



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2089/2011\*, \*\*

<i>Communication submitted by:</i>	Margarita Korol (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	20 November 2009 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 22 August 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matter:</i>	Arrest and administrative fine for the author's attempt to hold a picket
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of assembly; freedom of opinion and expression
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Margarita Korol, a Belarusian national born in 1990. She claims to be the victim of a violation by Belarus of her rights under articles 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



### **Facts as submitted by the author**

2.1 On 8 September 2009, the author participated in a peaceful demonstration in Minsk. In her hands, she was holding a poster that said “Maskal, remember 1514”. She was arrested and on the same day the Court of the Central District of Minsk imposed on her an administrative fine.

2.2 The author was accused of violating article 23.34 of the Code of Administrative Offences, which prohibits the organization or holding of unauthorized meetings, demonstrations, street gatherings and other types of public events.

2.3 On 18 September 2009, the author submitted to Minsk City Court an appeal against the decision of the Court of the Central District. On 2 October 2009, Minsk City Court upheld the lower court’s decision. The next step for the author would be to appeal to the Supreme Court of Belarus, under the supervisory review procedure. The author claims, however, that such a procedure is discretionary and that she considers it ineffective. The author points out that the Committee had previously established the ineffectiveness of such discretionary proceedings,<sup>1</sup> as had the European Court of Human Rights.<sup>2</sup>

2.4 The author claims that the police officers who detained her and the court that fined her did not justify the restrictions imposed on her rights to peaceful assembly and to freedom of expression.

### **The complaint**

3. The author claims that, by arresting and fining her, the State party violated her rights under articles 19 (2) and 21 of the Covenant. The author asks that she be reimbursed for the fine and that she be compensated for the legal fees that she incurred.

### **State party’s observations on admissibility**

4.1 On 5 September 2011, the State party challenged the admissibility of the communication based on the fact that the author had not exhausted all available domestic remedies. The author failed to appeal the Minsk City Court’s decision to the Supreme Court of Belarus. Furthermore, the State party claims that the communication should not have been registered at all since there were no legal grounds for considering the communication, either in respect of its admissibility or its merits.

4.2 In a note verbale dated 25 January 2012, the State party submitted that, upon becoming a party to the Optional Protocol to the Covenant, it had recognized the Committee’s competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any rights set forth in the Covenant. The provision on the competence of the Committee (art. 1) was recognized in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding the petitioners and the admissibility of their communications (see, in particular, arts. 2 and 5 of the Optional Protocol). The State party maintains that States parties have no obligation under the Optional Protocol to recognize the Committee’s rules of procedure nor its interpretation of the provisions of the Optional Protocol. The State party submits that, in the context of the complaints procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol and that reference to the Committee’s long-standing practice, methods of work and case law are not subjects of the Optional Protocol. It also submits that any communication registered in violation of the

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<sup>1</sup> The author does not refer to any specific decisions.

<sup>2</sup> The author refers to the decision of the European Court of Human Rights in *Tumilovich v. Russia*, application No. 47033/99.

provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or the merits and that any decisions taken by the Committee on those rejected communications will be considered by its authorities as “invalid”.

### **Issues and proceedings before the Committee**

#### *Lack of cooperation by the State party*

5.1 The Committee notes the State party’s assertion that there are no legal grounds for considering the author’s communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding the recognition of the Committee’s rules of procedure or the Committee’s interpretation of the provisions of the Optional Protocol; and that if a decision is taken by the Committee on the present communication, it will be considered “invalid” by its authorities.

5.2 The Committee observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State’s adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination, to forward its Views to the State party and to the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.<sup>3</sup> It is up to the Committee to determine whether a case should be registered and the Committee observes that, by failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring outright that it will not accept the Committee’s determination on the admissibility and the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

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

6.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the State party challenged the admissibility of the communication on the ground of non-exhaustion of domestic remedies, as the author did not avail herself of an appeal to the Supreme Court against the decision of the Minsk City Court under the supervisory review procedure. It notes the author’s submission that review of a decision that has already entered into force does not constitute an effective remedy. The Committee further notes that the State party has not demonstrated that there was a reasonable prospect

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<sup>3</sup> See, for example, communications No. 1867/2009, No. 1936/2010, No. 1975/2010, Nos. 1977/2010-1981/2010 and No. 2010/2010, *Levinov v. Belarus*, Views adopted on 19 July 2012, para. 8.2; and No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 6.2.

that such an appeal would provide an effective remedy in the author's case.<sup>4</sup> Given the circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under articles 19 (2) and 21 of the Covenant, declares them admissible and proceeds with a consideration of the merits.

*Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's allegations that her right to freedom of expression has been restricted arbitrarily, since, without sufficient justification, she was arrested and prevented from demonstrating publicly and from expressing her views. The Committee considers that the issue before it is to decide whether, by arresting the author and giving her an administrative fine, the State party's authorities have violated her rights under article 19 of the Covenant. Having considered the material before it, the Committee is of the view that, by arresting the author and subjecting her to an administrative fine, the State party imposed limitations on her rights, in particular on her right to impart information and ideas of all kinds, as prescribed under article 19 (2) of the Covenant.

7.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary for: (a) the respect of the rights and reputation of others; and (b) the protection of national security or public order (*ordre public*) or public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>5</sup> The Committee recalls<sup>6</sup> that it is for the State party to demonstrate that the restrictions imposed on the author's rights under article 19 were necessary and proportionate.<sup>7</sup>

7.4 The Committee considers that arresting the author and imposing on her an administrative fine for simply protesting and expressing her views does not appear to meet the standards of necessity and proportionality envisioned under article 19 of the Covenant. The Committee notes that neither the State party nor the national courts have provided any explanations for such restrictions. The Committee considers that, in the circumstances of the case, the arrest of the author and the administrative fine imposed on her were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. In the light of

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<sup>4</sup> See, for example, communication No. 2030/2011, *Poliakov v. Belarus*, Views adopted on 17 July 2014, para. 7.3.

<sup>5</sup> *Ibid*, para. 22.

<sup>6</sup> See, for example, communications No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3; and No. 1785/2008, *Olechkevitch v. Belarus*, Views adopted on 18 March 2013, para. 8.5.

<sup>7</sup> See, for example, communication No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para. 7.3.

the above, the Committee concludes that the rights of the author under article 19 (2) of the Covenant have been violated.

7.5 The Committee further notes the author's claim that her right to freedom of assembly under article 21 of the Covenant was also violated owing to the same fact that she was arrested and fined. In that context, the Committee recalls that the right to peaceful assembly guaranteed under article 21 of the Covenant is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society. That right allows for the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket or a demonstration), in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to this right is permissible unless it is imposed by law and is necessary in a democratic society, in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.<sup>8</sup>

7.6 In the present case, the Committee must consider whether the restrictions imposed on the author's right to freedom of assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes that, in the light of the information available on file, the police officers who arrested the author and the national courts that imposed the fine have not provided any justification or explanation as to how, in practice, the author's protest or demonstration in public would violate 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 as set out in article 21 of the Covenant. Accordingly, and in the absence of the State party's response regarding this matter, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 19 (2) and 21 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation, including reimbursement of the court fines, the legal costs and other related fees. The State party is also under an obligation to take steps to prevent similar violations in the future. In that connection, the Committee reiterates that the State party should review its legislation as it was applied in the present case with a view to ensuring that the rights under articles 19 and 21 of the Covenant can be fully enjoyed in the State party.<sup>9</sup>

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<sup>8</sup> See communication No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 8.4.

<sup>9</sup> See, for example, communication No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para. 9.

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 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 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 those Views.

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