



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1952/2010

Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Vitaly Symonik (represented by counsel, Roman Kisliak)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	26 December 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 May 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2014
<i>Subject matter:</i>	Fine imposed for distributing leaflets
<i>Substantive issues:</i>	Right to liberty and security; right to a fair trial; right to freedom of expression; permissible restrictions
<i>Procedural issues:</i>	Abuse of the right of submission; exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	9, paragraph 1; 14, paragraph 1; 19, paragraphs 1 and 2
<i>Articles of the Optional Protocol:</i>	2; 3; 5, paragraph 2 (b)



Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (112th session)

concerning

Communication No. 1952/2010*

Submitted by: Vitaliy Symonik (represented by counsel, Roman Kisliak)

Alleged victims: The author

State party: Belarus

Date of communications: 26 December 2008 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 October 2014,

Having concluded its consideration of communication No. 1952/2010, submitted to the Human Rights Committee by Vitaliy Symonik under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Vitaliy Symonik, a Belarusian national born in 1986. He claims to be a victim of a violation by Belarus of his rights under articles 9, paragraph 1; 14, paragraph 1; and 19, paragraphs 1 and 2; of the International Covenant on Civil and Political Rights (the Covenant). The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Roman Kisliak.

The facts as submitted by the author

2.1 On 26 July 2006, the author distributed leaflets calling for a demonstration on 27 July 2006 to commemorate the Independence Day of Belarus.¹ While he was distributing

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlatescu.

the leaflets, he was approached by police officers, who confiscated 573 leaflets still in his possession and arrested him under article 172, part 3, of the Belarus Code of Administrative Offences (the Administrative Offences).² The author was released three hours after his arrest.

2.2 On 7 September 2006, the Administrative Commission of the Leninsky District of Brest (the Administrative Commission) examined the author's case in his absence and fined him 100,000 Belarus roubles. The author complained about the decision to the Leninsky District Court (the District Court), which, on an unspecified date, acknowledged that the case had been examined in his absence and remitted to the Administrative Commission for a new examination.

2.3 On 16 November 2006, the Administrative Commission re-examined the author's case and found him guilty under article 172, part 3, of the Administrative Code of "illegal distribution of printed materials", and fined him 100,000 Belarus roubles. The decision stated that the leaflets had been produced in violation of the Law on Press and Other Media, did not bear the required publication data and contained information aimed at undermining national security and public order.

2.4 On 24 November 2006, the author complained about the decision of the Administrative Commission to the Court of the Leninsky District of Brest. On 15 December 2006, the District Court upheld the decision.³ On 26 December 2006, the author appealed the decision before the Brest Regional Court, which dismissed his appeal on 22 January 2007.

2.5 The author claims that he has exhausted all effective domestic remedies.

2.6 He submits that the decisions of the Administrative Commission and the domestic courts are not justified. He claims that the Law on Press and Other Media is not applicable

¹ The leaflets read as follows: "Dear citizens of Brest! Congratulations on the great national holiday of the Independence of our country! On 27 July, Belarus celebrates a major holiday in its history. On that date, in 1990, the Council of the Republic of Belarus proclaimed the Declaration of Independence. Belarusians declared to the whole world that they would like to build their house and that they were worth being called a nation. Since that date, 16 years have passed. The current regime trades the country's independence for cheap gas. Hiding behind declarations on sovereignty preservation, the Government only reflects on how to preserve itself. Each and every one of us is losing freedom today: a humiliating contractual system, low salaries, the rise in telephone bills, unemployment, excessive charges on entrepreneurs – in such conditions, only civil servants connected with the president live well. Fear and repression make people silent. The lack of perspectives and hope for a better future lead to the fact that 70 per cent of young people dream of living abroad. But who will stay here? For freedom! For independence! You are invited to take part in a holiday demonstration, which will take place on 27 July at 5.30 p.m. at the Stroitel stadium. On the programme: an address by the leader of democratic forces, Aleksandr Milinkevich; an address by public figures of the country and the city; enrolment in democratic parties and public associations; distribution of celebration attributes; a performance by Belarus folk singers. United democratic forces, Brest."

² Under article 172, part 3, of the Administrative Code, "Unlawful Distribution of Printed Material", it is an administrative offence to disseminate printed material which either is not produced in accordance with the established procedure, does not indicate required publication data or contains matter detrimental to the State, public order or the rights and lawful interests of private individuals. Under the Administrative Code, such offences are sanctioned with fines and/or confiscation.

³ According to the court decision of 15 December 2006, "the contents of the leaflets aimed at undermining the national security, the public order and rights and freedoms of others as, at the moment of the distribution of those leaflets, the demonstration of 27 July 2006 had been prohibited by the Brest City Executive Committee."

in his case. According to article 1, part 7, of the law, it applies to “the periodical distribution in print runs of 300 copies and over of texts drafted with the help of computers and the information collected in their databank and databases, and to other mass information media whose output is distributed in the form of printed communications, posters, leaflets and other material.” Furthermore, under article 1, part 2, of the law, the “mass information media” are defined as periodical printed publications; television or radio organizations; radio, television, video or newsreel programmes; or other forms or methods of periodical information dissemination. According to article 1, part 3, of the law, “printed periodical publications” are defined as newspapers, journals, brochures, almanacs, bulletins and other publications with unvarying titles and serial numbers, appearing not less than once per year.

2.7 With reference to the above-mentioned provisions, the author maintains that the law is only applicable to periodical printed publications with a distribution of over 300 copies, appearing at least once a year. He claims that the leaflets he was distributing were for a one-time event and were issued only once, and thus were not periodic. The Law on Press and Other Media is therefore not applicable to the leaflets in question.

2.8 The author adds that, in order to comply with the publication data requirement under the law, it is necessary to register leaflets as a mass media outlet, for example a newspaper. It would therefore be impossible to produce leaflets for a mass event beforehand because the timeline required for registering a media outlet (over 30 days) significantly exceeds the timeline between the date of permission for a mass event and the date of the event itself.

The complaint

3.1 The author complains that the facts as submitted constitute a violation by the State party of his rights under articles 9, paragraph 1; 14, paragraph 1; and 19, paragraphs 1 and 2; of the Covenant.

3.2 In particular, with reference to article 19, paragraph 2, the author claims that the application of the Law on Press and Other Media to his case restricted his freedom to impart information and ideas of all kinds to such an extent that it deprived him of the very opportunity to realize his right to freedom of expression by distributing leaflets.

3.3 He also claims that the leaflets did not contain any unlawful or illegal message. Even if they contained information about the demonstration and some criticism towards the Government, the author claims that everyone in a democratic society holds the right to criticize the authorities. He claims that it was on account of the criticism contained in the leaflets that he was arrested and fined, which according to him, amounts to persecution on political grounds and to a violation of his freedom to hold opinions without interference, as protected under article 19, paragraph 1, of the Covenant. Both the Administrative Commission and the courts stated that the leaflets contained “incitement, agitation against the existing regime.” Neither criminal nor administrative legislation outlaws agitation against the existing regime. The criminal law prohibits only public calls for a change of the constitutional order by violent means (article 361 of the Criminal Code). Any regime is subject to change in a democratic State. The constitutional order can be changed in accordance with the Constitution.

3.4 The author claims that his detention was arbitrary and in violation of article 9 of the Covenant.

3.5 He also claims, with reference to article 14, paragraph 1, that he was denied access to justice because his case was heard by the Administrative Commission, which does not fulfil the criteria of a competent, independent and impartial court. He adds that the courts in his case were not independent as they are accountable to the Executive, particularly the

Ministry of Justice and the Department of Justice of the Brest Regional Executive Committee.

State party's observations on admissibility

4.1 On 13 July 2010, the State party challenged the admissibility of the communication. It submits, *inter alia*, that it "[...] does not find legal grounds for further consideration of this communication." It adds that it does not appear from the documentation on file that the Committee has received the communication from the author as "it seems obvious" that it has been prepared by a third party rather than the author, contrary to article 1 of the Optional Protocol. It further requests the Committee to clarify the relationship between the author of the communication and the persons indicated by him as contact persons eligible to obtain the confidential information from the Committee regarding the complaint.

4.2 By note verbale of 10 August 2010, the Committee informed the State party that, *inter alia*, its Special Rapporteur on new communications and interim measures (the Special Rapporteur) sees no obstacles to the admissibility of the present communication under article 1 of the Optional Protocol, as it was duly signed by the author and there is nothing in the Optional Protocol, the Committee's rules of procedure or its working methods to prevent the author from indicating an address other than his own for correspondence. It further invited the State party to submit its observations on the admissibility and merits of the communication within the established time limits.

4.3 By note verbale of 3 September 2010, the State party submitted, *inter alia*, that "the Belarusian side suspends further consideration" of the communication "till the Committee provides comprehensive response on all issues raised by the State party in its previous submissions." It further notes that it has assumed its obligations under article 1 of the Optional Protocol. It has taken note of the Rapporteur's reply on the absence of any obstacles to the admissibility of the communication under the Optional Protocol, but it considers the reply to be "the Special Rapporteur's personal view, which does not and cannot create any legal obligations for the States parties to the Covenant." The State party further notes that it has not raised any issues concerning the addresses for correspondence relating to the present communication; however, "there were requests to the Committee to clarify the relationship of third parties to the complaints of Mr. Symonik [...] and the grounds for the third parties, the persons who are not subject to Belarusian jurisdiction, being listed in the communications as contact persons eligible to obtain confidential information from the Committee." Finally, the State party "draws the Committee's attention to the fact that in accordance with article 1 of the Optional Protocol, the State party had recognized the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant, but not from other persons (third parties). The State party did not accept any other obligation under article 1 of the Optional Protocol and suspends therefore further consideration of the present communication."

4.4 By letter of 28 October 2010, the Chairperson of the Committee informed the State party that, *inter alia*, the present communication had been duly signed by the author, who was himself the alleged victim. Regarding the author's decision to designate third parties residing outside of the State party to receive correspondence from the Committee on his behalf, the Chairperson notes that nothing in the Optional Protocol prevents authors from indicating an address other than their own for correspondence or from designating third parties as recipients of the Committee's correspondence on their behalf. The Chairperson points out that it has been a longstanding practice of the Committee to allow authors to designate representatives of their choice, who may not necessarily live in the territory of the State party, not only to receive correspondence, but even to represent them before the Committee. Finally, the State party was again invited to submit its observations on the

admissibility and merits. It was informed that, in the absence of such observations, the Committee would proceed with the examination of the communication on the basis of the information available to it.

4.5 By note verbale of 6 January 2011, the State party recalled that it had repeatedly expressed its legitimate concerns to the Committee regarding the unjustified registration of individual communications. The majority of its concerns related to communications which were submitted by individuals who had deliberately not exhausted all available remedies in the State party, including filing an appeal with the Prosecutor's Office under the supervisory review procedure against judgements having acquired the force of *res judicata*. The State party explains that the basis for that requirement is article 2 of the Optional Protocol. It further notes that the registration before the Committee of communications submitted by third parties (i.e. lawyers and other persons) on behalf of individuals alleging violations of their rights is undoubtedly an abuse of the Committee's mandate, and of the right to submit a communication: the registration of such communications is in violation of article 3 of the Optional Protocol. In addition, while being a State party to the Optional Protocol and having recognized the Committee's competence under article 1 thereof, the State party has not consented to the extension of the Committee's mandate. The State party notes the Committee's "one-sided and broad interpretation [...] of the legal norms of the respective international treaties" and explains that the interpretation of the provisions of the Covenant and the Optional Protocol is made strictly in accordance with articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties. It adds that, in accordance with an accurate interpretation of article 1 of, and the preamble to, the Optional Protocol, only communications submitted by individuals (and not by their representatives) may be registered by the Committee. Consequently, the State party concludes that it will decline every communication registered before the Committee in violation of the provisions of the aforementioned treaties and that any decision adopted by the Committee in relation to such communications will be considered by the State party as legally invalid.

4.6 By note verbale of 25 January 2012, the State party reiterated its previous observations, including those of 6 January 2011. It recalls that, by adhering to the Optional Protocol, it recognizes the Committee's competence under article 1 thereof to receive and consider communications from individuals subject to its jurisdiction who claim to be the victims of violations by the State party of any of the rights set forth in the Covenant. That recognition of competence also extends to other provisions of the Optional Protocol, including those setting forth criteria regarding petitioners and admissibility, in particular article 2 and article 5, paragraph 2, of the Optional Protocol. States parties have no obligation under the Optional Protocol to recognize the Committee's rules of procedure or its interpretation of the provisions of the Optional Protocol. According to the State party, that means that, in the context of the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that reference to the Committee's long-standing practice, methods of work and jurisprudence "are not subject of the Optional Protocol." It further submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with it and will be rejected without comment on the admissibility or merits. The State party further maintains that decisions taken by the Committee on such "declined communications" will be considered by its authorities as "invalid."

Issues and proceedings before the Committee

Lack of cooperation from the State party

5.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding the recognition

of the Committee's rules of procedure or the Committee's interpretation of the provisions of the Optional Protocol; and that decisions taken by the Committee on the present communication will be considered by its authorities as "invalid." The Committee also notes the State party's observation that registration of communications submitted by a third party (i.e. lawyers or other persons) on behalf of individuals claiming that there has been a violation of their rights constitutes an abuse of the mandate of the Committee and of the right to submit a communication.

5.2 The Committee recalls that, under article 39, paragraph 2, of the Covenant, it is empowered to establish its own rules of procedure, which the States parties have agreed to recognize. The Committee further 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 (see preamble and article 1). The Committee further notes that, by denying the right of an individual to be represented by a lawyer (or a designated person) of his/her choice before the Committee, the State party fails to meet its obligations under the Optional Protocol to the Covenant. Implicit in a State's adherence to the 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, to forward its views to the State party and to the individual (see article 5, paragraphs 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 a communication and in the expression of its Views.⁴ It is for 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 shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility and on the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement set out in article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that, in its submission of 6 January 2011, the State party challenged the admissibility of the present communication on the ground of non-exhaustion of domestic remedies, as the author had not filed a request for supervisory review with the Prosecutor's Office. The Committee recalls its jurisprudence according to which a petition for supervisory review to a Prosecutor's Office allowing for the review of court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁵ Accordingly, it considers

⁴ See, inter alia, communications No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1; No. 1948/2010, *Denis Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 5.2.

⁵ Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining that part of the communication.

6.4 The Committee notes the author's claim that he was subjected to arbitrary arrest on 26 July 2006, in violation of article 9, paragraph 1, of the Covenant. In the absence of any further detailed and documented information in support of those allegations and as to whether they were raised in domestic proceedings, the Committee considers that that claim has been insufficiently substantiated for the purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also notes the author's claim under article 14, paragraph 1, of the Covenant that he has been denied access to justice because his case was heard by the Administrative Commission rather than a court, and that the domestic courts lacked independence. It observes that the decision of the Administrative Commission of the Leninsky District in Brest was reviewed by courts of two instances, which has not been disputed by the author. It notes that the material before it does not demonstrate that, by reviewing the author's case, the courts lacked independence. Accordingly, and in the absence of any other pertinent information in that respect, the Committee considers that the author has failed to sufficiently substantiate his claim for the purposes of admissibility. Accordingly, it concludes that that part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further notes the author's claim under article 19, paragraph 1, of the Covenant. In the absence of any further information or explanations on file, the Committee considers that that part of the communication is insufficiently substantiated for the purposes of admissibility, and therefore inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers the remaining claims of the author, raising issues under article 19, paragraph 2, of the Covenant, to be sufficiently substantiated for the purposes of admissibility and declares them admissible.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that, by applying the Code on Administrative Offences and the Law on Press and Other Media in his case, the State party's authorities restricted his freedom to impart information, as protected under article 19, paragraph 2, of the Covenant.

7.3 The first issue before the Committee is whether or not the application of article 172 (3) of the Code on Administrative Offences and the Law on Press and Other Media to the author's case, resulting in the confiscation of the leaflets and the subsequent fine, as well as preventing him from distributing leaflets criticizing the existing regime, constituted a restriction by the authorities within the meaning of article 19, paragraph 3, on the author's freedom of expression, in particular of his right to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The Committee notes that, under the law, publishers of periodical publications, as defined in article 1 of the Law on the Press and Other Media, are required to include certain publication data and to register such publications as media outlets. In the view of the Committee, by imposing such requirements on a leaflet produced for a particular event, the State party has established such obstacles as to restrict the author's freedom to impart information, as protected under article 19, paragraph 3, of the Covenant.

7.4 The Committee has to consider whether the restrictions imposed on the author's right to freedom of expression were justified under any of the criteria set out in article 19, paragraph 3. The Committee observes that article 19 provides for certain restrictions but only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. It recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; and that such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.⁶ Any restrictions on the exercise of such freedoms must conform to strict tests of necessity and proportionality and "be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."⁷ The Committee recalls that, if the State imposes a restriction, it is up to the State party to show that it is necessary for the aims set out in article 19, paragraph 2, of the Covenant.

7.5 The Committee also notes that the State party has not attempted to address the restrictions imposed on the author. In particular, the State party has not demonstrated why it was necessary, under domestic law and for one of the legitimate aims set out in article 19, paragraph 3, of the Covenant, to require that the author should indicate publication data on his leaflets which he could only obtain by registering the leaflet as a media outlet. Neither has the State party shown how preventing the author from distributing leaflets with a political message was in compliance with any of the legitimate aims set out in article 19, paragraph 3, and, in particular, why it was necessary in a democratic society, the cornerstone of which is free dissemination of information and ideas, including information and ideas contested by the government or the majority of the population.⁸ The Committee concludes that, in the absence of any other pertinent explanations from the State party, the facts as submitted reveal a violation by the State party of the author's rights under article 19, paragraph 2, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as presented reveal a violation of the author's rights under article 19, paragraph 2, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the reimbursement of the legal costs incurred by the author. The State party is also under an obligation to take steps to prevent similar violations 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 or not 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 where it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the

⁶ See the Committee's general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 2.

⁷ *Ibid.*, para. 22.

⁸ See, *mutatis mutandis*, communication No. 1274/2004, *Korneenko v. Belarus*, Views adopted on 31 October 2006, para. 7.3, which reads: "The reference to the notion of 'democratic society' in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society."

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 Belarusian and Russian in the State party.
