



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. 2863/2016*, **

<i>Communication submitted by:</i>	Andrei Andreev
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	5 May 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 22 November 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Sanctioning of the author for distribution of political leaflets
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of right of submission of individual complaint
<i>Substantive issues:</i>	Freedom of expression; freedom to seek, receive and impart information
<i>Article of the Covenant:</i>	19 (2)
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1. The author is Andrei Andreev, a national of Belarus born in 1947. He claims that the State party has violated his rights under article 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author is a member of the Just World political party. On 13 August 2013, he was distributing political leaflets in an apartment building in Vitebsk. On the same day, at approximately 12 p.m., he was arrested by police officers for having committed an offence

* 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, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



under article 22.9 (2) of the Code of Administrative Offences (violation of the legislation on mass media).

2.2 On 5 September 2013, the Oktyabrsk District Court in Vitebsk found the author guilty under article 22.9 (2) of the Code of Administrative Offences of having illegally distributed foreign mass media campaign materials of a political nature and fined him 2 million roubles.¹ According to the Court, the foreign printing company should have obtained prior permission from the Ministry of Information; however, the author had no such permission.

2.3 On 12 September 2013, the author appealed the decision of the District Court to the Vitebsk Regional Court, claiming, *inter alia*, that the political leaflets were printed in accordance with the necessary technical regulations, with the sole aim of informing the population about important social and political issues and, therefore, could not be considered as periodical mass media publications within the meaning of article 22.9 (2) of the Code of Administrative Offences. On 25 September 2013, the Vitebsk Regional Court upheld the lower court's judgment.

2.4 On 15 October 2013, the author submitted a supervisory review appeal to the Chair of the Vitebsk Regional Court. His appeal was rejected on 15 November 2013. His supervisory review appeal to the Supreme Court, dated 11 December 2013, was rejected on 3 February 2014.

Complaint

3. The author claims that the State party has violated his rights under article 19 (2) of the Covenant. The political leaflets he distributed contained no information that could limit the rights and freedoms of others, insult or offend others or disrespect the professional reputation of public officials. Moreover, the leaflets did not incite public disorder or jeopardize public safety, health and morals. Fining him for the distribution of political leaflets deprived him of his right to seek, receive and impart information and ideas of all kinds.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 23 January 2017, the State party submitted its observations on admissibility and the merits. It observes that the author has not appealed the decision of the Supreme Court of 3 February 2014, either to the Prosecutor's office or to the Chair of the Supreme Court under the supervisory review procedure. The time limit for bringing a supervisory review request to the Prosecutor's office lapsed on 26 March 2014 and that remedy is no longer available to the author. The author could, however, have submitted a supervisory appeal, which is not limited in time, to the Chair of the Supreme Court.

4.2 The State party submits that, in view of the author's failure to exhaust domestic remedies, the complaint should be considered as an abuse of the right to submit an individual communication under article 3 of the Optional Protocol.

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

5.1 On 14 August 2017, the author submitted his comments on the State party's observations, reiterating his allegations that the State party violated his right to impart information under article 19 (2) of the Covenant without any legitimate grounds.

5.2 The author claims to have exhausted all domestic remedies available to him. He states that the supervisory review request to the Prosecutor's office is not an effective remedy.

¹ Equivalent to approximately \$220 at that time.

Issues and proceedings before the Committee

Considerations 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 observation that the author failed to exhaust domestic remedies because he did not submit a supervisory review appeal to the Chair of the Supreme Court. The Committee also notes the author's argument that he exhausted all the remedies available to him. The Committee recalls its jurisprudence, according to which filing requests for supervisory review to the chair of a court 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.² In the absence of any detailed information on this point from the State party, 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 remaining claims raising issues under article 19 (2) of the Covenant 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 author's claim that his right to freely impart information has been restricted, in violation of article 19 (2) of the Covenant, as he was sanctioned for distributing political leaflets and was thus prevented from further imparting the information they contained.

7.3 The Committee has to consider whether the restrictions imposed on the author's freedom to impart information can be justified under any of the criteria set out in article 19 (3) of the Covenant.

7.4 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 the foundation stone for every free and democratic society (para. 34). 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 for 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 of 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. The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.³

7.5 The Committee observes that, in the present case, the prohibition of the distribution of printed materials because the author did not have a special authorization from the Ministry of Information and the imposition of a significant fine on the author all raise serious doubts as to the necessity and proportionality of the restrictions on the author's rights under article

² *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.

³ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

19 of the Covenant. The Committee further observes that the State party has failed to invoke any specific grounds to support the necessity of the restrictions imposed on the author as required under article 19 (3) of the Covenant.⁴ Nor did the State party demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the present case, the limitations imposed on the author, although based on domestic law, were not justified under article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.⁵

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 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 take appropriate steps to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings. The State party is also under an obligation to take all steps necessary to prevent similar violations from 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 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.

⁴ *Zalenskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

⁵ *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.