



# 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. 2755/2016\*, \*\*

<i>Communication submitted by:</i>	Yury Belsky (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	28 January 2016 (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 23 March 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	24 March 2022
<i>Subject matter:</i>	Refusal of authorities to authorize meetings; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Fair trial; freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	14 (1), 19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Yury Belsky, a Belarussian national born in 1965. He claims that the State party has violated his rights under articles 14 (1), 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. He is not represented by counsel.

#### Facts as submitted by the author

2.1 On 4 December 2014, the author filed requests with the District Police Department, the Central Hospital of Polotsk and the Polotsk Housing Maintenance and Utility Board in order to obtain their support in the provision of services during and after a peaceful picket planned for 30 December 2014. All three entities refused to provide their services for a number of reasons. The Central Hospital responded that the provision of paid medical

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



services during mass events was regulated by a resolution of the Council of Ministers of Belarus and it was therefore not possible to provide them;<sup>1</sup> the Polotsk Housing Maintenance and Utility Board refused due to ongoing community redevelopment activities; while the District Police Department refused due to planned mass events dedicated to New Year and Christmas celebrations.

2.2 On 15 December 2014, the author applied to the Polotsk District Executive Committee to obtain authorization to hold a peaceful picket on 30 December 2014 to collect signatures in support of the establishment of a public association for the protection of the rights of consumers.<sup>2</sup> The peaceful picket was planned to take place near the movie theatre “Rodina”, a location that was previously identified by the Executive Committee as a specifically designated area in the city for the organization of peaceful assemblies.

2.3 On 24 December 2014, the District Executive Committee refused to authorize the picket because the author had failed to obtain the relevant support of the District Police Department to ensure security and public order and of the Central Hospital of Polotsk on the provision of medical services during the picket, as required by decision No. 167 of 15 March 2013 “On mass events”.

2.4 On 15 January 2015, the author appealed against the decision of the District Executive Committee with the District Court of Polotsk, claiming a violation of his rights to freedom of expression and of peaceful assembly, as guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. On 9 February 2015, the Court found that the decision of the Executive Committee was in compliance with the provisions of the Law on Mass Public Events and rejected the appeal.

2.5 On 9 March 2015, the author filed a cassation appeal against the decision of the District Court of Polotsk with the Vitebsk Regional Court, which was rejected on 9 April 2015.

2.6 The author’s further appeals under the supervisory review proceedings to the Chair of the Vitebsk Regional Court on 9 July 2015 and to the Chair of the Supreme Court on 16 September 2015 were rejected on 3 August and 2 November 2015, respectively.

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

### **Complaint**

3.1 The author claims that his rights to freedom of expression and of assembly have been restricted, in violation of articles 19 (2) and 21 of the Covenant, as he was denied authorization to organize a peaceful picket to collect signatures in support of the establishment of a public association for the protection of the rights of consumers.

3.2 The author also claims a violation of article 14 (1) of the Covenant, noting that the courts were unfair, biased and not competent, and that their decisions were influenced by the executive branch in contravention of the international obligations of Belarus.

3.3 The author requests the Committee to recommend to the State party to align its legislation governing freedom of expression and of peaceful assembly with the international standards set out in articles 19 and 21 of the Covenant; prevent similar violations from occurring in the future; and provide the authors with adequate financial and moral compensation.

### **State party’s observations on admissibility and the merits**

4.1 By note verbale of 10 August 2016, the State party submitted its observations on admissibility and the merits and noted that on 24 December 2016, the Polotsk District Executive Committee refused the author’s request to conduct a picket demonstration as he had failed to comply with provisions of the Law on Mass Events, which regulated the holding

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<sup>1</sup> The reference is made to resolution No. 182 of 15 February 2009, “On the provision of paid services by State health-care institutions”.

<sup>2</sup> The author submits that the Polotsk City Executive Committee had earlier refused to register such a public association.

of public events. In that context, the State party notes that the author failed to submit contracts signed with the respective city service providers to ensure medical services during the event and the cleaning of the location afterwards. The State party explains that city service providers were not in a position to provide their respective services due to their engagement in events linked to the New Year and Christmas celebrations.

4.2 The State party observes that the provisions of the national legislation on the right to peaceful assembly and freedom of expression are coherent with the Constitution of Belarus and do not contradict articles 19 and 21 of the Covenant, which allow each State to introduce restrictions to the rights and freedoms of person as are necessary in a democratic society and in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

4.3 The State party further observes that the decision of the District Executive Committee was upheld by the District Court of Polotsk on 9 February 2015 and that the author's appeal against that decision was also rejected by the Vitebsk Regional Court on 9 April. The author's further appeals under the supervisory review procedure were also dismissed.

4.4 Referring to the admissibility of the communication, the State party notes that the author has not exhausted all available domestic remedies since he did not appeal for a supervisory review to the Supreme Court or the Office of the Prosecutor.

4.5 Finally, commenting on the effectiveness of supervisory review proceedings, the State party notes that in the first half of 2016, out of 984 appeals that had been introduced under the supervisory review procedure, 111 were granted for review by the Supreme Court.

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

5.1 On 9 December 2016, the author referred to the Committee's jurisprudence and noted that the restrictions imposed on his freedom of assembly were based on provisions of domestic law and included the burdensome requirements of securing three separate written commitments from three different administrative departments, which might have rendered illusory the author's right to demonstrate.<sup>3</sup>

5.2 The author further referred to Views adopted by the Committee, in which it recalled that 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 aim of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. Any restriction on the exercise of the right to peaceful assembly must conform to the strict tests of necessity and proportionality.<sup>4</sup>

5.3 Referring to the State party's observations on the supervisory review, the author submits that he appealed the decisions under those proceedings to the Chair of the Supreme Court of Belarus, however the appeal was rejected by a Deputy Chair. In this context, he argues that the State party failed to explain which of the five deputies should have been addressed in order for the appeal to be reviewed by the Chair of the Court. The author submits that in the absence of any explanation by the State party in that regard, he does not consider the supervisory review procedures to be an effective remedy.

#### **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.

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.

<sup>3</sup> Reference is made to *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

<sup>4</sup> Reference is made to *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.6.

6.3 The Committee notes the State party's argument that the author has failed to seek a supervisory review by the Chair of the Supreme Court or by the Office of the Prosecutor of the decisions of the domestic courts. In that context, the Committee considers that filing requests for a supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. The Committee further notes the author's argument that he indeed appealed, unsuccessfully, those decisions under the supervisory review proceedings, namely to the Chair of the Vitebsk Regional Court and the Chair of the Supreme Court of Belarus, and provided all respective materials in that regard. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>5</sup> The Committee notes that in the present case, the author has exhausted all available domestic remedies, including those that constitute supervisory review proceedings, and therefore 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 notes the author's claim that his rights under article 14 (1) of the Covenant have been violated because the domestic courts were unfair, biased and not competent, and their decisions were influenced by the executive branch. In the absence of any other pertinent information in that respect on file, however, the Committee considers that the author has failed to sufficiently substantiate that claim for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee finally notes that the author's remaining claims as submitted raise issues under articles 19 (2) and 21 of the Covenant, considers these claims sufficiently substantiated for the purposes of admissibility and proceeds with consideration of the merits.

#### *Consideration of the merits*

7.1 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.

7.2 The Committee notes the author's claims that his rights to freedom of expression and of assembly have been restricted, in violation of articles 19 (2) and 21 of the Covenant, as he was denied authorization to organize a peaceful picket to collect signatures in support of the establishment of a public association for the protection of the rights of consumers. The Committee considers that the issue before it is to decide whether the prohibition of holding a public picket imposed on the author by the Polotsk District Executive Committee amounts to a violation of his rights under articles 19 and 21 of the Covenant.

7.3 The Committee notes the author's claim that his right to freedom of peaceful assembly has been restricted unlawfully, as he was not granted all the required services and authorization to hold a peaceful picket to collect signatures in support of the establishment of a public association for the protection of the rights of consumers. The issue before the Committee is therefore to determine whether the prohibition imposed on the author by the district executive authorities of holding a peaceful assembly with such an expressive purpose amounts to a violation of article 21 of the Covenant.

7.4 In its general comment No. 37 (2020), the Committee stated that peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.<sup>6</sup> Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being

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<sup>5</sup> *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; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

<sup>6</sup> Para. 55.

addressed or of the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city. The Committee further notes that the requirements for participants or organizers either to arrange for or contribute to the costs of policing, security, medical assistance, cleaning or other public services associated with peaceful assemblies are generally not compatible with article 21.<sup>7</sup>

7.5 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for the public expression of an individual's views and opinions and indispensable in a democratic society. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.<sup>8</sup> The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience<sup>9</sup> and no restriction to that right is permissible, unless it (a) is imposed in conformity with the law and (b) is 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 that right, rather than seeking unnecessary or disproportionate limitations to it.<sup>10</sup> The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.<sup>11</sup>

7.6 In the present case, the Committee must consider whether the restrictions imposed on the author's right of peaceful assembly, although the peaceful picket was planned to take place near a location that was previously identified by the City Executive Committee as a specifically designated area in the city for the organization of peaceful assemblies, 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 author's application to hold a peaceful picket was refused because the author failed to submit contracts with the respective city services providers to ensure medical services during the event and the cleaning of the location afterwards. In that context, the Committee notes that neither the Polotsk District Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice, the author's picket 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.

7.7 In the absence of any further explanations by the State party, the Committee concludes that the State party has violated the author's rights under article 21 of the Covenant.<sup>12</sup>

7.8 The Committee further notes the author's claim that his right to freedom of expression has been restricted unlawfully, as he was refused authorization to hold a peaceful picket to collect signatures in support of the establishment of a public association for the protection of the rights of consumers. The issue before the Committee is therefore to determine whether the prohibition imposed on the author by the district executive authorities of holding a peaceful assembly with such an expressive purpose amounts to a violation of article 19 of the Covenant.

<sup>7</sup> General comment No. 37 (2020), para. 64.

<sup>8</sup> *Ibid.*, para. 6.

<sup>9</sup> *Ibid.*, para. 22.

<sup>10</sup> *Ibid.*, para. 36.

<sup>11</sup> See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

<sup>12</sup> See, for example, *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 8; *Malei v. Belarus* (CCPR/C/129/D/2404/2014), para. 9.7; *Sadykov v. Kazakhstan* (CCPR/C/129/D/2456/2014), para. 8; *Tolchina et al. v. Belarus* (CCPR/C/132/D/2857/2016), para. 7.6; and *Zavadskaya et al. v. Belarus* (CCPR/C/132/D/2865/2016), para. 7.6.

7.9 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.<sup>13</sup> 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 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 proportionate to the interest being protected.<sup>14</sup> The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author’s rights under article 19 of the Covenant were necessary and proportionate.<sup>15</sup>

7.10 The Committee observes that limiting the holding of a picket to certain predetermined locations does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. In the present case, a peaceful picket was planned to take place near the movie theatre “Rodina”, a location that was previously identified by the City Executive Committee as a specifically designated area in the city for the organization of peaceful assemblies (para. 2.2 above). However, in spite of this, the District Executive Committee refused to authorize the picket because the author had failed to obtain the relevant support from city service providers (para. 2.3 above). The Committee notes that neither the State party nor the national courts have provided any explanation as to why the restriction imposed was necessary for a legitimate purpose, was the least intrusive among the measures that might achieve the relevant protective function and was proportionate to the interest being protected.<sup>16</sup> The Committee considers that, in the circumstances of the present case, the restrictions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant. In the absence of any further information or explanation by the State party, the Committee concludes that the rights of the author under article 19 of the Covenant have been violated.

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 the author’s rights under articles 19 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 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. In that connection, 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 and thus the State party should revise its normative framework on public events, consistent 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.

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.

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<sup>13</sup> Para. 2.

<sup>14</sup> General comment No. 34 (2011), para. 34.

<sup>15</sup> *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

<sup>16</sup> General comment No. 34 (2011), para. 22.