



# 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. 2486/2014\*, \*\*

<i>Communication submitted by:</i>	Siarhei Malashenak (represented by counsel, Mikhail Matskevich)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	2 June 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 2 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2020
<i>Subject matter:</i>	Author's sanction for holding a picket; freedom of expression
<i>Procedural issue:</i>	State party's lack of cooperation
<i>Substantive issue:</i>	Freedom of expression
<i>Article of the Covenant:</i>	19
<i>Article of the Optional Protocol:</i>	1

1. The author of the communication is Siarhei Malashenak, a national of Belarus born in 1983. He claims that the State party has violated his rights under article 19 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

#### The facts as submitted by the author

2.1 On 8 October 2012, the author was arrested by the police for hanging a piece of fabric with the slogan "Freedom to Belarusian political prisoners" written on it over the rails of a road bridge in the city of Novopolotsk. The author did not consider it necessary to request authorization from the city authorities for a one-person picket in order to publicly

\* 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.



express his opinion. On the same day, Novopolotsk City Court, in the Viciebsk region, found the author to be in violation of article 23.34 (1) of the Code of Administrative Offences (violation of the procedure for organizing or holding mass events) for holding an unauthorized picket, and fined him 300,000 Belarusian roubles (about US\$ 35).

2.2 On an unspecified date, the author appealed the decision of Novopolotsk City Court before Viciebsk Regional Court. On 31 October 2012, Viciebsk Regional Court dismissed the appeal. The author's supervisory review appeals (dates unspecified) to the President of Viciebsk Regional Court and to the Supreme Court were rejected on 11 April and 13 June 2013, respectively. The courts found that since one-person pickets fell under the definition of public events in the Public Events Act of 30 December 1997 (as amended on 7 August 2003), the author had to follow the procedure established by the Act and request authorization from the Novopolotsk City Executive Committee.

2.3 The author submits that he has exhausted all available and effective domestic remedies.

### **The complaint**

3.1 The author claims that the sanction imposed on him for expressing his opinion amounts to a violation by Belarus of his rights under article 19 of the Covenant. He claims that his right to freedom of expression was violated by the restrictions imposed, which were not necessary for the protection of national security or of public order, or of public health or morals, or for the respect of the rights or reputations of others. He submits that the courts did not assess how his acts had endangered national security, public order, public health or the rights or reputations of others.

3.2 The author claims that he was not holding a public event and for that reason, he did not request authorization from the authorities. Despite that fact, the domestic authorities and the courts qualified his public expression of opinion as a public event under the Public Events Act and subjected it to the procedural requirement of seeking authorization from the authorities. By doing so, they restricted his freedom of expression under article 19 of the Covenant.

3.3 The author asks the Committee to find a violation of article 19, to recommend that the State party reconsider his case and amend the definition of mass events in the Public Events Act of 1997 to refer only to groups of people, thus excluding one-person pickets from its scope, and to reimburse him for the fine he had to pay.

### **Lack of cooperation by the State party**

4. On 2 December 2014, 30 November 2015, 26 February 2016 and 8 December 2016, the Committee requested the State party to provide information and its 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 merits of the author's claims. It recalls that it is implicit in article 4 (2) of the Optional Protocol that States parties examine in good faith all allegations brought against them, and that they 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 have been properly substantiated.<sup>1</sup>

### **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 97 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.

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<sup>1</sup> For example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4.

5.3 The Committee notes the author's claim that he has exhausted all available and effective domestic remedies, having submitted requests for supervisory review to Viciebsk Regional Court and to the Supreme Court. In the absence of any observations from the State party to the contrary, 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.

5.4 The Committee considers that the author has sufficiently substantiated the claims under article 19 (1) 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 The Committee notes that the author raises two claims in his communication. Firstly, he claims that his freedom of expression had been restricted arbitrarily because he was sanctioned for publicly expressing his opinion. Secondly, he alleges that the fact that the Public Events Act considers a public expression of opinion by a single person to constitute a public event and subjects it to prior authorization places a disproportionate restriction on freedom of expression.

6.3 The Committee considers that the legal issue before it is to decide whether the sanction imposed on the author and whether qualifying a one-person public expression of opinion as a public event amount to a violation of article 19 of the Covenant. It transpires from the material before the Committee that the author's acts were qualified by the courts as constituting a public event and that he was fined because of his failure to seek the authorization of the city authorities to hold a picket. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification, amount to a limitation of the author's rights, in particular the right to impart information and ideas of any kind, under article 19 (2) of the Covenant.<sup>2</sup>

6.4 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. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). Article 19 (3) of the Covenant allows for certain restrictions only to be imposed on freedom of expression, as provided by law and 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 (para. 22).

6.5 The Committee recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 were necessary and proportionate.<sup>3</sup> The Committee observes that nothing on file suggests that the domestic authorities reviewed the author's case in the light of the standards of necessity and proportionality under article 19 of the Covenant. Similarly, no explanation has been provided by the State party as to how the author's actions were endangering the rights or reputations of others, national security or public order (*ordre public*), or public health or morals in the light of article 19 (3) of the Covenant and why the restrictions imposed on the author were necessary. The Committee considers that, in the circumstances of the present case, the sanctions imposed on the author, although based on domestic law, cannot be seen as justified for the purposes of article 19 (3) of the Covenant.

6.6 The Committee notes the author's second claim concerning the unjustified qualification of a one-person public expression of opinion as a public event and the ensuing requirement to seek authorization for such an expression. Despite its own approach that

<sup>2</sup> For example, *Misnikov v. Belarus* (CCPR/C/117/D/2093/2011), para. 9.2.

<sup>3</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.

one-person pickets normally do not fall under article 21 of the Convention, on the right of peaceful assembly, but instead are protected by article 19 of the Covenant,<sup>4</sup> the Committee observes that it is usually up to States parties to establish rules regulating public events, including the definition of such events, as long as such rules comply with the provisions of articles 19 and 21 of the Covenant. In the absence of the State party's response in the present case, the Committee finds that a general rule requiring prior authorization for a public expression of one person's political opinion does not meet the standards of necessity and proportionality enshrined in article 19 (3). The Committee therefore concludes that, in the present case, the State party has violated the author's rights under article 19 (2) 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 article 19 (2) 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 reimbursement of his fine and any related court expenses. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that regard, the Committee notes that 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 article 19 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 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 Belarusian and Russian.

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<sup>4</sup> For example, *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7.