



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. 2692/2015*, **

<i>Communication submitted by:</i>	Aleksandr Burakov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	27 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 1 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Freedom to impart information; imposition of a fine for production and distribution of mass media products
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	2 (2) and (3) and 19
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Aleksandr Burakov, a national of Belarus born in 1974. He claims that the State party violated his rights under article 19 (2) read in conjunction with articles 2 (2) and (3) 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 The author is a freelance journalist whose mass media products were periodically published by the Russian-language service of the German international broadcast company "Deutsche Welle". On 25 August 2014, an article by the author, entitled "Path of a smuggler:

* Adopted by the Committee at its 131st session (1–26 March 2021).

** The following members of the Committee participated in the examination of the communication: 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.



do Russian sanctions apply at border region?”, was published on the website of Deutsche Welle.

2.2 On 30 September 2014, a police report was drawn up against the author on a violation of article 22.9 (2) of the Belarus Code of Administrative Offences, which pertains to the unlawful production and distribution of mass media products.

2.3 On 8 October 2014, the Court of the Lenin District of the city of Mogilev found that the author had violated the law on mass media and fined him 6 million Belarusian roubles.¹ The Court established that the author had provided a media product that was published on the Deutsche Welle website. To operate as a foreign journalist, the author should have sought accreditation from the Ministry of Foreign Affairs. By failing to do so, he violated article 35 (4) of the law on mass media, prohibiting journalistic activities for foreign mass media without accreditation.

2.4 On an unspecified date, the author appealed to the Regional Court of Mogilev, which dismissed the complaint on 20 November 2014.

2.5 The author’s appeals under the supervisory review procedure to the Chair of the Regional Court of Mogilev and to the Chair of the Supreme Court were rejected on 10 March and 14 May 2015, respectively.

2.6 The author did not pursue the supervisory review procedure with the Prosecutor General’s office, arguing that such a review was not considered to be an effective remedy.

Complaint

3.1 The author claims that the domestic courts failed to establish whether the restrictions imposed on his right to receive and impart information were necessary to achieve one of the purposes listed in article 19 of the Covenant.

3.2 The author claims that his rights under article 19 read in conjunction with articles 2 (2) and (3) of the Covenant were violated because the authorities of Belarus and the domestic courts failed to demonstrate that finding him guilty for violating the media law and imposing a fine for publishing an article through the Internet website was necessary for the protection of national security or of public order, public health or morals, or respect of the rights of others.

3.3 The author requests that the Committee recommend that the State party bring the provisions of the law on mass media into line with its international obligations under the Covenant.

State party’s observations on admissibility

4.1 In a note verbale dated 4 February 2016, the State party notes that on 8 October 2014, the Lenin District Court of the city of Mogilev found the author guilty of violating article 22.9 (2) of the Code of Administrative Offences and imposed a fine for unlawful production and dissemination of mass media products.

4.2 The legality and relevance of the decision was confirmed by the Regional Court of Mogilev on 20 November 2014. On 10 March and 14 May 2015, respectively, the Chair of the Regional Court of Mogilev and the Chair of the Supreme Court of Belarus dismissed the author’s further supervisory appeals.

4.3 Thus, the author’s right to a fair and public hearing by a competent, independent and impartial tribunal established by law was fully guaranteed, as enshrined in article 14 of the Covenant.

4.4 The State party submits that the author’s right to freedom of expression under article 19 (2) of the Covenant was not violated. It concludes that the Belarusian legislation regulating the procedure for accreditation of mass media journalists cannot be considered as a restriction to the right under article 19 (3) of the Covenant.

¹ The equivalent of approximately \$560 on the day of the court ruling.

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

5. On 23 February 2016, the author reiterated his claims that his right to seek, receive and impart information was violated because the authorities had failed to demonstrate that the restrictions imposed on his right were necessary to achieve one of the purposes listed in article 19 of the Covenant.

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 takes note of the fact that the author claims to have exhausted the available domestic remedies and that the State party does not challenge the admissibility of the communication on those grounds. The Committee therefore considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the present case.

6.4 The Committee takes note of the author's submission that the State party violated his rights under article 19 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 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.² The Committee notes, however, that the author's claims already raise issues under article 19, 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 article 19 of the Covenant to be distinct from examination of the violation of the author's rights under article 19. The Committee therefore considers that the author's claim in that regard is incompatible with article 2 of the Covenant and declares this part of the communication inadmissible under article 3 of the Optional Protocol.

6.5 The Committee further notes the author's claims under article 19 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 author has failed to sufficiently substantiate his claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee finally notes that the author's claims as submitted raise issues under article 19 (2) of the Covenant. It considers these claims to be 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the courts failed to establish how the restriction on his right to freedom of expression fell within one of the permissible restrictions under article 19 (3) of the Covenant, and that therefore his rights under article 19 (2) of the Covenant were violated.

² *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.

7.3 The Committee recalls in that respect its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it points out, inter alia, that these freedoms are indispensable conditions for the full development of the person, are essential for any society and constitute the foundation stone for every free and democratic society.³ It notes that article 19 (3) of the Covenant allows restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputations of others, or (b) for the protection of national security or public order, or of public health or morals. It observes that any restriction on the exercise of the rights provided for in article 19 (2) of the Covenant 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 to be protected,⁴ conform to the strict test of necessity and proportionality and be directly related to the specific need on which they are predicated.⁵ The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.⁶ When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat to any of the enumerated grounds listed in article 19 (3) that has caused it to restrict freedom of expression, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁷ The Committee recalls that it is therefore for the State party to demonstrate that the restrictions on the author’s rights under article 19 of the Covenant were necessary and proportionate.⁸

7.4 The Committee notes that the author was sanctioned for publishing an article in the Russian-language service of the German international broadcast company “Deutsche Welle”. The author was fined by the Court of the Lenin District of Mogilev for illegal production and distribution of mass media products in violation of the provisions of the law on mass media. The Committee further notes that neither the State party nor the domestic courts have provided any explanation as to how such restrictions were justified for the purposes as set out in article 19 (3) of the Covenant, and whether the penalty imposed – i.e. the administrative fine – even if based on law, was necessary, proportionate and in compliance with any of the legitimate purposes listed in this provision. The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value that the restriction serves to protect.⁹

7.5 In these circumstances and in the absence of any explanations by the State party or any further pertinent information on file, the Committee concludes that the rights of the author under article 19 (2) 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 article 19 (2) 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 obligated, inter alia, to provide him with adequate compensation and to take appropriate steps to reimburse any expenses incurred by the author, including reimbursement for the fine imposed and for court fees related to the case in question. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation and the implementation thereof, in order to

³ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

⁴ *Ibid.*, para. 34.

⁵ *Ibid.*, para. 22. See also, for example, *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.7.

⁶ Human Rights Committee, general comment No. 34 (2011), para. 34.

⁷ *Ibid.*, paras. 35–36.

⁸ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

⁹ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.8.

make it compatible with its obligations to adopt measures able to give effect to the rights recognized by article 19.

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.
