



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2029/2011

Views adopted by the Committee at its 112th session (7-31 October 2014)

<i>Submitted by:</i>	Sergey Praded (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communications:</i>	20 June 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 February 2011 (not issued in document form)
<i>Date of adoption of views:</i>	10 October 2014
<i>Subject matter:</i>	Arrest and imposition of a fine for holding of a peaceful assembly without prior authorization
<i>Substantive issues:</i>	Right to freedom of expression; right to freedom of peaceful assembly; permissible restrictions
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	19, para. 2; and 21
<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 (112th session)

concerning

Communication No. 2029/2011*

Submitted by: Sergey Praded (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communications: 20 June 2010 (initial submission)

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

Meeting on 10 October 2014,

Having concluded its consideration of communication No. 2029/2011, submitted to the Human Rights Committee by Sergey Praded 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 Sergey Praded, a Belarusian national born in 1987. He claims to be the victim of a violation by Belarus of his rights under article 19, paragraph 2, and article 21 of the International Covenant on Civil and Political Rights. The Optional Protocol to the Covenant entered into force for the State party on 30 December 1992. The author is not represented.

The facts as presented by the author

2.1 On 16 December 2009, the author participated with only a few people in a peaceful demonstration in which a poster that read “Stop killings of gays in Iran” was displayed in front of the Embassy of the Islamic Republic of Iran in Minsk. He was apprehended and brought to a police station, where an official record of administrative offence was made,

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany, Konstantine Varzelashvili, Margo Waterval and Andrei Paul Zlătescu.

and where he was charged under article 23.34, paragraph 1, of the Belarusian Code of Administrative Offences.¹

2.2 On 23 December 2009, the Court of the Soviet District in Minsk found the author guilty of an administrative offence under article 23.34, paragraph 1, of Code of Administrative Offences, and fined him 350,000 Belarusian roubles. The court found that the author and the other participants had taken part in an unauthorized mass event without obtaining a prior authorization, in accordance with article 5 of the Law on Mass Events.

2.3 On 19 January 2010, the Minsk City Court rejected the author's appeal and upheld the decision of the District Court.

2.4 On 7 April 2010, the Supreme Court dismissed the author's application for a supervisory review of the lower courts' decisions of 23 December 2009 and 19 January 2010.

The complaint

3.1 The author claims that the facts as presented amount to a violation of his rights under article 21 of the Covenant, since the authorities did not provide any justification for the restriction of his rights and for his apprehension. He further claims that the imposed restrictions were not necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others. While he admits that he did not request prior authorization to participate in the demonstration, he claims that the legal regime in Belarus, under which prior permission is required before holding such a demonstration, imposes unacceptable restrictions on those freedoms guaranteed under article 21. According to article 5 of the Law on Mass Events, organizers of demonstrations are required to establish a contract with the Department of the Interior of the District Administration in order to ensure that public order is maintained during the demonstration; a contract with the Health Department to ensure that medical care is provided; and a contract with the Utilities Department to ensure that the area where the demonstration is to take place is cleaned following the event. Demonstrations are also forbidden within 50 metres of diplomatic premises, which the author considers unacceptable in his case, since holding the demonstration at any other location would have defeated its purpose.

3.2 The author also claims that his apprehension and conviction amount to a violation of his right to freedom of expression under article 19 of the Covenant. He refers to the Committee's Views² in which it found a violation of article 19, despite the fact that the national courts in question had acted in accordance with domestic legislation, and its Views³ in which it 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. The author further submits that Belarus has not submitted a notification under article 4, paragraph 3, of the Covenant in order to avail itself of the right of derogation of certain rights owing to a public emergency.

¹ According to article 23.34, paragraph 1, of the Belarusian Code of Administrative Offences, the violation of the established procedure for organizing or holding assemblies, meetings, rallies, demonstrations or other mass events or pickets is punishable by a warning, a fine of up to 10 times the minimum wage, or by administrative arrest.

² Communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005, para. 7.2.

³ Communication No. 628/1995, *Tae Hoon Park v. Republic of Korea*, Views adopted on 20 October 1998, para. 10.4.

State party's observations on admissibility

4.1 In a note verbale dated 5 October 2011, the State party expressed its position that there were no legal grounds for the consideration of the admissibility or the merits of the present communication, insofar as it was registered before the Committee in violation of article 1 of the Optional Protocol to the Covenant. According to the State party, the author had not exhausted all available domestic remedies, as required by article 2 of the Optional Protocol, since he had not appealed to the Prosecutor's Office, under the supervisory proceedings, against the decisions of the lower courts regarding his case.

4.2 In a note verbale dated 25 January 2012, the State party reiterated its position regarding the inadmissibility of the communication, emphasizing that it considered the communication to be registered in violation of the Optional Protocol.

4.3 In particular, it submits that, upon becoming a State party to the Optional Protocol, it recognized the competence of the Committee under article 1, but that that recognition of competence is made 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. It maintains that, under the Optional Protocol, States parties have no obligation to recognize the Committee's rules of procedure and its interpretation of the provisions of the Optional Protocol, which could only be applied when 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 practices, methods of work and case law are not subject to 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 Optional Protocol and will be rejected without comment on the admissibility or the merits. The State party maintains that decisions taken by the Committee on such declined communications will be considered by its authorities as invalid.

Issues and proceedings before the Committee*The State party's failure to cooperate*

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

5.2 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. 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, paragraphs 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 the admissibility and of the merits of the communications, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.

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 the State party's contention that the author should have requested the Prosecutor's Office to initiate a supervisory review of the domestic courts' decisions. It also takes note that the author's 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 the review of court decisions that have taken effect, do not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁵ Accordingly, it considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining this part of the communication.

6.4 The Committee considers that the author has sufficiently substantiated his claim of a violation of his rights under article 19, paragraph 2, and article 21 of the Covenant, for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its 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 under article 5, paragraph 1, of the Optional Protocol. The Committee notes that the State party has submitted no observations on the merits of the present communication.

7.2 The Committee notes the author's claim that his apprehension and conviction for his participation in a peaceful demonstration made without prior authorization constitutes an unjustified restriction on his rights to freedom of expression and to freedom of assembly as protected by article 19, paragraph 2, and article 21 of the Covenant. The Committee must therefore consider whether the restriction imposed on the author's rights in the present

⁴ See, inter alia, communications Nos. 1867/2009, 1936/2010, 1975/2010, 1977/2010, 1978/2010, 1979/2010, 1980/2010, 1981/2010 and 2010/2010, *Pavel Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

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.

communication are justified under any of the criteria set out in article 19, paragraph 3, and in the second sentence of article 21 of the Covenant.

7.3 The Committee recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.⁶ These freedoms form a basis for the full enjoyment of a wide range of other human rights and, for instance, are integral to the enjoyment of the right of freedom of assembly.⁷ The Committee recalls that article 19 allows for certain restrictions but only as provided by law and 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.

7.4 The Committee further recalls that the right of peaceful assembly is a fundamental human right that is essential for public expression of one's views and opinions and indispensable in a democratic society.⁸ That right entails a possibility of participating in a peaceful assembly with the intent to support or disapprove one or another particular cause. The restriction of that right is only permissible if it is in conformity with the law and necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.⁹

7.5 The Committee observes that, when a State imposes a restriction on the rights guaranteed under the Covenant, the State is obliged to demonstrate that the restriction was necessary in the case in question. Any restrictions to exercise the rights under article 19, paragraph 2, and article 21 of the Covenant must conform to strict tests of necessity and proportionality and 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.¹⁰

7.6 The Committee notes the author's allegations that he was apprehended and brought to a police station for participating in a peaceful but unauthorized demonstration and for holding a poster that read "Stop killings of gays in Iran" in front of the Embassy of the Islamic Republic of Iran in Minsk. He later received an administrative fine for the violation of article 23.34, paragraph 1, of the Belarus Code of Administrative Offences.

7.7 The Committee notes the author's claim that he was unable to request prior authorization to participate in the demonstration owing to the stringent regime of the Law on Mass Events, which imposes unreasonable restrictions on the right guaranteed by article 21 of the Covenant. In particular, the Committee notes that, according to article 5 of the Law on Mass Events, organizers of demonstrations are required to establish a contract with the Department of the Interior of the District Administration in order to ensure that public order is maintained during the demonstration; a contract with the Health Department to ensure that medical care is provided; and a contract with the Utilities Department to ensure that the area where the demonstration is to take place is cleaned following the event. The Committee also notes the author's unrefuted claim that demonstrations are also forbidden within 50 metres of diplomatic premises.

7.8 The Committee recalls that, while imposing the restrictions to the right of freedom of peaceful assembly, the State party should be guided by the objective to facilitate the

⁶ See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

⁷ Ibid, para. 4.

⁸ See communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.4.

⁹ Ibid.

¹⁰ See general comment No. 34 (note 6 above), para. 22.

right, rather than seeking unnecessary or disproportionate limitations to it.¹¹ In that regard, the Committee notes that, while the restrictions imposed in the author's case were in accordance with the law, the State party has not attempted to explain why such restrictions were necessary and whether they were proportionate for one of the legitimate purposes set out in article 19, paragraph 3, and the second sentence of article 21 of the Covenant. Nor did the State party explain how, in practice, in the present case, the author's participation in a peaceful demonstration in which only a few persons participated could have violated the rights and freedoms of others or posed a threat to the protection of public safety or public order, or of public health or morals. The Committee observes that, while ensuring the security and safety of the embassy of the foreign State may be regarded as a legitimate purpose for restricting the right to peaceful assembly, the State party must justify why the apprehension of the author and imposition on him of an administrative fine were necessary and proportionate to that purpose. Therefore, 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.

7.9 The Committee notes that the author was apprehended and given an administrative fine in accordance with article 23.34, paragraph 1, of the Belarusian Code of Administrative Offences because of his participation in the unauthorized demonstration. The Committee notes that the State party has failed to demonstrate that the apprehension and fine imposed on the author, although made on the basis of a law, was necessary and proportionate to achieve one of the legitimate purposes under article 19, paragraph 3, and the second sentence of article 21 of the Covenant. The Committee therefore concludes that the facts as submitted reveal a violation, by the State party, of the author's rights under article 19, paragraph 2, and article 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 article 19, paragraph 2, and article 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 and reimbursement of the fine imposed on the author as a result of the administrative proceedings. The State party is also under the 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 has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.¹²

10. By becoming a State 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. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and 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 therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the

¹¹ See *Turchenyak et al. v. Belarus* (note 8 above).

¹² See, inter alia, communications No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 9; No. 1790/2008, *Govsha, Syritya and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.

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.
