



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
One hundredth and first session
14 March to 1 April 2011

Views

Communication No. 1604/2007

<u>Submitted by:</u>	Elena Zalesskaya (not represented by counsel)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	8 February 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 October 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	28 March 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Prosecution of the author for distributing newspapers and leaflets in the street
<i>Procedural issues:</i>	Degree of substantiation of claims
<i>Substantive issues:</i>	Freedom of expression, right to impart information, peaceful assembly, prohibition of discrimination
<i>Articles of the Covenant:</i>	Article 19, paragraphs 2 and 3; article 21; article 26.
<i>Articles of the Optional Protocol:</i>	2

On 28 March 2011, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1604/2007.

[Annex]

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 (one hundredth and first session)

concerning

Communication No. 1604/2007**

Submitted by: Elena Zalesskaya (not represented by counsel)
Alleged victims: The author
State party: Belarus
Date of communication: 8 February 2007 (initial submission)

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

Meeting on 28 March 2011

Having concluded its consideration of communication No. 1604/2007, submitted to the Human Rights Committee by Ms. Elena Zalesskaya 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, dated 8 February 2007, is Ms. Elena Zalesskaya, Ukrainian citizen born in 1932. She claims to be a victim of violation by Belarus¹ of her rights under article 19 and 21 of the International Covenant on Civil and Political Rights. The author is unrepresented.

The facts as presented by the author

2.1 On 27 July 2006, the author, together with other two persons, distributed copies of the officially registered newspapers “Tovarishch” (“Comrade”), “Narodnaya Volya” (“Peoples’ Will”), and informative leaflets to passers-by on a sidewalk in Vitebsk city. Soon after, they were arrested and taken by the police to the Department of Internal Affairs

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

¹ The Optional Protocol entered into force for Belarus on 30 December 1992.

of Oktyabrsky district of Vitebsk, where a report that they have committed an administrative offence under article 167, part 1, of the Belarus Code of Administrative Offences², was drawn up. The author was accused of violation of the procedure for organizing and conducting street marches. On 28 July 2006, she was fined 620'000 Belarusian rubles by the Vitebsk District Court.

2.2 On 14 August 2006, the author appealed the decision of the Vitebsk District Court to the Vitebsk Regional Court, which dismissed the appeal on 20 September 2006. On 25 September 2006, she filed an appeal with the Supreme Court, which upheld the decision of the Vitebsk Regional Court on 10 November 2006.

2.3 The author claims that she has exhausted all available domestic remedies.

The complaint

3.1 The author claims that the State party violated her right to impart information as well as the individuals' right to receive information, as guaranteed by article 19 of the Covenant.

3.2 She further claims that the court failed to establish that on 27 July 2006 she organized and conducted a street march from Liberty Square to Lenin Square in the city of Vitebsk. Three persons walking on a sidewalk and distributing copies of the officially registered newspaper "Tovarishch" ("Comrade"), activity for which they possessed written authorization³, and of other printed materials (leaflets), the legality of which was not contested by the court, cannot be considered as an organized mass event.

3.3 The author maintains that she and the other two persons involved in the distribution activity did not display any flags, posters or other propaganda materials, as shown in the video records presented by the police as proof of her guilt. Her acts were wrongly qualified by the court as an organized mass event.

3.4 The author also submits that she had not requested authorization for the organization of a mass event from the competent authorities, as required by law, because she had no intention of organizing such an event. The distribution of printed materials lasted no more than ten minutes before the arrest, and her actions neither impaired the rights and freedoms of others, nor resulted in damage to citizens' or municipal property. She considers that the decision of the court was unreasonable, unfair and cruel, noting that the sum of the fine imposed is the equivalent of two months of her retirement pension.

3.5 According to the author, the authorities did not present any facts disclosing a breach of national security or of public order during the distribution of printed materials, and thereby endorsed its peaceful character. Neither did they provide any documentary evidence on attempts upon the life and health of individuals, upon their morals or on breaches of their rights and freedoms. Therefore, the author claims that the State Party has also violated her right of peaceful assembly under article 21 of the Covenant.

State party's observations on admissibility and merits

4.1 On 2 May 2008, the State party provided its observations on the admissibility and merits of the communication. It submits that on 27 July 2006, a report on the commission

² Article 167, part 1, of the Belarus Code on Administrative Offences "violation of the procedure for organizing and conducting religious, sporting, cultural or other events, as well as of gatherings, rallies, street marches, demonstrations and pickets".

³ The author enclosed a copy of the written authorization given by the editor-in-chief of the newspaper "Tovarishch".

of an administrative offence under the article 167, part 1, of the Belarus Code of Administrative offences was drawn up in relation to the author. According to the report, the author, on 27 July 2006 at 6:10 PM, organized an unauthorized mass event – a street march of a group of individuals moving from Liberty Square to Lenin Street in Vitebsk, with the intent of publicly expressing their socio-political opinion (event accompanied by distribution of informative leaflets). During the police questioning, the author explained that, as a member of the United Civic Party (Obedinennaya Grazhdanskaya Partiya) and the President of the Vitebsk municipal organization of the United Civic Party, she received a letter from the Russian National Unity Party (Russkaya Natsionalnaya Edinstvo) with a call to interethnic hatred, and decided to reply to that letter by distributing leaflets among the inhabitants of Vitebsk.

4.2 The State party also points out that similar reports were drawn up in relation to the other two persons involved in the event. On 27 July 2006 at 6:10 PM, the author together with two other persons organized an unauthorized street march from Liberty Square to Lenin Square, distributing printed materials, the newspaper “Narodnaya Volya” (“Peoples’ Will”), and leaflets “Za nashu, za vashu svobodu” (“For our, for your freedom”). According to the report on the body search, the author was found in possession of thirteen copies of the newspaper “Narodnaya Volya”, around one hundred copies of the newspaper “Tovarishch” and around two hundreds informative leaflets.

4.3 On 28 July 2006, the reports on administrative offence were considered by the Vitebsk District Court. The author pleaded not guilty during the court hearings, and maintained that her movement on a sidewalk and distribution of newspapers and leaflets to passers-by cannot be considered a street march. The police agents explained that the author and the two other persons were walking together on Lenin Street, distributing leaflets and the newspaper “Tovarishch” to passers-by, thus attracting their attention. They also informed the court that no written request to hold on 27 July 2006 a street march from Liberty Square to Lenin Square was received by the Town Executive Committee. A video recording of the above-mentioned events was presented in court.

4.4 The author and the other two persons were held administratively responsible for a violation of the procedure for organizing and conducting a street march, as prescribed by article 167, part 1, of the Belarus Code of Administrative Offences, and were sanctioned with a fine of twenty basic units (620’000 Belarusian rubles). The court considered the author as the organizer of the unauthorized street march. The case was examined by the Vitebsk Regional Court and the Supreme Court of Belarus under the supervisory judicial review in October 2006 and November 2006 respectively. The decision of the first instance court was confirmed. Ms. Zaleskaya lodged no complaint with the Vitebsk Regional Prosecutor’s Office. However, she filed a complaint with the Prosecutor’s Office of Oktyabrsky District of Vitebsk, on 16 August 2006, which was returned to the author on 21 August 2006 for failure to pay the state fees.

4.5 The author’s claim that the administrative penalty for violating the order on organizing and conducting mass events constitutes a violation of her right to freely impart information, as stipulated in article 34 of the Constitution⁴, is unfounded. It argues that the

⁴ Article 34 of the Constitution of Belarus stipulates: (1) Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment; (2) State bodies, public associations and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests; (3) The use of information may be restricted by legislation with

right to freely impart information is fully observed in Belarus. The author tries to unreasonably present her lawful sanctioning for violating the order on organizing and conducting gatherings, meetings, street marches as a violation of one of her other constitutional rights. It was repeatedly explained to the author that the distribution of printed materials during the street march and thus the dissemination of information was not used as evidence in her administrative offence case. The author also attempted to challenge the court's evaluation of the factual circumstances of her case and to impose her own definition of the term "street march". In this regard, the State party recalls that legal norms, as well as the evaluation of facts of a case, are matters of the sovereign rights of each state, and thereby fall outside the scope of the Covenant. The author considered the court's decision to sanction her with a fine of 620'000 rubles as cruel, taking into account the amount of her retirement pension. However, this amount was the minimum established by law, and all the circumstances referred to by the author were taken into consideration at the time of proceedings.

Author's comments on the State party's observations

5.1 By letter of 17 July 2008, the author recalls that the purpose of her communication to the Human Rights Committee is an attempt to restore the right of Belarusian citizens to freely impart and receive information as guaranteed by the Belarusian Constitution and other laws, as well as by international treaties to which Belarus is a State party. The author acknowledges the State party's information regarding her arrest on 27 July 2006, the subsequent accusation of having violated the order on organizing and conducting street marches, the drawing up of the report on an administrative offence under article 167, part 1, of the Belarus Code of Administrative Offences, and the imposition of a fine of 620'000 Belarusian rubles.

5.2 The author further states that she has been the President of the municipal organization of the United Civic Party for more than 10 years and she knows the procedure for the organization and conduct of meetings, street marches and pickets. She further claims that she is aware of the sanctions applicable for violations of the Law "On Mass Events in the Republic of Belarus" (hereinafter Law "On Mass Events"), and that she has always considered herself as a law-abiding citizen. The action of 27 July 2006 was not intended to be a mass event. They merely distributed to passers-by the officially registered newspapers "Narodnaya Volya", "Tovarishch" and the informative leaflets. For this reason, she did not request an authorization to conduct an organized mass event from the competent authorities, as required by law. During the proceedings it was ascertained that the newspapers and leaflets distributed did not contain information that might violate the rights or reputation of other citizens. She also submits that the materials distributed did not disclose State secrets and did not contain calls to disrupt public order or to infringe upon public health or morals. This fact was not challenged by the Belarusian authorities in their observations on admissibility and merits. Accordingly, she claims that none of the restrictions on the right to freely impart information, as provided by the Belarusian legislation, are applicable to her case.

5.3 The author further refers to article 34 of the Constitution of Belarus, which provides that citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment. She points out that the State is the guarantor of the realization of this

the purpose to safeguard the honour, dignity, personal and family life of the citizens and the full implementation of their rights.

right, but police agents, as representatives of the State, through their unlawful actions, prevented her from realizing her right to freedom to impart information and the citizens' right to receive information.

5.4 The author further refers to the State party's assertion that she organized and conducted an unauthorized street march, together with two other persons. She submits that the Law "On Mass Events" does not define the term "mass event", and thereby the authorities wrongly qualified the event of 27 July 2006 as a mass event. On this matter, the law is ambiguous and lacks clarity, which consequently leaves room for errors, as has happened in her case. In her opinion, three persons walking on a sidewalk cannot be considered a mass street march. Nonetheless, it was qualified as such by the police and judiciary. The author reiterates her allegation that she is a victim of a violation of article 19 of the Covenant.

5.5. The author refers to other events which took place in 2007 and 2008 and, as a result of which she was fined 62'000 and 700'000 Belarusian rubles respectively for participating in unauthorized mass events (pickets).⁵

State party's further observations

6.1 In its submission of 12 January 2009, the State party recalls that the right to freedom of expression is guaranteed to nationals of State parties to the International Covenant on Civil and Political Rights by article 19, paragraph 2. It submits that the Republic of Belarus, as a State party to the Covenant, fully recognize and carries out its obligations under the Covenant, and refers to article 33 of the Constitution of Belarus which guarantees to everyone freedom of opinion and belief and freedom of expression. It further refers to article 26 of the Covenant and states that nationals of Belarus have, in addition to other rights, the constitutional right to judicial protection, which ensures to everyone free access to courts and equality of all persons before the law. Therefore, the State party maintains that Belarusian legislation provides all necessary conditions for the enjoyment of the citizens' right to freedom of expression, to receive and impart information. It further submits that Ms. Zaleskaya has violated the legal provisions establishing the order on organizing and conducting mass events, and unlawfully attempted to exercise her rights under article 19 of the Covenant and article 33 of the Constitution of Belarus.

6.2 With regard to the author's reference to events which took place in 2007 and 2008, the State party notes that neither the Optional Protocol nor the rules of procedure of the Human Rights Committee contain provisions allowing for the consideration of a new submission based on facts and allegations not related to the initial communication

Additional comments by the author

7.1 On 12 March 2009, the author submitted further comments on the State Party's observations and reiterates that articles 19 and 21 of the Covenant have been violated. She confirms the State party's assertion that the procedure for the organization of mass events is set forth in national legislation, and that the organizers of such events have to comply with certain requirements in order to obtain authorization for their conduct. However, she did not request authorization from the town authorities because, in her opinion, the action was not a "mass" event. The law "On Mass Events" does not specify any quantitative threshold which would assist citizens, police or courts in their assessment on whether an event is of a "mass" character or not. Consequently, when they planned the distribution of printed materials, they didn't think that three persons were to hold a "mass" event. She further

⁵ These events are not directly relevant to the present communication.

states that the State party did not provide any evidence that the distribution of newspapers and leaflets was a mass street march.

7.2 The author further explains that the existence of a by-law regulating the organization of mass events in Vitebsk city was another reason for which they did not request authorization from the town authorities. She refers to the Town Executive Committee's Decision No. 820 of 24 October 2003 "Regarding the procedure for the organization and conduct of mass events in Vitebsk city" (hereinafter Decision no. 820), and claims that it significantly restricts the right to freedom of opinion and belief and their free expression as well as the right of peaceful assembly of the citizens of Vitebsk. The restrictions are imposed by: (1) designation of specific locations where mass events may be organized (only three rarely visited parks as possible venue); (2) compulsory payment of special services of the city (police, garbage-collection services, ambulance, those activity need to be paid, according to the author, from the city budget which comes from tax payments); (3) impossibility to conduct mass events on holidays, commemorative and other significant days defined as such by the authorities. These conditions are contrary to article 19 of the Covenant.

Additional observations by the State party

8.1 On 4 September 2009, the State party submitted its further observations. It refers to the wording of article 19 of the Covenant and argues that paragraph 3 of the article in question imposes on the rights holder special duties and responsibilities, and thus the right to freedom of expression may be subjected to certain restrictions that shall be provided by law and are necessary for the respect of the rights or reputation of others and for the protection of national security or public order, of public health or morals. This provision is reflected in article 23 of the Constitution of Belarus, which stipulates that restriction upon personal rights and freedoms shall be permitted only in the instances specified by law, in the interest of national security, public order, protection of public health and morals as well as of rights and freedoms of other persons. Article 35 of the Constitution guarantees the freedom to hold assemblies, gatherings, street marches, demonstrations and pickets that do not disrupt public order and do not violate the rights of other citizens. The procedure for conducting such events is enshrined in law. In this regard, article 6 of the Law "On Mass Events" clearly states that it is the head of the local executive body who has the authority to take decisions regarding the time and the location of a mass event. Since the prohibitions and rules governing the conducting of mass events are contained in the Constitution and laws, as required by the Covenant, and since Decision no. 820 of the Vitebsk Town Executive Committee was adopted in conformity with the corresponding provisions of the laws, the State party does not find the above-mentioned decision in violation of its international legal obligations or in violation of the rights of citizens. Accordingly, the author's allegation that Decision No 820 "Regarding the procedure for the organization and conduct of mass events in Vitebsk city" restricts the right to freedom of opinion and belief and their free expression as well as the right of peaceful assembly of the citizens of Vitebsk is groundless.

8.2 The State party further submits that article 2 of the Law "On Mass Events" defines a mass event as any gathering, meeting, street march, demonstration, picket or any other events of a mass character. The action organized by the author was qualified by the competent organs as a street march, i.e. an organized mass movement of a group of persons on sidewalk or carriageway, boulevard, avenue, square, with the purpose to draw attention to any problems or publicly express one's socio-political opinion or protest. Since the law does not define the lower limit of the number of participants, the State party believes that qualifying an event or another as a "mass" event is the prerogative of the competent state organs, taking into account the existing situation at the site of the event. The author in general ignored the requirements of the Law and did not file a request for authorization to

conduct a mass event with the local executive body. The author has repeatedly participated in unauthorized mass events and therefore was justly held administratively responsible. In particular, on 25 March 2008 she was fined for repeated participation during a year in an unlawful mass event, namely a picket, which is defined in the Law "On Mass Events" as public expression by a citizen or a group of citizens of their socio-political, collective, personal or of other interests or of their protest (without a march), including by way of hunger strike, on any problems, with or without using posters, banners or other means. The State party submits that the author's claim that her actions as part of a group of three persons cannot be considered participation in a mass event is her personal opinion and constitutes an inappropriate interpretation of Covenant's provisions and the national legislation.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

9.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's argument that the author failed to lodge a complaint against the decision of the Court of Oktyabrsky district of Vitebsk (first instance court) to the Vitebsk Regional Prosecutor's Office, although it admitted that the author filed a complaint with the Prosecutor's Office of Oktyabrsky District of Vitebsk, which was rejected for failure to pay the state fees. The Committee also notes that the author appealed to the Supreme Court, which upheld the decision of the first instance court. In these circumstances, the Committee considers that it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (b) of the Optional Protocol, from examining the communication.

9.4 The Committee considers that the author's claims under article 19 and article 21 of the Covenant are sufficiently substantiated, for 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 this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee notes the author's allegation that her right to freedom to impart information under article 19, paragraph 2, was violated, since she was arrested and subsequently fined 620'000 Belarusian rubles (twenty basic units) for distributing newspapers and informative leaflets on 27 July 2006 in Vitebsk.

10.3 The Committee also takes note of the author's argument that the Law "On Mass Events" in the Republic of Belarus is ambiguous and lacks clarity, as it does not define precisely the term "mass event" and does not specify the lower limit of the number of participants in order for an event to be qualified as "mass" event. The State party acknowledges this fact and submits that the question of qualification of one or another event as a "mass" event shall be decided each time by the competent state organs.

10.4 The Committee considers that the legal issue before it is not the question whether the author's actions ought or ought not to be qualified as an unauthorized mass event in the sense of the Belarus laws, *i.e.* its task is not to evaluate the facts and evidence made by the courts of the State party or interpret its domestic legislation. Rather, it is called upon to decide whether the imposition of the fine amounts to a violation 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 participation in an unauthorized street march and not as "imparting of information". In the Committee's opinion, the above action of the authorities, irrespective of its legal qualification, amounts to a *de facto* limitation of the author's rights under article 19, paragraph 2, of the Covenant.

10.5 The Committee has to consider whether the restrictions imposed on the author's right to freedom of expression are justified under any of the criteria set out in article 19, paragraph 3. The Committee observes that, in the present case, the State party has merely argued that the right to freedom of expression as guaranteed by article 19, paragraph 2, of the Covenant, may be subject to limitations as provided for by law (article 19, paragraph 3, of the Covenant and article 32 of the Belarus Constitution). It further observes that the State party has not contested the author's assertion that the distributed newspapers and leaflets did not contain information that might harm the rights or reputation of others, did not disclose State secrets, and did not contain calls to disrupt public order or to infringe upon public health or morals. Furthermore, 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 considers that, in the circumstances of the case, the fine imposed on the author was not justified under any of the criteria set out in article 19, paragraph 3. It therefore concludes that the author's rights under article 19, paragraph 2, of the Covenant, have been violated⁶.

10.6 Regarding the author's claim under article 21 of the Covenant, the Committee considers that the State party has failed to demonstrate that the restrictions imposed on the author were necessary 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. Accordingly, the Committee concludes that the facts before it resulted also in a violation of the author's rights under article 21 of the Covenant.

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 a violation of the author's rights under article 19, paragraph 2, and article 21, of 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, including reimbursement of the present value of the fine and any legal costs incurred by the author⁷, as well as compensation. The State party is also under an obligation to take steps to prevent similar violations 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 in case a violation has been established, the Committee wishes to

⁶ Communication No. 907/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004, paragraph 7.3; Communication No. 1009/2001, *Shchetko v. Belaru*, Views adopted on 11 July 2006, para. 7.5.

⁷ See Communication No. 780/1997, *Laptsevich v. Belarus* Views adopted on 13 April 2000.

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 Committee's Views.

[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.]
