



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2030/2011

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

<i>Submitted by:</i>	Vasily Poliakov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	28 January 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>	17 July 2014
<i>Subject matter:</i>	Denial of permission to conduct a demonstration
<i>Substantive issues:</i>	Freedom of assembly
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2, paragraph 2, and 21
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 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. 2030/2011*

Submitted by: Vasily Poliakov (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 28 January 2010 (initial submission)

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

Meeting on 17 July 2014,

Having concluded its consideration of communication No. 2030/2011, submitted to the Human Rights Committee by Vasily Poliakov 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 pursuant to article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Vasily Poliakov, a Belarus national born in 1969. He claims to be a victim of violations by Belarus of his rights under article 21 of the International Covenant on Civil and Political Rights and under article 2, paragraph 2, of the Covenant, read in conjunction with article 21 thereof.¹ The author is unrepresented.

The facts as submitted by the author

2.1 On 9 September 2008, the author filed an application with the Executive Committee of the City of Gomel requesting to organize a demonstration in the form of a picket on 18 September 2008, intended to call on citizens not to participate in the 28 September 2008 parliamentary elections. He enclosed a written undertaking to organize and conduct the public demonstration, as required by law.

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

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

2.2 On 12 September 2008, the Executive Committee issued a decision prohibiting the demonstration. On an unspecified date, the author filed an appeal against the decision before the Central Regional Court in Gomel, which was rejected on 15 October 2008. At the end of October 2008, the author filed a cassation appeal before the District Court of Gomel against the decision of the Regional Court. On 9 December 2008, the District Court issued a ruling upholding the decision of the Regional Court and rejecting the author's appeal. The District Court based its ruling exclusively on provisions of the domestic legislation, despite the fact that the appeal pointed out violations by Belarus of its international legal obligations. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author submits that article 21 of the International Covenant on Civil and Political Rights does not allow any restrictions on the freedom of assembly, unless it can be justified on the grounds of national security, public order, public health or morals or limitation on the rights and liberties of other persons. The author's request to conduct a demonstration was rejected because of the following alleged reasons: the manner of conducting the demonstration was not specified in the request; and the request did not comply with point 2 of Decision No. 299 of 2 April 2008 of the Executive Committee of the City of Gomel ("Regarding public gatherings in Gomel town"), which states that public gatherings can only be organized if the organizers present written commitments from the Department of Interior of the District Administration (to ensure public order during the demonstration), the Health Department (to ensure medical care during the demonstration) and the Utilities Department (to ensure cleaning of the area where the demonstration would take place). The author maintains that none of the above grounds constitute a valid justification to restrict his freedom of assembly under article 21 of the Covenant.

3.2 The author also submits that article 6 of the 1997 Law, "Regarding public events in the Republic of Belarus", allows the executive authorities, upon taking into consideration public safety and normal traffic, to request the organizers of a public event to change the date, time or location. The author points out that the executive authorities never contacted him, the organizer, to discuss and changes or any substantive problems or procedural flaws in his request.

3.3 The author further submits that Decision No. 299 of 2 April 2008 of the Executive Committee creates considerable obstacles for organizers of public events, such as requiring the procurement of commitments from three separate public service departments and allowing public gatherings to be organized in only one specific location on the outskirts of the City of Gomel. The author maintains that the above restrictions violate the obligations of the State party under article 2, paragraph 2, of the Covenant, since the State party has failed to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in article 21 of the Covenant.

The State party's observations on admissibility

4.1 On 5 October 2011, the State party submitted that there were no legal grounds for considering either the admissibility or the merits of the communication, since it was registered in violation of article 1 of the Optional Protocol. It maintains that the author has not exhausted all available domestic remedies as required by article 2 of the Optional Protocol, as he did not file any requests for supervisory review to the President of the Supreme Court, the General Prosecutor's Office or the Heads of District Prosecutor's Offices.

4.2 On 25 January 2012, the State party submitted that, upon becoming a State party to the Optional Protocol, it agreed to recognize 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 of the Optional Protocol. The State party maintains that, under the Optional Protocol, States parties have no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the 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 complaint procedure, States Parties should be guided first and foremost by the provisions of the Optional Protocol," and "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 to the Covenant on Civil and Political Rights 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 also maintains that decisions taken by the Committee on such "declined communications" will be considered by its authorities as "invalid".

Author's comments on the State party's observations

5.1 On 21 March 2012, the author submitted that the State party was challenging the Committee's right to develop its rules of procedure, as well as the usual practice of international bodies to develop internal regulations for their functioning. He maintains that the rules of procedure do not contradict the Covenant and are accepted by States as stemming from the competency of the Committee. Furthermore, without internal regulations international bodies would not be able to function.

5.2 The author further submits that, by becoming a State party to the Optional Protocol, Belarus recognized not only the Committee's competence to issue decisions regarding the existence or absence of violations of the Covenant, but, in accordance with article 40, paragraph 4, of the Covenant, also recognized the Committee's competence to transmit to States parties its reports and general comments that it considers appropriate. Under article 2 (a) of the Covenant, the State party is also obliged to ensure that any person within its territory and subject to its jurisdiction has an effective remedy if his or her rights under the Covenant are violated. By accepting the competence of the Committee to determine, in concrete cases, the effectiveness of a particular domestic remedy, the State party also undertook to take into consideration the Committee's general comments. The role of the Committee ultimately includes interpretation of the provisions of the Covenant and development of jurisprudence. By refusing to recognize the standard practices, methods of work and precedents of the Committee, Belarus in effect refuses to recognize its competence to interpret the Covenant, which contradicts the Committee's objective and goals.

5.3 The author submits that, having voluntarily accepted the jurisdiction of the Committee, the State party has no right to infringe on its competence and ignore its opinion.² The State party is not only obliged to implement the decisions of the Committee, but it is also obliged to recognize its standards, practices, methods of work and precedents. The above argument is based on the most important principle of international law — *pacta sunt servanda* —, according to which every treaty in force is binding upon the parties to it and must be performed by them in good faith.

² The author refers to the Committee's general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, paras. 11–13.

5.4 Regarding the argument that he has not exhausted all domestic remedies, the author submits that such remedies should be available and efficient and that, according to the Committee's practice, an efficient remedy is one that provides compensation and offers a reasonable prospect of redress. The author refers to the Committee's consistent jurisprudence that supervisory review is a discretionary review process common in former Soviet republics, which does not constitute an effective remedy for the purposes of exhaustion of domestic remedies. The author further maintains that the European Court of Human Rights employs a similar standard.³ He also maintains that the ineffectiveness of the above-mentioned remedy was confirmed in the recent case of Vladislav Kovalev, who was executed while the Supreme Court was conducting a supervisory review of his case.

Issues and proceedings before the Committee

The State party's lack of cooperation

6.1 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 article 1 of the Optional Protocol and because the author failed to exhaust the domestic remedies; that it has no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Protocol; and that decisions taken by the Committee on the present communication will be considered as "invalid".

6.2 The Committee recalls that under article 39, paragraph 2, of the International Covenant on Civil and Political Rights, it has the authority to establish its own rules of procedure, which States parties have agreed to recognize. The Committee further observes that, by adhering to the Optional Protocol, a State party 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 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 thereof, to forward its views to the State party concerned and to the individual (art. 5, paras. 1 and 4). Taking any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its views would be incompatible with the obligations of the State party.⁴ It is up to the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring outright that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.⁵

³ See the European Court of Human Rights, *Tumilovich v. Russia*, Application No. 47033/99, decision as to admissibility of 22 June 1999.

⁴ See communication No. 869/1999, *Piandiong et al. v. The Philippines*, views adopted on 19 October 2000, para. 5.1; as well as 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.

⁵ See 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.

Consideration of admissibility

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

7.2 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.

7.3 The Committee notes the State party's challenge to the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, namely the author's failure to petition the President of the Supreme Court, the General Prosecutor's Office or the Heads of District Prosecutor's Offices for supervisory review of the decisions handed down by the courts which prohibited his demonstration. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor's Office against a judgment having the force of *res judicata* does not constitute an effective domestic remedy which must be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol. The Committee also considers that filing a request for supervisory review to the President of a court with regard to a court decision that has entered into force constitutes an extraordinary remedy, which would depend on the discretionary powers of a judge, and the State party would have to show that there is a reasonable prospect that such request would result in an effective remedy in the circumstances of the case.⁶ However, the State party has not shown whether, and in how many cases, petition to the President of the Supreme Court for supervisory review has been successful in cases concerning the right to freedom of assembly. In the circumstances, the Committee finds that the provisions of article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the present communication.

7.4 The Committee notes the author's submission that the State party has violated its obligations under article 2, paragraph 2, of the Covenant, read in conjunction with article 21, since it failed to adopt such laws or other measures as may be necessary to give effect to the rights recognized in article 21 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.⁷ The Committee also considers that the provisions of article 2 cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee notes, however, that the author has already alleged a violation of his rights under article 21, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider that examination of whether the State party also violated its general obligations under article 2, paragraph 2, of the Covenant, read

⁶ See, *inter alia*, communications No. 836/1998, *Gelazauskas v. Lithuania*, views adopted on 17 March 2003, para. 7.4; No. 1873/2009, *Alekseev v. the Russian Federation*, views adopted on 25 October 2013, para. 8.4; No. 1851/2008, *Sekerko v. Belarus*, views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision adopted on 26 July 2011, para. 6.2.

⁷ See communications No. 2202/2012, *Castañeda v. Mexico*, decision adopted on 29 August 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; No. 1887/2009, *Peirano Basso v. Uruguay*, views adopted on 19 October 2010, para. 9.4.

in conjunction with article 21, to be distinct from examination of the violation of the author's rights under article 21 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

7.5 The Committee considers that the author has sufficiently substantiated his claim under article 21 of the Covenant for purposes of admissibility. Accordingly, it declares this part of the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 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.

8.2 The Committee notes the author's claim that his freedom of assembly was restricted without valid justification under article 21 of the Covenant, since his request to organize a demonstration was rejected for the following reasons: the manner of conducting the demonstration was not specified; and the absence of written commitments from the respective departments of the District Administration to ensure public order and medical care during the demonstration and subsequent clean-up of the area where it would take place. The Committee recalls that under article 21 of the Covenant, any restriction on the right of peaceful assembly must be imposed in conformity with the law and must be necessary in a democratic society for one of the public purposes specified in the Covenant, namely, 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 further notes that the disproportionate interferences with the right protected under article 21 of the Covenant cannot be deemed as "necessary".⁸

8.3 The Committee observes that the restrictions imposed on the author's freedom of assembly were based on provisions of domestic law and included the burdensome requirements of securing three separate written commitments from three different administrative departments, which might have rendered illusory the author's right to demonstrate. The State party has failed, however, to present any arguments as to why those requirements 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. Furthermore, the State party did not show how rejection of the request to demonstrate constituted a proportionate interference with the right of peaceful assembly – i.e., that it was the least intrusive measure to achieve the purpose sought by the State party and that it was proportionate to the interests the State party sought to protect.⁹ For example, the State party did not explain why the author was not given the opportunity to amend his request to carry out a demonstration and add details that were not fully specified in the original request. Accordingly, the Committee concludes that the facts before it resulted in a violation of the author's rights under article 21 of the Covenant.¹⁰

9. 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

⁸ See also communication No. 1851/2008, *Sekerko v. Belarus*, views adopted on 28 October 2013, para. 9.6; and the Committee's general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 34.

⁹ See the Committee's general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 34.

¹⁰ See communication No 1604/2007, *Zalesskaya v. Belarus*, views adopted on 21 March 2011, para. 10.6.

facts before it disclose a violation by Belarus of the author's rights under article 21 of the Covenant. The State party also breached its obligations under article 1 of the Optional Protocol to the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which should include compensation, as well as reimbursement of any legal costs paid by the author. The Committee invites the State party to review its relevant legislation on the organization of public events, with a view to aligning it with the requirements of article 21 of the Covenant. The State party should also ensure that no similar violations occur in the future.

11. 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 or not 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 and enforceable remedy when a violation has been established, 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.
