



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. 2917/2016*, **

<i>Communication submitted by:</i>	Alla Romanchik and Natalya Shchukina (represented by counsel, Leonid Sudalenko)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	28 September 2016 (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 30 December 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	27 July 2022
<i>Subject matter:</i>	Refusal of authorities to authorize a public event (street rally)
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	2 (2) and (3), 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The authors of the communication are Alla Romanchik and Natalya Shchukina, Belarusian nationals born in 1956 and 1944 respectively. They claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are represented by counsel.

Facts as submitted by the authors

2.1 On 20 October 2015, the authors sought the authorization of the Gomel City Executive Committee to hold a street rally in the town of Gomel on 15 November 2015, with the aim of drawing attention to the economic crisis in Belarus and to the need for economic reforms.

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, 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.



2.2 On 9 November 2015, the Executive Committee refused to issue an authorization on the grounds that the authors had failed to conclude contracts with the city service providers for security services, medical assistance and cleaning, as required under article 3 of Executive Committee decision No. 775 of 15 August 2013. The authors explain that in Gomel, which has a population of approximately 500,000, there are two locations on the outskirts of the town identified by the City Executive Committee as specifically designated areas for the organization of peaceful assemblies.

2.3 On 30 November 2015, the authors appealed the Executive Committee's decision before the court of the central district in Gomel, which rejected their complaint on 21 December 2015. On 29 December 2015, the authors filed a cassation appeal to the Gomel regional court, which rejected their appeal on 11 February 2016.

2.4 The authors appealed under the supervisory review proceedings to the Chair of the Gomel regional court on 1 April 2016 and to the Chair of the Supreme Court on 7 May 2016. Both appeals were rejected on 4 April and 2 June 2016 respectively.

2.5 The authors further appealed under the supervisory review proceedings to the Office of the Gomel Regional Prosecutor on 7 June 2016 and to the Office of the Prosecutor General on 21 July 2016. Their appeals were dismissed on 13 July and 8 September 2016 respectively.

Complaint

3.1 The authors claim that the decision of the Gomel City Executive Committee to refuse authorization of their peaceful street procession limited their rights disproportionately under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant.

3.2 The authors request the Committee to recommend that the State party bring the provisions of the law on mass events and decision No. 775 of the Gomel City Executive Committee of 15 August 2013 "On mass events in the city of Gomel" into line with its international obligations under the Covenant.

State party's observations on admissibility and the merits

4.1 By note verbale of 3 March 2017, the State party submitted its observations on admissibility and the merits and commented on the facts presented by the authors. In that context, the State party notes that on 9 November 2015, the Gomel City Executive Committee refused the authors' request to conduct a rally, as they had failed to comply with the provisions of the law on mass events, which regulated the holding of public events. The State party observes that the Gomel City Executive Committee provided an explanation to the authors as to the reasons for denying authorization of the rally. In that context, the State party notes that the authors failed to indicate the measures taken to ensure the public order and safety of the event and to provide the contracts with service providers for security and medical services during the event and the cleaning of the location afterwards.

4.2 The State party reiterates the dates of dismissal of the appeals brought by the authors before the court and the prosecutor's office, including those reviewed under the supervisory procedures.

4.3 The State party further notes that the authors' claims of a violation of articles 19 and 21, read in conjunction with article 2 (2) and (3), are unsubstantiated. The State party observes that the national legislation that provides for the right to freedom of peaceful assembly and freedom of expression is coherent with the provisions of the Constitution of Belarus¹ and does not contradict the international norms that allow each State to introduce restrictions to the rights and freedoms of a person that are necessary in a democratic society and 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, as foreseen under articles 19 and 21 of the Covenant.

4.4 The State party notes that according to article 5 of the law on mass events, the organizers of such events are responsible for taking measures related, among others, to medical assistance during the event and cleaning up afterwards.

4.5 Referring to the admissibility of the communication, the State party notes that the authors have not exhausted all available domestic remedies since their appeals for supervisory review to the Supreme Court

¹ See articles 33 and 35.

and to the Office of the Prosecutor General were not examined by either the Chair of the Supreme Court or the Prosecutor General, but by their deputies.

Authors' comments on the State party's observations

5.1 On 10 May 2017, the authors submitted their comments on the State party's observations. With reference to the State party's observations on the supervisory review, the authors reiterate that they appealed the decisions under these proceedings to the Chair of the Supreme Court of Belarus and to the Prosecutor General; however, the appeals were rejected by their deputies, which is not contested by the State party.

5.2 In that context, they note that the Chair of the Supreme Court has five deputies, while the Prosecutor General has four. The authors argue that the State party failed to explain which of the deputies should have been addressed in order for the appeal to be reviewed personally by the Chair of the Supreme Court or by the Prosecutor General. The authors submit that in the absence of any explanation by the State party in this regard, they do not consider the supervisory review procedures to be an effective remedy.

5.3 In addition, the current legislation does not give a citizen the right to directly file a complaint with the Constitutional Court. The authors therefore contend that they have exhausted all effective domestic remedies.

5.4 Regarding the State party's argument that the law on mass events is in compliance with articles 19 and 21 of the Covenant, the authors refer to the Committee's established jurisprudence and note that the State party has not implemented the recommendations of the Committee concerning this law.²

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 argument that the authors have failed to seek a supervisory review by the Chair of the Supreme Court or by the Prosecutor General himself of the decisions of the domestic courts. In that context, the Committee considers that filing requests for a supervisory review with the president of a court that are directed 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. The Committee further notes the authors' argument that they indeed appealed, unsuccessfully, such decisions under the supervisory review proceedings, namely to the Chair of the Supreme Court and to the Office of the Prosecutor General, and provided all respective materials in that regard. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.³ The Committee notes that in the present case, the authors have exhausted all available domestic remedies, including those that constitute supervisory review proceedings, and the Committee therefore considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the authors' claims that the State party violated their rights under articles 19 and 21, read in conjunction with article 2 (2) of the Covenant. The Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in

² The authors refer to communications No. 1864/2009, No. 1976/2010, No. 1988/2010, No. 1992/2010 and No. 2030/2011.

³ *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. and *Belsky v. Belarus* (CCPR/C/134/D/2755/2016), para. 6.3.

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.⁴ The Committee notes, however, that the authors have already alleged a violation of their rights under articles 19 and 21, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider 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 examination of the violation of the authors' rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the authors' claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee further notes the authors' claims under articles 19 and 21, read in conjunction with article 2 (3) of the Covenant. In the absence of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate their claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 Finally, the Committee notes that the authors' claims as submitted raise issues under articles 19 and 21 of the Covenant, considers these claims sufficiently substantiated for the purposes of admissibility and proceeds with consideration of the merits.

Considerations 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 authors' claims that their rights to freedom of expression and freedom of assembly have been restricted, in violation of articles 19 and 21 of the Covenant, as they were denied authorization to organize a peaceful rally to draw attention to the economic problems and the reforms needed in Belarus. The Committee considers that the issue before it is to decide whether the prohibition against holding a public rally imposed on the authors by the Gomel City Executive Committee amounts to a violation of their rights under articles 19 and 21 of the Covenant.

7.3 The Committee notes the authors' claim that their right to freedom of peaceful assembly has been restricted unlawfully, as they were not granted authorization to hold a peaceful rally to draw attention to the economic crisis and the need for economic reforms in Belarus. The issue before the Committee is therefore to determine whether the refusal of the authorities to authorize the authors to hold a peaceful assembly with an expressive purpose amounts to a violation of article 21 of the Covenant.

7.4 In its general comment No. 37 (2020), the Committee stated that peaceful assemblies might in principle be conducted in all spaces to which the public has 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 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.

7.5 The Committee further recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for public expression of an individual's views and opinions and indispensable in a democratic society. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. 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. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and 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 (*ordre public*), protection of public health or morals or protection of the rights and freedoms of others. When a

⁴ See *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4, (CCPR/C/127/D/2955/2017), para. 6.4, and (CCPR/C/127/D/3067/2017), para. 6.6.

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. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.⁵

7.6 In the present case, the Committee must consider whether the restrictions imposed on the authors' right to freedom of peaceful assembly, are 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 authors' application to hold a peaceful rally was refused because they failed to submit contracts with the respective city services providers to ensure medical services during the event and the cleaning of the location afterwards. In that 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 authors' rally would have violated the interests of national security or public safety, public order (*ordre public*), 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. The State party has also failed to show that any alternative measures were taken to facilitate the exercise of the authors' rights under article 21.

7.7 In the absence of any further explanations by the State party, the Committee concludes that the State party has violated the authors' rights under article 21 of the Covenant.

7.8 The Committee further notes the authors' claim that their right to freedom of expression has been unlawfully restricted, as they were refused authorization to hold a peaceful rally to draw attention to the economic crisis and the need for reforms in Belarus. The issue before the Committee is therefore to determine whether the refusal of the authorities to authorize the authors to hold a peaceful assembly with an expressive purpose amounts to a violation of article 19 of the Covenant.

7.9 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 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 (a) for respect for the rights or reputation of others or (b) for the protection of national security or public order (*ordre public*), 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 be proportionate to the interests being protected. The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.

7.10 The Committee observes that limiting the holding of a rally to certain predetermined locations does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. In the present case, a peaceful rally was planned to take place in the form of a peaceful procession in the streets of Gomel, a location that was previously not identified by the City Executive Committee as a specifically designated area in the city for the organization of peaceful assemblies. According to the authors, the Gomel City Executive Committee refused to authorize the rally because the authors failed to obtain the relevant support of providers of city services. The Committee notes that neither the State party nor the national courts have provided any explanation as to why the restriction imposed was necessary for a legitimate purpose, was the least intrusive among the measures that might achieve the relevant protective function and was proportionate to the interest being protected. The Committee considers that in the circumstances of the present case, the restrictions imposed on the authors, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant. In the absence of any further information or explanation by the State party, the Committee concludes that the rights of the authors under article 19 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 authors' 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 authors with an effective remedy. That 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 authors with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent

⁵ See general comment No. 37 (2020) paras. 6, 22 and 53.

similar violations from occurring in the future. In that connection, 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 and thus 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 of the Covenant may be fully enjoyed in the State party.

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.
