



International Covenant on Civil and Political Rights

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Human Rights Committee

Communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010

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

<i>Submitted by:</i>	Pavel Levinov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Dates of communications:</i>	2 June 2008, 17 February 2010, 10 December 2009, 8 January 2010, 18 March 2010, 20 April 2010, 10 June 2010, 18 June 2010, 8 November 2009 (initial submissions)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 19 February 2009, 1 April 2010, 24 September 2010 and 1 December 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2012
<i>Subject matter:</i>	Author was prohibited from holding public pickets
<i>Substantive issues:</i>	Freedom of expression, freedom of assembly
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2, paras. 1-2; 5, para. 1; 14, para. 1; 18, 19; 21; 26
<i>Articles 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

Communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010*

<i>Submitted by:</i>	Pavel Levinov (not represented by counsel)
<i>Alleged victim:</i>	The author
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 July 2012,

Having concluded its consideration of communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010, 2010/2010, submitted to the Human Rights Committee by Pavel Levinov 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 communications and the State party,

Adopts the following:

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

1.1 The author of the nine communications is Pavel Levinov, a national of Belarus, born in 1961. In all the communications, he claims to be a victim of violations by Belarus of his rights under article 2, paragraphs 1 and 2; article 5, paragraph 1; article 14, paragraph 1; article 19 and article 21 of the International Covenant on Civil and Political Rights. In communications 1867/2009, 1975/2010 and 2010/2010, he also claims to be a victim of violations by Belarus of his rights under article 26 of the Covenant, and in communication 1975/2010, he claims to be a victim of violations by Belarus of his rights under article 18 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, Mr. Gerald L. Neuman, 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.

the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented.

1.2 On 19 July 2012, pursuant to rule 94, paragraph 2, of the Committee's rules of procedure, the Committee decided to join the nine communications for decision in view of their substantial factual and legal similarity.

The facts as submitted by the author

2.1 The author submits that he was refused, on nine different occasions, permission to picket by the executive authorities of the town of Vitebsk, Belarus.

Picket 1 - communication No. 1867/2009

2.2 On 19, 21 and 23 November 2007, the author filed applications with the Executive Town Committee of Vitebsk (hereafter "ETC") requesting to picket on 9 December 2007 in three different locations with the goal of strengthening and developing human rights, raising awareness and publicly expressing an interest in human rights issues. In the application he specified that the picket would be conducted only by himself. On 28 and 30 November and on 3 December 2007, the ETC replied that picketing was prohibited in accordance with point 1 of ETC decision No. 820 of 24 October 2003 (Regarding the procedure for organization and conduct of public gatherings in Vitebsk town), which determined that public gatherings can only be organized in a few specified locations in Vitebsk town and the locations suggested by the author were not among them.

2.3 On 5 December 2007, the author filed an appeal against the decisions of the ETC before the Vitebsk Regional Court, which was rejected on 7 December 2007. On 18 December 2007, the author appealed the first instance decision before the District Court of Vitebsk. On 14 January 2008, the District Court issued a ruling confirming the Regional Court's decision and rejecting the author's appeal. The author attempted an appeal through the supervisory review mechanism before the Supreme Court of Belarus, which rejected his appeal on 28 April 2008.

Picket 2 - communication No. 1936/2010

2.4 On 30 January 2009, the author filed an application with the ETC requesting to hold a picket on 14 February 2009 entitled "Vitebsk - the town of love," on the occasion of Saint Valentine's day. In the application he specified that the picket would be conducted by himself only and that the intended location was the pedestrian crossing at Lenin Street and Frunze Boulevard, across from the Liberty Square in Vitebsk. The acting President of the ETC issued a decision prohibiting the picket, which was delivered to the author on 10 February 2009. The picket was allegedly prohibited in accordance with point 1 of ETC decision No. 820 of 24 October 2003, the reason being that the location suggested by the author for his picket was not among the permitted locations. The ETC's decision was issued based on the law regarding public events in the Republic of Belarus. Permission to hold the picket was also allegedly refused because the application for permission was filed only on 2 February 2009,¹ in violation of articles 5 and 9 of the same law, which provide for a 15-day deadline prior to the event for requesting permission to organize public gatherings.

2.5 On 15 February 2009, the author filed an appeal against the decision of the acting President of the ETC before the Vitebsk Regional Court, which was rejected on 11 March 2009. On the same date, the author appealed before the District Court of Vitebsk. On 16

¹ The author maintains that he submitted the application on 30 January 2009; the court decision states that the application was received on 2 February 2009.

April 2009, the District Court issued a ruling confirming the Regional Court's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk District Court (20 April 2009) and to the President of the Supreme Court of Belarus (26 May 2009). Both rejected his appeals (15 May 2009 and 24 July 2009, respectively) and affirmed that the decision of the first instance court was lawful.

Picket 3 - communication No. 1975/2010

2.6 On an unspecified date, the author filed an application with the ETC requesting to hold a picket on 7 January 2009, the purpose being to celebrate Orthodox Christmas. In the application he specified that the picket would be conducted by himself only and that he planned to congratulate his fellow citizens for Orthodox Christmas, standing in a pedestrian area on the Novoroshansk road in Vitebsk. The application was reviewed by the Deputy President of the ETC, who, on 30 December 2008, issued a decision prohibiting the picket. The picket was prohibited in accordance with ETC decision No 820 of 24 October 2003, the reason being that the location suggested by the author for his picket was not among the permitted locations. On 10 January 2009, the author filed an appeal against the decision of the Deputy President of the ETC before the Oktyabrsky District Court, which was rejected on 27 January 2009. On the same date, the author filed a cassation appeal against the District Court's decision before the Regional Court of Vitebsk. On 19 February 2009, the Regional Court issued a ruling confirming the first instance's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (4 March 2009) and to the President of the Supreme Court of Belarus (4 April 2009). Both rejected his appeals (31 March 2009 and 18 June 2009, respectively).

Picket 4 - communication No. 1977/2010

2.7 On an unspecified date, the author filed an application with the ETC of Vitebsk requesting to hold a picket on 25 January 2009 devoted to the anniversary of the birth of the poet Vladimir Vysotsky. In the application he specified that the picket would be conducted by himself only and that he intended to stand in front of the V. I. Lenin District Library. The application was reviewed by the Deputy President of the ETC, who, on 19 January 2009 issued a decision prohibiting the picket in accordance with ETC decision No. 820 of 24 October 2003 (Regarding the procedure for organization and conduct of public gatherings in Vitebsk town), the reason being that the location suggested by the author for his picket was not among the permitted locations. The Town Committee's decision was based on the law regarding public events in the Republic of Belarus. On 21 January 2009, the author filed an appeal against the decision of the Deputy President of the ETC before the Oktyabrsky District Court, which was rejected on 16 February 2009. On the same date, the author filed a cassation appeal against the District Court's decision to the Regional Court of Vitebsk. On 30 March 2009, the Regional Court issued a ruling confirming the first instance's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (3 April 2009) and to the President of the Supreme Court of Belarus (21 April 2009). Both rejected his appeals (15 April 2009 and 23 June 2009, respectively).

Picket 5 - communication No. 1978/2010

2.8 On 16 February 2009, the author filed an application with the ETC of Vitebsk requesting to hold a picket on 4 March 2009 with the purpose of drawing citizens' attention to the problem of violations of human rights and freedoms by police officers in the Republic of Belarus. In the application he specified that the picket would be conducted by one person only and that the intended location was the pedestrian crossing at Lenin Street

and Frunze Boulevard, across from Liberty Square in Vitebsk. The application was reviewed by the acting President of the ETC of Vitebsk, who, on 24 February 2009 issued a decision prohibiting the picket in accordance with point 1 of ETC decision No. 820 of 24 October 2003, the reason being that the location suggested by the author for his picket was not among the permitted locations. The ETC's decision was based on the law regarding public events in the Republic of Belarus. On 26 February 2009, the author filed an appeal against the decision of the acting President of the ETC before the Vitebsk Regional Court, which was rejected on 1 April 2009. On the same date, the author filed a cassation appeal against the Regional Court decision to the District Court of Vitebsk. On 4 May 2009, the District Court issued a ruling confirming the Regional Court's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk District Court (25 May 2009) and to the President of the Supreme Court of Belarus (22 June 2009). Both rejected his appeals (9 June 2009 and 24 July 2009, respectively).

Picket 6 - communication No. 1979/2010

2.9 On 14 May 2009, the author filed an application with the ETC of Vitebsk with a request to hold a picket on 1 June 2009 with the purpose of drawing citizens' attention to the problem of violations of children's rights. In the application he specified that the picket would be conducted by one person only and that the intended location was the pedestrian crossing at Lenin Street and Frunze Boulevard, across from Liberty Square in Vitebsk. The application was reviewed by the Deputy President of the ETC, who, on 14 May 2009 issued a decision prohibiting the picket. The picket was prohibited in accordance with ETC decision No. 820 of 24 October 2003, the reason being that the location suggested by the author for his picket was not among the permitted locations. The Town Committee's decision was based on the law regarding public events in the Republic of Belarus. On 24 June 2009, the author filed an appeal against the decision of the Deputy President of the ETC before the Oktyabrsky District Court, which was rejected on 24 July 2009. On the same date, the author filed a cassation appeal against the District Court's decision to the Regional Court of Vitebsk. On 17 August 2009, the Regional Court issued a ruling confirming the first instance's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (16 October 2009) and to the President of the Supreme Court of Belarus (8 November 2009). Both rejected his appeals (4 November 2009 and 10 December 2009, respectively).

Picket 7 - communication No. 1980/2010

2.10 On 9 November 2009, the author filed an application with the Administration of Oktyabrsky District of Vitebsk requesting to hold a picket on 10 December 2009, with the purpose of supporting State institutions in strengthening and developing human rights and popularizing human rights instruments. In the application he specified that the picket would be conducted by one person only and that the intended location was the pedestrian crossing at Lenin Street and Frunze Boulevard across from Liberty Square in Vitebsk. The application was reviewed by the Head of Administration of Oktyabrsky District, who, on 20 November 2009, issued a decision prohibiting the picket. The picket was prohibited in accordance with ETC decision No. 881 of 10 July 2009 (Regarding public events in Vitebsk town), the reason being that the location suggested by the author for his picket was not among the permitted locations. The decision also stated that the author had failed to present contracts with the Department of Interior of the District Administration to ensure public order during the picket; the Health Department to ensure medical care during the picket; and the Utilities Department to ensure the cleaning of the area where the picket would take place, as required by ETC decision No. 881. On 1 December 2009, the author

filed an appeal against the decision of the Head of Administration of Oktyabrsky District before the Oktyabrsky District Court, which was rejected on 24 December 2009. On 3 January 2010, the author filed a cassation appeal against the District Court's decision to the Regional Court of Vitebsk, which was rejected on 8 February 2010. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (19 February 2010) and to the President of the Supreme Court of Belarus (25 March 2010). Both rejected his appeals (18 March 2010 and 5 May 2010, respectively).

Picket 8 - communication No. 1981/2010

2.11 On 30 November 2009, the author filed an application with the ETC of Vitebsk requesting to hold a picket on 31 December 2009 with the purpose of congratulating his fellow citizens on the occasion of Christmas and New Year's Eve. In the application he specified that the picket would be conducted by one person only, dressed as "Father Frost" and that the intended location would be the pedestrian crossing at Lenin Street and Frunze Boulevard, across from Liberty Square in Vitebsk. In violation of local legislation, the application was not reviewed by the President of the ETC of Vitebsk, but by the Head of Administration of Oktyabrsky District, who, on 7 December 2009, issued a decision prohibiting the picket. The picket was prohibited in accordance with ETC decision No. 881 of 10 July 2009, the reason being that the location suggested by the author for the picket was not among the permitted locations. The decision also stated that the author had failed to present contracts with the Department of Interior of the District Administration to ensure the public order during the picket; the Health Department to ensure medical care during the picket; and the Utilities Department to ensure cleaning of the territory where the picket would take place, as required by ETC decision No. 881. On 15 December 2009, the author filed an appeal against the decision of the Deputy President of the ETC before the Oktyabrsky District Court, which was rejected on 5 January 2010. On 25 January 2010, the author filed a cassation appeal against the District Court's decision to the Regional Court of Vitebsk. On 25 February 2010, the Regional Court issued a ruling confirming the first instance's decision and rejecting the author's appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (13 March 2010) and to the President of the Supreme Court of Belarus (6 April 2010). Both rejected his appeals (29 March 2010 and 15 May 2010, respectively).

Picket 9 - communication No. 2010/2010

2.12 On an unspecified date, the author filed an application with the ETC of Vitebsk requesting to hold pickets on 7 and 10 December 2008 devoted to the 60th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms with the purpose of supporting State institutions in strengthening and developing human rights and popularizing human rights instruments and public expression of interest in human rights issues. In the application he specified that the pickets would be conducted by one person only and that he intended to stand at the crossing of Moskovskaya and Viktory boulevards on 7 December 2008 and in Zheleznodorozhnikov Park on 10 December 2008. The application was considered by the Deputy President of the ETC of Vitebsk, who issued a decision prohibiting the 7 December 2008 picket based on ETC decision No. 820 of 24 October 2003, the reasons being that the location suggested by the author for his picket was not among the permitted locations, and the author had not paid the expenses associated with the maintenance of public order during the picket. The ETC also refused the author's application to hold a picket on 10 December 2008 in a location authorized by decision No. 820, namely, Zheleznodorozhnikov recreation park. The reason invoked was that the municipal authorities planned to conduct the picket "Youth for a healthy lifestyle – 2008"

in the park. The author submits that the location he had chosen for his picket in the park was 100 metres away from the venue where the “Youth for a healthy lifestyle – 2008” picket was planned to take place.

2.13 On 1 December 2008, the author filed an appeal against the decision of the Deputy President of the ETC before the Oktyabrsky District Court of Vitebsk, which was rejected on 19 December 2008. On 16 January 2009, the author filed a cassation appeal against the District Court’s decision to the Regional Court of Vitebsk. On 12 February 2009, the Regional Court upheld the first instance’s decision and rejected the author’s appeal. The author attempted appeals through the supervisory review mechanism to the President of the Vitebsk Regional Court (26 February 2009) and to the President of the Supreme Court of Belarus (3 April 2009). Both were rejected on 27 April 2009 and 18 June 2009, respectively.

The complaint

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

3.2 In all the communications the author claims that Belarus is in violation of its obligation under article 2, paragraph 2, of the Covenant by failing to undertake the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights to freedom of assembly and association, as private citizens are not allowed to raise such issues before the Constitutional Court. The author makes reference to communication No. 628/1995,² 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, and argues that Belarus has also given precedence to its national legislation in violation of article 2, paragraph 1, of the Covenant.

3.3 In all the communications the author claims that his freedom of expression has been restricted arbitrarily in violation of the Constitution and of article 19 of the Covenant, as the restriction in question was neither justified by reasons of national security or public safety, public order, or protection of public health or morals, and was not necessary for the protection of the rights and freedoms of others.

3.4 In all the communications the author claims that his right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed restrictions contradict the Belarusian Constitution and are not necessary in a democratic society.

3.5 In all the communications the author also alleges that the courts reviewing the decisions of the ETC 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 (article 14, paragraph 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 2001,³ and states that its recommendations have not been implemented by the authorities.

3.6 In all the communications the author states that the decisions in question amount to acts aimed at limiting the freedoms of assembly and association to a greater extent than is provided for in the Covenant and thus violate article 5, paragraph 1, of the Covenant.

² *Tae Hoon Park v. Republic of Korea*, Views adopted on 20 October 1998, para. 10.4.

³ See E/CN.4/2001/65/Add.1, Civil and political rights, including questions of: independence of the judiciary, administration of justice, impunity, Report of the mission to Belarus.

3.7 In communications Nos. 1867/2009, 1975/2010 and 2010/2010, the author also claims to be a victim of violation by Belarus of his rights under article 26 of the Covenant. He maintains that the decision of town authorities to prohibit the organization of the pickets was politically motivated and represents discrimination towards the realization of citizens' rights to freedom of expression and peaceful assembly, in contradiction of article 26 of the Covenant.

3.8 In communication No. 1975/2010, the author also claims to be a victim of violation by Belarus of his rights under article 18 of the Covenant. He maintains that the domestic legislation does not contain limitations of the right to express one's religious opinion; accordingly, the authorities' refusal to allow him to congratulate his fellow citizens on the occasion of Orthodox Christmas amounts to arbitrary limitation to his freedom to express his religious feeling and a violation of article 18 of the Covenant.

State party's observations on the admissibility of communication 1867/2009

4. On 23 April 2009, the State party submits, with regard to communication 1867/2009, that the author had requested on 19, 21 and 23 November 2007 permission to hold a public picket on 9 December 2007. He was refused such permission and he appealed before the Vitebsk Regional Court, which rejected the appeal on 7 December 2007. It further submits that the author appealed the first instance decision to the District Court of Vitebsk, which, on 14 January 2008, rejected the appeal, and that the author's application for supervisory review to the Supreme Court of Belarus was also rejected by the Deputy President of the Supreme Court. The State party submits that according to article 439 of the Civil Procedure Code, the President of the Supreme Court, the General Prosecutor of the Republic and the Head Prosecutors of Vitebsk District can also submit requests for supervisory reviews and notes that the author did not make use of these avenues for appeal. Accordingly, the State party maintains that the author failed to exhaust available domestic remedies and that there is no ground to believe that the remedies would be unavailable or ineffective. Therefore, the communication is inadmissible.

Author's comments on the State party's observations

5. On 4 June 2009, the author comments on the State party's observations on the admissibility of communication 1867/2009. He maintains that the State party's submission on the inadmissibility of his communication aims to conceal the violations of his rights under articles 14, 19, 21 and 26 of the Covenant. He acknowledges that according to article 439 of the Civil Procedure Code, the President of the Supreme Court, his deputies, the General Prosecutor of the Republic and his deputies, the Head Prosecutors of Minsk and the Districts can also submit requests for supervisory reviews, but maintains that this remedy is not effective, since the decision to put forward a request for supervisory review is purely within the discretion of the above officials. He maintains that practice has demonstrated that in "politically motivated" cases, these officials, who are dependent on the executive, do not put forward requests for supervisory review. In addition, an individual petitioning for supervisory review must pay the lawyer's fees and the court fees, and the author submits that he cannot cover the above costs since he is a pensioner. He further maintains that the domestic legislation does not require individuals petitioning for supervisory review to address each and every of the above officials in order to exhaust domestic remedies. He maintains that he appealed the violation of his rights before the first and second instance court, which rejected his appeals and that he petitioned for a supervisory review on two occasions (to the President of the Supreme Court and to the President of the Vitebsk District Court) and that his petitions were rejected. The author reiterates that he has exhausted all available and effective domestic remedies.

State party's observations on the admissibility and merits of communication No. 1936/2010

6. On 9 July 2010, the State party submits, with regard to communication 1936/2010, that it considers it inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It submits that according to articles 5 and 9 of the law regarding public events in the Republic of Belarus, an application for the conduct of a public event should be submitted in writing at least 15 days before the date of the planned event. Local executive authorities can determine permanent locations for the conduct of public events, as well as locations where such events are not permitted. The Vitebsk ETC had determined such locations by a decision of 24 October 2003. Since the author's application was submitted in violation of the deadline and he applied to conduct a picket in a location which was not designated for that purpose, his application was refused, as were his cassation appeal and application for a supervisory review to the courts. According to article 439 of the Civil Procedure Code, the General Prosecutor of the Republic, his deputies and the Head Prosecutors of Minsk and the Districts can also submit requests for supervisory reviews; the author did not petition the Prosecutors' offices for a supervisory review. The State party maintains that the author failed to exhaust available domestic remedies and that there is no ground to believe that the above remedies would be unavailable or ineffective. Therefore, the communication is inadmissible. The State party also submits that the author had previously abused his right to submit individual communications and that the foregoing should lead to the non-admissibility of his petitions in accordance with the Optional Protocol. On 27 December 2010, the State party informs the Committee that its 9 July 2010 submission covers both the admissibility and the merits of communication 1936/2010.

Further observations by the State party

7.1 On 6 January 2011, the State party submits, with regard to communications 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, that the author has not exhausted all available domestic remedies in Belarus, including "the appeal to the Prosecutor's office against a judgment having force of *res judicata* as an act of supervision". It further submits that, while being a party to the Optional Protocol, it did not give its consent for the extension of the Committee's mandate; that it considers the above communications as registered with violations of the provisions of the Optional Protocol; that there are no legal grounds for their consideration by the State party; and that "any reference in this connection to the Committee's long-standing practice are unlawfully bound".

7.2 On 5 October 2011, the State party submits, with regard to communications 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010 and 1981/2010, that it believes that there are no legal grounds for the consideration of the author's communications, insofar as they are registered in violation of article 1 of the Optional Protocol. It maintains that the author did not exhaust all available domestic remedies as required by article 2 of the Optional Protocol since he did not appeal "in Prosecutors' offices against the decisions taken by the courts".

7.3 On 25 January 2012, the State party submits, with regard to communications 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, that upon becoming a State party to the Optional Protocol, it recognized the competence of the Committee under article 1, but that recognition of competence is done in conjunction with other provisions of the Optional Protocol, including those that set criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5 of the Optional Protocol. It maintains that under the Optional Protocol, State parties have no obligation to recognize the Committee's rules of procedure and its interpretation of the Protocol's provisions, which "could only be efficient when done in accordance with the

Vienna Convention on the Law of Treaties”. It submits that, “in relation to the complaint 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, case law are not subject to the Optional Protocol”. It further submits that “any communication registered in violation of the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights will be viewed by the State Party as incompatible with the Optional Protocol 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.

7.4 On 14 February 2012, the State party submits, with regard to communication 2010/2010, that it reiterates its observations submitted on 25 January 2012.

Issues and proceedings before the Committee

The State party’s failure to cooperate

8.1 The Committee notes the State party’s submissions that there are no legal grounds for the consideration of the author’s communications Nos. 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010 insofar as they are registered in violation of article 1 of the Optional Protocol, because the author has failed to exhaust the domestic remedies; that it has no obligations to recognize the Committee’s rules of procedure and its interpretation of the Protocol’s provisions; and that decisions taken by the Committee on the above communications will be considered by its authorities as “invalid”.

8.2 The Committee recalls that article 39, paragraph 2, of the International Covenant on Civil and Political Rights authorizes it 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 Human Rights 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). 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 (art. 5, paras. 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.⁴ 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 and of the merits of the communications, the State party has violated its obligations under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

Consideration of admissibility

9.1 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 case is admissible under the Optional Protocol to the Covenant.

⁴ See communication No. 869/1999, *Piandiong et al. v. The Philippines*, para. 5.1.

9.2 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.

9.3 Regarding the claims under article 2 of the Covenant, the Committee recalls its jurisprudence, which indicates that 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. The Committee therefore considers that the author's contentions in this regard are inadmissible under article 3 of the Optional Protocol.

9.4 Regarding the claims under article 5 of the Covenant, the Committee finds that this provision does not give rise to any separate individual right. Thus, the claim is incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.⁵

9.5 With respect to the allegations under article 14, paragraph 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.⁶ 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 this part of the communication has not been sufficiently substantiated, and thus finds it inadmissible under article 2 of the Optional Protocol.

9.6 The Committee notes that in communication No. 1975/2010 the author claims a violation of his rights under article 18 of the Covenant. The Committee considers that the author has failed to sufficiently substantiate this particular claim for purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.7 The Committee notes the author's allegations that his freedom of assembly under article 21 of the Covenant has been restricted arbitrarily on nine occasions, since he was refused permission to hold pickets. The Committee, however, notes that the author, according to his own submissions, intended to conduct the nine pickets 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 this part of the communication inadmissible under article 2 of the Optional Protocol.⁷

9.8 In communications 1867/2009, 1975/2010 and 2010/2010, the author also claims that the refusal of the State party's authorities to allow his pickets was discriminatory and violated his rights under article 26 of the Covenant. However, the Committee considers that

⁵ See communications No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.8, and No. 1011/2001, *Madafferi v. Australia*, Views adopted on 26 July 2004, para. 8.6.

⁶ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 26; see, inter alia, communications No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 29 March 2004, para. 5.7; No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, para. 6.3; No. 1084/2002, *Bochaton v. France*, decision of inadmissibility adopted on 1 April 2004, para. 6.4; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.7; and No. 1399/2005, *Cuartero Casado v. Spain*, decision of inadmissibility adopted on 25 July 2005, para. 4.3.

⁷ See communication No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006, para. 6.4.

this part of the communication has not been sufficiently substantiated, and thus finds it inadmissible under article 2 of the Optional Protocol.

9.9 The Committee takes note of the State party's challenge of the admissibility of the communications on the grounds of non-exhaustion of domestic remedies, namely the author's failure to petition the President of the Supreme Court or the General Prosecutor's Office or Heads of District Prosecutor's Office for supervisory reviews of the courts' decisions prohibiting his pickets. The Committee recalls its previous jurisprudence,⁸ according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary means of appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. In such circumstances, and also noting that on several instances, the author had appealed for supervisory reviews to the Supreme Court, which had rejected his appeals, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

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

Consideration of the merits

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

10.2 The Committee notes the author's allegations that his freedom of expression has been restricted arbitrarily on nine occasions, since he was refused permission to hold public pickets and to publicly express his opinion on a variety of issues. The Committee considers that the legal issue before it is to decide whether the prohibitions to hold public pickets imposed on the author by the executive authorities of the State party amount to violations of article 19 of the Covenant. From the material before the Committee, it transpires that the author's activities were qualified by the courts as applications to hold public events and were refused on the basis that the locations chosen were not among those permitted by the town's executive authorities. In the Committee's opinion, the above actions of the authorities, irrespective of their legal qualification, amount to *de facto* limitations of the author's rights, in particular the right to impart information and ideas of all kind, under article 19, paragraph 2, of the Covenant.

10.3 The Committee has next to consider whether the restrictions imposed on the author's freedom of expression are justified under any of the criteria set out in article 19, paragraph 3, of the Covenant. The Committee recalls in this respect its general comment 34, in which it states, *inter alia*, that the freedom of expression is essential for any society and a foundation stone for every free and democratic society.⁹ It notes that article 19, paragraph 3, allows restrictions on the freedom of expression only to the extent that they are provided

⁸ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 50, which states that "a system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor"; and, for example, communication No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003.

⁹ See the Committee's general comment 34 (2011), para. 2.

by law and only if they are 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. The Committee observes that, in the present case, the State party has failed to invoke any specific grounds on which the restrictions imposed on the author's activity would be *necessary* within the meaning of article 19, paragraph 3, of the Covenant. The Committee recalls that it is up to 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 introduces a permit system aimed at striking a balance between an individual's freedom of speech and the general interest of 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.¹⁰ The Committee observes that limiting pickets to certain predetermined locations, regardless of the kind of manifestation or the number of participants, raises serious doubts as to the necessity of such regulation under article 19 of the Covenant. 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, paragraph 3, of the Covenant. It therefore concludes that the author's rights under article 19, paragraph 2, of the Covenant have been violated.¹¹

11. 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 violations of the author's rights under article 19, paragraph 2 of the Covenant and under article 1 of the Optional Protocol to the Covenant.

12. 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, which should include compensation as well as reimbursement of the legal costs paid by the author. The Committee invites the State party to review the relevant legislation on the organization of public events with a view to aligning it with the requirements of article 19 of the Covenant. The State party should also ensure that no similar violations occur in the future.

13. 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 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. In addition, it requests the State party 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.]

¹⁰ See communication No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006, para. 7.3.

¹¹ See also communications No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, para. 7.3; and No. 1009/2001, *Shchetko v. Belarus*, Views adopted on 11 July 2006, para. 7.5.