



International Covenant on Civil and Political Rights

Distr.: General
10 March 2022

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2561/2015*, **

<i>Communication submitted by:</i>	Yury Voronezhstsev et al. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	31 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 4 February 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2021
<i>Subject matter:</i>	Refusal to grant permission to hold a public event
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly; effective remedy
<i>Articles of the Covenant:</i>	2 (2)–(3), 19 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The authors of the communication are Yury Voronezhstsev, Anatoly Poplavny and Leonid Sudalenko, all nationals of Belarus born in 1955, 1958 and 1966 respectively. They claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. Mr. Voronezhstsev is submitting the communication on his own behalf and also on behalf of Mr. Poplavny and Mr. Sudalenko.¹ The authors are not 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, Kobayyah Kpacha Tchamdja, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Héléne Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

¹ The power of attorney is attached.



Facts as submitted by the authors

2.1 On 16 July 2013, the authors filed an application to the Gomel City Executive Committee with a request to hold, on 4 August 2013, a picket in one of the central streets of Gomel to protest the persecution of human rights defender Aleksandr Belyatsky and other political prisoners.

2.2 On 25 July 2013, the Gomel City Executive Committee denied the request, stating that public events could be held at only one specific location in town and that, prior to the event, organizers must sign contracts with the providers of services for the maintenance of the public order and the provision of medical services during the event and for the cleaning of the location thereafter.

2.3 On 30 July 2013, the authors submitted an appeal against the decision of the Gomel City Executive Committee to the Central District Court of Gomel. On 11 September 2013, the Court dismissed the appeal and confirmed the decision of the Executive Committee as lawful.

2.4 On 19 September 2013, the authors filed a cassation appeal against the decision of the Central District Court of Gomel to the Gomel Regional Court, which was rejected on 21 November 2013. On 1 March and 21 April 2014, the authors submitted applications for a supervisory review of the court decisions from 11 September and 21 November 2013 to the Chairs of the Gomel Regional Court and of the Supreme Court. The applications were rejected on 11 April and 14 May 2014 respectively.

2.5 The authors submit that they have exhausted all available and effective domestic remedies. Referring to the Committee's jurisprudence,² the authors also submit that they did not file an application for supervisory review to a prosecutor's office since doing so did not constitute an effective domestic remedy.

Complaint

3.1 The authors claim to be victims of violations by the State party of their rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant.

3.2 The authors claim that their rights to freedom of expression and peaceful assembly, protected under articles 19 and 21 of the Covenant, were violated because the authorities did not clarify what was the legitimate aim of restricting their rights. They consider that the prohibition of peaceful assembly by the local authorities was not necessary in the interests of protecting national security, the public order, public health or the rights and freedoms of others.

3.3 The authors submit that the domestic courts refused even to consider the violations of the provisions of the Covenant, upon which they relied in their appeals. They claim that the requirements imposed by the law regulating public events (i.e., the need to request permission from the municipal authorities for the conduct of any public gathering 15 days in advance; to organize public events in only one specific location in town; to conclude contracts with the providers of services for the maintenance of the public order and the provision of medical services during the event and for the cleaning of the location afterwards) are arbitrary and unjustified under articles 19 and 21.

3.4 The authors refer to the Committee's jurisprudence to recall that the Committee has found it incompatible with the Covenant for a State party to give priority to the application of its national law over its obligations under the Covenant.³ Furthermore, the authors argue that Belarus has not submitted a notification under article 4 (3) of the Covenant that it is availing itself of the right of derogation from certain rights owing to a public emergency.

3.5 The authors submit that the Committee's previous request that the State party review its legislation, in particular the law regulating public events, including its application, to

² *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 5.2.

³ *Tae Hoon Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.4.

ensure its conformity with the requirements of article 21 of the Covenant, has not been implemented.⁴

State party's observations on admissibility and the merits

4.1 On 31 March 2015 and 18 July 2019, the State party provided its observations on the admissibility and the merits of the communication. The State party submits that the authors did not exhaust all available domestic remedies and that there are no legal grounds for considering the communication, which should, therefore, be considered inadmissible. The State party reiterates its view that the particularities of the national legal systems of States parties should be taken into account when considering the admissibility of complaints. The State party does not recognize the right of individuals to submit complaints on behalf of others.

4.2 The State party submits that the Constitution of Belarus upholds the right of individuals to complain to international bodies, if all domestic remedies have been exhausted. The authors admit that they did not exhaust all available domestic remedies, therefore, the State party must conclude that the communication is inadmissible. According to the State party, the Committee's interpretation of articles 2 and 5 of the Optional Protocol is arbitrary and capricious. Therefore, the State party considers that all other actions of the Committee regarding the present complaint are seen as encouraging actions of the authors that are not prescribed by the Optional Protocol and violate the Constitution of Belarus. The State party therefore ceases any further correspondence with the Committee regarding the communication.

Authors' comments on the State party's observations

5.1 On 21 November 2019, the authors, responding to the State party's observations, submit that they exhausted all effective domestic remedies. One of the authors, Mr. Voronezhtsev, obtained power of attorney from the other two authors to represent them before the Committee. The Committee has the right to decide whether to register a complaint or not. By not cooperating with the Committee, the State party ignores obligations that it has accepted.

5.2 The authors submit that they did indeed file requests for supervisory review, both to the Gomel Regional Court and to the Supreme Court of Belarus, which were rejected. The supervisory review procedure has long been declared by the Committee as an ineffective remedy that does not need to be exhausted. The Constitutional Court of Belarus does not accept complaints from individuals.

Lack of cooperation by the State party

6.1 The Committee notes the State party's assertion that there are no legal grounds for considering the authors' communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that the State party did not recognize the right of individuals to submit complaints on behalf of others; and that the State party will not engage in further correspondence regarding the communication.

6.2 The Committee recalls that, pursuant to rule 99 (b) of its rules of procedure, individuals may be represented by a person of their choice, provided that the representative is duly authorized. A communication submitted on behalf of an alleged victim may also be accepted when it appears that the individual in question is unable to submit the communication personally. The Committee 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 an 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 the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action

⁴ *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 11.

that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.⁵ 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 terminating its cooperation with the Committee on a communication, the State party is violating its obligations under article 1 of the Optional Protocol.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 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 takes note of the State party's statement that the authors failed to exhaust all domestic remedies. The Committee notes the authors' assertion that all available and effective domestic remedies have been exhausted and that supervisory review proceedings are not considered by the Committee as constituting an effective remedy.⁶ The Committee notes that the authors filed two supervisory review complaints, on 1 March and 21 April 2014, and both of them were rejected (see para. 2.4 above). In this context, the Committee recalls its jurisprudence, according to which 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.⁷ The Committee also notes that the State party does not indicate which particular remedies were available to the authors and could have been effective in their case. Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the communication.

7.4 The Committee takes note of the authors' submission that the State party violated their rights 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 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.⁸ 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 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.

⁵ General comment No. 33 (2008), paras. 8 and 10; and, inter alia, *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.

⁶ For example, *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006), para. 6.3.

⁷ *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.

⁸ *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.

7.5 The Committee has noted the authors' claims under article 2 (3), read in conjunction with articles 19 and 21, of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the authors have failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol (see para. 3.4 above).

7.6 The Committee considers that the authors' remaining claims, raising issues under articles 19 and 21 of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds to its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol. The Committee notes that, in failing to respond to a communication, or responding incompletely, a State that is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication.⁹ In the absence of any explanations from the State party in respect of the merits of the communication, due weight must be given to the authors' allegations, to the extent that they have been sufficiently substantiated.

8.2 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 a peaceful action to protest the persecution of Mr. Belyatsky, a human rights defender, and other political prisoners. It also notes the authors' claims that the authorities failed to explain why in their case the restriction on holding a picket was necessary in the interests of protecting national security, public safety, the public order, public health, morals or the rights and freedoms of others. The authors have also claimed that the authorities could not substantiate why restricting the organization of a peaceful assembly to just one specific location was a lawful and fair reason to ban pickets in other locations.

8.3 The Committee notes the authors' claim that their right to freedom of peaceful assembly under article 21 of the Covenant was violated by the refusal of the municipal authorities to allow the picket to be held. In its general comment No. 37 (2020), the Committee 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.¹⁰ The Committee also notes that the 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 21.¹¹

8.4 In this context, the Committee recalls that the right to freedom 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.¹² 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.¹³ The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,¹⁴ 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

⁹ General comment No. 33 (2008), para. 10.

¹⁰ General comment No. 37 (2020), para. 55.

¹¹ *Ibid.*, para. 64.

¹² General comment No. 34 (2011), para. 2.

¹³ General comment No. 37 (2020), para. 6.

¹⁴ *Ibid.*, para. 22.

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.¹⁵ The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.¹⁶

8.5 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 Committee notes that neither the municipal authorities nor the domestic courts have provided any justification or explanation as to how, in practice, the authors' protest would have violated the interests of protecting national security or public safety, the public order, public health or morals or 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.

8.6 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 explanation by the State party regarding the matter, the Committee concludes that, in the present case, the State party has violated the authors' rights under article 21 of the Covenant.

8.7 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that freedom of expression is essential for any society and constitutes one of the foundation stones for every free and democratic society.¹⁷ 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 be proportionate to the interest to be protected.¹⁸ The Committee recalls that it is for the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.¹⁹

8.8 The Committee notes that the refusal to authorize the requested pickets was based on the law regulating public events, in accordance with which public events are permitted only at one location in the city of Gomel. The Committee observes that limiting the holding of a picket to certain predetermined locations does not appear to meet the standards of necessity and proportionality set out in article 19 of the Covenant. The Committee further notes that neither the State party nor the national courts have provided any explanation as to how such restrictions were justified in the present case pursuant to the conditions of necessity and proportionality referred to earlier. The Committee considers that, in the circumstances of the 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 explanation by the State party, the Committee concludes that the rights of the authors under article 19 (2) of the Covenant were violated.

9. 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 (2) and 21 of the Covenant.

10. 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

¹⁵ *Ibid.*, para 36.

¹⁶ See, e.g., *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

¹⁷ General comment No. 34 (2011), para. 2.

¹⁸ *Ibid.*, para. 34.

¹⁹ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. To that end, the State party should revise its normative framework on public events, in accordance 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.

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 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.
