



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. 2702/2015*, **

<i>Communication submitted by:</i>	Aleksandr Abramovich (not represented by counsel)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	23 May 2011 (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 10 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2021
<i>Subject matters:</i>	Refusal to authorize a protest; sanctioning of the author for organizing and participating in an unauthorized peaceful protest
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of opinion and expression
<i>Articles of the Covenant:</i>	19 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Aleksandr Abramovich, a national of Belarus born in 1960. The author claims that the State party has violated his rights under articles 19 and 21 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 28 May 2010, the author applied to the District Executive Committee of Borisov for permission to hold a peaceful protest, together with several dozen participants, against the construction of a gas station in the town of Borisov. On 14 June 2010, the day of the

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



protest, the author found a message in his mailbox notifying him that a registered letter addressed to him was waiting at the post office. The sender of the letter was not indicated. The author did not think that it could be a response from the District Executive Committee and did not go to the post office to pick it up.

2.2 The protest took place as planned, until some police officers arrived and requested the participants, including the author, to disperse. The author was asked to present an authorization to hold the protest. When he refused to stop the protest and could not show the authorization, he was taken to Borisov District police station. There, he was charged with violating articles 23.4 (on the failure to obey a lawful request by a State official) and 23.34 (on the procedure for organizing or holding mass events) of the Code of Administrative Offences.

2.3 On 25 June 2010, the Borisov District Court found the author guilty of an administrative offence under article 23.34 of the Code of Administrative Offences and fined him to 875,000 Belarusian roubles (equivalent to about €235). The Court also found that, on 8 June 2010, the District Executive Committee had refused to authorize the protest to be held on 14 June 2010 because the author had failed to provide guarantees of public order for the planned meeting, as requested by the Law No. 214-Z of 26 June 2003 on the participation of citizens in protecting law and order.¹ The Court noted that the decision of the District Executive Committee had been sent to the author on time and also that the author did not try to check the status of his application with the District Executive Committee. However, the Court cleared the author of the charges under article 23.4 of the Code of Administrative Offences because of a mistake in the police administrative record.²

2.4 On an unspecified date, the author appealed to the Minsk Regional Court. His appeal was rejected on 20 July 2010. The author has not submitted an appeal under the supervisory review procedure. He argues that, in accordance with the Committee's jurisprudence, such a review is not considered as an effective remedy.

Complaint

3.1 The author claims that the refusal to authorize a peaceful protest and the fine imposed on him for holding it amount to violations of his rights under articles 19 and 21 of the Covenant. The author also claims that the reason given by the District Executive Committee for refusing to give authorization – i.e., that the author did not include, in his application, a guarantee that the public order would be maintained – is not one of the grounds upon which restrictions may be allowed under articles 19 and 21 of the Covenant.

3.2 The author asks the Committee to find violations of articles 19 and 21 of the Covenant and to recommend to the State party that it provide him with an effective remedy and pay him adequate compensation.

State party's observations on admissibility

4. By a note verbale dated 4 February 2016, the State party submitted its observations. According to the State party, the author failed to submit supervisory review appeals to the Chair of the Minsk Regional Court and to the Supreme Court. These remedies are guaranteed by article 12.11 of the Administrative Offences Procedure Implementation Code. The State party concludes that the communication should be found inadmissible under articles 2 and 3 of the Optional Protocol for failure by the author to exhaust domestic remedies and for abuse of submission.

Author's comments on the State party's observations

5. On 7 March 2016, the author submitted his comments on the State party's observations. He claims that the supervisory review procedure is discretionary in nature and does not guarantee that the appeal is transmitted to a court for consideration. If it is accepted

¹ The submissions, including the court decisions, do not specify which documents the author was required to submit with his application for permission to hold the protest.

² The administrative record indicated that the author had refused to obey an order by police officers on 25 June 2010, not on 14 June 2010.

for consideration, the court will not review the case on the merits. The author claims that the requirement of exhaustion under article 5 (2) (b) applies only to remedies that are effective and available. He submits that the Committee does not consider the supervisory review procedure in Belarus to be an effective remedy.³

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 State party's observation that the author failed to exhaust domestic remedies because he did not submit supervisory review appeals to the Chair of the Minsk Regional Court or to the Supreme Court. The Committee also notes the author's argument that such appeals do not constitute an effective remedy. The Committee recalls its jurisprudence, according to which filing requests for supervisory review to the chair of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute 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.⁴ In the absence of such information in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant for the purposes of admissibility and proceeds with its 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 assembly have been restricted in violation of articles 19 and 21 of the Covenant, as he was denied authorization to organize a protest. It also notes the author's claims that the authorities invoked, as a basis for refusal, his failure to provide guarantees of public order in his application for authorization to hold the protest and that such a reason is not among the permissible grounds for restricting rights set out in articles 19 and 21 of the Covenant.

7.3 Regarding the author's claim that his failure to provide guarantees of public order during the protest was considered as a basis for refusing his application by the District Executive Committee, the Committee notes that the 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 of the Covenant.⁵

³ The author refers to communications *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008) and *Shumilin v. Belarus* (CCPR/C/105/D/1784/2008).

⁴ See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus*, para. 8.3.

⁵ General comment No. 37 (2020), para. 64.

7.4 Furthermore, the Committee recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and is indispensable in a democratic society. 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.⁶ 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, 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.⁷ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.⁸

7.5 In the present case, the Committee must consider whether the restrictions imposed on the author's right to peaceful assembly were 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 request to organize a peaceful protest was refused because he did not provide guarantees of public order in his application. In this context, the Committee notes that neither the District Executive Committee nor the domestic courts have provided any justification or detailed explanation as to how, in practice, the author's event would have violated the interests 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, as set out in article 21 of the Covenant.

7.6 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 the absence of any further explanation by the State party regarding the matter, the Committee concludes that the State party has violated the author's rights under article 21 of the Covenant.

7.7 The Committee also notes the author's claim that his right to freedom of expression has been restricted unlawfully, as he was refused authorization to hold the peaceful protest in order to publicly discuss the construction of a new gas station in the town of Borisov and express his opposition to the construction of the gas station. The Committee also notes the author's claim that he was found guilty of an administrative offence and fined 875,000 Belarusian roubles (equivalent to about €235) for organizing the public protest. The issue before the Committee is therefore to determine whether the prohibition imposed on the author by the authorities of the State party on holding a peaceful protest and the related sanction amount to a violation of article 19 of the Covenant.

7.8 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.⁹ 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, 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.¹⁰ 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.¹¹

⁶ *Ibid.*, para. 6.

⁷ *Ibid.*, para. 36.

⁸ See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

⁹ General comment No. 34 (2011), para. 2.

¹⁰ *Ibid.*, para. 34.

¹¹ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

7.9 The Committee observes that imposing a vague and general requirement to provide guarantees of public order in order to obtain an authorization for a peaceful protest, as well as the imposition of a significant fine on the author for holding such a peaceful albeit unauthorized protest, raise serious doubts as to the necessity and proportionality of the restrictions on the author's rights under article 19 of the Covenant. The Committee observes in this regard that the State party has failed to invoke any specific grounds to support the necessity of such restrictions as required under article 19 (3) of the Covenant.¹² Nor did the State party demonstrate 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 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 of the Covenant have been violated.¹³

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, including to reimburse the fine and 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, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognized by articles 19 and 21.

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.

¹² See, e.g., *Zaleskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

¹³ 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.