



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. 2713/2015*, **

<i>Communication submitted by:</i>	Leonid Markhotko (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	19 June 2015 (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 28 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2020
<i>Subject matter:</i>	Refusal of authorities to authorize a picket; 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 (2) and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Leonid Markhotko, a national of Belarus born in 1954. He claims that the State party has violated his rights under articles 19 (2) 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 18 November 2014, the author applied to the Salihorsk District Executive Committee with a request to hold a picket on 10 December 2014, from 5 to 7 p.m. The purpose of the picket was to attract the attention of civil society to international Human Rights Day, and to protest against human rights violations committed in Belarus. In his application, the author specified that approximately seven persons would participate in the picket, which was intended to be held near the building of the Executive Committee on the

* 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: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



central square in Salihorsk. He also indicated the source of funding and requested the local authorities to ensure security, medical care and arrangement of cleaning services after the picket.

2.2 On 1 December 2014, the author's application was rejected by the Executive Committee on the following grounds: (a) the location of the picket was not the one specified for such events by the Executive Committee in its decision No. 700 of 7 October 2004 on measures to prevent emergency situations and to ensure the rule of law during mass events; (b) the author had failed to indicate the specific measures that he, as organizer, intended to take in order to ensure security and public order during the picket, as required by decision No. 700.

2.3 On 29 December 2014, the author filed an appeal against the decision of the Executive Committee with Salihorsk District Court, claiming a violation of his right to freedom of expression and right of peaceful assembly as guaranteed by the Constitution of Belarus and articles 19 and 21 of the Covenant. On 26 January 2015, the Court found the decision of the Executive Committee to be in compliance with the provisions of the Public Events Act and rejected the author's appeal.

2.4 On 12 February 2015, the author filed a cassation appeal against the District Court's decision with Minsk Regional Court. On 12 March 2015, Minsk Regional Court dismissed the appeal. The author has made no further appeals under the supervisory review procedure since he considers that it does not constitute an effective remedy, given the established domestic practice in similar cases.

Complaint

3. The author claims that the State party authorities have restricted his right to freedom of expression, in violation of article 19 of the Covenant, and his right to freedom of assembly, in violation of article 21, by unjustifiably refusing to authorize the picket. The author claims that the restrictions imposed by the State party authorities on the exercise of his rights to freedom of expression and freedom of assembly were not necessary in 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.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 24 February 2016, the State party submitted its observations on admissibility and the merits of the complaint. The State party notes that the author has not exhausted all available domestic remedies, since he has not filed an application for supervisory review with the Supreme Court or the Office of the Procurator General. The State party disagrees with the author's argument that the supervisory review procedure does not constitute an effective remedy, and it notes that in 2015, out of 197 appeals filed under the supervisory review procedure, 192 were granted for review by the Supreme Court.

4.2 The State party notes that the author's claims of violation of articles 19 and 21 are unsubstantiated. The author's appeals against the decision of the Executive Committee with Salihorsk District Court and Minsk Regional Court were dismissed on 26 January 2015 and 12 March 2015 respectively. The State party explains that the Executive Committee's refusal to allow the author to hold a picket was based on its decision of 7 October 2004, under which the organization of mass events is regulated and a designated area allocated for such events in the city of Salihorsk. The Executive Committee's decision is in accordance with article 9 of the Public Events Act, under which the local executive authorities are vested with powers to designate special areas for mass events.

4.3 The provisions of the Public Events Act, and the regulation of the organization and holding of meetings, rallies, street processions and demonstrations, pickets and other mass events in Belarus, are aimed at creating conditions for the realization of the constitutional rights of citizens and their freedoms. The provisions also maximize public safety and order during mass events in the streets, in squares and in other public venues, and increase the personal responsibility of the citizens organizing the events. The State party asserts that the author failed to comply with the Act, and violated its articles 5 and 10 by failing to indicate the specific measures that he, as organizer, intended to take in order to ensure security and

public order during the picket.¹ The State party therefore concludes that the courts' decision to uphold the refusal by the Executive Committee to authorize a mass event was correct.

4.4 The State party further submits that the national legislation that provides for the right of peaceful assembly and regulates the order and time frame of the organization of mass events is coherent with the provisions of the Constitution, and does not contradict the international norms that allow each State to introduce restrictions on the exercise of rights and freedoms that are necessary in a democratic society in 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.

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

5.1 On 14 March 2016, referring to State party's observations to the effect that the Public Events Act was aimed at creating conditions for the realization of citizens' right of peaceful assembly, the author draws the attention to the Committee's case law and observes that the restrictions imposed on his freedom of assembly were based on provisions of domestic law and included the burdensome requirements of securing three separate written authorizations from three different administrative departments, rendering illusory his right to demonstrate.²

5.2 The author further refers to the Committee's case law in which it has stated that, when a State party imposes restrictions with the aim of reconciling an individual's right of assembly and interests of general concern, it should be guided by the aim of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. Any restriction on the exercise of the right of peaceful assembly must conform to the strict tests of necessity and proportionality.³

5.3 The author maintains that the domestic remedies should be not only accessible, but also effective. Referring to the Committee's jurisprudence, he points out that an appeal under the supervisory review procedure does not constitute an effective remedy. He adds that this procedure is subject to the discretion of a prosecutor or a judge and does not entail consideration of the case on its merits. He concludes that all available and effective domestic remedies have thus been exhausted in his case.

5.4 Regarding the statistics provided by the State party on the number of cases reviewed under the supervisory review procedure, the author believes that this argument is groundless since the State party failed to specify how many of the cases related to citizens' rights on freedom of assembly.

5.5 The author asserts that all available and effective domestic remedies have been exhausted and that the current case is admissible for consideration by the Committee under article 5 (2) (b) of the Optional Protocol.

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.

¹ Article 5 of the Act regulates the process of applying for authorization to hold a mass event and stipulates the information that should be included in the application, including the purpose, type, venue and route of the planned event, the expected number of participants, and the measures taken to ensure public order and safety, provision of medical services and cleaning after the event. Article 10 regulates the procedure for holding the event and specifies that the organizers should ensure that the event is held in accordance with the purpose and other information specified in the application.

² *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

³ *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.6.

6.3 The Committee notes the State party's argument that the author has failed to exhaust all domestic remedies. It notes that the only remedy available to the author after his appeal was dismissed by Minsk Regional Court was an appeal under the supervisory review procedure to the Office of the Procurator General or the Supreme Court. In this context, the Committee recalls its jurisprudence, according to which a petition to a prosecutor's office 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 The Committee also considers that filing a request for supervisory review to the chairperson of a court against court decisions that have entered into force and depend on the discretionary power of a judge constitutes 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. Given that the State party has not done so, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee considers that the author has sufficiently substantiated his claim under articles 19 (2) and 21 of the Covenant for the purposes of admissibility. It therefore declares the communication admissible 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims that the State party has arbitrarily restricted his rights to freedom of expression and freedom of assembly, in violation of articles 19 (2) and 21 of the Covenant, by denying authorization to hold a peaceful assembly – a picket – to attract the attention of civil society to international Human Rights Day and to protest against human rights violations committed in Belarus, and that the restrictions imposed on the exercise of his rights were not necessary in 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. The Committee considers that the issue before it is to decide whether the prohibition on holding a public picket imposed on the author by the Salihorsk District Executive Committee amounts to a violation of articles 19 and 21 of the Covenant.

7.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that freedom of opinion and freedom of expression were indispensable conditions for the full development of the person, that they were essential for any society and that they constituted the foundation stone for every free and democratic society.⁵ The Committee recalls that article 19 (3) of the Covenant allows certain restrictions on the exercise of the right of freedom of expression only as are provided by law and as are necessary for respect of the rights and reputation of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for the purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁶ The Committee recalls that it is for the State party to demonstrate that the restrictions imposed on the author's right under article 19 were necessary and proportionate.⁷

7.4 The Committee notes the author's claim that his right to freedom of assembly under article 21 of the Covenant was also violated by the refusal of the municipal authorities to allow him to hold the picket on the basis that the location chosen by him was not among those permitted by the authorities. In its general comment No. 37 (2020) on the right of peaceful assembly, the Committee stated that peaceful assemblies could in principle be conducted in

⁴ For example, *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; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

⁵ General comment No. 34 (2011), para. 2.

⁶ *Ibid.*, para. 22.

⁷ For example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3, and *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5.

all spaces to which the public had access or should have access, such as public squares and streets. Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or 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. 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.⁸

7.5 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, constitutes 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. This right 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 and no restrictions of this right are permissible unless imposed in conformity with the law and necessary in a democratic society in 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. 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 to impose unnecessary or disproportionate limitations on it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.

7.6 In the present case, the author chose the central square in Salihorsk for his picket to publicly express his opinion by attracting attention to the commemoration of international Human Rights Day and protesting against human rights violations committed in Belarus. The Committee notes that the municipal authorities rejected the author's request to organize a picket on the grounds that the planned location of the event was not the single location specified for such events by the Executive Committee in its decision No. 700, and that the author had failed to indicate the specific measures that he, as organizer, intended to take in order to ensure security and public order during the picket. The Committee observes, however, that the national authorities have failed to demonstrate how a picket held in the location proposed by the author would jeopardize national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. It notes in particular that neither the decision of the Executive Committee to refuse the author's request to hold a picket nor the court decisions provide any explanation as to why the restrictions imposed by decision No. 700 and applied in the author's case were necessary and justified.

7.7 The Committee notes that the de facto prohibition imposed by decision No. 700 of assemblies in any public location in the entire city of Salihorsk, with the exception of a single location specified by the Executive Committee, unduly limits the right of assembly and the right to freedom of expression. The Committee also notes that requesting the author, as organizer of a picket, to take specific measures to ensure security and public order during the picket imposes a disproportionate burden on him in his exercise of the right of peaceful assembly and the right to freedom of expression in the same context. In these circumstances, the Committee finds the formal application of decision No. 700 and the rejection by the State party's authorities of the author's request to hold a picket to be unjustified and concludes that the author's rights under articles 19 (2) and 21 of the Covenant have been violated.

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 (2) 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

⁸ General comment No. 37 (2020), paras. 55 and 64.

obligated, *inter alia*, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations 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 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.
