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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. 2330/2014*, **

Communication submitted by:	Svetlana Goldade (not represented by counsel)
Alleged victims:	The author, Anatoly Poplavny and Leonid Sudalenko
State party:	Belarus
Date of communication:	11 April 2013 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 January 2014 (not issued in document form)
Date of adoption of Views:	6 November 2020
Subject matter:	Sanction for participating in a peaceful assembly
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Freedom of expression; freedom of assembly
Articles of the Covenant:	19 and 21, read alone and in conjunction with 2 (2) and (3)
Articles of the Optional Protocol:	2 and 5 (2) (b)

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

1. The author of the communication is Svetlana Goldade, a citizen of Belarus born in 1946. She is submitting the communication on her own behalf and on behalf of Anatoly Poplavny and Leonid Sudalenko, citizens of Belarus born in 1958 and 1966 respectively. She claims that the State party has violated their rights under articles 19 and 21, read alone and in conjunction with article 2 (2) and (3), 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 On 10 July 2012, the author and the two other alleged victims filed an application to the Homiel City Executive Committee – a local municipal authority for a city of approximately 500,000 inhabitants – to hold a picket on 4 August 2012 on a square close to the Homiel department store, to protest against the criminal prosecution of human rights defender Aleksander Belyatsky and several other political activists.

2.2 On 19 July 2012, the Executive Committee refused to allow the picket on the grounds that the author and the other alleged victims did not fulfil the requirements of the Executive Committee's decision No. 299 of 2 April 2008 on mass events in the city of Homiel. This decision requires organizers to hold public events in a single remote location and, prior to the event, to conclude service contracts with the local police so that it can maintain public order and safety during the event, with the local hospital so that it has medical professionals present for medical emergencies, and with the local road maintenance entity so that it can clean after the event. The author claims that the application was refused because the protest was planned to take place at a different location from the standing one designated by the Executive Committee, and because the author and the other alleged victims had failed to conclude contracts for police, medical or cleaning services prior to the planned event.

2.3 On 31 July 2012, the author and the other alleged victims submitted an appeal against the decision of the Executive Committee to Homiel Central District Court. On 23 August 2012, Homiel Central District Court dismissed their appeal and upheld the decision of the Executive Committee as lawful.

2.4 On an unspecified date, the author and the other alleged victims filed a cassation appeal with Homiel Regional Court, which was rejected on 4 October 2012. On unspecified dates, they petitioned the chairpersons of Homiel Regional Court and the Supreme Court of Belarus, seeking a supervisory review of the ruling by Homiel Central District Court. On 21 January 2013 and 18 March 2013 respectively, both courts rejected their petitions.

2.5 The author submits that she has exhausted all available and effective domestic remedies. She refers to the Human Rights Committee's jurisprudence and notes that she did not file an application for supervisory review to the Office of the Procurator General since it did not constitute an effective domestic remedy.[1]

Complaint

3.1 The author claims that the Homiel City Executive Committee, in its decision No. 299 of 2 April 2008 on mass events in the city of Homiel, has unduly restricted her and the other alleged victims' right to freedom of expression and right of peaceful assembly, by imposing on the organizers of public events an obligation to conclude service contracts with the local police, local medical personnel and the local road maintenance entity, and by designating a single remote location for all public events held in Homiel, a city of 500,000 inhabitants. She also claims that the authorities and courts did not specify a legitimate aim of the restriction of their rights, and considers that the prohibition of peaceful assembly by the local authorities was not necessary for the protection of national security, public order or public health or morals, or for respect of rights and freedoms of others. The State party thus violated her and the other alleged victims' rights under articles 19 and 21, read alone and in conjunction with article 2 (2) and (3), of the Covenant.

3.2 The author refers to the Committee's Views in *Schumilin v. Belarus*, in which the Committee requested the State party to review its legislation, in particular the Public Events

[1] *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

Act, and its application, to ensure its conformity with the requirements of article 19 of the Covenant, and submits that this recommendation has still not been implemented by Belarus.[2]

State party's observations on admissibility

4.1 In a note verbale dated 26 March 2015, the State party submitted its observations on the admissibility of the communication. The State party submits that while it recognizes the Committee's competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of violations of their rights under the Covenant, it does not recognize the Committee's competence to consider communications from third parties representing alleged victims. The State party argues that article 1 of the Optional Protocol does not give the author of a communication the right to represent the interests of other victims mentioned in the communication.

4.2 The State party rejects the author's assertion that she has exhausted all available domestic remedies, as required by article 2 of the Optional Protocol. The State party submits that the Optional Protocol does not contain the condition of "effectiveness" of domestic remedies, thus all available domestic remedies must be fully exhausted before a communication may be submitted to the Committee.

4.3 The State party submits that since the communication has been registered in violation of the provisions of the Optional Protocol, it will stop its cooperation with regard to the communication.

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

5.1 In a letter dated 14 May 2015, the author provided her comments on the State party's observations on admissibility. She notes that in accordance with the Committee's jurisprudence, a person submitting a communication to the Committee may indicate an indefinite number of victims. The author refers to the Committee's Views in *Kalyakin et al. v. Belarus*, in which the Committee found violations of the rights of the author and of 20 other victims under the Covenant.[3]

5.2 With regard to the exhaustion of domestic remedies, the author notes that the remedies should be not only available, but also effective. She submits that she has not complained to the Office of the Procurator General because she does not consider the supervisory review procedure to be an effective remedy.

5.3 As for the arguments referring to the competence of the Committee to consider the communication, the author submits that, by adhering to the Optional Protocol, the State party has recognized the Committee's competence not only to issue decisions on violations of the Covenant, but also, in accordance with article 40 (4) of the Covenant, to transmit its reports, and such general comments as it may consider appropriate, to the States parties. The role of the Committee ultimately includes interpreting the provisions of the Covenant and developing jurisprudence thereon. By refusing to recognize the standard practices, methods of work and precedents of the Committee, the State party is in fact refusing to recognize the Committee's competence to interpret the Covenant, which contradicts the Covenant's objective. The State party is obliged not only to implement the decisions of the Committee, but also to recognize its standard practices, methods of work and precedents. This argument is based on the most important principle of international law, the pacta sunt servanda principle, according to which every treaty in force is binding upon the parties to it and must be observed by them in good faith.

[2] *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 11.

[3] *Kalyakin et al. v. Belarus* (CCPR/C/112/D/2153/2012), para. 9.5.

Issues and proceedings before the Committee

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that the communication has been registered in violation of the provisions of the Optional Protocol, and that it will stop its cooperation with regard to this communication.

6.2 The Committee recalls that, under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and to the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication and in the expression of its Views. It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring outright that it will not accept the Committee's determination on the admissibility or the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol.[4]

Considerations of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes that the author has not complained under the supervisory review procedure to the Office of the Procurator General of Belarus. In this connection, it notes the State party's assertion that the author has failed to exhaust all available domestic remedies and that the Optional Protocol does not contain the condition of "effectiveness" of domestic remedies, thus all available domestic remedies must be fully exhausted before a communication may be submitted to the Committee. The Committee also notes the author's argument that she submitted an appeal against the decision of the Homiel City Executive Committee to Homiel Central District Court, which was dismissed on 23 August 2012. She filed a cassation appeal with Homiel Regional Court, which was rejected on 4 October 2012, and petitions with Homiel Regional Court and the Supreme Court of Belarus for a supervisory review, which were rejected on 21 January 2013 and 18 March 2013 respectively. The Committee further notes the author's submission that she has not submitted a petition under the supervisory review procedure to the Office of the Procurator General because she does not consider it to be an effective remedy.

7.4 The Committee recalls its jurisprudence, according to which a petition to a prosecutor's office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[5] Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

[4] For example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 8.2, and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

[5] *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; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para 9.3.

7.5 The Committee notes the author's submission that the State party violated its obligations under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant. The Committee reiterates that the provisions of article 2 cannot be invoked as 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.[6] The Committee notes, however, that the author has already alleged a violation of her 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 author's rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

7.6 In the absence of any information from the State party on the facts of the communication, the Committee considers that the author has sufficiently substantiated her claims under articles 19 and 21, read alone and in conjunction with article 2 (3), of the Covenant for the purposes of admissibility, and therefore considers it admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 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.

8.2 The Committee notes the author's claim that her and the other alleged victims' right of peaceful assembly under article 21 of the Covenant was violated by the refusal of the municipal authorities to allow them to hold a picket. In its general comment No. 37 (2020) on the right of peaceful assembly, the Committee stated that peaceful assemblies could in principle be conducted in all spaces to which the public had 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. 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 of the Covenant.[7]

8.3 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual's views and opinions and is indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restrictions of this right are permissible, unless (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*), the protection of public health or morals or the protection of 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. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[8]

[6] *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] General comment No. 37 (2020), paras. 55 and 64.

[8] *Poplavny v. Belarus*, para. 8.4.

8.4 In the present case, the Committee must consider whether the restrictions imposed on the author's and the other alleged victims' right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes that, according to the information available on file, neither the municipal authorities nor the domestic courts have provided any justification or explanation as to how, in practice, the author's and the other alleged victims' protest 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 also failed to show that any alternative measures were taken to facilitate the exercise of the author's and the other alleged victims' rights under article 21.

8.5 In the absence of any explanation by the State party regarding the matter, the Committee concludes that, in the present case, the State party has violated the rights of the author and the other alleged victims under article 21, read alone and in conjunction with article 2 (3), of the Covenant.

8.6 The Committee also notes the author's claim that her and the other alleged victims' right to freedom of expression has been restricted unlawfully, as they were refused authorization to hold a picket to protest against the criminal prosecution of several political activists. The Committee considers that the legal issue before it is to decide whether the prohibition on holding a public picket imposed on the author and the other alleged victims by the city executive authorities of the State party amounts to a violation of article 19 of the Covenant.

8.7 The Committee recalls its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression was essential for any society and constituted a foundation stone for every free and democratic society.[9] It notes that article 19 (3) of the Convention allows 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 (*ordre public*) or of public health or morals. Lastly, 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 to be protected.[10] The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the rights of the author and the other alleged victims under article 19 of the Covenant were necessary and proportionate.[11]

8.8 The Committee notes that the refusal to authorize the picket was based on the Homiel City Executive Committee's decision of 2 April 2008 No. 299 on mass events in the city of Homiel. The Committee observes, however, that neither the State party nor the national courts have provided any explanation as to how such restrictions – namely limiting peaceful assemblies to a certain predetermined location and requiring that the organizers conclude service contracts with a number of government agencies in order to hold a peaceful assembly – were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. In the absence of any explanation by the State party, the Committee concludes that the rights of the author and the other alleged victims under article 19 (2), read alone and in conjunction with article 2 (3), of the Covenant have been violated.

9. 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 rights of the author and the other alleged victims under articles 19 (2) and 21, read alone and in conjunction with article 2 (3), of the Covenant. The Committee reiterates its conclusion that the State party has also violated its obligations under article 1 of the Optional Protocol.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author and the other victims with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the

[9] General comment No. 34 (2011), para. 2.

[10] Ibid., para. 34.

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

State party is obligated, inter alia, to provide the author and the other victims 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 particular by reviewing the national legislation, and the implementation thereof, in order to make it compatible with the State party's obligation to adopt measures able to give effect to the rights recognized by articles 19 and 21 of the Covenant.

11. 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.