



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1866/2009

Views adopted by the Committee at its 104th session, 12 to 30 March 2012

<i>Submitted by:</i>	Olga Chebotareva (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	18 October 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 February 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	26 March 2012
<i>Subject matter:</i>	Refusal to issue permission to conduct pickets
<i>Procedural issue:</i>	Degree of substantiation of claims
<i>Substantive issues:</i>	Right to peaceful assembly and to a court hearing by a competent, independent and impartial tribunal
<i>Articles of the Covenant:</i>	14, paragraph 1, and 21
<i>Article of the Optional Protocol:</i>	2

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 (104th session)

concerning

Communication No. 1866/2009*

Submitted by: Olga Chebotareva (not represented by counsel)

Alleged victim: The author

State party: Russian Federation

Date of communication: 18 October 2008 (initial submission)

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

Meeting on 26 March 2012,

Having concluded its consideration of communication No. 1866/2009, submitted to the Human Rights Committee by Olga Chebotareva 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 Olga Chebotareva, a national of the Russian Federation¹ born in 1980. She claims to be a victim of a violation by the Russian Federation of her rights under articles 14, paragraph 1, and 21 of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

The facts as presented by the author

2.1 On 1 October 2007, the author and one Ms. Kozlovskaya requested the city administration of Nizhny Novgorod to grant them permission to conduct a public event—a picket at the city’s Gorky Square—which they were planning for 7 October 2007. The stated purpose of the event was to mark the anniversary of the murder of Anna

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella 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.

¹ The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

Politkovskaya² and to protest against political repression in the country. They informed the city administration that 45 persons would be participating in the event.

2.2 On 2 October 2007, the city administration informed the author and other organizers that the city authorities were planning to hold events dedicated to Teachers' Day on 7 October 2007. It stated that those events would be held at the same Gorky Square. As an alternative, the city administration suggested conducting the picketing event in another location.

2.3 The author submits that the proposed location was far from the city centre. Because of the remote location, the purpose of the picket would be thwarted. On the same day they received the city administration's response, the author and other organizers informed the city administration by fax that, in their view, the reasons for denying the request for the picket were unsubstantiated. On 3 October 2007, the author and other organizers received another letter from the city administration, which stated that no agreement had been reached on the venue of the picket and, therefore, the organizers had no permission to hold the event.

2.4 Also on 2 October 2007, the author and other organizers submitted a second request to the city administration of Nizhny Novgorod, for an event in a different location. The requested venue for this picket, to be held on 7 October 2007, was the intersection of Bolshaya Pokrovskaya Street and Malaya Pokrovskaya Street. This second picket would also mark the anniversary of the murder of Anna Politkovskaya. The organizers informed the city administration that 30 persons would be participating in the event.

2.5 On 3 October 2007, Mr. Shimovolos, one of the picket organizers, submitted additional information on the second picket, indicating that the intended location for the event was on the right side of the "Jan Jak" hotel, away from pedestrians and car traffic.

2.6 On 4 October 2007, the city administration responded by again suggesting a different location for the picket, as, according to it, the location suggested by the organizers was an area of heavy vehicle and pedestrian traffic. Thus, according to the administration, the picket at that location would be a hazard to public safety. The city administration also claimed that they could not locate the "Jan Jak" hotel on the corner of Bolshaya Pokrovskaya Street and Malaya Pokrovskaya Street. Despite further clarifications provided by the organizers, the city administration refused to give permission. Consequently, neither event was held as planned.

2.7 The author claims that the two events would have been conducted in accordance with the law and would not have constituted a threat to the public safety, order, health or morals of the population. She also claims that on 7 November 2007, the day of the planned events, the city's Gorky Square was empty and there were no other events held, despite the city administration's previous statement.

2.8 On an unspecified date, the author and other organizers filed a suit with the Nizhegorodsky District Court, alleging violations of their right to freedom of assembly. On 18 December 2007, the Nizhegorodsky District Court issued a decision finding that the actions of the city administration were not unlawful. The author claims that the court that examined her claim was not a "competent, independent and impartial tribunal", as it did not address the claims regarding violations of the right to freedom of assembly. Instead, according to the author, the court focused on the lawfulness of the Nizhny Novgorod city administration's decision.

² Anna Politkovskaya was a Russian journalist, author and human rights activist well known for her opposition to the Chechen conflict and then-President Vladimir Putin.

2.9 On 21 December 2007, the author filed an appeal against the decision of the Nizhegorodsky District Court with the Nizhegorodsky Regional Court which, on 29 January 2008, rejected the appeal and upheld the decision of the lower district court.

2.10 The author submits that she also filed a supervisory review request on 27 May 2008 to the Nizhegorodsky Regional Court. On 3 June 2008, that Court rejected her appeal, citing violations of procedural rules for filing supervisory review appeals.

2.11 On 16 June 2008, the author submitted a second supervisory review request to the Nizhegorodsky Regional Court. On 24 July 2008, the court rejected the second appeal, finding that the lower court decisions had been authenticated by a notary public and not by a judge, as required by law. The author claims that the court had had no intention of looking into the merits of the case and rejected the appeal for purely technical reasons.

The complaint

3.1 The author claims that, by refusing permission to conduct the pickets, the State party violated her right to freedom of assembly, as guaranteed by article 21 of the Covenant.

3.2 She further claims that the court hearing during which she challenged the city administration's decision was not conducted by a "competent, independent and impartial tribunal", thus violating her rights under article 14, paragraph 1, of the Covenant. The author submits that instead of considering the restrictions placed on her right to peaceful assembly, the court only looked into the lawfulness of the city administration's actions.

3.3 The author also submits that during the supervisory appeal, the Nizhegorodsky Regional Court never looked into the merits of her case, and rejected both supervisory appeals on purely formal and technical grounds.

State party's observations on admissibility and merits

4.1 By note verbale of 15 May 2009, the State party provided its observations on the admissibility and merits. It submits that on 1 October 2007, the author requested permission to conduct a picket at Gorky Square in Nizhny Novgorod. The State party submits that the city administration was planning to hold other events dedicated to Teachers' Day. Therefore, the organizers were given the option to conduct the picket at another location, and were provided with several suggestions for alternatives in other parts of the city.

4.2 The State party also points out that, according to Federal Law No. 54-FZ on gatherings, meetings, demonstrations, rallies and picketing, the organizers of the public event do not have a right to conduct such an event if the organizers and local authorities cannot agree on the event's location.

4.3 The State party further submits that on 2 October 2007, the city administration received the second request to conduct the picket, this time at the crossroads of Malaya Pokrovskaya and Bolshaya Pokrovskaya. According to the State party, the organizers did not specify the exact location of the event. The State party argues that this intersection is very busy with car and pedestrian traffic, and holding a public event there would jeopardize public safety. The city administration again suggested alternative locations in other districts of Nizhny Novgorod. The State party cites the same federal law on public events, arguing that the organizers and the local authorities must agree on the event's location.

4.4 The State party also argues that the Nizhegorodsky District Court correctly rejected the author's complaint, and the court came to the conclusion that no rights were violated, and that the city administration did not impose an unlawful ban on the picket, but rather suggested changing the location of the event. According to the State party, the author's allegations on the unlawful restriction of her right to organize a picket were examined by the courts, and found to be groundless.

4.5 The State party further submits that both supervisory appeals filed by the author, on 27 May 2008 and 16 June 2008, violated procedural rules for filing supervisory appeals, as established by the Civil Procedure Code of the Russian Federation (chap. 41). It contends that the author had ample opportunity to correct the procedural mistakes and resubmit the supervisory appeal request, but that she failed to do so; she also failed to file a cassation appeal.

4.6 The State party also submits that due to these circumstances, the author's communication should be considered as an abuse of the right of submission, and should also be declared inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Authors' comments on the State party's observations

5.1 By letter of 20 October 2009, the author recalls that, contrary to the State party's submission, she did in fact file the cassation appeal with the Nizhegorodsky Regional Court, and that this appeal was rejected on 29 January 2008.

5.2 The author further states that the supervisory appeals were rejected by the Nizhegorodsky Regional Court on formalistic grounds, such as the fact that the copies of previous court decisions were authenticated by a notary, and not the court itself, and due to the expiration of the six-month deadline for supervisory review claims, as introduced by a new law, following the examination of her case by the first-instance court. The author contends that she has asked to have the deadline for supervisory appeal extended, without success. As a result, the case could not be examined under the supervisory review proceedings.

5.3 The author also claims that there are multiple decisions of the European Court of Human Rights that indicate that supervisory appeals cannot be considered as constituting an "effective" domestic remedy.³

5.4 She also reiterates that the pickets were banned because the organizers were planning to protest against political repression, and that, according to her, all requirements of peaceful demonstrations were fulfilled. The author repeats her claims of the violation of article 21 of the Covenant.

State party's further observations

6.1 On 13 August 2010, the State party reiterated that it was up to the author to correct the mistake in her supervisory appeal of 27 May 2008, and that she had to appeal again. The State party claims that the author did not properly authenticate the lower court's decisions, which constitutes a violation of current legislation of the Russian Federation. The State party recalls that both of the author's appeals were therefore rejected without having the case considered on the merits.

6.2 The State party further submits that the author is a lawyer by profession, and must have been aware of all the requirements of the Constitution of the Russian Federation, which requires strict adherence to the Constitution and laws of the Russian Federation (art. 15, para. 2, of the Constitution). The State party submits that the author's failure to follow the requirements set out by law was purposeful, and that the author never wanted the courts to look into merits of her case.

³ In support of her statement, the author provides reports by the Nizhny Novgorod Human Rights Union, and from Mr. Shimovolov, one of the other organizers of the pickets in this case. She adds that, in any event, the supervisory review is aimed mainly at checking whether serious procedural violations have occurred in a specific case, and not at considering the merits of the case; furthermore, equality of arms is not necessarily respected.

6.3 The State party therefore insists that the author abused her right of submission of an individual communication, and that her case cannot be considered admissible also in the light of the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

Additional comments by the author

7.1 On 28 September 2010, the author submitted additional comments. She argues that court decisions become enforceable after the examination of a cassation appeal. The entry into force of court decisions cannot be stayed during the supervisory appeal process. The author also invokes a ruling of the Constitutional Court of the Russian Federation in which, according to her, the Court admits that the supervisory appeal cannot be considered as an effective remedy.⁴

7.2 The author further argues that, based on articles 363 and 364 of the Civil Procedure Code of the Russian Federation, the grounds for supervisory appeal are very limited. Also, the author cites a European Court of Human Rights case in which the Court considered the supervisory appeal as an optional remedy, because it is a discretionary procedure that depends on authorities and not the complainant.⁵

7.3 The author admits that article 378 of the Civil Procedure Code requires the courts to authenticate the copies of the contested decisions. Such a requirement is also confirmed by resolution No. 36 of the Supreme Court of the Russian Federation. The author argues that such a resolution only regulates the activities of courts and cannot be considered a law. The author also cites a law on notaries public, which does not prohibit authentication of court decisions by notaries public.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

8.3 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 follow the procedural rules when filing two separate supervisory appeals. The Committee notes, however, that the author filed a cassation appeal with the Nizhegorodsky Regional Court, which upheld the decision of the first instance court.⁶ The Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary remedy,

⁴ It should be noted, however, that in its ruling of 5 February 2007, the Constitutional Court refers to the supervisory appeal as constituting an "additional measure of protection under law", and stops short of calling it "ineffective". The Court also refers to the jurisprudence of the European Court of Human Rights when dealing with the issue of supervisory review (in which the European Court of Human Rights does call the supervisory appeal process "ineffective").

⁵ The author cites *Tumilovich v. Russia*, application No. 47033/99, judgement of the European Court of Human Rights of 22 June 1999.

⁶ Copies of the decisions of those courts were submitted by the author to the attention of the Committee.

dependent on the discretionary power of a judge or prosecutor,⁷ and which, thus, do not need to be exhausted for purposes of admissibility. In these circumstances, the Committee considers that, in the present case, it is not precluded, by article 5, paragraph 2 (b), of the Optional Protocol, from examining the communication.

8.4 The Committee notes the author's claims that, in violation of the requirements of article 14 of the Covenant, her case was examined neither by a competent nor an impartial or independent court. She contends that the first instance court judge also failed to address in substance the issues she had raised. She further submits that the cassation and supervisory appeal judges failed to examine her case on the merits. The State party has in turn replied that all decisions in the author's case were lawful and fully grounded, and that the author's allegations on the unlawful restriction of her right to organize a picket were duly examined by the courts, and found to be groundless. The Committee recalls that the guarantees of article 14, paragraph 1, not only apply to courts and tribunals determining criminal charges or rights and obligations in a suit at law, but must also be respected where domestic law entrusts a judicial body with a judicial task.⁸ The Committee observes that the relevant Nizhny Novgorod courts that heard the author's cases were composed of full-time professional judges. It also observes that the author has not sufficiently put forward specific elements which could call into question the competence, impartiality or independence of those judges or shown elements that could indicate that the application of domestic law was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise violated its obligation of independence or impartiality.⁹ In these circumstances, the Committee considers that the author has failed to substantiate her claim under article 14, paragraph 1, for the purposes of admissibility, and that accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.5 The Committee considers that the author's claim under article 21 of the Covenant is sufficiently substantiated for the purposes of admissibility, and declares it admissible.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's allegation that her right to freedom of assembly under article 21 was violated, since she was arbitrarily prevented from holding a peaceful assembly (picket). In this context, the Committee recalls that the right to peaceful assembly as set forth in article 21 of the Covenant is not absolute but may be subject to limitations in certain situations. The second sentence of article 21 of the Covenant requires that no restrictions may be placed on the exercise of the right to peaceful assembly other than those that are (a) imposed in conformity with the law and (b) necessary in a democratic society in

⁷ See, inter alia, communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, and No. 1537/2006, *Gerashchenko v. Belarus*, decision of inadmissibility adopted on 23 October 2009.

⁸ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI), para. 7; and communication No. 1015/2001, *Perterer v. Austria*, Views adopted on 20 July 2004, para. 9.2.

⁹ See general comment No. 32, para. 26.

the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of rights and freedoms of others.¹⁰

9.3 In the present case, the Committee must consider whether the restrictions imposed on the author's right to freedom of assembly were justified under any of the criteria set out in article 21. The Committee notes the State party's assertion that the restrictions were in accordance with the law. However, the State party has not demonstrated to the Committee's satisfaction that the impeding of the two pickets in question was necessary for the purpose of protecting 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. Moreover, the State party never refuted the author's claim that no event actually occurred at Gorky Square on 7 October 2007, and that the city administration's claim of a competing Teachers' Day event was in fact a mere pretext given in order to reject the author's request. In these circumstances, the Committee concludes that in the present case the State party has violated the author's right under article 21 of the Covenant.

10. 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 right under article 21 of the Covenant.

11. 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 compensation and reimbursement of any legal costs paid by the author. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. 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 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 the official language of 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.]

¹⁰ See communication No. 1604/2007, *Zalesskaya v. Belarus*, Views adopted 28 March 2011, para. 10.6.