



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. 2891/2016*, **

<i>Communication submitted by:</i>	Galina Belova, Leonid Sudalenko and Anatoly Poplavny (not represented by counsel)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	31 March 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 12 December 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Refusal of authorities to authorize the holding of a peaceful assembly; freedom of expression; effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression; effective remedy
<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 Galina Belova, Leonid Sudalenko and Anatoly Poplavny, nationals of Belarus born in 1958, 1966 and 1958, 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 not represented by counsel.

* 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.



Facts as submitted by the authors

2.1 On 21 November 2014, the authors sought the authorization of the Gomel City Executive Committee to hold a peaceful rally on Sovetskaya Street in Gomel, from Lenin Square to the Gomel department store, on 10 December 2014 – Human Rights Day – to express support for political prisoners in Belarus.

2.2 On 4 December 2014, the Executive Committee rejected the authors' application on the basis of article 9 of the Public Events Act of 1997. The article stipulates that the holding of public events is not permitted at a distance of less than 50 m from the premises of public institutions, including local executive and administrative authorities, or less than 200 m from underground pedestrian crossings or the premises of television or radio broadcasting agencies. The rally was also prohibited due to the authors' failure to submit contracts signed with the respective city service providers to ensure medical services during, and the cleaning of the location after, the event, as required under article 3 of Executive Committee decision No. 775 of 15 August 2013 on the holding of public events in the City of Gomel.

2.3 On 26 December 2014, the authors appealed against the decision of the Executive Committee before the Central District Court in Gomel, which rejected their application on 22 January 2015. The court upheld the reasoning of the Executive Committee and added that the authors had been organizing a public event at a location other than that designated in decision No. 775 for that purpose.

2.4 On 29 January 2015, the authors filed a cassation appeal against the decision of the Central District Court with the Gomel Regional Court, which was rejected on 17 March 2015.

2.5 The authors' further appeals under the supervisory review procedure, before the Chair of the Gomel Regional Court on 15 May 2015 and before the Chair of the Supreme Court on 7 October 2015, were rejected on 24 September and 20 November 2015, respectively.

2.6 The authors also filed applications for supervisory review with the Prosecutor General's Office on 17 December 2015 and 1 February 2016, which were rejected on 28 January 2016 and 21 March 2016, respectively.

Complaint

3.1 The authors claim that the rejection by the national authorities of their request to hold a rally amounts to a violation of their rights under articles 19 and 21 of the Covenant, read in conjunction with article 2 (2) and (3).

3.2 They claim that neither the Gomel City Executive Committee nor the courts considered whether the limitations imposed on their rights under decision No. 775 were justified by reasons of national security or public safety, public order or protection of public health or morals, or whether they were necessary for the protection of the rights and freedoms of others. They allege that decision No. 775, restricting the holding of all public events in Gomel to a single, remote location, and the requirement to conclude paid contracts with the city services beforehand, unnecessarily limit the very essence of the rights guaranteed under articles 19 and 21 of the Covenant.

3.3 The authors submit that, by ratifying the Covenant, the State party has undertaken, under article 2 thereof, to respect and ensure to all individuals the rights listed in the Covenant, and to adopt such laws or measures as may be necessary to give effect to the rights recognized in the Covenant. The authors claim that the State party is not fulfilling its obligations under article 2 (2), read in conjunction with articles 19 and 21 of the Covenant, since the Public Events Act contains vague and ambiguous provisions. For example, article 9 of the Act gives the heads of local executive committees the discretionary right to designate specific permanent areas for the organization of peaceful assemblies, without justification.

3.4 The authors request the Committee to recommend that the State party align its legislation, particularly the Public Events Act and decision No. 775 of the Gomel City Executive Committee, with the international standards set out in articles 19 and 21 of the Covenant.

State party's observations on admissibility

4.1 By note verbale of 10 February 2017, the State party submits that pursuant to the Optional Protocol, individuals who claim that any of 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 notes that on 4 December 2014, the Gomel City Executive Committee refused the authors' request to conduct a rally on 10 December 2014, with reference to the Public Events Act of 1997 and decision No. 775 of the Executive Committee of 15 August 2013 on the holding of public events in Gomel.

4.3 The decision of the Executive Committee was upheld by the Central District Court in Gomel. The authors' appeals were rejected by the Gomel Regional Court. Further appeals under the supervisory review procedure were also dismissed. However, the State party notes, not all available domestic remedies were exhausted, since the authors' claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court.

4.4 The State party submits that the rally was prohibited due to authors' failure to submit the contracts with the respective city service providers, a requirement aimed at ensuring medical services during, and the cleaning of the location after, the event, pursuant to article 3 of decision No. 775 of the Executive Committee. In addition, the planned location of the rally was less than 200 m from an underground pedestrian crossing and premises of television and radio broadcasting agencies, which is prohibited under the Public Events Act.

4.5 The State party rejects the authors' claims to the effect that their rights under articles 19 and 21 of the Covenant, read in conjunction with article 2 (2) and (3), were violated. It notes that these rights are guaranteed under articles 33 and 35 of the Constitution. It concludes that the provisions of the Public Events Act comply with articles 19 (3) and 21 of the Covenant, and should not be considered as a limitation to the right to freedom of expression and peaceful assembly.

Authors' comments on the State party's observations

5.1 On 17 March 2017, the authors noted that an appeal under the supervisory review procedure did not constitute an effective remedy. They submit that this procedure is subject to the discretion of a prosecutor or a judge and does not entail a consideration of the case on its merits. They had appealed unsuccessfully under a supervisory review procedure, including to the Chair of the Supreme Court and to the Prosecutor General.

5.2 Referring to the State party's observations related to the provisions of the law, the authors draw the Committee's attention to the fact that the State party failed to comply with the recommendations of international organizations to amend the Public Events Act and bring it into line with international standards.¹ The authors also note that the State party failed to follow other Views of the Committee, in which the Committee had called upon Belarus to review its national legislation and make it compatible with its obligations.

¹ The author refers to the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

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 State party's observations, in which the State party implies that the authors have not exhausted the available domestic remedies as the authors' claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court. The Committee also takes note of the authors' argument that they indeed appealed the court decisions in their case under the supervisory review procedure, namely to the Chair of the Supreme Court and to the Prosecutor General, to no avail. In this context, the Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, dependent on the discretionary power of the prosecutor, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.² It also considers that filing with the Chair of a court requests for supervisory review of 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.³ In the absence of further 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 present communication.

6.4 The Committee takes note of the authors' claim 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 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 the 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 author's claims under articles 19 and 21 of the Covenant, read in conjunction with article 2 (3). 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.

² *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 *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.

⁴ *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.

6.6 The Committee notes that the authors' claims as submitted raise issues under articles 19 (2) and 21 of the Covenant, considers 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 assembly were restricted in violation of articles 19 and 21 of the Covenant, as they were denied authorization to organize a peaceful rally in support of political prisoners in Belarus. It also notes the authors' claims that the authorities failed to explain why the restrictions on holding the rally were necessary in the interests of national security or public safety, public order, or the protection of public health, morals or the rights and freedoms of others, as required under article 19 (3) and the second sentence of article 21, and that they therefore consider the restrictions unlawful.

7.3 The Committee notes the authors' claim that their right to peaceful assembly under article 21 of the Covenant was violated by the refusal of the Gomel City Executive Committee to allow the holding of a peaceful rally. In its general comment No. 37 (2020), the Committee states 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.⁵ The Committee further notes that 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 21.⁶

7.4 The Committee further recalls that the right 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.⁷ 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 this right is permissible, unless it: (a) is imposed in conformity with the law; and (b) is necessary in a democratic society to protect national security, public safety, 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 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

7.5 In the present case, the Committee must consider whether the restrictions imposed on the authors' right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In light of the information available on file, the authors' application to hold a rally was refused because: the location chosen did not correspond to the single location designated by the city executive authorities; the planned

⁵ General comment No. 37 (2020), para. 55.

⁶ *Ibid.*, para. 64.

⁷ *Ibid.*, para. 6.

⁸ *Ibid.*, para. 22.

⁹ *Ibid.*, para. 36.

¹⁰ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

location of the rally was less than 50 m from the premises of public institutions, including local executive and administrative authorities, and less than 200 m from an underground pedestrian crossing and premises of television and radio broadcasting agencies; and the authors failed to submit contracts with the respective city services providers to ensure medical services during, 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 authors' protest would have violated 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 set out in article 21 of the Covenant. The State party also failed to show that any alternative measures were taken to facilitate the exercise of the authors' rights under article 21.

7.6 In the absence of any further explanations by the State party regarding the matter, 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 was restricted unlawfully, as they were refused authorization to hold a rally to publicly express their support for political prisoners in Belarus. The issue before the Committee is therefore to determine whether the prohibition on holding a peaceful assembly imposed on the authors by the city executive authorities amounts to a violation of article 19 of the Covenant.

7.8 The Committee recalls its general comment No. 34 (2011), in which it states, *inter alia*, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.¹¹ It notes that 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 by law and only if they are necessary for respect of the rights or reputation of others or 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.¹² 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.¹³

7.9 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. It 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.¹⁴ The Committee considers that, in the circumstances of this 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 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. 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

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.

¹⁴ General comment No. 34 (2011), para. 22.

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 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.
