



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 communications No. 2572/2015 and No. 2573/2015*, **

<i>Communications submitted by:</i>	Vladimir Sekerko (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Dates of communications:</i>	21 July 2014 (No. 2572/2015) and 12 October 2014 (No. 2573/2015) (initial submissions)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 20 February 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2020
<i>Subject matters:</i>	Refusal of the authorities to authorize the holding of pickets; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	19 and 21, read alone and in conjunction with article 2 (2)–(3)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the two communications is Vladimir Sekerko, a national of Belarus born in 1948. He claims that the State party has violated his rights under articles 19 and 21, read alone and in conjunction with article 2 (2)–(3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

1.2 On 5 November 2020, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to deal with the two communications jointly, in view of their substantial factual and legal similarity.

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Schuichi, Christoph Heyns, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



Facts as submitted by the author

Communication No. 2573/2015

2.1 The author is Chair of the Gomel regional branch of A Just World, a leftist party in Belarus. On 20 July 2013, he applied¹ to the Gomel City Executive Committee for authorization to hold a picket on 6 August 2013 to raise public awareness of the tasks and goals of A Just World, together with five members of the party. The picket was planned to take place at the location that had been identified by the Gomel City Executive Committee specifically for the organization of peaceful assemblies.²

2.2 On 31 July 2013, the author's application was rejected by the Gomel City Executive Committee, which noted in its response that the location had already been reserved for another event, in other words for the rehearsals of the opening ceremony of the Seventh International Festival of Choreographic Art.

2.3 On an unspecified date, the author appealed against that decision to the Central District Court of Gomel, claiming a violation of his rights to freedom of expression and peaceful assembly, as guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. In his complaint, he also noted that no alternative time or date had been proposed by the authorities. On 20 November 2013, the court ruled that the decision of the Gomel City Executive Committee was in compliance with the provisions of the Law on Mass Events and rejected the author's appeal.

2.4 On 14 January 2014, the Gomel Regional Court rejected another appeal submitted by the author.

2.5 On 10 April and 3 June 2014, the author appealed under the supervisory review procedure to the Chair of the Gomel Regional Court and to the Supreme Court. His appeals were rejected on 22 May and 4 September 2014, respectively. The courts held that the decision of the Gomel City Executive Committee was objective, that it did not prohibit the holding of demonstrations altogether and was not aimed at limiting the rights of the party. The author did not pursue the supervisory review procedure with the office of the Prosecutor General. He argues that, according to the Committee's jurisprudence, since that procedure was not considered to be an effective remedy, he has exhausted all domestic remedies.

Communication No. 2572/2015

2.6 On 11 September and 22 October 2013, the author applied to the Gomel City Executive Committee to hold pickets on 26 September and 7 November 2013, respectively. The purpose of the September picket would be to raise public awareness of the tasks and goals of A Just World, whereas the November event would be devoted to the highlighting the significance of the "great October socialist revolution" for the Belarusian people. In the applications, the author specified the intended location of the pickets and the expected number of participants.

2.7 On 20 September and 31 October 2013, the Gomel City Executive Committee refused to authorize the pickets on the following grounds: (a) the location of the proposed pickets was not among those specified for the conduct of such events in Gomel City Executive Committee decision No. 775 of 15 August 2013; and (b) the author had failed to submit the contracts drawn up with the relevant city service providers in order to ensure the provision of medical services during and the cleaning of the location after both events.

2.8 On 23 September and 22 November 2013, the author appealed against the decisions of the Gomel City Executive Committee to the Central District Court of Gomel, claiming a violation of his rights to freedom of expression and peaceful assembly, as guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. In his complaint, he also

¹ The author's request to the Gomel City Executive Committee and complaints filed before the courts were submitted on behalf of the organization and signed by the author as Chair of the organization.

² Pursuant to Gomel City Executive Committee decision No. 299 of 2 April 2008, mass events could be organized in the area in front of the Palace of Culture at Jubilee Street 48. That decision was replaced by decision No. 775 of 15 August 2013, which identified two other locations for holding pickets.

noted that no alternative time or date had been proposed by the authorities. On 25 November 2013 and 3 January 2014, the Central District Court dismissed the appeals and confirmed the decisions of the Gomel City Executive Committee as lawful.

2.9 On 27 November 2013 and 20 January 2014, the author filed cassation appeals against the decisions with the Judicial Chamber on Civil Cases of Gomel Regional Court. On 11 February and 20 March 2014, the Judicial Chamber dismissed both appeals.

2.10 On unspecified dates, the author sought a supervisory review of the decisions of the Judicial Chamber before the Gomel Regional Court. On 29 May 2014, the Gomel Regional Court dismissed both appeals. The author's subsequent appeals to the Supreme Court were rejected on 30 June 2014.

2.11 The author submits that he has exhausted all available and effective domestic remedies.

Complaint

3.1 The author claims that the State party has violated his rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant. He considers that the reason he was denied the right to hold a peaceful assembly and the right to freedom of expression was unlawful. In his communications to the Committee, the author, who is not represented by counsel, also appears to raise issues concerning articles 19 and 21 of the Covenant.

3.2 The author considers that, when restricting his rights to freedom of expression and to hold peaceful pickets, the authorities failed to substantiate how the restrictions were necessary for the purposes of articles 19 and 21 of the Covenant. Moreover, no alternative time or date for holding the picket were proposed.

3.3 The author argues that the Public Events Act of Belarus and the decisions of the Gomel City Executive Committee on holding mass events in Gomel should be brought into line with the State party's international obligations under articles 19 and 21 of the Covenant.

State party's observations on admissibility

4.1 In notes verbales dated 14 April and 21 July 2015, the State party submits that both communications should be declared inadmissible under article 2 of the Optional Protocol since the author has failed to exhaust all available domestic remedies.

4.2 The State party notes with regret that the Committee's interpretation of articles 2 and 5 of the Optional Protocol is arbitrary and unlawful, does not follow the provisions of the Covenant and is contrary to the principles of interpretation established in the Vienna Convention on the Law of Treaties.

4.3 The State party submits that it rejects the communications due to the failure of the author and the Committee to comply with the procedural conditions set out in the Covenant and its Optional Protocol and ceases further correspondence in this regard.

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

5.1 In letters dated 5 May 2015 and 18 January 2016, the author claims that, in accordance with the case law of the Committee, remedies must not only be available but also effective. Accordingly, the remedies are to be considered exhausted if they do not satisfy one of these requirements. He notes that the Committee has repeatedly stressed that making an appeal under the supervisory review procedure is a common practice for decisions that have entered into force in the former republics of the Soviet Union and that the Committee does not recognize that practice as an effective remedy for the purposes of establishing that all domestic remedies have been exhausted.

5.2 The author explains that he did not file an application with the office of the Prosecutor General under the supervisory review procedure since he did not consider that it constituted an effective remedy.

5.3 With regard to the Committee's competence in reviewing the case, the author believes that the State party, by voluntarily accepting the jurisdiction of the Committee, is not entitled to challenge the Committee's competence or to ignore its authoritative opinions. The author

believes that the State party is not only obliged to comply strictly with the decisions of the Committee, but also that it must recognize its standards, practices, methods of work and precedents.

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that the author's communication was registered in violation of article 2 of the Optional Protocol and that it rejects the communications due to the failure of the author and the Committee to comply with the procedural conditions set out in the Covenant and its Optional Protocol and ceases further correspondence in that regard.

6.2 The Committee observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination, to forward its Views to the State party and to the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.³ It is up to the Committee to determine whether a case should be registered. By failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring outright that it ceases further correspondence, the State party has violated its obligations under article 1 of the Optional Protocol.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes that the State party challenges the admissibility of both communications No. 2572/2015 and No. 2573/2015 for non-exhaustion of domestic remedies. It also notes that the author has not submitted a petition under the supervisory review procedure to the office of the Prosecutor General because he does not consider it to be an effective remedy. The Committee further notes the author's argument that his appeals against the decisions of the Gomel City Executive Committee, including for a supervisory review, were dismissed by the Central District Court of Gomel, by the Gomel Regional Court and by the Supreme Court.

7.4 The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office (which is dependent on the discretionary power of the prosecutor) requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁴ Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communications at hand.

7.5 The Committee takes note of the author's submission that the State party violated his rights under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant. The

³ See, for example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

⁴ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para 9.3.

Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.⁵ The Committee notes, however, that the author has already alleged a violation of his rights under articles 19 and 21 resulting from the interpretation and application of the existing laws of the State party. Moreover, the Committee does not consider an examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant to be distinct from an examination of the violation of the author's rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

7.6 The Committee considers that the author has failed to substantiate his claims under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant and therefore declares this part of the communications inadmissible.

7.7 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant for the purposes of admissibility of both communications and proceeds with its consideration of the merits.

Considerations of the merits

8.1 The Committee has considered both communications in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claims that his rights to freedom of expression and freedom of assembly have been restricted, in violation of articles 19 and 21 of the Covenant, as he was denied authorization to organize peaceful assemblies to raise public awareness of the tasks and goals of A Just World (see communications No. 2573/2015 and No. 2572/2015) and of the significance of the "great October socialist revolution" (see communication No. 2572/2015). It also notes the author's claims that the authorities failed to explain why the restrictions on holding the pickets were necessary in the interests of national security, public safety or public order, or for protecting public health, morals or the rights and freedoms of others, as required by articles 19 (3) and 21 of the Covenant, and therefore considers the restrictions unlawful.

8.3 The Committee notes the claim made by the author in both communications that his right to freedom of peaceful assembly, guaranteed under article 21 of the Covenant, was violated by the refusal of the Gomel City Executive Committee to allow him and other members of A Just World to hold pickets. In its general comment No. 37 (2020), the Committee stated that peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.⁶ Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed or of the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city. The Committee further 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 21.⁷

8.4 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual's views and opinions and is indispensable in a democratic society. That right

⁵ *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

⁶ General comment No. 37 (2020), para. 55.

⁷ *Ibid.*, para. 64.

entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,⁸ and no restriction to that right is permissible, unless it is imposed in conformity with the law and it is necessary in a democratic society, in the interests of national security, public safety or public order or for protecting public health or morals or 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 on it.⁹ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.¹⁰

8.5 In the present case, the Committee must consider whether the restrictions imposed on the author's right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In communication No. 2573/2015, the author submits that his application to hold a picket was refused due to a planned parallel event (the rehearsals of the opening ceremony devoted to the Seventh International Festival of Choreographic Art), whereas in communication No. 2572/2015 the author submits that his request was refused because the location chosen was not among those permitted by the city executive authorities and because the author had failed to submit the contracts with the respective city service providers to ensure medical services during the event and the cleaning of the location after the event. In this context, the Committee notes that neither the Gomel City Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice, the author's protest would have violated the interests of national security, public safety or public order or resulted in the non-protection of public health or morals or the rights and freedoms of others, as set out in article 21 of the Covenant. The State party has also failed to show that any alternative measures were taken to facilitate the exercise of the author's rights under article 21.

8.6 In the absence of any explanation by the State party, the Committee concludes that, in communications No. 2753/2015 and No. 2752/2015, the State party has violated the author's rights under article 21 of the Covenant.

8.7 The Committee notes the author's claim that his right to freedom of expression has been restricted unlawfully, as he was refused authorization to hold pickets in order to publicly express his opinion on the goals of A Just World (communications No. 2573/2015 and No. 2572/2015) and on the significance of the "great October socialist revolution" (communication No. 2572/2015). The issue before the Committee is to determine whether the prohibition on holding a public picket imposed on the author by the city executive authorities of the State party amounts to a violation of article 19 of the Covenant.

8.8 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that freedom of expression is an essential for any society and constitutes a foundation stone for every free and democratic society.¹¹ It notes that article 19 (3) of the Convention allows for certain restrictions to 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 of 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.¹² 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.¹³

⁸ *Ibid.*, para. 22.

⁹ *Ibid.*, para. 36.

¹⁰ *Poplavny v. Belarus*, para. 8.4.

¹¹ General comment No. 34 (2011), para. 2.

¹² *Ibid.*, para. 34.

¹³ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

8.9 Referring to both communications, the Committee observes that limiting pickets to certain predetermined locations – and given the fact that the author, in communication No. 2573/2015, had expressed his willingness to consider an alternative time and date for holding the picket – does not appear to meet the standards of necessity and proportionality set out in article 19 of the Covenant. The Committee notes that neither the State party nor the national courts have explained why the restriction was necessary for a legitimate purpose.¹⁴ The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant. In the absence of any explanation by the State party, the Committee concludes that the rights of the author under article 19 of the Covenant have been violated.

9. 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.

10. 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. In that connection, the Committee notes that 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 articles 19 and 21 may be fully enjoyed in the State party.

11. 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 or 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.

¹⁴ General comment No. 34 (2011), paras. 22 and 33.