



International Covenant on Civil and Political Rights

Distr.: General
29 August 2014

Original: English

Human Rights Committee

Communication No. 1934/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Igor Bazarov (unrepresented)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	12 October 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rule 97, transmitted to the State party on 30 March 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2014
<i>Subject matter:</i>	Imposition of a fine for holding a peaceful assembly without prior authorization
<i>Substantive issues:</i>	Right to freedom of expression; right of peaceful assembly
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	19 and 21
<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 (111th session)

concerning

Communication No. 1934/2010*

Submitted by: Igor Bazarov (unrepresented)
Alleged victim: The author
State party: Belarus
Date of communication: 12 October 2009 (initial submission)

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

Meeting on 24 July 2014,

Having concluded its consideration of communication No. 1934/2010, submitted to the Human Rights Committee by Igor Bazarov under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Igor Bazarov, a Belarusian national born in 1964. He claims to be a victim of a violation by Belarus of his rights under articles 2, paragraph 1; 19, paragraph 2; and 21 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.

The facts as submitted by the author

2.1 On 25 March 2009, the author was arrested and brought to a district police station in Vitebsk, where an official record was drawn up, stating that he had committed an administrative offence under article 23.34, part 1, of the Code of Administrative Offences.¹

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

¹ Article 23.34, part 1, of the Code of Administrative Offences reads: "Violation of the established procedure of organizing or holding mass events or pickets. Violation of the established procedure of

On 27 March 2009, Vitebsk Oktyabrsky District Court found the author guilty of a violation of the established procedure for organizing and holding mass events, under article 23.34, part 1, of the Code of Administrative Offences, and fined him 70,000 Belarusian roubles. The court found that the author, together with two other persons, took part in an unauthorized mass event on 25 March 2009. More specifically, he participated in a street march that was moving along the pavement down Lenin street, from “Bistro” towards Independence Square, in Vitebsk, and sought to express his political opinion, by carrying a white, red and white flag.

2.2 On 22 April 2009, Vitebsk Regional Court rejected the author’s appeal and upheld the District Court’s decision.

2.3 On 25 September 2009, the Supreme Court dismissed the author’s application for a supervisory review of the court decisions of 27 March and 22 April 2009.

2.4 The author submits that the domestic courts failed to establish that he had participated in a street procession on 25 March 2009. He submits that the event in question could not be considered as a mass one because only three persons, who had walked along the pavement carrying a flag, had participated. The white, red and white flag was the official flag of Belarus from 1991 to 1995.

2.5 The author claims that he sought to remind the people of Vitebsk of the foundation of the Belarus People’s Republic on 25 March 1918. The right to freedom of expression is guaranteed under article 33 of the Constitution.

2.6 He explains that, due to the spontaneous nature of the event, there was no need to notify the domestic authorities. Furthermore, he had been at Independence Square for no more than 10 minutes when he was arrested by the police. Owing to this limited duration, his actions did not affect the rights of others or cause injury to citizens or damage to the city administration, and nobody sued him for damages as a consequence.

2.7 In addition, he submits that the unlawful interruption of the peaceful assembly violated his rights to publicly express his opinion, whereas article 35 of the Constitution provides for the right of peaceful assembly.

2.8 The author explains that he cherishes the white, red and white flag as a symbol of the national revival of Belarus. However, his views run counter to the ideology of the current political leaders. He therefore considers that he was targeted by the national authorities, who arrested and fined him, which he equates with persecution and discrimination on political grounds.

2.9 He submits that he has exhausted all available domestic remedies.

The complaint

3. The author claims that the facts as submitted amount to a violation of his rights under articles 2, paragraph 1; 19, paragraph 2; and 21 of the Covenant. He requests that his rights be restored and claims compensation for non-pecuniary damages.

The State party’s observations on admissibility and merits

4.1 On 23 June 2010, the State party recalled the facts of the case and challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies as he had not applied for supervisory review of the domestic

organizing or holding assemblies, meetings, rallies, demonstrations or other mass events or pickets, is punishable by a warning, or a fine of up to 10 minimal wages, or by administrative arrest.”

courts' decisions. The right to apply for supervisory review of a *res judicata* court ruling in an administrative case is guaranteed under article 12.11 of the Code of Administrative Procedure. Such an application shall be made within six months after the ruling becomes final. An application for supervisory review is an effective remedy aimed at avoiding to the greatest extent possible instituting proceedings against citizens without justification. The author has not applied to the Office of the Procurator-General under the supervisory review procedure and hence has failed to avail himself of such a remedy.

4.2 Article 35 of the Constitution guarantees the right to hold assemblies, meetings, street marches, demonstrations and pickets, provided that they do not violate law and order or breach the rights of others. The procedure for organizing mass events is regulated under the Law on Mass Events of 30 December 1997. The Law aims to create conditions for the enjoyment of constitutional rights and freedoms of citizens, and the protection of public order and public safety when such events are carried out in public spaces.

4.3 The State party points out that the author himself has admitted that he participated in a non-authorized street march in Vitebsk and carried a white, red and white flag. The domestic courts correctly established that he had participated in a street march as defined in article 2 of the Law on Mass Events² — which is confirmed by the number of participants in the event, their use of non-State symbols and their intention to express political views and attract public attention, as well as by the author's statements to this effect before the courts. Breaching that Law, the event of 25 March 2009 was conducted without prior authorization and the author had not personally applied for such authorization. The author therefore committed an administrative offence under article 23.34, part 1, of the Code of Administrative Offences. No violation of international law appears to be present in this case.

4.4 With reference to article 22 of the Constitution, the State party maintains that all citizens are equal before the law and entitled to protection by the State. The wish of a group of people to hold and participate in mass events should not violate the rights and freedoms of other citizens. This is the purpose of the Law on Mass Events.

4.5 In conclusion, the State party submits that, as the author has not exhausted all available domestic remedies and there are no reasons to believe that such remedies would be unavailable or ineffective, the communication should be declared inadmissible.

4.6 As a general rule, the State party asks the Committee to consider individual communications more carefully before registering them, in particular in the event of abuse of the right of submission or of authors' failure to exhaust all available domestic remedies.

4.7 In a note verbale of 25 January 2012, the State party reiterated its position of 23 June 2010 regarding the admissibility of the communication. It adds that it considers the communication as having been registered in violation of the Optional Protocol.

² Article 2 "Basic notions used in the present Law and their definitions" contains the description of different mass events and includes the following:

Mass event — assembly, rally, street march, demonstration, picket or other mass event;

Street march — organized mass movement of a group of citizens along a pedestrian or carriageway section of a street/road, boulevard, avenue or square for the purpose of drawing attention to certain problems or publicly expressing their public/political sentiment or a protest;

Substantial damage caused to the rights and lawful interests of citizens, organizations or State or public interests — disruption of a mass event, temporary halting of the activity of organizations or a stoppage of transport movement, death of people, grievous bodily harm to one or more victims;

Large-scale damage — damage amounting to over 10,000 times the basic unit established on the day when the offence was committed.

4.8 In particular, it submits that upon becoming a State party to the Optional Protocol, it had recognized the competence of the Committee under article 1, but that recognition of competence was undertaken in conjunction with other provisions of the Optional Protocol, including those that established criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, State parties have no obligation to recognize the rules of procedure of the Committee and its interpretation of the provisions of the Optional Protocol, 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 complaints 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 of the Optional Protocol". It also submits that "any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State Party as incompatible with the Protocol and will be rejected without comments on the admissibility or on the merits". The State party further maintains that decisions taken by the Committee on such rejected communications will be considered by its authorities as "invalid".

Issues and proceedings before the Committee

The State party's lack of cooperation

5.1 The Committee notes the State party's submissions that there are no legal grounds for the consideration of the author's communication, insofar as it is registered in violation of article 1 of the Optional Protocol; because the author failed to exhaust available domestic remedies; that it has no obligation to recognize the Committee's rules of procedure and interpretation of the Protocol's provisions; and that the decision taken by the Committee on the communication will be considered "invalid" by the authorities of the State party.

5.2 The Committee recalls that under article 39, paragraph 2, of the Covenant it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (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, 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 the communication, and in the expression of its Views.³ It is for the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility or the merits of that communication, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.

³ See, for example, communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

Consideration of admissibility

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

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

6.3 The Committee notes that the author claims a violation of his rights under article 2, paragraph 1, of the Covenant. It 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.⁴ The Committee therefore considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee takes note of the State party's objection to the effect that the author should have requested the Prosecutor General's Office to initiate a supervisory review of the domestic courts' decisions. It also takes note of the author's explanation that his request to initiate supervisory review proceedings with the Supreme Court remained unsuccessful. The Committee recalls its jurisprudence, according to which the State party's supervisory review proceedings before the Prosecutor General's Office, allowing a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁵ In the circumstances, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from examining the present communication.

6.5 The Committee considers that the author has sufficiently substantiated his claims under articles 19, paragraph 2, and 21, of the Covenant, for purposes of admissibility. Accordingly, it declares them admissible and proceeds to their examination on the merits.

Consideration of the merits

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

7.2. The Committee notes the author's claim that the interruption of a peaceful assembly by the authorities and finding him guilty of having conducted it without prior authorization constitutes an unjustified restriction on his right to freedom of expression and his right of peaceful assembly, as protected under articles 19, paragraph 2, and 21, of the Covenant. It also notes the State party's explanation that the restriction in question was imposed in accordance with the Law on Mass Events, in particular because the author had no valid authorization to hold the event, and that "the wish of a group of people to hold mass events should not violate the rights and freedoms of other citizens".

⁴ See, for example, communication No. 268/1987, *M.G. B. and S. P. v. Trinidad and Tobago*, decision of inadmissibility adopted on 3 November 1989, para. 6.2.

⁵ See, for example, communications No. 1785/2008, *Oleshkevich v. Belarus*, Views adopted on 18 March 2013, para. 7.3; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.; No. 1839/2008, *Komarovsky v. Belarus*, Views adopted on 25 October 2013, para. 8.3; and No.1903/2009, *Youbko v. Belarus*, Views adopted on 17 March 2014, para. 8.3.

7.3 The Committee has to consider whether the restriction imposed on the author's right to freedom of expression and on his right to peaceful assembly was justified under any of the criteria set out in article 19, paragraph 3, and the second sentence of article 21, of the Covenant.

7.4 The Committee recalls that article 19, paragraph 3, of the Covenant allows certain restrictions, but only as provided by law and necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. It also recalls that the second sentence of article 21 of the Covenant requires that no restrictions be placed on the exercise of the right to peaceful assembly other than those imposed in conformity with the law and that are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Committee points out that if a State party imposes a restriction on the rights under articles 19, paragraph 2, and 21, of the Covenant, it should demonstrate that the restriction was necessary in the case in question, and that even if, in principle, a State party may introduce a system aimed at reconciling an individual's freedom to impart information and to participate in a peaceful assembly with the general interest of maintaining public order in a certain area, that system must not operate in a way that is incompatible with the object and purpose of articles 19 and 21 of the Covenant.⁶

7.5 In this regard, the Committee notes the State party's explanation that the restriction imposed in the author's case was in accordance with the law. It points out, however, that the State party has not attempted to explain why it was necessary — under domestic law and for one of the legitimate purposes set out in article 19, paragraph 3, and the second sentence of article 21 of the Covenant — to obtain authorization prior to holding a peaceful street march in which only three persons intended to participate. Neither has it explained how in practice, in the case at issue, the movement of the author and his two acquaintances movement with a flag along the pavement down a pedestrian street during daytime would have violated the rights and freedoms of others or would have posed a threat to public safety or public order (*ordre public*). In the absence of any other pertinent explanations from the State party, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as submitted reveal a violation, by the State party, of the author's rights under articles 19, paragraph 2, and 21 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under articles 19, paragraph 2, and 21 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, as well as adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the Committee reiterates that the State party should review its legislation, in particular, the Law on Mass Events of 30 December 1997, as it was applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.⁷

⁶ See, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.8.

⁷ See, for example, communications No. 1851/20008, *Vladimir Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; *Turchenyak et al. v. Belarus* (note 6 above) para. 9; and No. 1790/2008, *Govsha, Syritya and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether 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. 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.
