



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

Communication No. 1949/2010

**Views adopted by the Committee at its 113th session
(16 March–2 April 2015)**

<i>Submitted by:</i>	Pavel Kozlov, Valery Ilyash, Sergei Pstyga, Marat Brashko, Raman Kislyak
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	15 March 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 18 May 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	25 March 2015
<i>Subject matter:</i>	Town administration refusing the authors' request to hold a demonstration
<i>Procedural issues:</i>	Admissibility - manifestly ill-founded; facts and evidence
<i>Substantive issues:</i>	Fair trial; freedom of expression; freedom of assembly; discrimination on the ground of political or other opinion
<i>Articles of the Covenant:</i>	14, paragraph 1, 19, paragraph 2, 21, 26
<i>Articles 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 (113th session)

concerning

Communication No. 1949/2010*

Submitted by: Pavel Kozlov, Valery Ilyash, Sergei Pstyga, Marat Brashko, Raman Kislyak

Alleged victim: The authors

State party: Belarus

Date of communication: 15 March 2010 (initial submission)

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

Meeting on 25 March 2015,

Having concluded its consideration of communication No. 1949/2010, 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 authors of the communications are Pavel Kozlov, born in 1936, Valery Ilyash, born in 1951, Sergei Pstyga, born in 1976, Marat Brashko, born in 1970 and Raman Kislyak, born in 1975, all Belarus nationals. They claim to be victims of violations by Belarus of their rights under article 14, paragraph 1; article 19, paragraph 2, article 21 and article 26 of the International Covenant on Civil and Political Rights.¹ Raman Kislyak is submitting the communication on his own behalf and he is also acting as counsel for the other four authors.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuya Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, and Margo Waterval.

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

The facts as presented by the authors

2.1 On 28 August 2009, the first author filed an application with the Brest City Executive Committee with a request to hold a picket “against the indifference of state officials” on 27 September 2009, with the purpose of drawing citizens’ attention to the indifferent attitude of state officials towards citizens’ petitions and to the systematic violation of the law on petitions by state officials. In his application, the first author specified that the picket would be conducted by 5 persons (the authors), and that the intended location was the pedestrian zone on Gogol Street in Brest.

2.2 On 16 September 2009, the first author received a letter from the Brest City Executive Committee dated 14 September 2009 and signed by the Deputy Chairperson of the Brest City Executive Committee, informing him that permission to carry out the picket at the desired location was denied. The letter referred to the Brest City Executive Committee’s decision No. 1715 of 25 October 2006 (“Regarding the determination of a permanent location for the conduct of public gatherings in Brest city”), which determines that public gatherings can only be organized in one specified location in Brest, which is a sports complex “Lokomotive”.² The letter further stated that the first author’s application was denied on the basis of article 6 of the Law “On Mass Events in the Republic of Belarus”.

2.3 On 15 October 2009, the authors filed an appeal against the decision of the Deputy Chairperson of the Brest City Executive Committee of 14 September 2009 before the Leninsky District Court of Brest, claiming that this decision violated their right to freedom of expression and resulted in discrimination on the ground of their opinion. The Leninsky District Court of Brest held public hearings on 6 and 9 November 2009. During the hearings, the authors requested the officials of the Brest City Executive Committee to be summoned as witnesses. The Court declined, stating that the Brest City Executive Committee was adequately represented. The authors’ appeal was rejected on 9 November 2009.

2.4 On 19 November 2009, the authors filed a cassation appeal against the decision of the Leninsky District Court to the Judicial Chamber for Civil Cases of the Brest Regional Court. On 24 December 2009, the Judicial Chamber for Civil Cases of the Brest Regional Court quashed the decision of the Leninsky District Court of 9 November 2009 and “left without consideration” the authors’ appeal against the actions of the Deputy Chairperson of the Brest City Executive Committee of 14 September 2009, because they “failed to follow a prerequisite extrajudicial procedure for this category of cases”.

2.5 On 20 January 2010, the Chairperson of the Brest Regional Court entered a protest with the Presidium of the Brest Regional Court against the decision of the Judicial Chamber for Civil Cases of the Brest Regional Court of 24 December 2009. On 27 January 2010, the Presidium of the Brest Regional Court quashed the decision of the Judicial Chamber for Civil Cases of the Brest Regional Court of 24 December 2009 and ordered a new examination of the authors’ cassation appeal of 19 November 2009.

2.6 On 18 February 2010, the Judicial Chamber for Civil Cases of the Brest Regional Court examined and rejected the authors’ cassation appeal of 19 November 2009, stating

² The above decision reads in pertinent part: “[...] the Brest City Executive Committee DECIDED :
1. To determine as a permanent venue for all public events in the city of Brest, with the exception of street demonstrations and street processions, the sports complex “Locomotive” [...]” [Unofficial translation]. Article 3 of the Law “On Mass Events in the Republic of Belarus” provides in pertinent part: “The rules for organization and conduct of mass events, established by this law [...] do not apply to mass events, carried out following a decision of state bodies.” [Unofficial translation].

that the rejection of their request to hold a picket was lawful, based on the Brest City Executive Committee's decision No. 1715 of 25 October 2006 (see paragraph 2.2 above) and the Law "On Mass Events in the Republic of Belarus". The authors contend that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The authors claim to be victims of violations by Belarus of their rights under article 14, paragraph 1; article 19, paragraph 2, article 21 and article 26 of the Covenant.

3.2 The authors claim that their freedom of expression has been restricted arbitrarily, since neither the decision of the Deputy Chairperson of the Brest City Executive Committee, nor the court decisions provided any justification as to the reasons for the restriction other than the formal application of decision No. 1715. The authors claim that the restriction in question was neither justified by reasons of national security nor public safety, public order, the protection of public health or morals, and was not necessary for the protection of the rights and freedoms of others and therefore its imposition breached article 19 of the Covenant. They allege that restricting all 300 000 citizens of Brest to conducting public gatherings in one single location, which in addition is a stadium, outside of the town and surrounded by a concrete wall, moves all campaigns outside the public space and in practice precludes the realization of all campaigns, thus infringing freedom of expression.

3.3 The authors also claim that the refusal to allow them to conduct their picket outside of the one location specified in decision No. 1715 amounted to discrimination under article 26 of the Covenant on the ground of their opinion, since the Brest City Executive Committee had on numerous occasions allowed other persons to conduct campaigns outside the officially designated location. They provide information about six different events that were carried out outside the designated location with the authorization of the Brest City Executive Committee.

3.4 The authors claim that their right to fair trial was violated, as the courts refused to summon key witnesses that the authors wanted to question, to request additional materials from the Brest City Executive Committee and to make an in-situ examination of the sports complex "Lokomotive". They also maintain that the courts were not impartial in examining their case in violation of article 14, paragraph 1 of the Covenant.

3.5 The authors claim that their right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed restriction contradicted the Belarus Constitution and was not necessary in a democratic society.

State party's observations on admissibility

4. 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 claim to be victims of a violation by the State party of any rights protected by the Covenant. It notes, however, that that recognition was 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 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 Optional Protocol, which could only be effective 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 that references to the Committee's long-standing practice, methods of work and case law are not subjects of the Optional

Protocol. It also submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications will be considered by its authorities as “invalid”. The State party considers that the present communication, as well as several other communications before the Committee, were registered in violation of the Optional Protocol.

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 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.³ 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.⁴

Consideration of admissibility

6.1 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.

6.2 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.

³ See, inter alia, communication No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

⁴ 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.

6.3 The Committee takes note of the authors' claim that their rights under article 14 of the Covenant have been violated as the State party's courts were not impartial and as they had refused to summon key witnesses that the authors wanted to question, to request additional materials from the Brest City Executive Committee and to make an in-situ examination of the sports complex "Lokomotive". The Committee notes that the authors have not demonstrated in specific terms how these omissions adversely affected the fairness of the proceeding and, accordingly, considers that the authors have not sufficiently substantiated, for the purposes of admissibility, their allegations under article 14, paragraph 1, of the Covenant. The Committee, therefore considers this part of the communication inadmissible under article 2 of the Optional Protocol.

6.4 As to the alleged violations of the authors' rights under article 26 of the Covenant, in the absence of any further pertinent information on file, the Committee considers that this claim is not sufficiently substantiated for purposes of admissibility, as the author has failed to demonstrate that the decision to deny him a right to hold assembly was discriminatory in nature. It is not clear from the submissions if the author's political views, as he claims, were the basis of the decision of the authorities not to allow assembly at the specified location. Therefore, the Committee concludes that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.5 Finally, the Committee considers that the authors have sufficiently substantiated their remaining claims that raise issues covered under article 19, paragraph 2, and article 21 of the Covenant for purposes of admissibility. It declares the communication admissible with regard to these provisions of the Covenant 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 notes the authors' claims: that their freedoms of expression and assembly have been restricted arbitrarily, since neither the decision of the Deputy Chair of Brest City Executive Committee, nor the decisions of the domestic courts provided any justification as to the reasons for the restriction to hold pickets, other than the formal application of the Executive Committee's Decision No. 1715 of 25 October 2006 which designates a sport complex outside the city centre as the ordinary location for public gatherings in Brest; that restricting all 300 000 citizens of Brest to conducting public gatherings in one single location, which in addition is a stadium, outside of the town and surrounded by a concrete wall, moves all campaigns outside the public space and in practice precludes the realization of all campaigns, thus infringing freedoms of expression; that the restriction in question was not necessary under any of the reasons listed in article 19, paragraph 2 of the Covenant; and that their right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed restriction was not necessary in a democratic society.

7.3 The Committee notes that Decision No. 1715 of Brest City Executive Committee which determines the sport stadium as the sole location for holding mass public events (with the exception of street demonstrations and street processions), and the related decisions of the domestic courts, which find the restrictions imposed on the authors to be in conformity with the Law on Mass Events and the Constitution of Belarus, do not provide any justification as to the restriction imposed. In particular, the Committee notes the decision of 18 February 2010 of the Judicial Chamber for Civil Cases of the Brest Regional Court, whereby it concluded that the authors' application to hold pickets at the desired location was refused lawfully on the basis of Decision No. 1715, which prescribes that

mass events, including pickets (i.e. congregating at a specific location with the intent of supporting or disapproving a particular cause, with or without informative materials), are to be held in the Lokomotiv sports stadium.

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 choose a location within sight and sound of their target audience 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, a pedestrian zone in the city of Brest was chosen by the authors as the intended location to hold a picket, on 27 September 2009, with the purpose of drawing citizens' attention to the alleged systematic violation of the law on petitions by state officials, but their request was rejected. In these circumstances and in absence of any explanations from the State party, the Committee finds the decision of the State party's authorities denying the authors' right to assemble peacefully at the public location of their choice to be unjustified. 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 in the said location 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 thus de facto prohibition of an assembly in any public location in the entire city of Brest, with the exception of the Lokomotiv stadium, unduly limits the right to freedom of assembly. In these circumstances, the Committee concludes that the authors' right under article 21 of the Covenant has been violated.

7.6 The Committee takes note that of the authors' claim that as a result of the prohibition on holding a picket, they were also denied the right to impart information in violation of article 19 of the Covenant. The Committee recalls that freedom of opinion and freedom of expression constitute the foundation for every free and democratic society.⁶ Any restrictions on their exercise 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".⁷ In absence of any explanations on behalf of the State party and for the reasons, *mutatis mutandis*, stated in paragraph 7.5 above, the Committee concludes that there has been a violation of article 19, paragraph 2 of the Covenant.

⁵ See, for example, communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 7.4.

⁶ See General comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, para 2.

⁷ *Ibid.*, para 22. See also communications No 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 7.8, No 1999/2010, *Evrezov et al. v. Belarus*, Views adopted on 10 October 2014, paras. 8.6-8.8, No 1976/2010, *Kuznetsov et al. v. Belarus*, Views adopted on 24 July 2014, paras. 9.6-9.8.

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 State party has violated the authors' rights under article 19, paragraph 2, and 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 authors with an effective remedy, including reimbursement of any legal costs incurred by the authors, together with compensation. With a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party, the State party should also review the national legislation as it has been applied in the present case. The State party is also under the 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 and 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.
