenko)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	7 May 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 29 September 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2020
<i>Subject matters:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression; effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; submission of individual communication by a third party on behalf of an alleged victim
<i>Substantive issues:</i>	Freedom of expression; right of peaceful assembly; effective remedy
<i>Articles of the Covenant:</i>	2 (2) and (3), 19 and 21
<i>Articles of the Optional Protocol:</i>	1 and 5 (2) (b)

1. The authors of the communication are Mikhail Timoshenko, born in 1930, Vladimir Katsora, born in 1957, Vasily Polyakov, born in 1969, Vladimir Nepomnyashchikh, born in 1952, Andrey Tolchin, born in 1959, Yekaterina Tolchina, born in 1975, Leonid Sudalenko, born in 1966, Vladimir Shitikov, born in 1946, Zinaida Shumilina, born in 1952, Natalya Shchukina, born in 1944, Eduard Nelubovich, born in 1962, and Aleksandr Protsko, born in 1953, all nationals of Belarus. They claim that the State party has violated their rights under

\* 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.



articles 19 and 21 of the Covenant, read in conjunction with article 2 (2) and (3). The Optional Protocol entered into force for the State party on 30 December 1992. The authors are represented by Mr. Timoshenko.

### **The facts as submitted by the authors**

2.1 On 15 April 2013, the authors sought the authorization of the Gomel City Executive Committee to hold, on 7 May 2013, a series of 12 pickets of 20 persons each at different locations in the city of Gomel. The aim of the pickets was to attract public attention to the absence of effective criminal investigation into the disappearances of famous politicians in Belarus.

2.2 On 29 April 2013, the Gomel City Executive Committee refused to authorize the pickets, stating that the authors had not fulfilled the requirements set out in decision No. 299 of the Gomel City Executive Committee of 2 April 2008 on the holding of public events in the city of Gomel, based on the Public Events Act of Belarus of 1997. The authorities also noted that the authors' intended locations differed from those designated in the Executive Committee's decision No. 299, and that they had failed to conclude the required contracts with the city services for the maintenance of security and for medical assistance and cleaning.

2.3 On 7 May 2013, the authors appealed against the decision of the Gomel City Executive Committee before the Gomel Central District Court, which rejected their appeal on 27 August 2013. The court concluded that the decision of the Executive Committee was in accordance with the Public Events Act and was therefore lawful. On 31 August 2013, the authors filed a cassation appeal against the District Court's decision with the Gomel Regional Court. Their appeal was rejected on 26 September 2013. On 3 December 2013 and 25 February 2014, the authors appealed against the decision of the Gomel Regional Court before the Chair of the Gomel Regional Court and the Chair of the Supreme Court of Belarus, respectively, under the supervisory review procedure. Their appeals were dismissed on 20 February 2014 and 16 April 2014, respectively. The authors did not file an application for supervisory review with the Prosecutor's Office, since they did not consider that it constituted an effective domestic remedy.<sup>1</sup>

### **The complaint**

3.1 The authors claim that the rejection by the national authorities of their request to hold pickets amounts to a violation of their rights under articles 19 and 21 of the Covenant, read in conjunction with article 2 (2) and (3).

3.2 They claim that neither the Gomel City Executive Committee nor the courts considered whether the limitations imposed under decision No. 299 were justified by reasons of national security or public safety, public order or protection of public health or morals, nor whether they were necessary for the protection of the rights and freedoms of others. They claim that decision No. 299, which restricts the holding of all public events in Gomel, a city of 500,000 inhabitants, to a single, remote location, and the requirement to conclude paid contracts with the city services beforehand, unnecessarily limits the very essence of the rights guaranteed under articles 19 and 21 of the Covenant. The authors submit that decision No. 299 was replaced by decision No. 775 on 15 August 2013, which designates two, instead of one, permanent locations for public events. However, the two new locations are also on the outskirts of Gomel.

3.3 The authors claim that, by ratifying the Covenant, the State party has undertaken, under article 2 thereof, to respect and to ensure to all individuals the rights recognized in the Covenant, and to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. The authors claim that the State party is not fulfilling its obligations under article 2 (2), read in conjunction with articles 19 and 21 of the Covenant, since the Public Events Act contains vague and ambiguous provisions. For example, article 9 of the Act gives the heads of local executive committees the discretionary power to

---

<sup>1</sup> The authors refer to *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

designate specific permanent locations for the organization of peaceful assemblies, without justification.

3.4 The authors request that the Committee recommend that the State party align its legislation, particularly the Public Events Act and decision No. 775 of the Gomel City Executive Committee, with the international standards set out in articles 19 and 21 of the Covenant.

#### **State party's observations on admissibility**

4.1 By note verbale dated 10 October 2014, the State party challenged the admissibility of the communication. It submits that as a party to the Optional Protocol, it has recognized the Committee's competence to receive and consider communications from individuals who claim to be victims of violations of the rights guaranteed by the Covenant. However, it has not recognized the Committee's competence to consider communications submitted on behalf of third persons. The State party maintains that article 1 of the Optional Protocol does not authorize the author of the present communication to represent the interests of the other 11 individuals.

4.2 Furthermore, the State party notes that the author has not exhausted all available domestic remedies. It maintains that the Optional Protocol does not contain a reference to "effective" domestic remedies and therefore, under articles 2 and 5 (2) (b) of the Optional Protocol, the author should have exhausted all available domestic remedies.

4.3 In addition, the author is 84 years old. Individuals of that age usually write in a simple manner, using simple language. The present communication is full of specific legal terminology and references to the Committee's jurisprudence, which, in turn, raises doubts as to whether the communication has been written "voluntarily".

4.4 In conclusion, the State party submits that the author has not demonstrated that the court proceedings concerning the alleged violations of his rights guaranteed by the Covenant were unfair.

#### **Authors' comments on the State party's observations**

5.1 On 6 January 2015, the authors noted that according to the Committee's jurisprudence, an author of a communication may indicate an unlimited number of individuals who claim to be victims of a violation of their rights.<sup>2</sup> They note that when recognizing the Committee's competence to adopt Views, the State party also recognized its standards, jurisprudence and methods of work.

5.2 On non-exhaustion of domestic remedies, the authors note that in line with the Committee's jurisprudence, domestic remedies must not only be available, but also effective. They note that a remedy is effective if it can directly remedy the impugned state of affairs and if it offers a reasonable prospect of success. They further claim that, given that the Committee's jurisprudence does not recognize the supervisory review procedure as an effective remedy, they did not bring a supervisory review claim before the Prosecutor's Office.

5.3 The authors submit that the State party's comment that elderly persons write in a simple manner has offended all elderly persons in Belarus. Mr. Timoshenko has demanded an apology from the Ministry of Foreign Affairs.

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

##### *Consideration of admissibility*

6.1 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.

---

<sup>2</sup> The authors refer to *Kalyakin v. Belarus* (CCPR/C/112/D/2153/2012).

6.2 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.

6.3 The State party claims that the authors have failed to exhaust domestic remedies. The Committee notes that the authors appealed against the decision of the Gomel Central District Court of 27 August 2013 before the Gomel Regional Court and their appeal was rejected on 26 September 2013. They appealed further to the Chair of the Gomel Regional Court and to the Chair of the Supreme Court of Belarus under the supervisory review proceedings, but their appeals were rejected on 20 February and 16 April 2014, respectively. In these circumstances, and in the absence of specific information from the State party on which remedies the authors failed to exhaust, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee further notes the authors' claim that their rights under articles 19 and 21 of the Covenant, read in conjunction with article 2 (2), were violated. The Committee recalls its jurisprudence indicating that the provisions of article 2 of the Covenant set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. The Committee also considers that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.<sup>3</sup> The Committee notes, however, that the authors have already alleged a violation of their rights under articles 19 and 21, resulting from the interpretation and application of the existing laws of the State party. The Committee does not consider that an examination of whether the State party also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with articles 19 and 21, to be distinct from an examination of the violation of the authors' rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the authors' claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

6.5 The Committee also considers that the authors have failed to substantiate their claims raised under articles 19 and 21 of the Covenant, read in conjunction with article 2 (3), and therefore declares this part of the communication inadmissible.

6.6 The Committee considers that the authors have sufficiently substantiated their claims under articles 19 and 21 of the Covenant, for the purposes of admissibility, that their rights were restricted by the authorities and that neither the Gomel City Executive Committee nor the courts considered whether the restrictions in question, imposed under decision No. 299 of the Executive Committee, were in fact justified by reasons of national security or public safety, public order, or protection of public health or morals, or whether they were necessary for the protection of the rights and freedoms of others. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claim that decision No. 299 of the Gomel City Executive Committee unduly restricted the right to freedom of expression and the right of peaceful assembly by imposing on the organizers of public events an obligation to conclude paid contracts with city services, and by designating one single, remote location for all public events held in Gomel, a city of 500,000 inhabitants. The Committee also notes the authors' allegation that the formal application of decision No. 299 by the Gomel City Executive Committee, without consideration of the necessity of the limitations in relation to the exercise

---

<sup>3</sup> For example, *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4.

of their rights, constituted an unjustified restriction on their rights under both articles 19 and 21 of the Covenant.

7.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that freedom of opinion and freedom of expression were indispensable conditions for the full development of the person, and that they were essential for any society, constituting the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows for certain restrictions, but only such 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 public order (*ordre public*), or of public health or morals. Any restriction on the exercise of the freedoms of opinion and expression 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 (para. 22). The Committee also recalls that it is for the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.<sup>4</sup>

7.4 The Committee notes that the refusal to authorize the pickets was based on decision No. 299 of the Gomel City Executive Committee of 2 April 2008, which is based on the Public Events Act of 1997. The Committee observes, however, that neither the State party nor the domestic courts have provided any explanation or observations as to how such restrictions, namely limiting pickets to a certain predetermined location and requiring that the organizers conclude service contracts with a number of municipal agencies in order to hold a picket, met the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. In the absence of any explanation by the State party, the Committee concludes that the rights of the authors under article 19 (2) of the Covenant have been violated.

7.5 The Committee notes the authors' claim that their right of peaceful assembly under article 21 of the Covenant was also violated by the refusal of the municipal authorities to allow the pickets 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 public expression of an individual's views and opinions and is indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) 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*), protection of public health or morals or 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.<sup>5</sup>

7.6 In the present case, the Committee must consider whether the restrictions imposed on the authors' right of peaceful assembly were justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In the light of the information before it, the Committee notes that the municipal authorities have not provided any justification or explanation as to how, in practice, the authors' pickets would have endangered 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. Accordingly, the Committee concludes that, in the present case, the State party has violated the authors' rights under article 21 of the Covenant.

---

<sup>4</sup> For example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

<sup>5</sup> *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

8. 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.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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 authors with adequate compensation, including reimbursement for any legal costs or other fees incurred by them. 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 notes that the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under articles 19 and 21 may be fully enjoyed in the State party.

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 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.

---