

Belarus' denial of authorisation for demonstration breached rights to peaceful assembly and freedom of expression

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The Human Rights Committee finds that Belarus violated its obligations under the International Covenant on Civil and Political Rights for refusing a request for authorisation to hold a demonstration.



KOZLOV ET AL. V. BELARUS (1949/2010)

Summary

In March 2015, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights in connection with a refused request for authorisation to hold a demonstration.

The communication was submitted by five Belarus nationals under the Optional Protocol to the Covenant.

Background

On 28 August 2009, the first author, Mr Kozlov, filed an application with the Brest City Executive Committee requesting permission to hold a picket (with the four other authors of the communication) in a pedestrian zone in Brest on 27 September 2009, with the stated purpose of drawing attention to the systematic violation of the Law on Petitions by State officials.

On 14 September 2009, the Deputy Chair of the Brest City Executive Committee rejected Mr Kozlov's request. The Deputy Chair based his decision on article 6 of the Law on Public Events and a previous decision by the Brest Executive Committee that had determined that public gatherings could only take place in the Lokomotiv sports stadium, outside Brest city centre.

On 15 October 2009, the authors appealed the Deputy Chair's decision before the Leninsky District Court in Brest. The appeal was rejected on 9 November 2009.

On 19 November 2009, the authors filed a cassation appeal against the Leninsky District Court's decision before the Judicial Chamber for Civil Cases of the Brest Regional Court.

On 18 February 2010, the Judicial Chamber for Civil Cases of the Brest Regional Court concluded that the authors' application to hold a picket at the desired location was lawfully refused on the basis of the legal authorities referred to in the Deputy Chair's decision.

On 15 March 2010, the authors filed this communication with the Human Rights Committee under the Optional Protocol to the Covenant. The authors claimed that Belarus had violated their rights to: (i) a fair trial, (ii) freedom of expression, (iii) peaceful assembly, and (iv) freedom from discrimination on the grounds of political opinion (in violation of articles 14, 19, 21 and 26 of the Covenant respectively).

The Committee's decision

Regarding the admissibility of the authors' complaint, the Committee declared that the parts of the complaint concerning articles 14 and 26 were inadmissible for lack of substantiation. The Committee considered that the authors had sufficiently substantiated their claims regarding articles 19 and 21 and declared this part of the authors' complaint admissible. The Committee noted that the authors had exhausted domestic remedies for the purposes of article 5(2)(b) of the Optional Protocol due to their various attempted appeals.

On the merits, the Committee recalled that the rights to peaceful assembly and to freedom of expression were fundamental human rights of particular importance in a democratic society. Any restrictions must therefore be (i) in conformity with the law, (ii) proportionate, (iii) necessary in a democratic society, and (iv) in the interest

of national security, public order, protection of public health or morals or the protection of the rights of others.

The Committee noted that neither the decision of the Deputy Chair of the Brest City Executive Committee nor the decisions of the domestic courts had included any justification for the refusal of Mr Kozlov's request. Moreover, the Committee decided that the national authorities had failed to demonstrate how the proposed picket would jeopardize protected interests. The prohibition of an assembly in any public location in the entire city of Brest except Lokomotiv stadium therefore infringed the right to freedom of assembly.

The Committee recalled that the tests of necessity and proportionality also applied to the right to freedom of expression. In the absence of any justification for the interference with this right, the Committee considered that Belarus had violated article 19 of the Covenant.

The Committee also found Belarus to be in breach of article 1 of the Optional Protocol to the Covenant due to its lack of cooperation in the proceedings. In particular, the Committee referred to Belarus' failure to accept the Committee's competence and its declaration that it would not accept the Committee's findings.

In view of the above, the Committee concluded that Belarus was in violation of articles 19(2) and 21 of the Covenant, as well as article 1 of the Optional Protocol.

In accordance with article 2(3) of the Covenant, the Committee found that Belarus was under an obligation to provide the authors with an effective remedy, including financial compensation and reimbursement of legal costs. The Committee also requested Belarus to review the application of its domestic legislation to ensure full compliance with articles 19 and 21. Belarus was also under an obligation to ensure that such violations did not reoccur 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 the light of the Committee's recommendations, and ensure that the decision is published widely.

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