



International Covenant on Civil and Political Rights

Distr.: General
30 August 2016

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2101/2011*, **

<i>Communication submitted by:</i>	Valentin Evzrezov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Dates of communication:</i>	5 August 2011 (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 22 September 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matters:</i>	Refusal of authorization to hold a peaceful assembly; freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Valentin Evzrezov, a Belarusian national born in 1954. He claims to be the victim of a violation by Belarus of his rights under articles 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

* 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, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



The facts as submitted by the author

2.1 On 7 February 2011, the author applied to the Zhlobin District Executive Committee with a request to hold a picket with up to 20 participants on 23 February 2011. The picket was to be organized in Pridneprovsky park, in the town of Zhlobin. The purpose of the picket was to protest the political persecution of former candidates for the presidency of Belarus and of the members of their electoral teams.

2.2 On 15 February 2011, the author's application was rejected by the District Executive Committee on the ground that a sporting event was to take place on the same day, at the same location. The authorities also noted in their refusal that the Criminal Code of Belarus did not define the term "political persecution".

2.3 On 3 March 2011, the author appealed against the decision of the District Executive Committee to the Gomel Regional Executive Committee. His appeal was rejected on 23 March 2011. On 28 March 2011, the author appealed to the Zhlobin District Court. The court rejected the appeal on 19 April 2011. On 27 April 2011, the author filed an appeal to the Gomel Regional Court that was dismissed on 9 June 2011. The author has made no further appeals under the supervisory review procedure since he considers that the procedure does not constitute an effective remedy, given the established domestic practice in similar cases.

The complaint

3. The author claims that his right to freedom of expression has been restricted in violation of article 19 of the Covenant by an unjustified refusal of the State party's authorities to permit him to hold a picket. He also alleges that his right to freedom of assembly under article 21 of the Covenant has been violated by the unjustified refusal of the authorities to authorize the picket.

State party's observations

4.1 In a note verbale dated 28 November 2011, the State party submits that the author has not exhausted all available domestic remedies as required by article 2 of the Optional Protocol as he has not made an appeal under the supervisory review procedure. According to the State party, the procedure constitutes an effective remedy, as proven by the fact that, of the 4,565 appeals filed in 2011 under that procedure 239 were upheld by the Supreme Court's officials. In the State party's opinion, there are no legal grounds for considering the communication submitted by the author 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 explains, in regard to a number of communications, including the one submitted by the author, that by becoming a party to the Optional Protocol it has 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 the rights protected by the Covenant. It notes, however, that such 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 States parties to the Optional Protocol 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 done 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 subject to 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 the admissibility or the merits, and that any decision taken by the Committee on such communications would be considered by its authorities as “invalid”. The State party reiterated its view that the present communication was registered in violation of the Optional Protocol.

Author’s comments on the State party’s observations

5. In a letter dated 29 January 2012, the author submitted his comments on the State party’s observations. He asserted that the supervisory review procedure could not be seen as an effective remedy in cases involving political rights, as it is a procedure that is at the discretion of a prosecutor or a judge who could decide to reject the appeal or to transmit it to a higher court for consideration. The author points out that no dissenting opinion has ever been submitted in cases concerning individual political rights in the State party.

Issues and proceedings before the Committee

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 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 its interpretation of the provisions of the Optional Protocol; and that, if a decision is taken by the Committee on the present communication, that decision will be considered “invalid” by the State party 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 (Optional Protocol, preamble and art. 1). 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 these 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.¹ It is up to the Committee to determine whether a case should be registered, and 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 on the admissibility and the merits of the communication, 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.

¹ 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, para. 8.2; and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 6.2.

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 observation that the author has failed to initiate a supervisory review of the domestic courts' decisions. The Committee recalls its jurisprudence finding that petitioning a prosecutor's office to initiate a supervisory review against a judgment having the force of *res judicata* does not constitute an effective remedy nor is it a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.² It also considers that filing requests to the Chair of a court for a supervisory review 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 will provide an effective remedy in the circumstances of the case.³ The Committee takes note of the statistics provided by the State party on a number of supervisory review appeals submitted and upheld by Supreme Court officials. It notes, however, that those statistics do not specify whether and in how many cases the petitions to the Chair of the Regional Court or to the Supreme Court for supervisory review were successful in cases concerning the right to freedom of expression and the right to peaceful assembly. In such circumstances, the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication submitted by the author.

7.4 The Committee considers that the author's claims under articles 19 (2) and 21 of the Covenant are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to the examination of the merits.

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 right to freedom of expression has been restricted arbitrarily, since he was refused permission to hold a public picket and to publicly express his opinions. The Committee considers that the issue before it is to decide whether the prohibition to hold a public picket imposed on the author by the Zhlobin municipal executive authorities amounts to a violation of articles 19 and 21 of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it 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. They constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and as are 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 the purposes for which they were prescribed and must be directly

² Communications No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4; and No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para. 7.3.

³ Communications No. 836/1998, *Gelazauskas v. Lithuania*, para. 7.4; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility, 26 July 2011, para. 6.2.

related to the specific need on which they are predicated. The Committee recalls⁴ that it is for the State party to demonstrate that the restrictions imposed on the author's rights under article 19 were necessary and proportionate.

8.4 The Committee notes the author's claim that his right to freedom of assembly under article 21 of the Covenant was also violated by the refusal of the municipal authorities to allow him to hold the picket. In that context, 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 the public expression of an individual's views and opinions and indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including the right to 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 restriction to this right is permissible unless it is imposed in conformity with the law and is necessary in a democratic society, in the interests of national security or public safety, public order, protection of public health or morals or 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 to impose unnecessary or disproportionate limitations on it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.⁵

8.5 The Committee observes that in the present case the author's application for a picket was rejected by the municipal authorities on the basis that "political persecution" was not defined in the Criminal Code and because there was a sporting event already scheduled to take place at the same location, on the same date. The Committee notes that prohibiting a protest against political persecution because the term "political persecution" is not defined in law does not appear to meet the standards of necessity and proportionality under article 19 (3) and the second sentence of article 21 of the Covenant. The Committee further notes that even though there was a second, potentially legitimate ground for refusal, in other words a previously authorized sporting event, there was no indication in the decision of the Zhlobin District Executive Committee or the domestic courts, in the light of the first objection raised by the Executive Committee, that the author would have been allowed to carry out a picket at an alternative time or date. The Committee concludes, therefore, that in the present case the State party has violated the author's rights under articles 19 and 21 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's 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 author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation and to take steps to prevent similar violations occurring in the future.

⁴ 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.

⁵ See communication No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 8.4.

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.
