



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1836/2008

Views adopted by the Committee at its 106th session (15 October–2 November 2012)

<i>Submitted by:</i>	Vladimir Katsora (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	20 May 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 December 2008 (not issued in document form)
<i>Date of adoption of decision:</i>	24 October 2012
<i>Subject matter:</i>	Imposition of an administrative arrest to an individual for having distributed leaflets in violation of the right to disseminate information without unreasonable restrictions
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to impart information; permissible restrictions
<i>Articles of the Covenant:</i>	2; 19; 21
<i>Article of the Optional Protocol:</i>	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 (one hundred and sixth session)

concerning

Communication No. 1836/2008*

Submitted by: Vladimir Katsora (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 20 May 2008 (initial submission)

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

Meeting on 24 October 2012,

Having concluded its consideration of communication No. 1836/2008, submitted to the Human Rights Committee by Vladimir Katsora 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 is Vladimir Katsora, a Belarusian national born in 1983. He claims to be a victim of violations by the State party of his rights under articles 19, paragraph 2, and 21, read in conjunction with article 2 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

The facts as presented by the author

2.1 In April 2006, the author, then deputy chairperson of the Gomel regional branch of the United Civic Party organization, printed out and distributed leaflets, informing the Gomel population about a meeting intended to take place in this city, on 25 April 2006, without however indicating either exact place or time of the event. When the leaflets were

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanela Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

distributed, the author, as an organizer, had yet not received the authorization of the Gomel Regional Executive Committee to conduct the event in question. Under article 8 of the Law on Mass Events of 30 December 1997, before receiving authorization to hold a mass event, the organizer(s) or other persons have no right to announce in mass media information concerning the date, place and the time of its holding, or to prepare and distribute leaflets, posters and other materials in this regard.

2.2 On 14 April 2006, the police seized a number of the leaflets in question, which were distributed by other individuals in Gomel. On 18 April 2006, the Zheleznodorozhny District Court of Gomel found the author guilty of having committed an administrative offence under article 167-1, part 1, of the Code on Administrative Offences (breach of the procedure for organizing and conduct of events, assemblies, etc.) and sentenced him to 10 days of administrative arrest. On an unspecified date, the author complained to the Gomel Regional Court. On 23 May 2006, the Chairperson of the Gomel Regional Court upheld the ruling of the Zheleznodorozhny District Court of Gomel. The author explains that he did not appeal the ruling of the Gomel Regional Court to the Supreme Court, as according to him, supervisory review proceedings in Belarus are ineffective, as they do not automatically result in the review of the case. He refers to the Committee's case law, according to which only available and effective remedies are to be exhausted.

2.3 Subsequently, on 12 February 2008, the author printed out and distributed leaflets, informing the population about a forthcoming debate between Aleksander Milinkevich, former presidential candidate, and citizens of Gomel, to take place on 15 February 2008. On 13 February 2008, the author was summoned to the Department of Internal Affairs of the Soviet District of Gomel, where a record stating that he had committed an administrative offence under article 23.34, part 2, of the Code of Administrative Offences (breach of the order for organization or conduct of a mass action or picket) was drawn up. On the same day, the Soviet District Court in Gomel found the author guilty of having committed an administrative offence under article 23.34, part 2, of the Code of Administrative Offences and sentenced him to seven days' administrative arrest.

2.4 On 21 March 2008, on appeal, the Gomel Regional Court confirmed the ruling of the Soviet District Court of Gomel; the decision was final and enforceable. The author complained to the Supreme Court and, on 13 May 2008, a Deputy Chairperson of the Supreme Court rejected his request to have the case examined under the supervisory review proceedings. In his reply, the Deputy Chairperson specifically referred to article 8 of the Law on Mass Events and the fact that the leaflets in question were printed and distributed in the absence of official permission to organize a public debate with Mr. Milinkevich in Gomel.

2.5 The author observes that article 8 of the Law on Mass Events prohibiting the announcement in mass media of the date, venue and time of holding of a mass action and the preparation and distribution of the leaflets, posters and other materials for this purpose before the receipt of authorization to hold the mass action in question does not meet the requirement of necessity: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals, as required by article 19, paragraph 3, of the Covenant. He notes that article 35 of the Belarus Constitution guarantees the right to hold assemblies, rallies, street marches, demonstrations and pickets, provided they do not disturb law and order or violate the rights of other citizens; this article also stipulates that the procedure for conducting the above events shall be determined by law. According to the author the law in question – the Law on Mass Events and its article 8 in particular – is incompatible with the requirements of articles 19 and 21 of the Covenant.

The complaint

3. The author claims to be a victim of violations by the State party of his rights under article 19, paragraph 2, and article 21; both read in conjunction with article 2 of the

Covenant, as the authorities have effectively deprived him, without justification, of the right to freedom of expression and the right of peaceful assembly.

State party's observations on admissibility and merits

4.1 By note verbale of 19 February 2008, the State party explained that under article 35 of the Constitution, the freedom to hold assemblies, rallies, street processions, demonstrations, and pickets which do not disturb the law and order and do not violate the rights of the other citizens is guaranteed by the State; the procedure for conducting such events shall be determined by law. The 1997 Law on Mass Events sets up such a procedure and is aimed at creating conditions for the realisation of the citizens' constitutional rights and freedoms and the protection of public safety and public order during the holding of such events on the streets, in squares and at other public locations.

4.2 The State party recalls that on 18 April 2006, the Zheleznodorozhny District Court of Gomel found the author guilty under article 167-1 of the Code of Administrative Offences for having breached the procedure for organizing a meeting and he was sentenced to 10 days of administrative arrest. This decision was confirmed by the Gomel Regional Court on 23 May 2006.

4.3 On 13 February 2008, the Court of the Soviet District in Gomel sentenced the author to 7 days of administrative arrest, for having breached article 23.34, part 2, of the Code of Administrative Offences (non-respect of the procedure for organizing a meeting). On 21 March 2008, this decision was confirmed on appeal by the Gomel Regional Court. On 13 May 2008, a Deputy Chairperson of the Supreme Court rejected the author's request to have the case examined under supervisory review proceedings.

4.4 The State party points out that, under article 12.11 of the Procedural-Execution Code of Administrative Offences, requests to have a final decision examined under supervisory review proceedings shall be submitted within six months after the adoption of the final decision; no claim would be examined after the elapsing of this time limit. The author has thus failed to exhaust available domestic remedies, as he did not seek a supervisory review of his case with the Chairperson of the Supreme Court and the General Prosecutor's Office. The author's contention that supervisory review is not an effective judicial remedy as it does not lead to the re-examination of a case is, according to the State party, a personal opinion of the author, unsupported by evidence. In addition, the author is not consistent, as in 2006, he did not submit a supervisory review complaint, but in 2008, he complained to the Supreme Court under the supervisory proceedings; therefore, the author recognized the effectiveness of the proceedings.

4.5 The State party provides details on the possibility of filing appeals against court decisions concerning administrative offences, including through requests for supervisory review. It maintains that supervisory review proceedings constitute an effective remedy. In this context, the State party explains that, of 2,739 appeals received by the Prosecutor's Office in 2008 against rulings concerning cases of administrative offences, 422 were satisfied. During this period, the General Prosecutor's Office had introduced 105 protest motions to the Supreme Court concerning such cases and 101 of them were satisfied.

4.6 On 26 May 2009, the State party reiterated its previous observations and added that article 8 of the Law on Mass Events forbids any announcements concerning an event that is yet not authorized in the mass media (concerning date, venue, etc.), or to produce related leaflets, posters and other materials. Mr. Katsora was distributing leaflets containing information concerning a meeting with Mr. Milinkevich in February 2008, prior to receiving authorization for the meeting and for this reason his liability was engaged correctly.

4.7 The State party explains that its laws do not contradict article 21 of the Covenant. It notes that this provision allows for restrictions on the freedom of assembly, if imposed in conformity with the law and necessary in a democratic society 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. Article 19, paragraph 3, of the Covenant, similarly, permits restrictions to freedom of expression; the restrictions shall be provided by law and necessary for respect of the rights or reputations of others; or for the protection of national security or of public order (ordre public), or of public health or morals. The Covenant's provisions are included in national law. In particular, article 33 of the Constitution guarantees the freedom of opinion, conscience and their free expression. Article 35 of the Constitution guarantees the freedom of assembly and holding of meetings, street processions, demonstrations and picketing which do not breach the public order and rights of others.

4.8 The State party adds that article 23 of the Constitution allows for the restriction of individual rights and freedoms but only in cases provided by law and necessary in the interests of national security, public order, protection of the morals, public health, rights and freedoms of others. Under article 35 of the Constitution protecting freedom of assembly, the procedure for conducting mass events shall be determined by law. The law adopted by the authorities in this connection is the Law on Mass Events (1997). This law established an authorization and not a notification regime. Restrictions can only be imposed if they are provided by law and are in the interest of national security, public order, and protection of morals, health and rights and freedoms of others.

Author's comments on the State party's observations

5.1 On 11 April 2009, the author noted that under article 5, paragraph 2, of the Optional Protocol, individuals must exhaust all available domestic remedies. He recalls that in its case law, the Committee has concluded that supervisory review is not a remedy which shall be exhausted. He did not use all procedural possibilities to file a supervisory review appeal, as he believes that only ordinary appeals lead to a systematic review of a case; according to him, supervisory review does not lead to a re-examination of a case. Thus, according to the author, in both proceedings against him, domestic remedies were exhausted with the examination of his appeals by the Gomel Regional Court, after which the first-instance courts' decisions became enforceable.

5.2 As to the fact that he had appealed to the Supreme Court under the supervisory review proceedings in one of the cases, the author explains that submitting a supervisory review request is a right, not an obligation.

5.3 On 14 November 2009, the author added that the freedoms protected under articles 19 and 21 can be restricted, but only in line with the requirements of article 19, paragraph 3, and/or the second sentence of article 21, of the Covenant. On the other hand, article 2, paragraph 1, of the Covenant requires that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind. Article 2, paragraph 2, of the Covenant provides that, where not already provided for by existing legislative or other measures, each State Party to the Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the Covenant's provisions, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant.

5.4 In this connection, the author claims that each time when applied in practice, the requirement of article 8 of the Law on Mass Events not to disseminate information, leaflets, posters, etc., concerning a mass event for which no authorization has yet been received, violates articles 19 and 21, of the Covenant. In his case, the application of article 8 of the above-mentioned law amounted to the limitation of his right to disseminate information and right to peaceful assembly.

5.5 The author further notes that in his case, the courts failed to explain how the limitations of his rights under articles 19 and 21 of the Covenant were justified. Similarly,

the State party in its replies has also failed to explain why the limitations on the author disseminating information on a future meeting with a known politician and citizens and information concerning a peaceful assembly were necessary for the purposes of the legitimate aims listed in article 19, paragraph 3, and the second sentence of article 21 of the Covenant.

Issues and proceedings before the Committee

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 it 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 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 file an application for supervisory review to the Chairman of the Supreme Court of Belarus and to the Prosecutor's Office, with a supervisory review complaint and that, therefore, he had failed to exhaust available domestic remedies. The Committee further notes the author's explanation that he did not appeal with the Chairman of the Supreme Court of Belarus or the Prosecutor's Office, as supervisory review proceedings do not constitute an effective domestic remedy, even if he had submitted one request which was rejected by a Deputy-Chairman of the Supreme Court in May 2008. The Committee also notes that the State party has not shown whether and in how many cases supervisory review procedures were applied successfully in cases concerning freedom of expression. The Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions which have entered into force do not constitute a remedy, which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.¹ In the light of this, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol, from examining the present communication.

6.4 The Committee considers that the author has sufficiently substantiated his claims under article 19, paragraph 2, and article 21; read together with article 2, paragraph 3, of the Covenant, for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the 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.

7.2 The Committee has noted the author's claim that the application of the Law on Mass Events has breached his rights under articles 19, paragraph 2, and 21 of the Covenant. The Committee must thus verify, first, whether the limitation of the author's rights to freedom of expression (right to disseminate information) and the imposition of his administrative arrest for having distributed leaflets concerning two meetings in 2006 and 2008 for which

¹ See, for example, *Vladimir Schumilin v. Belarus*, Communication No. 1784/2008, Views adopted on 23 July 2012, paragraph 8.3.

authorization had not yet been given, violated his rights under article 19, paragraph 2, of the Covenant.

7.3 The Committee recalls in this respect its general comment No. 34 (2011) on freedoms of opinion and expression,² in which it stated inter alia that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society and that they constitute the foundation stone for every free and democratic society.³ Any restrictions to freedom of expression must conform to the strict tests of necessity and proportionality and “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”.⁴

7.4 It further notes the State party’s explanation that the author was subjected to an administrative sanction, under national law, for having breached the procedure for the organization and holding of a meeting. The Committee observes that article 19, paragraph 3, of the Covenant provides for certain restrictions only as provided by law and necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. The Committee must thus consider whether the restrictions imposed on the author’s right to freedom of expression, even if provided by law, are justified under any of the criteria set out in article 19, paragraph 3.

7.5 The Committee has noted the State party’s explanation that the Law on Mass Events is aimed at creating conditions for the realization of citizens’ constitutional rights and freedoms and the protection of public safety and public order during the holding of public events on the streets, in squares and at other public locations. It notes, however, that the State party has not supplied any specific indication as to how the restrictions imposed on the author’s rights under article 19, paragraph 2, were necessary under article 19, paragraph 3, of the Covenant to achieve any of these purposes. The Committee recalls that it is for the State party to show that the restrictions on the author’s right under article 19 are necessary and that, even if a State party introduces a system aiming to strike a balance between an individual’s freedom to impart information and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant.⁵ In the light of the information before it and in the absence of any pertinent explanations from the State party in this connection, the Committee concludes that the imposition of sanctions on the author for the distribution of leaflets by himself and others informing the population about a planned, albeit not yet authorized, mass meeting without indicating time and location and announcing a forthcoming debate by a former presidential candidate cannot be considered as restrictions of the exercise of the author’s freedom to seek, receive and impart information and ideas that could be deemed necessary for the protection of national security or of public order (*ordre public*) or for respect of the rights or reputations of others. Accordingly, the Committee concludes that, in the circumstances of the present case, the author’s rights under article 19, paragraph 2, of the Covenant have been violated.

7.6 In the light of this conclusion, the Committee decides not to examine separately the author’s claim under article 21 of the Covenant.

² Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40, vol. I (A/66/40 (Vol. I)), annex V,

³ *Ibid.*, para. 2.

⁴ *Ibid.*, para. 23.

⁵ See, for example, Communication No. 1226/2003, *Viktor Korneenko v. Belarus*, Views adopted on 20 July 2012, paragraph 10.8.

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 facts before it disclose a violation of the author's rights under article 19, paragraph 2, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the reimbursement of the legal costs incurred by the author, as well as compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

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 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 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.

[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.]
