

Belarus: Denial of permission to convene public meeting violates right to freedom of expression and assembly

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Youbko v. Belarus (1903/2009)

Summary

In March 2014, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights in denying an individual permission to organise a peaceful meeting.

The communication was submitted by a Belarusian national under the Optional Protocol to the Covenant.

Background



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Background

On 19 January 2007, the author of the communication, Ms Galina Youbko, filed an application with the Minsk City Executive Committee requesting permission to hold a picket from 10 to 13 February 2007. The picket was to be conducted by 50 women whose husbands, sons or other relatives had allegedly been wrongly convicted, with the purpose of drawing public attention to the need for courts to respect the Constitution and international treaties when adjudicating civil or criminal cases.

On 2 February 2007, the Minsk City Executive Committee refused to authorise the picket on the grounds that its purpose was to question court decisions and influence the courts in their adjudication process, in violation of the Constitution.

On 27 February 2007, the author appealed this refusal to the Moscow District Court of Minsk, explaining that the picket would only concern final court decisions that had already been enforced. The appeal was rejected,

as was the author's subsequent appeal to the Minsk City Court. The author then filed three applications for a supervisory review of these decisions, including with the Supreme Court, but all of her requests were rejected. She also unsuccessfully tried to bring a complaint to the Constitutional Court.

On 18 February 2009, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that by refusing her application to hold a picket with other women to express their opinion on the administration of justice, Belarus had violated her right to impart information and her right of peaceful assembly under articles 19 and 21 of the Covenant.

The Committee's decision

The Committee first noted Belarus's assertion that the author's communication was registered in violation of the Optional Protocol, and that therefore Belarusian authorities would consider any decision taken by the Committee on such communication as 'invalid'. By failing to recognise the competence of the Committee and declaring that it would not accept the Committee's determination on the admissibility or on the merits of the communication, the Committee considered that Belarus was in breach of its obligations under article 1 of the Optional Protocol.

Regarding the admissibility of the claims, the Committee rejected Belarus's argument that the author had not exhausted domestic remedies. The Committee noted that the author had not requested the Prosecutor General to initiate supervisory review proceedings. However, there was no evidence that such proceedings would be successfully applied in cases concerning freedom of expression and right to peaceful assembly. In any event, the Committee recalled its jurisprudence according to which supervisory review proceedings that allow for review of court decisions that have already taken effect do not constitute a remedy which must be exhausted for the purposes of the Optional Protocol. The Committee therefore concluded that nothing barred the admissibility of the claims.

On the merits, the Committee recalled its General Comment No. 34, in which it found that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society. As such, restrictions on the exercise of these freedoms must conform to strict tests of necessity and proportionality.

The Committee held that the refusal to permit the author's picket amounted to a restriction on the exercise of the author's right to impart information and her right to freedom of assembly. The main issue was therefore whether such restrictions were justified under any of the legitimate aims set out in articles 19(3) or 21 of the Covenant, namely to respect the rights or reputation of others, to protect national security or public order, or to protect public health and morals.

Recalling that it is for State parties to demonstrate that restrictions on Covenant rights are justified in the case in question, the Committee noted that Belarus had not submitted any observations on the merits of the communication. It then observed that the local authorities' refusal to allow the picket was based on grounds that they viewed such picket as an attempt to question court decisions and influence court rulings in specific civil and criminal cases. However, the authorities failed to explain how criticism of a general nature regarding the administration of justice would jeopardise the court rulings at issue. Belarus also failed to explain why it was necessary to restrict the author's rights in accordance with any of the legitimate aims set out in articles 19(3) or 21 of the Covenant.

In light of the above, the Committee found that Belarus had breached articles 19(2) and 21 of the Covenant. In accordance with article 2(3) of the Covenant, Belarus was under the obligation to provide the author with an effective remedy, including adequate compensation. The Committee also held that Belarus must take steps to prevent similar violations in the future.

Belarus must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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