



International Covenant on Civil and Political Rights

Distr.: General
5 September 2012

Original: English

Human Rights Committee

Communication No. 1784/2008

Views adopted by the Committee at its 105th session (9 to 27 July 2012)

<i>Submitted by:</i>	Vladimir Schumilin (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 March 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 April 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2012
<i>Subject matter:</i>	Sanctioning (fining) of an individual for having distributed leaflets in violation of the right to disseminate information without unreasonable restrictions.
<i>Substantive issues:</i>	Right to impart information; permissible restrictions.
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Article of the Covenant:</i>	19, paras. 2 and 3
<i>Article of the Optional Protocol:</i>	5, para. 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 (105th session)

concerning

Communication No. 1784/2008*

Submitted by: Vladimir Schumilin (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 17 March 2005 (initial submission)

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

Meeting on 23 July 2012,

Having concluded its consideration of communication No. 1784/2008, submitted to the Human Rights Committee by Vladimir Schumilin 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 is Vladimir Shumilin, a Belarusian national born in 1973. He claims to be a victim of violation by Belarus of his rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented by counsel.

The facts as submitted by the author

2.1 On 12 February 2008, the author distributed leaflets¹ containing information on the venue of a meeting in Gomel city with Mr. Milinkevich – a former candidate for the post of

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

¹ The author submits a copy of the leaflets in question. It contains a photograph of Mr. Milinkevich, and an explanation to the Gomel citizens that a month ago the City's Executive Committee was asked to authorize a public meeting with Mr. Milinkevich in the « Festivalny » Hall. It is explained that this request was supported by more than 300 Gomel's residents, and that the administration has later on

President of the Republic. The same day, he was apprehended by the police and a record concerning the commission of an administrative offence under article 23.24 (part 1) of the Code of Administrative Offences was established. The said article provides for the engagement of liability for violating the existing regulations on the organization and the conduct of meetings, street rallies, demonstrations, other mass events or pickets. These regulations are set by a specific law on mass events, whose article 8 forbids anyone to produce and disseminate information materials concerning events if the issue whether to authorize the event is still under consideration.

2.2 Given that the leaflets distributed by the author contained information concerning a meeting of a politician with citizens, the police considered that the author was doing this in breach of the law. The same day, the author was brought to the Court of the Soviet District in Gomel. The Court immediately issued a ruling that by distributing leaflets for a non-authorized meeting, the author had breached the provisions of article 23.24 (part 1) of the Code of Administrative Offences and fined him 1.05 million Belarusian roubles (equal at that time to US\$ 488). The author notes that the amount of the fine then exceeded the average monthly salary in Belarus.

2.3 The author points out that nothing in the administrative case file indicated that the court had based its conclusion on something other than the police record concerning him distributing leaflets. Therefore, the only question which had had to be examined by the court would have been to verify whether by distributing leaflets about an upcoming meeting amounted to a breach, by the author, of the regulations governing the organization of peaceful assembly. In his opinion, neither the police nor the court made an effort to clarify why the limitation of the author's right to disseminate information in this case was necessary for the purposes of article 19 of the Covenant.

2.4 On 29 February 2008, the Gomel Regional Court, on appeal, simply confirmed the Soviet District Court's decision, without providing a qualification of the author's acts in light of the Covenant's provisions, in spite of the explicit request of the author in this connection in his appeal claim. In particular, in his appeal, the author reminded the court that the provisions of international treaties in force for Belarus prevail in case of conflict with norms of domestic law, and that under the Vienna Law of the Treaties, national law cannot be invoked to justify non-application of provisions of international law; under article 15 of the State party's Law on international agreements, universally recognized principles of international law and the provisions of international agreements into force for Belarus are part of the domestic law. Article 19 of both the Universal Declaration of Human Rights and the Covenant prescribe the freedom to disseminate information.

2.5 The author refers to the Committee's jurisprudence in similar cases, and emphasizes that the restriction of his right was not necessary for purposes of national security, public order, the defence of the morals and health of the population, or the freedoms of others.² He notes that the rights under article 19 are not absolute and may be restricted, but adds that the provisions of the State party's law on mass events restricting the right to disseminate information cannot be in conformity with the State party's obligations under the Covenant,

refused to authorise the meeting under an « invented » pretext. The text continues with an explanation that the meeting with Mr. Milinkevich would take place anyway, on 15 February 2008, at 4 p.m. in an area between buildings located at Nr. 94-98 at Barykin Street, and at 5.30, at the Yanaki Kupaly Square. It is also explained that Mr. Milinkevich would expose his programme for overcoming the social-economic problems, which have occurred due to the "short-sighted" policy of the "current leadership", and he would also reply to questions. Finally, the leaflet contains a contact phone number for further explanations.

² The author refers in particular to case No. 780/1997, *Laptsevich v. Belarus*, Views adopted on 20 March 2000.

as they are not aimed at protecting the State security or safety, the public order, or necessary for the protection of the health and morals of the population or for the protection of the rights and freedoms of others.

2.6 The author explains that he has exhausted available effective domestic remedies, without submitting appeals under the supervisory review proceedings which do not lead systematically to a review of a case and are thus not effective.

The complaint

3. The author claims that the application of the law on mass events in his case resulted in an unjustified limitation of his right to disseminate information under article 19, article 2, of the Covenant.

State party's observations on admissibility and merits

4.1 On 2 June and 4 August 2008, the State party provided its observations on the admissibility and the merits of the communication. It explained that, on 12 February 2008, the Court of the Soviet District of Gomel found the author guilty under article 23.34, part 1, of the Code of Administrative Offences and sentenced him to a fine. The court found out that, on 12 February 2008, the author together with another individual distributed leaflets calling for the citizens to attend an unauthorized meeting to take place on 15 February 2008. The police seized 1,933 leaflets in their possession. The State party explains that in court, Mr. Shumilin had accepted his guilt, and that he did not complain to a prosecutor about his administrative case. The court's decision was confirmed on appeal, on 29 February 2008, by the Gomel Regional Court. This decision entered into force immediately, and further appeals were only possible under the supervisory review proceedings.

4.2 The State party challenges the admissibility of the communication. It explains that under the provisions of the Procedural-Execution Code on Administrative Offences ("P.E. Code" hereafter), the author could have introduced a request for a supervisory review of the decision of the Gomel Regional Court with the President to the higher jurisdiction, the President of the Supreme Court in this case, but he failed to do so.

4.3 The State party explains that appeals under the supervisory review proceedings, as set up under article 12.14 of the P.E. Code, suppose a verification of the legality of the appealed decision, the grounds for decision and its fairness, in light of the arguments contained in the appeal. If the court reveals grounds for the improvement of the situation of the individual concerned, the previous decision may be re-examined in parts, even if the person had not requested this specifically in his/her appeal. Thus, according to the State party, the author's contention that supervisory proceedings are not effective is groundless. The State party adds that the author is still in a position to file a supervisory review appeal with the Supreme Court.

4.4 On the merits, the State party rejects the author's allegations in the present communication as groundless. It explains that under article 23.34 of the Code of Administrative Offences, violating the regulations on the organisation or carrying out of assemblies, meetings, demonstrations or mass events, constitutes an administrative offence and is subject to a warning or a fine. The material on file, including the leaflets in question, makes it clear that the planned meeting was not authorized. The leaflets contain a call to the citizens to attend the event. Given that no authorization for the said event has been received, the acts of the author could only be considered as constituting a breach of the regulation on the organization of mass events. The author breached article 8 of the law on mass events, pursuant to which prior to the receipt of an authorization to conduct a mass event, it is forbidden to anyone without exception to prepare and disseminate information materials.

Author's comments on the State party's observations

5.1 On 22 September 2008, the author explains that he has not complained to the prosecutor's office because his complaint would not lead to the re-examination of his case as such appeals are non-efficient and do not lead to the examination of the merits of the case. He notes that only effective and accessible remedies should be exhausted.

5.2 As to the State party's contention that he had distributed leaflets calling for a meeting prior to the obtaining of an authorization for the conduct of the event, the author notes that the Covenant is directly applicable in the State party and that it guarantees the freedom of everyone to freely disseminate all kinds of information. Even if this right is not absolute, its restrictions may only be done if justified for the purpose of the permissible limitations contained in article 19, paragraph 3, of the Covenant. Given that the restrictions of his rights were not justified under any of these permissible limitations, the authorities have breached his rights under article 19, paragraph 2, of the Covenant.

5.3 The author adds that pursuant to article 8 of the Constitution, the State party accepts the universally recognized principles of international law and ensures that national law complies with them. He notes that States parties must fulfil their international obligations in good faith, and points out that, according to articles 26 and 27 of the Vienna Law of the Treaties, a party to an international agreement cannot invoke its national law to justify non-execution of the international treaty. He also notes that under article 15 of the State party's law on international treaties, the universally recognized principles of international law and the provisions of the international treaties to which Belarus is a party constitute a part of the domestic law. Article 19, paragraph 2, of the Covenant guarantees the freedom of expression, including the right to disseminate information. This right can only be limited for the purposes listed in article 19, paragraph 3, of the Covenant. The grounds invoked by the courts when engaging his administrative liability in his case are not, according to the author, justifiable under any of the permissible limitations.

Additional observations by the State party

6.1 On 26 March 2009, the State party provided additional information. It noted, first, that the author is not correct when declaring that an appeal to the prosecutor's office does not lead to a re-examination of a case and that the supervisory appeal to the Supreme Court is not effective. In support, the State party provides statistical data, according to which in 2007, the Supreme Court examined appeals in 733 administrative cases, including at the request of the prosecutors' office. The Chairperson of the Supreme Court quashed or modified the decisions (rulings) in 116 cases (63 at the request of the prosecutor's office). In 2008, 171 such decisions were quashed or modified, 146 out of which were initiated by the prosecutor's office. A total of 1,071 administrative cases were examined by the Supreme Court in 2008. Thus, in 2007, the Supreme Court has quashed or modified decisions in administrative cases in 24.4 per cent of the cases appealed, and in 2008, this figure constitutes 29.6 per cent.

6.2 The State party next contends that the author's affirmation that the decision to have his administrative liability engaged was not justified under article 19, paragraph 3, of the Covenant, is groundless. The law on mass events regulates the organization and conduct of assemblies, meetings, demonstrations, street rallies, pickets, etc. Its preamble makes it clear that the aim of creating such a framework is to set up the conditions for the realization of the constitutional rights and freedoms of the citizens and the protection of the public safety and public order when such events are conducted on the streets, squares, or other public area. The author has breached the limitations under article 23.34 of the Code of Administrative Offences and article 8 of the Law on Mass Events, which are necessary for the protection of the public safety and order during the conduct of gatherings, meetings, street rallies, etc.

6.3 The State party adds that the right to freely express an opinion is guaranteed by article 19 to all citizens of the States parties to the Covenant. It explains that, as a party to the Covenant, it fully recognizes and complies with its obligations thereon. Article 33 of the Constitution guarantees the freedom of opinion and beliefs and their free expression. Even if the right to freedom of expression is considered as one of the main human rights, it is not absolute. Article 19 is not included in the list of articles, which cannot be derogated at any circumstances, contained in article 4 of the Covenant. Thus, the exercise of these rights can be restricted by the State, provided that the limitations are provided by law, have a legitimate aim, and are necessary in a democratic society.

6.4 Pursuant to article 23 of the Constitution, limitations of rights and freedoms are permitted only if they are provided by law and are in the interest of national security, public order, protection of morals and health of the population, and the rights and freedoms of others. Similarly, article 19, paragraph 3, of the Covenant provides that the rights set up in paragraph 2 of the same provision imply special obligations and particular responsibility. The exercise of these rights can therefore be limited, but the limitations must be provided by law and be necessary for the respect of the rights and reputation of others, the protection of the public order, health or morals.³

6.5 According to the State party, the above-mentioned permits it to conclude that the realization of the right to receive and disseminate information can be achieved exclusively in a lawful manner, i.e. in the framework of the existing legislation of a State party to the Covenant. The current Belarusian legislation offers the necessary conditions for the free expression of the opinion by the citizens, and for the receipt and dissemination of information.

6.6 The State party contends that the author induces the Committee into error concerning the existing legislation. Thus, pursuant to article 2.15, part 2, point 7, of the P.E. Code, a prosecutor, within his/her powers, can introduce a protest motion against court rulings on administrative cases which are contrary to the existing legislation. Article 2.15, point 1, of the same Code provides that court rulings on administrative cases which have entered into force can be re-examined, in particular following a protest motion introduced by a prosecutor. Article 12.14, point 2, of the Code provides that following the examination of the protest motion, the attacked ruling may be annulled partly or in its totality, and the case may be referred back for a new examination. Article 12.11, point 3, fixes a six months' timeframe for the introduction of protest motions, starting as of the date of the entry into force of the attacked rulings. Therefore, an appeal to the prosecutor's office may lead to a re-examination of the merits of an administrative case. In the present case, the author consciously has not availed himself of all domestic remedies of legal protection available to him.

Additional comments by the author

7.1 On 9 March 2011, the author reiterates that, according to him, supervisory review appeals do not constitute an effective remedy, due to the fact that their examination is left at the discretion of a single official, and if an appeal is granted, it would not lead to an examination of elements of facts and evidence. The author notes that the Committee has

³ In this connection, the State party also notes that article 29 of the Universal Declaration of Human Rights provides that "(1) everyone has duties to the community in which alone the free and full development of his personality is possible" and that "(2) in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

dealt with this issue on several occasions, and has concluded that it is not necessary to appeal under the supervisory review proceedings for purposes of article 5, paragraph 2 (b), of the Optional Protocol. The author also notes that the existing law does not allow individuals to file complaints to the Constitutional Court.

7.2 The author disagrees with the State party's rejection of his contention that his administrative case was not grounded under any of the permissible restrictions listed in paragraph 3 of article 19 of the Covenant, and he explains that the courts' decision in the case do not contain such argumentation. The judges in his case only referred to the national laws in their decisions, and ignored completely the State party's obligations under international law. With reference to the Committee's case-law,⁴ the author notes that the Committee has decided that giving a priority to the application of national law over the Covenant's provisions was incompatible with the State party's obligations under the Covenant. Pursuant to article 8, part 1, of the State party's Constitution, when they were examining his case, the courts were obliged to bear in mind the prevalence of the State party's international obligations over its national law's provisions.

7.3 The author reiterates that the Covenant's provisions prevail over national law and are part of it. He emphasizes that limitations of the right to disseminate information must be justified under article 19, paragraph 3, of the Covenant but this was not done in this case, and thus his right to freedom of expression was unduly restricted.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

8.3 As to the issue of exhaustion of domestic remedies, the Committee has noted the author's explanation that he has not sought to have the decision of the Court of the Soviet District of Gomel of 12 February 2008 or the decision, on appeal, of the Gomel Regional Court of 29 February 2008, examined under the supervisory review proceedings, as such a remedy is neither effective nor accessible. The Committee also notes the State party's objections in this respect, and in particular the statistical figures provided in support, intending to demonstrate that supervisory review was effective in a number of instances. However, the State party has not shown whether and in how many cases supervisory review procedures were applied successfully in cases concerning freedom of expression. The Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions which have entered into force do not constitute a remedy, which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁵ In light of this, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol, to examine the present communication.

⁴ The author refers in particular to the Committee's Views in communication No. 628/1995, *Pak v. Republic of Korea*.

⁵ See, for example, communication No. 1814/2008, *P.L. v. Belarus*, Inadmissibility decision of 26 July 2011, paragraph 6.2.

8.4 The Committee considers that the author has sufficiently substantiated his claim of a violation of his rights under article 19, paragraph 2, of the Covenant. Accordingly, it declares the communication admissible, and proceeds with its examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 The issue before the Committee is whether the author's fine for having distributed leaflets concerning two meetings of the Gomel population with a political opponent, for which authorization had not been given, has violated his rights under article 19, paragraph 2, of the Covenant.

9.3 The Committee recalls in this respect its general comment No. 34, in which it stated *inter alia* that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society. Any restrictions to freedom of expression must conform to the strict tests of necessity and proportionality and "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".

9.4 The Committee has noted the State party's explanation that under its law on mass events, no information concerning possible meetings can be disseminated before the official authorization of the said meeting by the competent authorities and that the author's action constituted an administrative offence. The State party has also acknowledged that the right to freedom of expression may only be limited in line with the requirements set up in article 19, paragraph 3, of the Covenant, without explaining, however, how, in practice, in this particular case, the author's actions affected the respect of the rights or reputations of others, or posed a threat to the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee recalls that it is for the State party to show that the restrictions on the author's right under article 19 are necessary and that even if a State party may introduce a system aiming to strike a balance between an individual's freedom to impart information and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant. In light of the refusal of the Gomel Regional Court to examine the issue on whether the restriction of the author's right to impart information was necessary, and in the absence of any other pertinent information on file to justify its authorities' decisions under article 19, paragraph 3, the Committee considers that the limitations of the author's rights in the present case were incompatible with the requirements of this provision of the Covenant. It therefore concludes that the author is a victim of a violation by the State party of his rights under article 19, paragraph 2, of the Covenant.

10. 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 before it disclose a violation of the author's rights under article 19, paragraph 2, of the Covenant.

11. 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 present value of the fine and any legal costs incurred by the author: as well as compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation, in particular the Law on Mass Events, and its application, to ensure its conformity with the requirements of article 19, of the Covenant.

12. 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 or not 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 in case a violation has been established, 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.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
