



**International Covenant on
Civil and Political Rights**

Distr.: General
17 August 2015

Original: English

Human Rights Committee

Communication No. 1988/2010

**Views adopted by the Committee at its 114th session
(29 June–24 July 2015)**

<i>Submitted by:</i>	Valentin Evrezov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	5 January 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 September 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	15 July 2015
<i>Subject matter:</i>	Local administration refusing the author's request to hold a demonstration
<i>Procedural issue:</i>	Admissibility — manifestly ill-founded; facts and evidence
<i>Substantive issue:</i>	Freedom of assembly
<i>Article of the Covenant:</i>	21
<i>Article of the Optional Protocol:</i>	2

GE.15-13664(E)



Please recycle



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 (114th session)

concerning

Communication No. 1988/2010*

Submitted by: Valentin Evrezov (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 5 January 2009 (initial submission)

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

Meeting on 15 July 2015,

Having concluded its consideration of communication No. 1988/2010, submitted to the Human Rights Committee 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 Valentin Evrezov, a Belarusian national born in 1954. 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. The author is unrepresented. The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as presented by the author

2.1 On 15 August 2007, the author filed an application with the Executive District Committee of the town of Zhlobin with a request to hold, on 30 August 2007, together with several other citizens, a picket to protest against the politically motivated imprisonment of the former presidential candidate, Aleksand Kozulin.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier De Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

2.2 On 23 August 2007, the Executive District Committee of Zhlobin issued a decision prohibiting the event. The reason given for the prohibition was that the declared purpose of the demonstration contradicted a court verdict, according to which Mr. Kozulin's sentence was unrelated to his political opinions.

2.3 On an unspecified date, the author and his fellow campaigners filed an appeal against the decision of Executive Committee before the District Court, which was rejected on 17 October 2007. The Court noted that, since, according to the verdict, Mr. Kozulin's political views had not been the basis for his sentence, the authorities' refusal to allow the event was legal and justified. The author filed a cassation appeal against the District Court's decision to the Regional Court of Gomel. On 27 November 2007, the Regional Court confirmed the decision of the first instance and rejected the appeal.

2.4 In addition, the author requested his case to be reviewed under the supervisory review procedures to the Chair of the Regional Court and to the Chair of the Supreme Court of Belarus. Both rejected his appeals, on 14 March 2008 and on 5 June 2008, respectively. In his appeals, the author claimed that the refusal to allow him to conduct his campaign violated article 21 of the Covenant.

The complaint

3. The author claims to be a victim of violation by Belarus of his rights under article 21 of the Covenant. He submits that neither the executive authorities nor the courts attempted to explain whether the restriction imposed on his right to freedom of association was permissible for the purposes of the second sentence of article 21 of the Covenant. He maintains that the above restriction was necessary neither in the interest of national security or public order, nor for the protection of the public morals or the health or rights of other persons. He submits that the courts refused to apply the provision of the Covenant, in violation of articles 26 and 27 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations and of article 15 of the Law Regarding International Treaties of the Republic of Belarus, which states that the provisions of international treaties that have entered into force in Belarus constitute part of the applicable law in the State party.

State party's observations on admissibility

4.1 In its note verbale of 6 January 2011, the State party, *inter alia*, recalled that it had repeatedly expressed its legitimate concerns to the Committee regarding unjustified registration of individual communications, and that the majority of its concerns related to communications that had been submitted by individuals who deliberately had not exhausted all available remedies in the State party, including by filing, an appeal with the Prosecutor's Office under the supervisory review procedure against judgements that have taken effect. The State party added that, *inter alia*, the present communication had been "registered in violation of the provisions of the Optional Protocol" and that, therefore, there were "no legal grounds for (its) consideration by the State party".

4.2 In its letter of 19 April 2011, the Chair of the Committee informed the State party that it was implicit in article 4, paragraph 2, of the Optional Protocol to the Covenant that a State party must provide the Committee with all the information at its disposal. Therefore, the State party was requested to submit further observations as to the admissibility and the merits of the present case. The Chair also informed the State party that, in the absence of further information from it, the Committee would proceed with the examination of the communication based on the information available to it.

4.3 On 30 September 2011, the State party was again invited to submit its observations on admissibility and merits.

4.4 On 5 October 2011, the State party submitted, inter alia, with regard to the present communication, that it believed that there were no legal grounds for the consideration of the author's communication insofar as it had been registered in violation of article 1 of the Optional Protocol. It maintained that all available domestic remedies had not been exhausted, as required by article 2 of the Optional Protocol, since no appeal had been filed to the Prosecutor's offices for supervisory judicial review.

4.5 On 25 October 2011, the State party was again invited to submit its observations on the admissibility and merits. It was again informed that, in the absence of further information from the State party, the Committee would proceed with the examination of the communication based on the information available to it.

4.6 In a note verbale dated 25 January 2012, the State party submitted that, upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claimed to be victims of a violation by the State party of any rights protected by the Covenant. It noted, however, that that recognition had been undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintained that, under the Optional Protocol, States parties had no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in accordance with the Vienna Convention on the Law of Treaties. It submitted 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 practice, methods of work and case law are not subjects of the Optional Protocol. It also submitted that any communication registered in violation of the provisions of the Optional Protocol would be viewed by the State party as incompatible with the Optional Protocol and would be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications would be considered by its authorities as "invalid". The State party considered that the present communication, as well as several other communications before the Committee, had been registered in violation of the Optional Protocol.¹

Issues and proceedings before the Committee

The State party's lack of cooperation

5.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligation to recognize the Committee's rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and that any decision taken by the Committee on the present communication will be considered "invalid" by its authorities.

5.2 The Committee recalls that, under article 39, paragraph 2, of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's

¹ See, inter alia, communication No. 1949/2010, *Pavel Kozlov et al. v. Belarus*, Views adopted on 25 March 2015, para. 4

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 and the individual (art. 5, paras. 1 and 4). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.² It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand 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.³

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 case is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee recalls its jurisprudence, according to which a petition to a Prosecutor's Office to initiate supervisory review to review court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.⁴ Accordingly, it considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the authors' claim that his rights under article 21 of the Covenant have been violated as neither the State party's courts, nor the Zhlobin local authorities explained whether the restriction imposed on his right to freedom of association was permissible for the purposes of the second sentence of article 21 of the Covenant; this remained unrefuted by the State party. In the circumstances, the Committee considers that the author has sufficiently substantiated his claim that raises issues covered under article 21 of the Covenant for purposes of admissibility. 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 present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

² See, inter alia, communication No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

³ See also communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1 and 8.2; and communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1. and 5.2.

⁴ See communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, at para 8.4; communication No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para.7.3.

7.2 The Committee notes the author's claim that his right to freedom of peaceful assembly has been restricted arbitrarily, since neither the local authorities, nor the courts attempted to explain whether the restriction of his right to freedom of association was permissible under article 21 of the Covenant; that the limitation in question was not necessary under any of the reasons listed in the second sentence of article 21 of the Covenant, notably in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others, and that, thus, his right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed limitation was also not necessary in a democratic society.

7.3 The Committee notes that the decision of 23 August 2007 of the Zhlobin Executive District Committee prohibiting the picket on the ground that the purpose of the event, namely, to protest against the politically motivated imprisonment of the former presidential candidate, Mr. Kozulin, contradicted a court ruling pursuant to which Mr. Kozulin's sentence was said to have been unrelated to his political opinions. Furthermore, the relevant decisions of the domestic courts, which find the restriction imposed on the author to be in conformity both with the Law on Mass Events and the Constitution of Belarus, provide no justification for the necessity of imposing the restriction in question.

7.4 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of one's views and opinions and indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including the right to a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to decide on the purpose of the demonstration and no restriction to this right is permissible, unless (a) imposed in conformity with the law; and (b) 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 to facilitate 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.⁵

7.5 In the present case, the purpose of the author was to protest against the motives for the imprisonment of a former presidential candidate, Mr. Kozulin, but his request was rejected and the event was not authorized. In these circumstances, and in the absence of any explanations thereon from the State party, the Committee decided to give due weight to the author's allegations. Accordingly, it considers that the decision of the State party's local authorities to deny the author's right to assemble peacefully with others, with a purpose of their choice, to be unjustified, as the fact that the motives alleged by the author have been rejected by the court should not prevent him from continuing to invoke them in the exercise of his rights under the Convention. The Committee also notes, based on the material on file, that in their replies to the authors, the national authorities failed to demonstrate how a picket held with the purpose to protest against the imprisonment of a political figure and a former presidential candidate would jeopardize national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee notes that the prohibition of the assembly based on the argument that the demonstration's purpose contradicts the verdict against Mr. Kozulin and that his sentence is unrelated to his political opinions, unduly limits the author's right to freedom of

⁵ See, for example, *Turchenyak et al. v. Belarus*, para. 7.4; and *Pavel Kozlov et al. v. Belarus*, para. 7.4.

assembly. In these circumstances, the Committee concludes that the author's right under article 21 of the Covenant has been violated.

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 right under article 21 of the International Covenant on Civil and Political Rights.

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, including reimbursement of any legal costs incurred by the author, and an adequate compensation. 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 1997.⁶

10. 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. 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 in case 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 present 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.

⁶ See, for example, communications No. 1851/2008, *Vladimir Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 11; *Turchenyak and others v. Belarus*, para.9; No. 1790/2008, *Sergei Govsha, Viktor Syritsa and Viktor Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.