



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. 2865/2016*, **

<i>Communication submitted by:</i>	Svetlana Zavadskaya et al. (represented by counsel, Roman Kisliak)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	21 January 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 23 November 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2021
<i>Subject matters:</i>	Refusal of the authorities to authorize meetings; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression; fair trial; effective remedy
<i>Articles of the Covenant:</i>	2, 14 (1), 19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The authors of the communication are Svetlana Zavadskaya, Sergei Bakhun, Olga Zavadskaya, Valeriya Krasovskaya, Valentina Malysheva, Tamara Bakhun, Marina Koktysh and Roman Kisliak, all nationals of Belarus born in 1973, 1976, 1947, 1982, 1942, 1949, 1977 and 1975 respectively. They claim that the State party has violated their rights under articles 14 (1), 19 (2) and 21, read in conjunction with article 2, of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are represented by counsel.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as submitted by the authors

2.1 The authors submit that the municipal authorities of Minsk refused to grant them permission to hold pickets on two occasions, thus violating their rights to freedom of peaceful assembly and freedom of expression.

2.2 The first attempt was made on 21 April 2008, when the authors requested the Minsk City Executive Committee to grant them permission to hold a picket on 7 May 2008, on the occasion of the anniversary of the disappearance of former Minister of the Interior Yury Zakharenko. A peaceful picket was to take place at Oktyabrsk Square in Minsk, from 6 p.m. to 8 p.m., with approximately 100 participants. The aims of the event were to draw the public's attention to the disappearances of certain individuals in Belarus and to urge the authorities to conduct effective investigations into those disappearances and to ratify the International Convention on the Protection of All Persons from Enforced Disappearance.

2.3 On 28 April 2008, on the basis of article 9 (3) of the law regulating public events, the Minsk City Executive Committee refused to authorize the picket, arguing that the location of the proposed event was less than 200 metres from underground passages and metro stations.

2.4 On 26 May 2008, the authors filed a complaint against the decision of the Minsk City Executive Committee with the Moscow District Court of Minsk, claiming a violation of the right to freedom of peaceful assembly guaranteed by article 21 of the Covenant.

2.5 On 20 June 2008, the Moscow District Court found the decision of the Minsk City Executive Committee to be in compliance with the provisions of the law regulating public events and rejected the appeal.

2.6 The authors filed a cassation appeal against the decision of the Moscow District Court with the Civil Chamber of the Minsk City Court, claiming that the Moscow District Court's decision was unlawful, unjustified and violated their civil rights. They also claimed that they had been denied their right to a fair hearing, as the judge dismissed their motions. On 31 July 2008, the authors' cassation appeal was dismissed as unfounded.

2.7 The second attempt to hold a picket was made on 18 June 2008, when the authors requested the Minsk City Executive Committee to grant them permission to hold a picket on 7 July 2008, on the occasion of the anniversary of the disappearance of Dmitry Alexandrovich Zavadsky, a Belarusian photojournalist. The event was to take place at Freedom Square in Minsk, from 7 p.m. to 8 p.m., with approximately 50 participants. The aims of the event were the same as those of the other planned picket (see para. 2.2 above).

2.8 On 30 June 2008, the Minsk City Executive Committee refused to authorize the picket, arguing that the location of the event was near Minsk city hall and would interfere with pedestrian and vehicular traffic in the surrounding area.

2.9 On 29 July 2008, the authors appealed against the decision of the Minsk City Executive Committee with the Moscow District Court of Minsk, claiming a violation of the rights to freedom of expression and peaceful assembly guaranteed by articles 19 and 21 of the Covenant. On 11 December 2008, the Court found the decision of the Executive Committee to be lawful and rejected the appeal.

2.10 On 22 December 2008, the authors filed a cassation appeal against the decision of the Moscow District Court with the Civil Chamber of the Minsk City Court, which was rejected on 22 January 2009.

Complaint

3.1 The authors claim that the domestic authorities' refusal to grant permission to hold the two pickets amounts to a violation of their rights under articles 19 and 21, read in conjunction with article 2, of the Covenant.

3.2 The authors claim that the restrictions imposed by the State authorities on the exercise of their rights to freedom of assembly and freedom of expression were not justified for the purposes of protecting national security, public safety or the public order or of protecting public health or morals, nor were they necessary for protecting the rights and freedoms of others. Moreover, the State authorities could not demonstrate that organizing a peaceful

assembly at a distance of less than 200 metres from underground passages and metro stations, or near Minsk city hall, was a legal and fair reason to ban the requested pickets.

3.3 The authors also claim a violation of their right to a fair hearing, which is protected by article 14 (1) of the Covenant, as they argue that the national courts were influenced by the Minsk City Executive Committee and therefore not independent. They also argue that the courts were biased and unjustifiably disregarded the authors' requests.

State party's observations on admissibility and the merits

4.1 By a note verbale dated 23 January 2017, the State party submitted its observations on admissibility and the merits. It notes that, pursuant to the Optional Protocol, individuals who claim that their Covenant rights have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee.

4.2 The State party observes that, on 30 June 2008, the Minsk City Executive Committee refused the authors' requests to conduct a rally on 7 July 2008 on the grounds that the location of the event was near Minsk city hall, which would interfere with pedestrian and vehicular traffic in the surrounding area.

4.3 The State party also observes that the Moscow District Court and the Civil Chamber of the Minsk City Court rightfully dismissed the authors' appeals based on article 9 of the law regulating public events of 30 December 1997, in accordance with which mass events cannot be held at a distance of less than 50 metres from the premises of public institutions, including local executive and administrative authorities, diplomatic representations and consulates. The State party submits that the planned picket was to take place near Minsk city hall.

4.4 The State party further observes that the authors have not appealed the decision under the supervisory review procedure to the Supreme Court, to the prosecutor's office or to the Chair of the Supreme Court and therefore argues that the authors submitted their communication in violation of article 2 of the Optional Protocol.

4.5 The State party submits that, in view of their failure to exhaust all available domestic remedies, the authors' complaints should be treated as an abuse of the right to submit a communication under article 3 of the Optional Protocol.

Authors' comments on the State party's observations

5.1 On 27 December 2018, the authors noted that an appeal under the supervisory review procedure does not constitute an effective remedy, arguing that the State party in its observations did not specify exactly which effective domestic remedies the authors had failed to exhaust.

5.2 The authors refer to the Committee's jurisprudence on the exhaustion of domestic remedies and note that such remedies must be both accessible and effective. The authors submit that the State party must provide details on which remedies are available to the authors, together with evidence that there would be a reasonable prospect that such remedies would be effective.¹

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 See, e.g., *Torres Ramirez v. Uruguay*, communication No. 4/1977, para. 5.

6.3 The Committee takes note of the State party's observations, which imply that the authors have not exhausted all available domestic remedies as their claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.² It also considers that filing requests for supervisory review to the Chair of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute 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.³ In the absence of further information or explanations by the State party in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication. The Committee also notes that the communication was submitted within five years after the exhaustion of domestic remedies and therefore cannot constitute an abuse of the right of submission set out in article 3 of the Optional Protocol and rule 99 (c) of its rules of procedure on the grounds of a delay in submission.

6.4 As to the alleged violations of article 14 (1) of the Covenant, the Committee considers that the claim that the authors were denied the right to a fair hearing because the courts were influenced by the Minsk City Executive Committee and unjustifiably disregarded the authors' requests is vague and broadly defined, therefore insufficiently substantiated for purposes of admissibility. The Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol.

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

6.6 In conclusion, the Committee notes that the authors' claims as submitted raise issues under articles 19 (2) and 21 of the Covenant, consider these claims sufficiently substantiated for the purposes of admissibility 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 made available to it by the parties, in accordance with 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 peaceful rallies aimed at drawing the public's attention to the disappearances of certain individuals in Belarus and urging the authorities to conduct effective investigations into those disappearances and to ratify the International Convention on the Protection of All Persons from Enforced Disappearance. It also notes the authors' claims that the authorities failed to explain why the restrictions imposed on their rights to hold a rally were necessary in the interests of protecting national security or public safety, the public order, public health, morals or the rights and freedoms of others, as required by articles 19 (3) and 21 of the Covenant, and therefore consider the restrictions unlawful.

7.3 The Committee notes the authors' claim that their right to freedom of peaceful assembly, guaranteed by article 21 of the Covenant, was violated by the refusal of the Minsk

² See *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.

³ See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

City Executive Committee to allow them to hold peaceful rallies. It recalls its general comment No. 37 (2020), in which it 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. 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.⁴

7.4 The Committee also recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for the public expression of an individual's views and opinions and indispensable in a democratic society.⁵ 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.⁶ The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience⁷ 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 protecting national security or public safety, the public order, 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 to it.⁸ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.⁹

7.5 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 article 21 of the Covenant. In the light of the information available on file, the authors' applications to hold two rallies were refused by the municipal authorities, which argued that those planned peaceful assemblies were to take place near underground passages and metro stations, as well as in the vicinity of public institutions, including Minsk city hall, and would therefore disrupt the pedestrian and vehicular traffic in the surrounding area. In this context, however, the Committee notes that neither the Minsk City Executive Committee nor the domestic courts have provided any justification or explanation as to how, in practice, the authors' protests would have violated the interests of national security or public safety, the public order, 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.

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

7.7 The Committee also notes the authors' claim that their right to freedom of expression has been restricted unlawfully, as they were denied authorization to organize peaceful rallies to raise human rights concerns in Belarus. The issue before the Committee is therefore to determine whether the prohibition imposed on the authors by the municipal authorities, on holding peaceful assemblies to draw the public's attention to the disappearances of certain individuals in Belarus and to urge the authorities to conduct effective investigations into those

⁴ General comment No. 37 (2020), para. 55.

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

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

⁷ *Ibid.*, para. 22.

⁸ *Ibid.*, para. 36.

⁹ See, e.g., *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

disappearances and to ratify the International Convention on the Protection of All Persons from Enforced Disappearance, amounts to a violation of article 19 of the Covenant.

7.8 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.¹⁰ Article 19 (3) of the Covenant allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or 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.¹¹ 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.¹²

7.9 The Committee observes that the refusal to authorize the requested pickets was based on article 9 of the law regulating public events, in accordance with which mass events cannot be held at a distance of less than 50 metres from the premises of public institutions or less than 200 metres from underground passages and metro stations. It notes that neither the State party nor the national courts have provided any explanation as to why the restrictions imposed were necessary for a legitimate purpose.¹³ 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 were violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations 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. 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 authors 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), 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.

¹⁰ General comment No. 34 (2011), para. 2.

¹¹ *Ibid.*, para. 34.

¹² *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹³ General comment No. 34 (2011), para. 22.