United Nations CCPR/C/135/D/2860/2016

International Covenant on Civil and Political Rights

Distr.: General
16 January 2023

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2860/2016*, **

Communication submitted by:	Yury Belenky (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	5 February 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 November 2016 (not issued in document form)
Date of adoption of Views:	8 July 2022
Subject matter:	Imposition of a fine for breaching the established procedure for organizing a public event
Procedural issue:	Exhaustion of domestic remedies
Substantive issue:	Freedom of assembly
Articles of the Covenant:	14 (1) and 21
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Yury Belenky, a national of Belarus born in 1960. He claims that the State party has violated his rights under article 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author is a deputy head of the Conservative Christian Party. On 9 and 14 October 2014 respectively, the Party requested the Minsk City Executive Committee and the Minsk Regional Executive Committee to authorize the holding in the city of Minsk and the Minsk Region, respectively, of a demonstration and a rally, with up to 5,000 participants. Both events were planned for 2 November 2014 – Dzyady – the day for remembrance of the dead, which is an ancient Belarusian Christian holiday. On 17 October 2014, the Party requested authorization from the Minsk City Executive Committee for another public event – a

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

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

demonstration with up to 500 participants planned for 9 November 2014 in Minsk, also marking Dzyady. The author was appointed by the Party as one of the persons responsible for the organization of the events.

2.2 By decisions of the Minsk City Executive Committee of 23 and 31 October 2014 and of the Minsk Regional Executive Committee of 24 October 2014, all three public events were authorized. The decisions stipulated the duty of the events' organizers to coordinate, in a timely manner, on issues related to ensuring public order during the events with the relevant offices of the Ministry of Internal Affairs, and to pay for their services to ensure public order during the events in accordance with the relevant provisions of the Law on Mass Events. According to the author, the decisions did not contain information on the procedure to follow for concluding contracts with the relevant authorities to ensure public order; he, therefore, assuming that the public events were authorized without such contracts, did not take measures to coordinate the concluding of the contracts.

2.3 On 27 October 2014, the author took part in a meeting with representatives of the Minsk City Executive Committee, the main Minsk office of the Ministry of Internal Affairs, and the Prosecutor's Office, at which they discussed details of the planned events, such as public security measures, the route, the use of posters, and so on. Furthermore, prior to the demonstration on 9 November 2014, the author and a representative of the main Minsk office of the Ministry of Internal Affairs also verbally discussed public safety measures during the event.

2.4 The public events took place on 2 and 9 November 2014, as planned, and were conducted peacefully.

2.5 On an unspecified date after the events, the Conservative Christian Party requested the main Minsk office of the Ministry of Internal Affairs to provide the necessary information about how to pay for the public security services provided during the events. In a letter dated 28 November 2014, that office replied that it was not possible to issue an invoice to pay for the services due to the fact that the organizers of the event had not concluded the relevant contracts with the service providers.

2.6 On unspecified dates, the author was charged with a breach of the established procedure for conducting public events, due to the failure to coordinate with the relevant office of the Ministry of Internal Affairs on the provision of public security services during the events, to sign a contract and to pay for the services – an administrative offence under article 23.34 (2) of the Code of Administrative Offences. Three separate administrative proceedings were instituted against the author.

2.7 On 17 and 28 November and 24 December 2014, the Pervomaysky and Leninsky District Courts of Minsk, and Minsk District Court, respectively, examined the charges and found that no contracts had been concluded by the events' organizer with the relevant office of the Ministry of Internal Affairs for public security services at the events, and that no payment had been made for the services. Consequently, the courts found the author guilty of an administrative offence under article 23.34 (2) of the Code of Administrative Offences and ordered him to pay administrative fines in the amounts of – respectively – 3 million, 4.5 million and 3.75 million Belarusian roubles.[1]

2.8 The author appealed against all three administrative convictions in three separate sets of cassation appeal proceedings. In decisions by Minsk City Court on 23 December 2014 and 10 February 2015 (concerning, respectively, the public events of 2 and 9 November 2014 held in the city of Minsk), and by Minsk Regional Court on 17 February 2015 (concerning the public event of 2 November 2014 held in the Minsk Region), the author's appeals were dismissed as unfounded.

2.9 The author lodged a further appeal against the decision of the Pervomaysky District Court of Minsk of 17 November 2014 and the corresponding appeal decision of Minsk City Court of 23 December 2014, under the supervisory review procedure at Minsk City Court. On 20 March 2015, the Chair of Minsk City Court rejected the supervisory review appeal as

[1] Equivalent to a total of approximately €840 at the material time.

unfounded. On 14 July 2015, the author submitted a further supervisory review appeal to the Supreme Court. No information has been submitted on the outcome of that appeal.

2.10 The author submits that he has exhausted all available domestic remedies.

Complaint

3.1 The author claims initially that, by imposing the administrative sanctions on him, the State party violated his rights under article 21 of the Covenant. With reference to the Organization for Security and Cooperation in Europe (OSCE) Guidelines on Freedom of Peaceful Assembly,[2] the author submits that the requirement under domestic legislation to pay for services to ensure public safety during public events is an excessive burden on organizers of such events, and that the burden should instead be carried by the State party, in view of its positive obligation to ensure the realization of the right to peaceful assembly. He also claims that the sanctions imposed have an intimidating effect and discourage organizers from carrying out similar events in the future. The domestic courts, which lacked independence and impartiality, based their decisions in his case only on the relevant provisions of the domestic legislation, in disregard of the international standards on the right to freedom of assembly.

3.2 The author asks the Committee to find a violation of his rights under article 21 of the Covenant, and to urge the State party to restore his right to peaceful assembly and provide him with adequate compensation.

State party's observations on admissibility and the merits

4. In a note verbale dated 23 January 2017, the State party submitted its observations on the admissibility and the merits of the communication. The State party submits that the author's communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol, as he did not exhaust all available domestic remedies, by failing to appeal against the decisions in his case before the Chair or Deputy Chair of the Supreme Court under the supervisory review procedure.

Author's comments on the State party's observations

5. On 4 April 2017, the author submitted his comments. He states that the supervisory review procedure does not constitute an effective domestic remedy to be exhausted, noting that the decision on the outcome of an appeal under this procedure is taken in the absence of the party concerned and depends solely on the discretion of a judge. Additionally, he submits that, in view of the absence of an independent judiciary in the State party, as well as the abuse of executive power over the judiciary and the current political realities in the State party, he did not have any effective domestic remedy available to him in his case. The author asks the Committee to find his communication admissible and to find a violation of his rights under articles 14 (1)[3] and 21 of the Covenant.

State party's additional observations on admissibility and the merits

6. In a note verbale dated 29 October 2018, the State party submitted its further observations on admissibility and the merits, in which it reiterated that the author had failed to exhaust all available domestic remedies, as he had not appealed the decisions in his case before the Chair of the Supreme Court under the supervisory review procedure.

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

7. On 24 February 2020, the author reiterated his position – that an appeal under the supervisory review procedure does not constitute an effective domestic remedy. In view of the established case law on the subject matter, he decided not to proceed with exhausting this remedy in his case. He adds that there is no practice of applying the international standards

[2] Second edition (OSCE, Warsaw and Strasbourg, 2010).

[3] The initial submission before the Committee does not contain a request to find a violation of the author's rights under article 14 (1) of the Covenant.

on freedom of peaceful assembly in the State party, and that the domestic courts are guided by the provisions of the domestic legislation in their decisions on cases related to the subject matter, which significantly limits the guarantees of the rights at issue.

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.

8.3 The Committee notes the State party's argument that the author has failed to seek a supervisory review of the impugned decisions in his case by the Chair or Deputy Chair of the Supreme Court. The Committee also takes notes of the author's argument that the supervisory review is an extraordinary review procedure which does not constitute an effective remedy for the purpose of exhaustion. In this context, the Committee recalls its jurisprudence: filing requests for 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 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.[4] The Committee further notes the author's argument that he indeed appealed, unsuccessfully, under the supervisory review proceedings, namely to Minsk City Court and the Supreme Court. Moreover, the Committee notes that the State party does not provide any information or arguments to demonstrate that supervisory review constitutes an effective domestic remedy in the circumstances of the case. In the absence of further explanations by the State party in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.4 The Committee further notes the author's claim that his rights under article 14 (1) of the Covenant have been violated, as the domestic courts were not independent and impartial, and their decisions were influenced by the executive body. In the absence, however, of any other pertinent information in that respect on file, the Committee considers that the author has failed to sufficiently substantiate that claim for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.5 Finally, the Committee takes note of the author's remaining claims under article 21 and finds them sufficiently substantiated for the purposes of admissibility, and proceeds with its examination of the merits.

Consideration of the merits

9.1 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.

9.2 The Committee notes the author's claim that his right to freedom of assembly guaranteed by article 21 of the Covenant has been violated, as he was sanctioned for breaching the established procedure for conducting public events, in view of the failure to conclude contracts with the relevant domestic authorities for the provision of public security services during the events and to pay for such services. The issue before the Committee is therefore to determine whether the administrative sanctions imposed on the author amount to a violation of his rights under article 21 of the Covenant.

9.3 In its general comment No. 37 (2020) on the right of peaceful assembly, the Committee stated that the right of peaceful assembly, as guaranteed under article 21 of the

[4] *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

Covenant, was a fundamental human right, essential for 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.[5] No restriction to the right of peaceful assembly 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 the right, rather than seeking unnecessary or disproportionate limitations to it.[6] Requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies, are generally not compatible with article 21.[7] The State party is under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[8]

9.4 The Committee observes that, unlike in a number of other cases against the State party concerning the right of peaceful assembly under article 21 of the Covenant, in which restrictions on the right related either to refusal by the authorities to issue an authorization for holding a public event or to the imposition of a sanction for participation in an unauthorized public event, in the present case the public events organized by the author were authorized by the domestic authorities and took place as planned. However, the author was subsequently sentenced to significant administrative fines for failing to comply with the requirement under domestic law to conclude contracts with the relevant domestic authorities for the provision of public security services during the events and to pay for such services. The Committee, therefore, must consider whether the administrative sanctions imposed on the author in the circumstances of the case constituted a restriction which was necessary in a democratic society and justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes, in the light of the information available on file, that all three planned events were held in a peaceful manner; security measures for the events had been discussed in detail between the organizers and the domestic authorities at a meeting on 27 October 2014 and, additionally, prior to the event, on 9 November 2014. The Committee observes that, in finding the author guilty of an administrative offence under article 23.34 (2) of the Code of Administrative Offences, the domestic courts relied solely on the established formal breach of the procedure for organizing public events under the Law on Mass Events in the form of non-compliance with the requirement for events' organizers to conclude contracts for public security services and to pay for such services. In this respect, neither the domestic courts, nor, subsequently, the State party in its observations in the present case, have provided any justification or explanation as to whether the sanctions imposed on the author, taking into account the particular circumstances of the case, were necessary and proportionate to one of the legitimate aims under article 21 of the Covenant, namely 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. Recalling its position expressed in its general comment No. 37 (2020), according to which the requirements for participants or organizers of a public event either to arrange for or to contribute towards the costs of policing or security are generally not compatible with article 21 of the Covenant,[9] the Committee is of the opinion that the imposition of significant administrative sanctions on the author for his failure to comply with such requirement under domestic law, in the absence of any justification provided by the domestic authorities and courts in this respect, constitutes a restriction on the author's right to peaceful assembly, which, although based on the law, was not necessary in a democratic society. In the absence

[5] See the Committee's general comment No. 37 (2020) on the right of peaceful assembly, para. 6.
[6] Ibid., para. 36.
[7] Ibid., para. 64.
[8] *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.
[9] See para. 64 of the general comment.

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.

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 article 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, including reimbursement of the fines imposed on him and of any legal costs incurred. 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) of the Covenant, with a view to ensuring that the rights under article 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 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.