



## 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. 2082/2011\*, \*\*

<i>Communication submitted by:</i>	Pavel Levinov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	30 August 2010 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 10 August 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matter:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression; fair trial; effective remedy
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i> ; exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	2 (1), 5 (1), 14 (1), 19 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5

1. The author of the communication is Pavel Levinov, a national of Belarus born in 1961. He claims to be a victim of a violation by Belarus of his rights under articles 2 (1),

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.



5 (1), 14 (1), 19 and 21 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

#### **The facts as submitted by the author**

2.1 On 30 November 2009, the author filed an application with the Zheleznodorozhny District Administration of Vitebsk with a request to hold a picket on 31 December 2009. The purpose of the picket was to congratulate his fellow citizens on the occasion of the New Year's Eve and Christmas. In the application, he specified that the picket would be carried out by one person dressed as "Father Frost".

2.2 On 3 December 2009, the author's application was rejected by the District Administration on the following grounds: (a) the location of the picket was not among the locations specified for such events in the Vitebsk Town Executive Committee's decision No. 881 of 10 July 2009 on public events in Vitebsk town;<sup>1</sup> (b) the author failed to submit contracts with the respective city service providers in order to ensure security, medical care and cleaning services during the picket, as required by decision No. 881.

2.3 On 15 December 2009, the author filed an appeal against the decision of the District Administration with the Zheleznodorozhny District Court. On 24 December 2009, the appeal was dismissed. On 3 January 2010, the author filed a cassation appeal against the District Court decision with the Vitebsk Regional Court. On 15 February 2010, the Regional Court dismissed the author's cassation appeal. The author appealed through the supervisory review procedure to the president of the Vitebsk Regional Court and the President of the Supreme Court of Belarus on 7 June 2010 and on 14 July 2010, respectively. On 1 July 2010 and on 19 August 2010, respectively, the appeals were dismissed.

2.4 The author contends that he has exhausted all available and effective domestic remedies.

#### **The complaint**

3.1 The author argues that Belarus has given precedence to its national legislation before the international obligations under the Covenant, in violation of article 2 (1) of the Covenant.

3.2 The author states that the decision of the District Administration amounted to an act aimed at limiting the freedom of assembly to a greater extent than is provided for in the Covenant and thus violated article 5 (1) of the Covenant.

3.3 The author alleges that the courts reviewing the decision of the District Administration acted in violation of the international human rights obligations of Belarus and were under the influence of the executive. Therefore, he alleges that his right to a fair hearing by a competent, independent and impartial tribunal provided for in article 14 (1) of the Covenant was violated. To support his argument, he refers to the report of the Special Rapporteur on the independence of judges and lawyers of 8 February 2001,<sup>2</sup> and states that the Special Rapporteur's recommendations have not been implemented by the authorities. The author also makes reference to communication No. 628/1995,<sup>3</sup> in which the Committee found it incompatible with the Covenant that the State party had given priority to the application of its national law over its obligations under the Covenant.

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<sup>1</sup> Decision No. 881 is based on the Public Events Act of 30 December 1997.

<sup>2</sup> See report on his mission to Belarus (E/CN.4/2001/65/Add.1).

<sup>3</sup> *Tae Hoon Park v. Republic of Korea*, Views adopted on 20 October 1998, para. 10.4.

3.4 The author claims that his freedom of expression has been restricted in violation of article 19 of the Covenant. He claims that the restriction in question was not justified on the grounds set out in article 19 (3) of the Covenant, i.e. was not in accordance with the law or necessary for the protection of the rights and freedoms of others and was not justified by reasons of national security or public safety, public order, or protection of public health or morals.

3.5 The author claims that his right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed restriction was neither in accordance with the law nor necessary in a democratic society.

#### **State party's observations**

4.1 In a note verbale dated 27 September 2011, the State party notes that the author has not exhausted all available domestic remedies as required in article 2 of the Optional Protocol due to his failure to appeal to the Vitebsk Regional Prosecutor's Office. In the State party's opinion, there were no legal grounds for consideration of the communication since it was registered in violation of article 1 of the Optional Protocol.

4.2 In a note verbale dated 25 January 2012, the State party states that, by becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize 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 rights protected by the Covenant. It noted, however, that that recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. It maintained that, under the Optional Protocol, States parties have no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when undertaken in accordance with the Vienna Convention on the Law of Treaties. It submits that, in relation to the communications procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law are not subjects of the Optional Protocol. The State party also submits that any communication registered in violation of the provisions of the Optional Protocol would be viewed as incompatible with the Optional Protocol and rejected without observations on admissibility or the merits, and any decision taken by the Committee on such communications would be considered by its authorities as "invalid". The State party reiterates its view that the present communication was registered in violation of the Optional Protocol.

#### **Author's comments on the State party's observations**

5.1 In a letter dated 27 January 2015, the author submits that, according to the jurisprudence of the Committee<sup>4</sup> and the European Court of Human Rights,<sup>5</sup> the supervisory review before the Prosecutor's Office cannot be considered an effective domestic remedy.

5.2 Regarding the State party's challenge to the Committee's rules of procedure, the author notes that the Committee interprets the provisions of the Covenant and that "the views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the

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<sup>4</sup> See communication No. 1418/2005, *Iskiyaev v. Uzbekistan*, Views adopted on 20 March 2009.

<sup>5</sup> See European Court of Human Rights, application No. 47033/99, *Tumilovich v. Russia*, decision of 22 June 1999.

interpretation of that instrument”.<sup>6</sup> Thus, according to the author, the State party must respect the Committee’s decisions, as well as its “standards, practice, and methods of work”.

5.3 The author points out that, as of the date of his submission, the State party has failed to implement the Committee’s Views in more than 65 communications, including a number of communications submitted by the author himself.<sup>7</sup>

### **Issues and proceedings before the Committee**

#### *The State party’s lack of cooperation*

6.1 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 and regarding the Committee’s interpretation of the Optional Protocol’s provisions; and that if a decision is taken by the Committee on the present communication, it will be considered “invalid” by its authorities.

6.2 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, 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.<sup>8</sup> It is up to the Committee to determine whether a case 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 outright that it will not accept the Committee’s determination of admissibility or the merits of the communications, the State party is violating its obligations under article 1 of the Optional Protocol.

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 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 objection that the author has failed to request the Prosecutor’s Office to initiate a supervisory review of the domestic courts’ decisions. The Committee recalls its jurisprudence, according to which a petition to

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<sup>6</sup> Reference is made to the Committee’s general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol, para. 13.

<sup>7</sup> See, for example, communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010–1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012.

<sup>8</sup> See, for example, *ibid.*, para. 8.2, and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 6.2.

prosecutor's office to initiate supervisory 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.<sup>9</sup> Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 Regarding the author's claim under article 2 (1) of the Covenant, the Committee recalls its jurisprudence, according to which the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol.<sup>10</sup> The Committee therefore considers that the author's contentions in that regard are inadmissible under article 3 of the Optional Protocol.

7.5 Regarding the author's claim under article 5 (1) of the Covenant, the Committee observes that that provision does not give rise to any separate individual right. Thus, that part of the claim is incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.<sup>11</sup>

7.6 With respect to the allegations under article 14 (1) of the Covenant, the Committee observes that these complaints refer primarily to the appraisal of evidence adduced during the court proceedings and interpretation of laws, matters falling in principle to the national courts, unless the evaluation of evidence was manifestly arbitrary or constituted a denial of justice.<sup>12</sup> In the present case, the Committee is of the view that the author has failed to demonstrate, for purposes of admissibility, that the conduct of the proceedings in his case was arbitrary or amounted to a denial of justice. The Committee consequently considers that that part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

7.7 The Committee notes the author's allegations that his freedom of assembly under article 21 of the Covenant has been restricted arbitrarily, since he was refused permission to hold a picket. The Committee notes, however, that the author, according to his own submission, intended to conduct the picket on his own. Accordingly, in the circumstances of the present case, the Committee considers that the author has failed to sufficiently substantiate this particular claim, for purposes of admissibility, and declares that part of the communication inadmissible under article 2 of the Optional Protocol.<sup>13</sup>

7.8 Regarding the author's claim of violation of his rights under article 19 of the Covenant, the Committee finds it sufficiently substantiated for the purposes of admissibility, declares it admissible and proceeds to their examination on the merits.

<sup>9</sup> See communications No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para 8.4; and No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 6.3.

<sup>10</sup> See communications No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and No. 1867/2009, 1936/2010, 1975/2010, 1977/2010-1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 9.3.

<sup>11</sup> See communications No. 1361/2005, *X. v. Colombia*, Views adopted on 30 March 2007, para. 6.3; and No. 2041/2011, *Dorofeev v. Russian Federation*, Views adopted on 11 July 2015, para. 9.3.

<sup>12</sup> See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26; see, inter alia, communications No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, para. 6.3; No. 1399/2005, *Cuartero Casado v. Spain*, decision of inadmissibility adopted on 25 July 2005, para. 4.3; and Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010-1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 9.5.

<sup>13</sup> See communications No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006, para. 6.4; and Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010-1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 9.7.

*Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's allegations that his freedom of expression has been restricted arbitrarily, since he was refused permission to hold a picket and to publicly express his opinion. The Committee considers that the legal issue before it is to decide whether the prohibition on holding a public picket imposed on the author by the executive authorities of the State party amounts to a violation of article 19 of the Covenant. From the material before the Committee, it transpires that the author's act was qualified by the courts as an application to hold a public event and was refused on the basis that the location chosen was not among those permitted by the town's executive authorities, and because the author had not secured medical care, security and cleaning services during his picket. In the Committee's opinion, the above actions of the authorities, irrespective of their legal qualification, amount to a limitations of the author's rights, in particular the right to impart information and ideas of all kind, under article 19 of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, which states 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.<sup>14</sup> They constitute the foundation stone for every free and democratic society.<sup>15</sup> The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*) or public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must 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.<sup>16</sup> The Committee recalls<sup>17</sup> that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate.<sup>18</sup> The Committee observes that limiting pickets to certain predetermined locations, as well as requesting the organizer of a one-person picket to contract additional services in order to hold a picket, does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee notes that neither the State party nor the national courts have provided any explanation for such restrictions. The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) 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 violations of the author's rights under article 19 (2) of the Covenant.

10. 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

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<sup>14</sup> See general comment No. 34 (2011), para. 2.

<sup>15</sup> *Ibid.*, para. 2.

<sup>16</sup> *Ibid.*, para. 22.

<sup>17</sup> See, for example, communications No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3, and No. 1785/2008, *Olechkevitch v. Belarus*, Views adopted on 18 March 2013, para. 8.5.

<sup>18</sup> See, for example, communication No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para. 7.3.

obligated, inter alia, to take appropriate steps to provide the author with adequate compensation and to take steps to prevent similar violations occurring in the future. In that connection, the Committee reiterates that the State party should revise its legislation consistent with its obligation under article 2 (2), in particular, the decision No. 881 of the Vitebsk Town Executive Committee and the Public Events Act of 30 December 1997, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.<sup>19</sup>

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 Belarusian and Russian in the State party.

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<sup>19</sup> See, for example, communications No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; No. 1948/2010, *Turchenyak and others v. Belarus*, Views adopted on 24 July 2013, para. 9; No. 1790/2008, *Govsha and others v. Belarus*, Views adopted on 27 July 2012, para. 11; and, mutatis mutandis, No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10, and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 10.