



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. 2404/2014*, **

<i>Communication submitted by:</i>	Vladimir Malei (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	23 December 2012 (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 28 May 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2020
<i>Subject matter:</i>	Refusal of authorities to authorize the holding of pickets; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	19 and 21, read in conjunction with 2 (2) and (3)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Vladimir Malei, a national of Belarus born in 1951. He claims that the State party has violated his rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), 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 18 March 2012, the author applied to the District Executive Committee of the city of Malorita with a request to hold a picket on 7 June 2012, from 1 to 3 p.m., in the vicinity of the main entrance of the cultural centre.¹ The purpose of the picket was to attract public attention to the absence of free and democratic elections in Belarus.

* 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 approximate distance between the proposed location of the picket and the cultural centre is 25 metres.



2.2 On 31 May 2012, the author's application was rejected by the District Executive Committee on the basis of article 9 (3) of the Public Events Act, according to which the holding of mass events is not permitted at a distance of less than 50 metres from the premises of public institutions, including local executive and administrative authorities. Since some of the departments of the Malorita District Executive Committee are located in the above-mentioned cultural centre, the District Executive Commission stated in its decision that the picket was prohibited. It also underlined that the request to hold a picket did not contain any information on the source of funding of the event.

2.3 On 22 June 2012, the author filed an appeal against the decision of the District Executive Committee with the Malorita District Court, claiming a violation of his rights to freedom of expression and peaceful assembly as guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. On 10 July 2012, the Court considered the decision of the District Executive Committee to be in compliance with the provisions of the Public Events Act and rejected the author's appeal.

2.4 On 20 August 2012, the Brest Regional Court did not uphold the author's claim and refused to reconsider the decision. The author subsequently addressed supervisory complaints to the Chair of the Brest Regional Court and of the Supreme Court. The complaints were dismissed on 15 November 2012 and on 18 December 2012, respectively. The author claims that he has exhausted all domestic remedies.

Complaint

3.1 The author claims that the State party has violated his rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant. He considers that the reason for denial of a peaceful assembly and of his right to freedom of expression was unlawful. In his written statements to the District Executive Committee of Malorita, he has repeatedly expressed his willingness to negotiate with the local authorities and to consider an alternative concerning the organization of the picket. Nevertheless, the local authorities prohibited the picket without proposing an alternative.

3.2 The author considers that the authorities failed to explain why in this particular case the restriction on holding a picket could be necessary in a democratic society in the interests of national security or public safety in order to protect public health, morals or the rights and freedoms of others. Moreover, the authorities could not prove that the impossibility of organizing a peaceful assembly at a distance of less than 50 metres from public administration institutions, including the Civil Registry Office, was a legal and fair reason to ban pickets.

3.3 With reference to article 2 (2) and (3) of the Covenant, the author states that the courts refused to consider international legal provisions, that is, the provisions of the Covenant, while upholding the decision of the District Executive Committee of Malorita.

State party's observations on admissibility

4. In a note verbale dated 21 July 2014, the State party submitted its observations on admissibility. The State party submits that the author's communication should be declared inadmissible in accordance with article 5 (2) (b) of the Optional Protocol, since he has failed to exhaust the domestic remedies.

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

5. On 22 September 2014, the author submitted that the State party's supervisory review proceedings did not constitute an effective domestic remedy. To be considered effective, the remedy must have a reasonable chance of succeeding. Furthermore, the European Court of Human Rights, in its jurisprudence, has also declared the supervisory proceedings to be "discretionary", and thus, ineffective remedies.² The author asks the Committee to consider his complaint admissible and to proceed with its consideration of the merits.

² European Court of Human Rights, *Tumilovich v. the Russian Federation*, application No. 47033/99.

State party's additional observations and observations on the merits

6.1 On 4 November 2014, the State party reiterated that the author had not exhausted all existing domestic remedies.

6.2 On 28 December 2018, the State party submitted its observations on the merits and informed the Committee that, on 31 May 2012, the District Executive Committee of the city of Malorita had rejected the author's application to hold a picket in the square in front of the cultural centre, on the basis of article 9 of the Public Events Act of 30 December 1997. On 10 July 2012 and 20 August 2012, respectively, the Malorita District Court and the Brest Regional Court had rejected the author's appeals.

6.3 The author's further appeals under the supervisory complaints procedure were dismissed by the Chair of the Brest Regional Court and of the Supreme Court on 15 November 2012 and 18 December 2012, respectively.

6.4 The State party notes that the holding of mass events in public spaces concerns not only the participants but also other citizens who are not part of the event. In this context, reference is made to article 29 (1) of the Universal Declaration of Human Rights, which stipulates that everyone has duties to the community in which alone the free and full development of his personality is possible. Therefore, the State party continues, when organizing mass events, it is important to take necessary measures to ensure public safety and to provide enjoyment of the rights of those who are organizing the events as well as of those who are not participating in them.

6.5 The State party rejects the author's claims of a violation of his rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant and finds them groundless.

Author's comments on the State party's additional observations and its observations on the merits

7.1 On 17 May 2019, the author reiterated that an appeal under the supervisory review procedure did not constitute an effective remedy. He added that the procedure is subject to the discretion of a prosecutor or a judge and does not entail a consideration of the case on its merits. He concluded that all available and effective domestic remedies have thus been exhausted in his case.

7.2 Commenting on the State party's arguments that the provisions of the Public Events Act are consistent with articles 19 and 21 of the Covenant, the author insists that the law should be amended, and, in this context, he refers to legal analysis conducted by various international organizations in this regard.³ In addition, the author refers to the Committee's jurisprudence and notes that the Public Events Act should be brought into line with the Covenant.⁴

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

³ Reference is made to the analysis by the European Commission for Democracy through Law and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

⁴ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3; and *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5.

8.3 The Committee notes that the author has not complained under the supervisory review procedure to the Prosecutor General of Belarus. In this connection, it notes the State party's assertion that the author has failed to exhaust the available domestic remedies. The Committee also notes the author's argument that he submitted an appeal against the decision of the District Executive Committee of the city of Malorita to the Malorita District Court, which was dismissed on 10 July 2012. He further filed a cassation appeal to the Brest Regional Court, which was rejected on 20 August 2012, and petitioned the Brest Regional Court and the Supreme Court of Belarus under the supervisory review proceedings, but his appeals were rejected on 15 November 2012 and on 18 December 2012, respectively. The Committee further notes the author's assertion that he has not submitted a petition under the supervisory review procedure to the Prosecutor's Office because he does not consider it to be an effective remedy.

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

8.5 The Committee takes note of the author's submission that the State party violated his rights under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant. The Committee recalls its jurisprudence,⁶ which indicates 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 reiterates 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.⁷ The Committee notes, however, that the author has already alleged a violation of his rights under articles 19 and 21, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant, to be distinct from examination of the violation of the author's rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

8.6 The Committee considers that the author has failed to substantiate his claims under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant, and therefore declares this part of the communication inadmissible.

8.7 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant, for the purposes of admissibility, to the effect that his rights were restricted by the authorities, but that neither the District Executive Committee of the city of Malorita nor the courts considered whether the restrictions 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 protection of the rights and freedoms of others. Accordingly, it declares the communication admissible and proceeds with its consideration on the merits.

⁵ *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.

⁶ For example, *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

⁷ *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claims that his rights to freedom of expression and freedom of assembly have been restricted in violation of both article 19 and article 21 of the Covenant, as he was denied authorization to organize a peaceful assembly to attract public attention to the absence of free and democratic elections in Belarus. It also notes the author's claims that the authorities failed to explain why in his case the restriction to hold a picket was necessary in the interests of national security or public safety in order to protect public health, morals, or the rights and freedoms of others. The author has also claimed that the authorities could not substantiate that the restriction on organizing a peaceful assembly at a distance of less than 50 metres from public administration institutions was a lawful and fair reason to ban pickets.

9.3 The Committee recalls in that respect its general comment No. 34 (2011), in which it states, *inter alia*, that freedom of expression is essential for any society and constitutes one of the foundation stones for every free and democratic society. It notes that article 19 (3) of the Convention allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary (a) for respect of the rights or reputation of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature – that is, it must be the least intrusive among the measures that might achieve the relevant protective function and be proportionate to the interest to be protected. The Committee 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.⁸

9.4 The Committee notes that the refusal to authorize the picket was based on article 9 of the Public Events Act, which states that the holding of mass events is not permitted at a distance of less than 50 metres from the premises of public institutions. The Committee observes, however, that neither the State party nor the national courts have provided any explanation as to how such restrictions were justified pursuant to the conditions of necessity and proportionality in the present case, since the picket was supposed to be held in the vicinity of the main entrance of a cultural centre, and particularly given that the author had expressed his willingness to consider an alternative location for holding the picket. In the absence of any explanation by the State party, the Committee concludes that the rights of the author under article 19 (2) of the Covenant have been violated.

9.5 The Committee notes the author's claim that his right of peaceful assembly under article 21 of the Covenant was also violated by the refusal of the municipal 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 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.⁹

⁸ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

⁹ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

9.6 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 the second sentence of article 21 of the Covenant. In the light of the information available on file, the Committee notes that neither the municipal authorities nor the domestic courts have provided any justification or explanation as to how, in practice, the author's protest would have 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 of the Covenant. The State party has also failed to show that any alternative measures were taken to facilitate the exercise of the author's rights under article 21.

9.7 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. In line with those precedents, and in the absence of any explanation by the State party regarding the matter, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.

10. 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 the author's rights under articles 19 (2) and 21 of the Covenant.

11. 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 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. To that end, the State party should revise its normative framework on public events, in accordance with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

12. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
