



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 – 3 November 2005

VIEWS

Communication No. 1022/2001

<u>Submitted by:</u>	Mr. Vladimir Velichkin (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	9 May 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 24 October 2001 (not issued in document form)
<u>Date of adoption of Views:</u>	20 October 2005

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- Made public by decision of the Human Rights Committee.

Subject matter: Freedom of expression

Procedural issues: none

Substantive issues: Restrictions of the right to freedom of expression (freedom to impart information)

Articles of the Covenant: 19, paragraphs 2 and 3

Articles of the Optional Protocol: None

On 20 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1022/2001. The text of the Views is appended to the present document.

[ANNEX]

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**

Eighty-fifth session

concerning

Communication No. 1022/2001**

Submitted by: Mr. Vladimir Velichkin (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 9 May 2001 (initial submission)

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

Meeting on 20 October 2005

Having concluded its consideration of communication No. 1022/2001, submitted to the Human Rights Committee by Vladimir Velichkin 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 Mr. Vladimir Velichkin, a Belarusian national born in 1960. He claims to be victim of violations of Belarus of his rights under article 19, paragraph 2, of the Covenant. He is not represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present document.

Factual background

2.1 The author claims to be a human rights activist from Brest (Belarus). On 23 November 2000, he requested the authorization of the Executive Committee of the City of Brest to organize a meeting with 10 participants, to celebrate the 52nd anniversary of the signature of the Universal Declaration of Human Rights (UDHR), on 10 December 2000, near the “Pushkin” Public Library in the Centre of Brest.

2.2 On 4 December 2000, the Chief of the Executive Committee of Brest rejected his request for such a meeting in the centre of Brest, but authorized a meeting at the “Stroitel” Stadium. The Committee based its decision on a previous Executive Committee’s decision of 12 October 1998, pursuant to which all meetings had to take place in the Stadium, and that the Stadium was declared to be a “permanent place” for the organization of meetings and assemblies.

2.3 At 11 a.m. on 10 December 2000 (a Sunday), the author stood in front of the CUM (Central Universal Store) in the centre of Brest and began to distribute leaflets of the UDHR, to “remind the citizens of this date and of their rights”. Next to him stood four other individuals who carried posters and who also, according to the author, distributed the text of the Declaration. The author contends that he acted in conformity with article 34 of the Belarusian Constitution¹.

2.4 At around 12.30, a policeman allegedly approached the author, presented himself as a district inspector, and asked him to stop distributing leaflets and to leave. The author refused, invoking article 34 of the Constitution. Shortly afterwards, another man approached him, and after identifying himself as the Chief of the Leninsky District Police Department in Brest, invited the author to stop distributing leaflets. He explained that the author was holding a non-authorized meeting (“picket”), and asked him to leave.

2.5 As the author again refused to leave, a police car arrived and he was asked by the policemen to climb into the car. He obeyed and at around 12.50 he was brought to the Leninsky District Police Department, where he was charged with two administrative offences under articles 166 and 167 of the Administrative Offences Code (breach of the order for organization and conduct of assemblies, meetings, street parades and demonstrations, and insubordination to a lawful instruction or request of a police officer while he executes his duty to protect the public order). He was placed in a temporary detention until 11 a.m. the following day, 11 December 2000, when he was brought to the Leninsky District Court of Brest. According to the author, the examination of his case started at 2 p.m, but due to procedural violations (allegedly, he was not informed of his rights by the police upon arrest), the judge ordered his release and returned the indictment act to the Police Department. According to the author, he was thus unlawfully deprived of liberty for 25 hours.

¹ Article 34 of the Constitution reads as follow: “(1) Citizens of the Republic of Belarus shall be guaranteed the right to receive, store, and disseminate complete, reliable, and timely information on the activities of state bodies and public associations, on political, economic, and international life, and on the state of the environment.

(2) State bodies, public associations, and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests”.

2.6 On 15 January 2001, the Leninsky District Court of Brest decided to fine the author the equal of 20 minimum monthly salaries (72 000 BLR), on charges of “conduct of a meeting on a place non authorized by the Brest City Executive Council”, in violation of the provisions of article 11, part 1, of the Law on Assemblies, Meetings, Street Processions, Demonstrations and Pickets (Law on Assemblies).

2.7 The author claims that his acts did not constitute an administrative offence. He invokes article 2 of the Law on Assemblies, which gives the definition of picket. Accordingly, a picket constitute “the expression in public, made by a citizen or a group of citizens, of a socio-political, collective, individual or other interests, or the contestation, including by hunger strike, in relation to all type of problems, with or without use of placards, posters or other means”. He affirms that on 10 December 2000, he did not express his personal opinions on any issue but simply disseminated 53 copies of the UDHR. According to him, Belarusian law does not provide for any authorization by the authorities in order to disseminate information contained in printed papers having printing identification data, such as the UDHR leaflets he was distributing.

2.8 Mr. Velichkin further explains that as he did not violate the Law on Assemblies, he considers the police requests to have him stop distributing leaflets and to leave the scene to be unlawful. In addition, according to him, article 166 of the Administrative Offences Code engages the responsibility only for insubordination against a lawful police instruction or request.

2.9 On an unspecified date, the author appealed against the decision of the Leninsky District Court of 15 January 2001 to the Brest Regional Court. On 13 February 2001, the Brest Regional Court upheld the District Court’s decision to fine the author. The author then appealed to the Supreme Court (on an unspecified date). On 3 April 2001, the Supreme Court rejected his claim.

The complaint

3. The author claims that he is a victim of his right to disseminate information, in violation of article 19, paragraph 2, of the Covenant and article 34 of the Belarusian Constitution.

State party’s observations and author’s comments

4.1 In a Note verbale of 6 February 2002, the State party observes that the Supreme Court of Belarus has proceeded to a verification of the author’s case. It recalls that in November 2000, the author had requested an authorization of the Brest Executive Council to organize a meeting near the Public Library, to commemorate the 52nd anniversary of the signature of the UDHR. On 4 December 2000, the Brest City Council authorized the author to organize this meeting in the Stroitel Stadium; this decision was based on a previous decision of the City Council (of 15 December 1998).

4.2 Notwithstanding, on 10 December 2000, in violation of the City administration’s decision, Mr. Velichkin unlawfully organized a meeting (“picket”) on one of the Brest main streets (prospect Masherova). He refused to comply with numerous police demands to interrupt the meeting. These circumstances were confirmed in court by witnesses’ testimonies and the photographs of the meeting.

4.3 In light of the above, the domestic courts correctly assessed that the author's acts revealed the elements of the administrative infraction of articles 167-1 (breach of the order for organization and conduct of assemblies, meetings, street parades and demonstrations) and 166 (insubordination to a lawful instruction or request of a police officer while he executes his duty to protect the public order) of the Code of Administrative Offences (CAO).

5.1 By letter of 13 March 2002, the author challenges the State party's contention that he organized an illegal meeting and had unsubordinated to police instructions. He reiterates that his acts did not disclose the elements of the administrative infraction under article 167-1 CAO and invokes the definition of meeting ("picket") pursuant to article 2 of the Law on Assemblies.

5.2 The author explains that he was not the organizer of a meeting held near the Central Universal Store in Brest on 10 December 2000. He contends that when he was refused the right to organize the meeting near the Pushkin Public Library, he renounced the idea, thus complying with the decision of the Brest Executive Council; he explains that he decided not to organize a picket at Stroitel Stadium, because it would not « meet the object set » due to the absence of visitors at the site. Notwithstanding, on 10 December 2000, wishing to remind his co-citizens of the commemorative date of the signature of the UDHR and of their rights, at 11 a.m., he distributed leaflets with the UDHR text to passers by. In doing so, he did not commit any breach of the public order nor did he create any threat to the health or life to others. Finally, he reiterates his allegation that he is a victim of violations of his right to impart information, as protected by article 19, paragraph 2, of the Covenant.

Issues and proceedings before the Committee

Consideration on 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 communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted. It considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol have been met.

6.3 The Committee considers that the author has sufficiently substantiated his claim under article 19, paragraph 2, for purposes of admissibility. It concludes that the communication is admissible and proceeds to its examination on the merits.

Consideration on the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

7.2 The author has claimed that his right to freedom to impart information under article 19, paragraph 2, was violated, since when he distributed the text of the UDHR in the centre of Brest on 10 December 2000, he was arrested and subsequently fined to the equal of 20

minimum monthly wages. The State party has replied that the author violated the provisions of the Administrative Offences Code, because the Executive Council of Brest had designated another venue for the conduct of his meeting, that the author had gone on to organize the meeting in the City centre and had refused to conform to police instructions. From the material before the Committee, it transpires that the author's activities were qualified by the courts as "participation in an unauthorised meeting" and not as "imparting of information". In the Committee's opinion, the above action of the authorities, irrespective of its legal qualification, amounts to a de facto limitation of the author's rights under article 19, paragraph 2, of the Covenant.

7.3 The Committee recalls that article 19 of the Covenant allows 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. It further recalls that the right to freedom of expression is of paramount importance in any democratic society, and any restrictions on the exercise of this right must meet a strict test of justification². In the present case, however, the State party has not invoked any specific ground on which the restrictions imposed on the author's activity which, whether or not it took place within the context of a meeting, it is uncontested did not pose a threat to public order, would be necessary within the meaning of article 19, paragraph 3, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of 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 Mr. Velichkin with an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author. The State party is under an obligation to take measures 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 90 days, information about the measures taken to give effect to the Committee's Views.

[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.]

² See, inter alia, Communication No. 574/1994, Kim vs. the Republic of Korea, Views dated 3 November 1998 and Communication No. 628/1995, Park vs. the Republic of Korea, Views dated 20 October 1998, and Communication No. 780/1997, Vladimir Laptsevich v. Belarus, Views adopted on 20 March 2000, paragraph 8.2.

APPENDIX

Individual opinion by Committee member Ms. Ruth Wedgwood

The city authorities of Brest, in Belarus, arrested a young human rights advocate, Vladimir Velichkin, for conducting a prohibited “meeting” outside a store. The “meeting” consisted of distributing copies of the Universal Declaration of Human Rights to fellow citizens passing by on the sidewalk. Four other persons also distributed copies, and carried posters.

The Committee has found that this action by Belarus was an unreasonable interference with the author’s “freedom of expression” and his right to “impart information,” protected by article 19(2) of the International Covenant on Civil and Political Rights.

But in addition, there was a further violation of article 21 of the Covenant, namely, the author’s right of peaceful assembly. A state can impose reasonable restrictions on public assemblies in the interests of public safety and public order, and to protect the rights and freedoms of others. Belarus has not attempted to offer any explanation for the Brest authorities’ flat ban on all public protests and gatherings, even of a modest size, in areas within the city center.

The author had originally requested permission to gather outside the confines of the Pushkin Public Library. The city of Brest instead has insisted that all protests, demonstrations, and picketing must be confined to a remote sports stadium. Needless to say, a state has no legitimate interest in banning public gatherings merely to limit their influence.

[signed] Ms. Ruth Wedgwood

[Done 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.]
