



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. 2574/2015*, **

<i>Communication submitted by:</i>	Ulugbek Ersaliev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	24 July 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 25 February 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2021
<i>Subject matter:</i>	Conduct of a non-authorized picket
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Unjustified restriction on the right to freedom of expression
<i>Articles of the Covenant:</i>	19 and 21
<i>Articles of the Optional Protocol:</i>	None

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



1. The author of the communication is Ulugbek Ersaliev, a national of Uzbekistan born in 1964. He claims that the State party has violated his rights under article 21 of the Covenant. Although the author does not specifically invoke article 19 of the Covenant, the communication appears to raise issues also under that article too. The Optional Protocol entered into force for the State party on 28 December 1995. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 13 February 2013, the author applied for permission to hold a two-hour-long demonstration (individual picket) on 26 February 2013 in front of the Department of Bailiffs in Tashkent. The author wanted to protest the bailiffs' failure to execute a judicial decision in his favour following his refusal to bribe a bailiff.

2.2 On 5 April 2013, the Office of the Mayor of Tashkent informed the author that his request had been transferred to the municipal Department of Internal Affairs for a decision. The author notes that, according to the national legislation, permission to hold a demonstration should be issued by the Office of the Mayor, not by the police. He claims that, by transferring his request, the Office tried to threaten him and make him withdraw his request. Moreover, the municipal Department of Internal Affairs did not provide him with a written decision; instead, an officer telephoned him and informed him orally, in front of the Department building, that his request had been rejected.

2.3 The author appealed the response of the Office of the Mayor to the Tashkent City Court on 23 April 2013. The City Court transmitted his appeal to the head of the Mirzo-Ulugbeksk Inter-District Court, which rejected the appeal on 27 September 2013. The author appealed the decision of the Inter-District Court to the Tashkent City Court on 28 October 2013. His appeal was rejected by the City Court on 19 November 2013. His next appeal, which was submitted on 11 December 2013 under the supervisory review procedure and addressed to the head of the Tashkent City Court, was rejected on 20 January 2014.

2.4 On 23 January 2014, the author appealed, under the supervisory review procedure, to the Supreme Court and, on 19 March 2014, to the Presidium of the Supreme Court. Both appeals were rejected, on 25 April 2014 and 26 June 2014 respectively.

Complaint

3.1 The author claims that the Office of the Mayor should have made a reasoned decision in response to his request to hold a picket and not transfer the request to the police. By failing to make the decision themselves, the State party's authorities violated his right to freedom of peaceful assembly, which is protected under article 21 of the Covenant.

3.2 The communication appears also to raise issues under article 19 of the Covenant, although that article is not specifically invoked by the author. The author claims that the Office of the Mayor transferred his request to hold a picket to the police in order to intimidate him, pressure him to withdraw his request and thus silence his protest against alleged corrupt practices in the Department of Bailiffs.

State party's observations on admissibility and the merits

4.1 In its notes verbales dated 15 and 19 May 2015, the State party presents its observations on admissibility and the merits. It submits that the entire communication, including specifically the part concerning the alleged non-execution of a judicial decision in the author's favour, the illegal actions of a bailiff, Mr. P, and the violation of the author's right to freedom of peaceful assembly, is inadmissible for lack of substantiation.

4.2 The execution order of the Mirzo-Ulugbeksk Inter-District Court dated 6 April 2012, ordering the recovery of an outstanding payment from Ms. K., an officer of a credit union, in favour of the author, became subject to execution proceedings by the Department of Bailiffs on 3 August 2012.

4.3 Following a number of procedural steps, the payment was recovered from the debtor (notably, by means of selling the debtor's property and withholding money from the debtor's

old-age pension) and the money was transferred to the author's bank account. On 12 May 2014, Ms. K. passed away and the execution proceedings were terminated.

4.4 The execution order by the Uchtepa Inter-District Court dated 29 October 2012, ordering the recovery of an outstanding payment from Ms. S., an officer of a different credit union called Sharq Yulduzi, in favour of the author, became subject to execution proceedings by the Department of Bailiffs on 17 December 2012.

4.5 The State party points out that, alongside the author, 343 other people appear to have been creditors of Sharq Yulduzi. The Department of Bailiffs has admitted execution orders (including the author's) issued by inter-district civil courts in favour of 344 claimants. In order to execute the order in respect of the author, a bailiff repeatedly attempted to reach the debtor at the credit union's legal address, but it transpired that the credit union was not conducting any business activities at that address. The bailiff duly reflected that finding in a report.

4.6 It was also discovered that, following the Central Bank's statement of 17 September 2011, the licence of Sharq Yulduzi had expired. Nevertheless, the issue of its liquidation had not been addressed. At the same time, officials of Sharq Yulduzi became subject to criminal proceedings. In the course of the proceedings, 344 individuals were recognized as victims. The value of the confiscated property and the recovered loans amounted to 866.6 million sum.

4.7 The bailiff filed a request with the court, asking for clarifications on the execution proceedings.

4.8 On 8 October 2013, the 170 million sum that had been transferred to the Department of Bailiffs' deposit account was distributed among the creditors. Moreover, the Department of Bailiffs further admitted the execution order of 5 September 2014 issued by the Shaykhontohur Inter-District Court ordering the recovery of the remaining outstanding payments in favour of the creditors by means of selling the debtor's physical assets (notably, three vehicles and office furniture).

4.9 In view of the above, the State party concludes that the author's claims alleging the failure of the bailiffs to carry out their duties lack substantiation.

4.10 The State party recalls that, on 27 September 2013, the Mirzo-Ulugbeksk Inter-District Court rejected the author's complaint against the Office of the Mayor's response regarding an authorization to conduct a picket and the municipal Department of Internal Affairs, claiming compensation for moral damages. On 19 November 2013, the Tashkent City Court dismissed the author's appeal.

4.11 The State party explains that, according to the civil case file, on 13 February 2013 the author sought permission from the Office of the Mayor to hold a picket. Subsequently, officers of the municipal Department of Internal Affairs held a conversation with the author and sent a letter on 10 March 2013 explaining the legal norms prohibiting the holding of unauthorized meetings. The author filed a complaint against the actions of the Office of the Mayor and then received an official explanation of his right to submit his case either to the judicial department in Tashkent or to a court. The author held that his request for permission to hold a demonstration should not have been transmitted to the municipal Department of Internal Affairs but should instead have been considered by the Office of the Mayor. The author requested that the response of the local administration be declared unlawful and that the Office of the Mayor be obliged to consider his application, to authorize the picket and to provide him compensation for moral damages.

4.12 The State party submits that an inquiry established that the author had earlier been found guilty of committing a criminal offence in 2006. Besides, he had received a negative assessment by a group of local residents, in particular because he did not participate in the activities of the group but regularly kept writing complaints to different State authorities. The State party further refers to article 33 of the Constitution, which reads as follows: "All citizens shall have the right to engage in public life by holding rallies, meetings and demonstrations in accordance with the legislation of the Republic of Uzbekistan. The bodies of authority shall have the right to suspend or ban such undertakings exclusively on the grounds of security".

4.13 The court of first instance found that the author's claim for moral damages was unsubstantiated, a finding that was upheld by the appeal court. The State party notes that moral damages are to be awarded to a complainant if the perpetrator's guilt has been established. In the case at hand, the courts have established no such guilt, as no undue pressure was exercised on the author that could affect him negatively.

Author's comments on the State party's observations

5.1 On 17 July 2015, the author commented on the State party's observations. In particular, the author contests the State party's assertion that the Department of Bailiffs took efficient measures as regards the execution of the order of the Mirzo-Ulugbeksk Inter-District Court dated 6 April 2012. He reiterates that the bailiff, Mr. P., requested him to pay a bribe to ensure the execution of the order; he refused and complained to the Office of the Prosecutor General. Following his refusal to pay a bribe, the bailiffs deliberately started to prolong the execution of the order under various pretexts. The author appealed against the bailiffs' actions in court. On 4 July 2013 and on 28 February and 10 September 2014, the appeal court decided that the bailiffs' conduct was unlawful and granted the author compensation for moral damages. The author explains that those decisions serve as irrefutable proof of the credibility of his assertions.

5.2 The author refutes the State party's arguments concerning the legality of the rejection by the Office of the Mayor of his request to hold a picket, as well as the subsequent court decisions upholding that decision. The author refers to the limitations on the right to hold a demonstration set forth in article 33 of the Constitution and submits that a peaceful individual picket would not have disrupted the public order. The Office of the Mayor could also have suggested another place to hold the picket, had considerations of public order been the basis for the rejection of the author's request, yet it failed to do so.

Additional submissions

From the State party

6.1 In a note verbale dated 20 November 2015, the State party reiterates its previous submissions. It adds that on 18 October 2013 the Uchtepa Inter-District Court ordered the recovery of the outstanding payment from the credit union Sharq Yulduzi in favour of the author, which became subject to execution proceedings by the Department of Bailiffs on 25 November 2013. The execution orders issued by the same court in favour of the other claimants in 2013 also became subject to execution proceedings.

6.2 The State party clarifies the status of the execution proceedings in the author's case. On 23 December 2013, the bailiff initiated an inquiry concerning both the whereabouts and the market value of the credit union's physical assets that were expected to cover part of the outstanding debt. The inquiry of the bailiff and the asset valuation remain in progress.

From the author

7.1 In a submission dated 6 December 2015, the author adds that, despite the constitutional guarantees, holding peaceful assemblies is de facto prohibited in the State party. He notes that there have been no media reports covering any peaceful assemblies against corruption and injustice held during the 20 years since the State party gained independence. In this regard, he explains that all authorized demonstrations take place exclusively at the initiative of State party authorities, thus precluding any eventual protest against the ruling government.

7.2 The author also maintains that the authorities did not substantiate their rejection of his request to hold a peaceful protest, notably by failing to explain how the picket could have posed a threat to the public order.

State party's further observations

8.1 In a note verbale dated 20 January 2016, the State party reiterates its previous observations.

8.2 The State party submits, in particular, that the Mirzo-Ulugbeksk Inter-District Court decision of 27 September 2013 dismissing the author's claims regarding the conduct of a picket was based on the fact that the authorities had already considered the request in an effective and timely manner. In addition, the author has failed to demonstrate that he has suffered moral damages and has adduced no evidence of pressure on the part of the officers of the municipal Department of Internal Affairs.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 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.

9.3 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.

9.4 Furthermore, the Committee notes the author's allegations that his right to freedom of assembly, which is protected under article 21 of the Covenant, has been restricted arbitrarily, since his request to hold a peaceful picket, instead of being examined by the relevant authorities, was redirected to the police. The Committee notes, however, that the author, according to his own submission, requested permission to conduct the picket on his own.

9.5 The Committee recalls that, while the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19.¹ In the Committee's view, the author has not advanced sufficient elements to show that an "assembly" within the meaning of article 21 would in fact have taken place in this case. Accordingly, in the particular circumstances of the case, the Committee considers that the author has failed to sufficiently substantiate this particular claim for the purposes of admissibility. Therefore, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.²

9.6 The Committee considers that the communication as submitted by the author raises issues under article 19 of the Covenant, which have been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 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.

10.2 The Committee notes that the author's right to freedom of expression has been restricted unduly, implicitly invoking a violation of article 19 (2) of the Covenant, as his request to hold a picket was de facto rejected, instead of being examined by the relevant executive municipal authorities. His request was also transferred to the police, with the aim of threatening him and pressuring him into withdrawing it.

10.3 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.

¹ General comment No. 37 (2020), para. 13.

² *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.

10.4 The Committee recalls its general comment No. 34 (2011), in paragraph 2 of which it states 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 Covenant allows for certain restrictions on 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 to respect the rights or reputation of others or to protect national security or public order (or 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 must be proportionate to the interest being protected.³ 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.⁴

10.5 The Committee observes that, in the present case, the de facto refusal of the author's request to obtain a prior authorization from the local executive authorities for a picket 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 further observes that, even relying on the ground of security and citing its Constitution, the State party has failed to provide any concrete information as to why the restriction imposed on the author was necessary for maintaining security as required under article 19 (3) of the Covenant. Furthermore, the State party did not 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 present case, the limitations imposed on the author 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.⁵

11. 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 article 19 (2) of the Covenant.

12. 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.

13. 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 official language of the State party.

³ General comment No. 34 (2011), para. 34.

⁴ *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.

⁵ 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.