



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. 2397/2014*, **

<i>Communication submitted by:</i>	Viktor Sazonov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	10 February 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 27 May 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2021
<i>Subject matter:</i>	Administrative fine imposed on the author for posing with a portrait
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; fair trial; discrimination
<i>Articles of the Covenant:</i>	2 (1) and (3), 14 (1), 19 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Viktor Sazonov, a national of Belarus born in 1963. He claims that the State party has violated his rights under article 14 (1), read in conjunction with article 2 (1) and (3), and articles 19 and 26 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

1.2 On 19 February 2015, pursuant to rule 93 (1) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 12 September 2014, pursuant to rule 93 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

* 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, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as submitted by the author

2.1 The author submits that, on 10 December 2012, the day of the sixty-fourth anniversary of the Universal Declaration of Human Rights, he and his friends took several portraits of Ales Belyatsky¹ and displayed them at 48A Budennyi Street, Grodno. Subsequently, photographs of the author and his friends holding those portraits were posted online. The author submits that on 13 December 2012 the local police charged him with an administrative offence for having participated in an unlawful (unauthorized) assembly (protest). The charges that were brought against him and his friends were based on them holding the portraits on 10 December 2012.

2.2 On 5 January 2013, the Leninsky District Court in Grodno fined the author 1,500,000 Belarusian roubles² for violating article 23.34 (1) of the Code of Administrative Offences, which imposes sanctions for violating the regulations on holding public events.³ The only witnesses that were present during the hearings were police officers who had put together a complaint against the author despite not having been present on the day on which the protest was held. No witnesses to the alleged protest were heard.

2.3 The author submits that on 29 January 2013 he appealed the decision of the Leninsky District Court. In his appeal, the author argued that he had not violated any laws or regulations and had not held any public events. Police officers never witnessed him holding any portraits. The complaint that was brought against him was based on photographs that had been posted online, although the police officers at the initial court hearing had admitted that uploading photographs online was not an administrative offence. His appeal was dismissed by the Grodno Regional Court, which upheld the lower court's decision and fine.

2.4 On 21 March 2013, the author filed a request for supervisory review before the Grodno Regional Court, bringing forward claims similar to those made during the initial appeal; this time too his claims were rejected. The author also argued that the fine was too high. The author therefore contends that he has exhausted all available effective domestic remedies.

Complaint

3.1 The author claims that the State party has violated his rights under article 14 (1), read in conjunction with article 2 (1) and (3), of the Covenant. He considers that he was not afforded a fair and impartial hearing. All the administrative charges against him were based only on police reports and on photographs from the Internet. No witnesses saw the process of taking pictures or could testify against the author. Moreover, Belarus does not comply with its international obligations, in particular those under the Covenant, nor does it provide all individuals within its territory with an effective remedy to defend their rights before competent judicial, administrative or legislative authorities or with the possibility of being granted a judicial remedy.

3.2 The author also claims that the State party has violated his rights under article 19 (2) of the Covenant, as his right to freedom of expression was not guaranteed. The author should be free to take pictures, even if they could be interpreted as a political message, anytime and anywhere.

3.3 With reference to article 26 of the Covenant, the author submits that he faces discrimination on the basis of his political opinion and that there is no legal protection in the State party against discrimination on the grounds of political views.

¹ Mr. Belyatsky is a prominent Belarusian human rights activist.

² Approximately €133 at the time of the imposition of the fine, according to the National Bank of Belarus.

³ The author was found guilty of having infringed article 23.34 (1) of the Code of Administrative Offences, concerning the organization or conduct of meetings, processions, pickets, assemblies or other public actions, interference in their organization or conduct, or the participation in illegal meetings, assemblies, processions or other public actions if those actions do not constitute criminal acts.

State party's observations on admissibility and the merits

4. On 23 July 2014, the State party provided its observations on the admissibility of the author's complaint. It states that the author of the communication had not exhausted all available domestic remedies at the time of the submission of the communication. The State party submits that Mr. Sazonov's complaint should be considered inadmissible under article 2 of the Optional Protocol.⁴ On 7 October 2014, responding to a request for comments on the merits of the communication, the State party explained that article 2 of the Optional Protocol stipulates that all available domestic remedies, not all effective domestic remedies, should be exhausted and requested that the author be provided with that explanation.⁵

Author's comments on the State party's observations

5. On 25 August 2014, responding to the State party's observations, the author submits that the system of supervisory reviews is not an effective remedy that needs to be exhausted. In those reviews, the outcome is at the discretion of judges and prosecutors. Moreover, the Committee has long recognized that supervisory reviews are ineffective and unnecessary.⁶

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 article 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 contention that the author failed to exhaust all available domestic remedies but also notes that the State party does not provide any specific details as to the potential remedies that the author should have exhausted.⁷ In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 The Committee notes the author's claims under article 14 (1), read in conjunction with article 2 (1) and (3), and article 26 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining claims, raising issues under article 19 of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

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

⁴ No further information is provided by the State party.

⁵ The State party was requested on 12 September 2014 to provide its observations on the merits of the communication (in addition to the request that was sent during the initial registration). Additional reminders were sent on 26 August 2020 and 8 April 2021. No response has been received to date.

⁶ The author refers, inter alia, to *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998).

⁷ See paragraph 4 above. The State party provides no information on the available remedies.

7.2 The Committee notes the author's claim that his right to freedom of expression has been restricted unlawfully, as reflected in the fact that he was found guilty of an administrative offence and fined 1,500,000 Belarusian roubles for participating in an alleged public event. The issue before the Committee is therefore to determine whether the sanction imposed on the author by the domestic authorities for posing in public with a portrait amounts to a violation of article 19 of the Covenant.

7.3 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. 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, the Committee reiterates that 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.⁸ 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.⁹

7.4 The Committee observes that imposing a significant fine on the author for simply posing with a portrait raises 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.¹⁰ 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 restrictions 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.¹¹

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 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 by reimbursing him for the 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, 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) of the Covenant and by adopting measures able to give effect to the rights recognized by article 19.

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

⁸ General comment No. 27 (1999), para. 14.

⁹ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹⁰ See, e.g., *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

¹¹ 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.

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.
