



## 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. 2622/2015\*, \*\*

<i>Communication submitted by:</i>	Ilya Dobrotvor (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	9 September 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 23 June 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Conducting an unauthorized single picket
<i>Procedural issue:</i>	None
<i>Substantive issue:</i>	Unjustified restrictions on the right to freedom of expression
<i>Articles of the Covenant:</i>	19 and 21
<i>Article of the Optional Protocol:</i>	None

1. The author of the communication is Ilya Dobrotvor, a national of Belarus born in 1981. He claims that the State party has violated his rights under articles 19 and 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 On 30 November 2013, from 4 p.m. to 4.10 p.m., the author stood in front of the Embassy of Ukraine in Minsk holding a Ukrainian flag in his hands. He wanted to express his solidarity with the Ukrainian people and to show his support for the choice made by the Government of Ukraine towards European integration.

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* 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, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



2.2 On 10 December 2013, the author was arrested by the police in relation to his picket of 30 November 2013 and detained overnight in a police detention centre. The police charged him with an administrative offence for breaching the order on organizing and holding mass events (meetings, street rallies, demonstrations and pickets).

2.3 On 12 December 2013, the Minsk Central District Court found the author guilty of violating article 23.34 (1) of the Code of Administrative Offences and fined him 1,040,000 Belarusian roubles (equal to approximately €76). The author was found guilty because he had failed to seek prior authorization for the picket by the local authorities.

2.4 The author filed an appeal with the Minsk City Court, arguing that his actions had not posed a threat and that he was simply expressing his political opinion. On 28 January 2014, the Minsk City Court rejected his appeal and upheld the lower court's decision. The author made another appeal, to the Chair of the Minsk City Court, who rejected his appeal on 18 April 2014. The author then appealed to the Supreme Court. A Deputy Chair of the Supreme Court rejected his appeal on 27 June 2014.

### **Complaint**

3.1 The author claims that his rights to freedom of expression and to peaceful assembly under articles 19 and 21 of the Covenant were violated owing to unnecessary limitations imposed by law, his administrative arrest 10 days after the picket and the disproportionate sanctions imposed on him by the courts.

3.2 The author asks the Committee to urge the State party to review his administrative sentence and to pay him compensation in the amount of the fine or more. Furthermore, the Committee should urge the State party to bring its legislation on the right to freedom of peaceful assembly in line with the requirements of the Covenant and to avoid similar violations from occurring in the future.

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

4. By a note verbale dated 28 August 2015, the State party presented its observations on admissibility and the merits. It recalls the facts of the case: on 12 December 2013, the Minsk Central District Court fined the author 1,040,000 Belarusian roubles for violating article 23.34 (1) of the Code of Administrative Offences; on 28 January 2014, the Minsk City Court rejected his appeal and upheld the lower court's decision; the author's guilt was proven; and the judges, who took into consideration the mitigating factors, imposed a fine that is commensurate to the offence and not the most severe that could have been imposed. The State party disagrees with the arguments advanced by the author. In conclusion, it considers that, in finding the author liable for an administrative offence, its authorities have respected the provisions of the law and the Constitution. Thus, the State party invites the Committee to reject the communication.

### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 17 January 2019, the author submitted comments on the State party's observations. He maintains that the State party has admitted the facts of his case, notably that he was fined for peacefully expressing his opinion and that he subsequently availed himself of all the remedies available to him to appeal the judgment. The author notes that the State party does not dispute that, in expressing his opinion, he did not violate the public order and morals, nor does it dispute that his detention by the police violated his right to freedom of expression, guaranteed by the Covenant.

5.2 The author notes that the State party does not refer to the Covenant as a norm that defines the scope of his civil rights. He submits that the State party considered his picket (organized as a form of expressing his opinion about political events) to be an assembly and asked him to comply with disproportionately complex requirements. These requirements, which are set out in the law on mass events, include the need to receive permission from the local authorities and simultaneously to meet other formalities related to the permission request, such as payment of costs associated with the protection of public order by the police, cleaning the area where the picket would be held and payment of the services of an ambulance on duty during the picket.

## 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.

6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. It also notes that the State party has not challenged the communication on this ground. Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee notes the author's allegations that his right to freedom of assembly under article 21 of the Covenant has been restricted arbitrarily, since he was fined for holding an unauthorized picket. The Committee notes, however, that the author, according to his own submission, conducted the picket on his own. The notion of an assembly to be protected under article 21 implies that there is more than one participant in the gathering, while a single protester enjoys comparable protections under the Covenant, for example under article 19.<sup>1</sup> In the Committee's view, the author has not advanced sufficient elements to show that an assembly within the meaning of article 21 in fact took place. Accordingly, in the circumstances of the present case, the Committee considers that the author has failed to sufficiently substantiate this particular claim for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.<sup>2</sup>

6.5 Regarding the author's claim of a violation of his rights under article 19 of the Covenant, the Committee finds it sufficiently substantiated for the purposes of admissibility, declares it admissible and proceeds with its examination of the merits.

### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that his right to freedom of expression has been restricted in violation of article 19 (2) of the Covenant, as he was sanctioned for holding a one-person picket in order to publicly express his opinion on and support for the European integration of Ukraine.

7.3 The Committee has to consider whether the restrictions imposed on the author's freedom of expression can be justified under any of the criteria set out in article 19 (3) of the Covenant.

7.4 The Committee reiterates that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.<sup>3</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 reputations of others; or (b) for the protection of national security or public order, or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad – 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>4</sup> The Committee recalls that the

<sup>1</sup> General comment No. 37 (2020), para. 13.

<sup>2</sup> *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4; *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7; *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 9.7; and *Levinov v. Belarus* (CCPR/C/123/D/2235/2013), para. 5.7.

<sup>3</sup> General comment No. 34 (2011), para. 2.

<sup>4</sup> General comment No. 27 (1999), para. 14.

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>5</sup>

7.5 The Committee observes that, in the present case, the sanctioning of the author's peaceful picket because he did not obtain prior authorization from the local executive authorities and, notably, the imposition of a fine on the author raise serious doubts as to the necessity and proportionality of the restrictions on the author's rights protected under article 19 of the Covenant. The Committee also observes that the State party has failed to invoke any specific grounds to support the necessity of the restrictions imposed on the author as required under article 19 (3) of the Covenant.<sup>6</sup> Nor has the State party demonstrated that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the case, the sanctions and limitations imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.<sup>7</sup>

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 article 19 (2) 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 and to reimburse him for fine imposed and for any legal costs incurred by the author in relation to the domestic proceedings. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 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 disseminate them widely in the State party's official languages.

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<sup>5</sup> *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3; and *Andreev v. Belarus* (CCPR/C/131/D/2863/2016), para.7.4.

<sup>6</sup> See, e.g., *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

<sup>7</sup> See, e.g., *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.