



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

Communication No. 1772/2008

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

<i>Submitted by:</i>	Syargei Belyazeka (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	23 February 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 March 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	23 March 2012
<i>Subject matter:</i>	Breaking up a peaceful assembly aimed at commemorating the victims of the Stalinist repressions in violation of the right to express opinions and the right to hold a peaceful assembly without unreasonable restrictions.
<i>Substantive issues:</i>	Right to freedom of expression; permissible restrictions; right to peaceful assembly.
<i>Procedural issue:</i>	None
<i>Articles of the Covenant:</i>	19, paragraph 2; 21
<i>Article of the Optional Protocol:</i>	None

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. 1772/2008*

Submitted by: Syargei Belyazeka (not represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 23 February 2008 (initial submission)

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

Meeting on 23 March 2012,

Having concluded its consideration of communication No. 1772/2008, submitted to the Human Rights Committee by Syargei Belyazeka 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 Syargei Belyazeka, a Belarusian national born in 1974, residing in Vitebsk, Belarus. He claims to be a victim of violations by Belarus of article 19, paragraph 2, and article 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented.

Factual background

2.1 On 30 October 2007, the author, together with 30 other inhabitants of Vitebsk whose relatives perished in the Stalinist camps in Soviet Russia, took part in a commemoration service. According to the author, all those who took part in the commemoration shared the view that the communist (Stalinist) regime was repressive and aimed at the suppression of political pluralism in Soviet society. Therefore, participation in the commemoration was a

* The following members of the Committee participated in the examination of the present communication: Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kaelin, Zonke Zanele Majodina, Gerald L. Neuman, Michael O'Flaherty, Rafael Rivas Posada, Nigel Rodley, Fabian Omar Salvioli, Marat Sarsembayev, Krister Thelin and Margo Waterval.

way for the author and other participants to collectively express their negative attitude to the violent suppression of all types of dissent. The commemoration was intended to include a visit to the location in the proximity of Polyai village where some of the victims of political repressions had been executed, as well as two cemeteries close to Voroni and Kopti villages, the laying of wreaths and the erection of a cross.

2.2 When the participants arrived at the parking lot next to the venue for the commemoration in Polyai village, police officers demanded that the commemoration be stopped, as in the opinion of the Deputy Head of the Vitebsk District Department of Internal Affairs, it was an unauthorized mass event, i.e. a “picket”. The participants refused to stop and were allowed to carry out the commemoration. When, however, they boarded a bus to continue to Voroni and Kopti villages, the Deputy Head of the Vitebsk District Department of Internal Affairs entered the bus and announced that he was breaking up the commemoration and that all the bus passengers were being detained as participants at an unauthorized mass event (“picket”). The participants, including the author, expressed their disagreement with this decision but obeyed the order.

2.3 The author, together with the other participants, was transported to the Vitebsk District Department of Internal Affairs on the bus, where an administrative protocol in relation to the author was drawn up. He was accused of committing an administrative offence under article 23.34, part 3, of the Code on Administrative Offences (violation of the established procedure for organizing or conducting a mass event or a “picket”).

2.4 On 31 October 2007, a judge of the Vitebsk District Court found the author guilty of having committed an administrative offence under article 23.34, part 3, of the Code on Administrative Offences and ordered him to pay a fine of 620,000 Belarusian roubles (20 baseline value units).¹ The author challenged in court the legal definition of his actions, since, inter alia, he did not display any flags and the commemoration took place in woodland and not in a public place. The court referred to article 2 of the Law on Mass Events of 30 December 1997, according to which:

a “picket” is a public expression by a citizen or by a group of citizens of public and political, group or individual and other interests or the protest (without a procession), including by hunger strike, on any issues, with or without the use of posters, banners and other materials.

The Vitebsk District Court concluded that, by actively taking part in a mass event in a public place and, in particular, by holding unfurled flags and a cross for a long period of time on the parking lot with the other participants at the mass event, the author publicly expressed his personal and other interests.

2.5 On 8 November 2007, the author filed a cassation appeal with the Vitebsk Regional Court against the ruling of 31 October 2007. In his appeal, the author stated that the Vitebsk District Court had erred in the legal definition of his actions. Specifically, the author submitted that he had not displayed any posters, banners or other propaganda materials and, therefore, could not publicly express any group, individual or other interests or protest. Even if he did take part in an unauthorized mass event (“picket”), article 23.34 of the Code on Administrative Offences proscribes a violation of the established procedure for the organization or holding of a mass event or of a “picket”, it does not penalize mere participation in a mass event of this type. Moreover, from 28 October 2007 to 3 November 2007, Christians in Belarus were observing the autumn day of the dead: the exercise of religious rites is not governed by Belarus laws. Lastly, the author claimed that the commemoration in which he took part was a peaceful citizens’ gathering. They did not pose

¹ Approximately US\$ 288.4/202.9 euros.

a threat to national security, public safety, public order, the protection of public health, morals or rights and freedoms of others. Therefore, his right to peaceful assembly as guaranteed by the Belarus Constitution and by the international obligations of Belarus was violated.

2.6 On 28 November 2007, a judge of the Vitebsk Regional Court rejected the author's appeal. The court referred to the Law on Mass Events,² which required participants at the commemoration to apply for the competent State authorities' permission to hold a mass event. According to the author's cassation appeal, no such application was submitted in the present case. Furthermore, article 23.34 of the Code on Administrative Offences provides for the administrative liability of an individual who repeatedly breaches the established procedure of organization or holding of a mass event or of a "picket" within a year after he or she has already been subjected to an administrative penalty for the same offence. The Vitebsk Regional Court noted that, on an earlier occasion, on 27 April 2007, the author had been found guilty of committing an administrative offence under article 23.34, part 1, of the Code on Administrative Offences and ordered him to pay a fine of 155,000 Belarusian roubles.³

2.7 On 21 December 2007, the author appealed the rulings of the Vitebsk District Court and the Vitebsk Regional Court to the Supreme Court under the supervisory review procedure. In his appeal, the author reiterated his argument that article 23.34 of the Code on Administrative Offences provides for administrative liability only for a violation of the established procedure of organizing or holding a mass action ("picket") and not for mere participation therein. He, however, had merely participated in the commemoration and was neither among its organizers nor leading it. The Deputy Chair of the Supreme Court dismissed the author's appeal on 4 February 2008. The Supreme Court took into account that the author had previously been the subject of an administrative penalty under article 23.34, part 1, of the Code on Administrative Offences and determined that the lower courts had correctly defined his actions under part 3 of the same article.

The complaint

3.1 The author submits that his detention by the police on 30 October 2007 in the course of the commemoration interfered with his right to freedom of expression, as guaranteed by article 19, paragraph 2, of the Covenant. The author maintains that he did not display any flags, posters or other propaganda materials, as shown in the video recording presented by the police as proof of his guilt. Therefore, his acts were wrongly defined by the court as a mass event.

3.2 The author also submits that the commemoration was never intended to be a political, social or economic action and, for that reason, its participants did not request authorization for the organization of a mass event from the competent authorities. The commemoration in which he took part was a peaceful citizens' gathering, and the participants' actions neither impaired the rights and freedoms of others, nor resulted in damage to citizens' or municipal property. According to the author, the authorities had not presented any facts disclosing a breach of national security or of public order during the commemoration, and thereby endorsed its peaceful nature. Neither did they provide any documentary evidence of threats to the life and health of individuals, to their morals or

² See article 5 of the Law on Mass Events (application for holding a mass event); article 6 (procedure for consideration of the application and passing the decision thereon); article 7 (appealing the decision on banning the holding of the mass event or on changing the date, place and time thereof).

³ Approximately US\$ 72.3 /53.6 euros.

breaches of their rights and freedoms. Therefore, the author claims that the State Party has also violated his right to peaceful assembly under article 21 of the Covenant.

The State party's observations on admissibility and merits

4.1 By note verbale of 20 May 2008, the State party submitted its observations on the admissibility and merits of the communication. It confirms that, on 31 October 2007, a judge of the Vitebsk District Court found the author guilty of having committed an administrative offence under article 23.34, part 3, of the Code on Administrative Offences and ordered him to pay a fine of 20 baseline value units. The court had valid reasons for determining that the author, on 30 October 2007 at 12.30 p.m., took part in a public expression of personal and other interests at the parking lot on the Vitebsk–Liozno motorway in the proximity of Polyai village, without regard for the procedure for conducting mass events established by the Law on Mass Events. His participation in the said mass event was corroborated by witness statements and the video recording of the event that took place on 30 October 2007.

4.2 The State party submits that the conduct of the said mass event had not been authorized by either the head or deputy head of the local executive body. It adds that the Law on Mass Events aims at creating the conditions for the exercise of the constitutional rights and freedoms of citizens, and compliance with the Law serves as a guarantee for the protection of public safety and order in the course of such mass events. The State party concludes that the author's claims, alleging a violation of his constitutional rights and the international obligations of Belarus, are unfounded.

Author's comments on the State party's observations

5.1 On 2 July 2008, the author commented on the State party's observations. He notes that under article 2, paragraph 2, of the Covenant, Belarus undertook to adopt such legal and legislative measures as may be necessary to ensure exercise of their rights by individuals subject to its jurisdiction. The author submits that article 33 of the Constitution guarantees freedom of thought, opinion and freedom of expression to everyone, while article 35 of the Constitution establishes that the "freedom to hold assemblies, meetings, street marches, demonstrations and 'pickets' that do not disturb law and order or violate the rights of other citizens of Belarus, shall be guaranteed by the State. The procedure for holding the above-mentioned events shall be determined by law." He states that these rights can be exercised by a citizen of Belarus under any circumstances, subject to the restrictions that are provided in law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

5.2 The author reiterates his argument that, at the time of his detention and in court, he was not accused of encroaching upon national security or public safety by his actions. Nor was he accused of breaching public order or making threats to the life and health of individuals, to their morals or in breach of their rights and freedoms. The author submits that he was fined for the mere fact of taking part in a "picket", which reportedly was organized without regard for the procedure for conducting mass events.

5.3 The author recalls that article 23.34 of the Code on Administrative Offences does not proscribe mere participation in a mass event. He adds that, at the time of his detention and in court, it was not established that he either organized or led the commemoration. Therefore, as a mere participant in the event, he should not have been taken away from the venue and subjected to an administrative penalty. The author explains that by taking him away from the commemoration, the State party's authorities deprived him of the right to peaceful assembly. The peacefulness of the assembly is demonstrated by its aim of paying tribute to the victims of the Stalinist repressions. The peaceful nature of the

commemoration has not been disputed by the police officers who detained the author, the State party's courts that have examined his case or by the State party in its observations to the Committee.

5.4 The author submits that by breaking up the commemoration, the State party's authorities also deprived him of the right to freedom of expression. He recalls that he did not display any posters, flags, banners or other propaganda materials and that the only way in which he expressed his opinion about past political repression was to take part in the event. The author adds that he deliberately chose this way of expressing his opinion, because it did not pose any threat to national security or public safety, public order, public health or morals or the rights and freedoms of others. The author asserts, therefore, that his rights under article 19, paragraph 2, and article 21 of the Covenant have been violated.

Further submissions from the State party

6.1 By note verbale of 11 December 2008, the State party submits that the author's claims concerning the unlawfulness of subjecting him to administrative liability under article 23.34, part 3, of the Code on Administrative Offences are unfounded. The State party explains that, further to the requirement of article 35 of the Constitution, the Law on Mass Events established the procedure for holding such events in order to create the conditions for the exercise of the constitutional rights and freedoms of citizens, as well as to ensure public safety and public order in the course of such mass events.

6.2 The State party argues that in his comments the author does not dispute the fact that he took part in the mass event on 30 October 2007, which he describes as a peaceful assembly, i.e. the commemoration. At the same time, the event in question took place at the parking lot, which was not intended for such purposes and then on the Vitebsk-Liozno motorway with the use of white/red/white flags. Flags of this colour combination, however, are not the official State symbol of Belarus.

6.3 The State party submits that the courts have correctly determined that the author took part in a "picket", a definition of which is contained in article 2 of the Law on Mass Events. This conclusion is supported by the fact that a number of individuals took part in the event, that they used symbols that were not the official State symbols of Belarus and that they intended to erect crosses in arbitrary locations. Furthermore, the said actions were accompanied by public statements.

6.4 The State party also points out that, contrary to the requirements of the Law on Mass Events, the "picket" of 30 October 2007 was not authorized. For this reason, police officers who arrived at the venue of the mass event indicated to the participants that they should stop it. This demand was not complied with. Therefore, the courts correctly determined that the author took part in a "picket" in violation of the established procedure for the conduct thereof. Since the author had committed a similar administrative offence less than a year before, having taken part in a "picket" on 30 October 2007, this time he was found guilty under article 23.34, part 3, of the Code on Administrative Offences.

6.5 The State party concludes by saying that the desire of a group of citizens to hold a mass event or to take part in it should not infringe the rights and freedoms of others. All persons are equal before the law and the State guarantees the protection of its citizens, inter alia, through ensuring compliance with the provisions of the Law on Mass Events.

Further submissions from the author

7.1 On 23 January 2009, the author submits that the State party's authorities have not adduced any additional arguments in support of their claim that he did not have the right to take part in a peaceful assembly, i.e. the commemoration, or to publicly express his opinion about the political repression in Soviet Russia. He adds that in its observations the State

party has acknowledged that (1) the commemoration took place where the execution of the victims of political repressions was carried out; (2) the event was a peaceful assembly; (3) the commemoration took place in a rural area; (4) the symbols used by the participants (white/red/white flags and wooden crosses) have not been proscribed either by the law or courts; (5) the public statements did not contain any calls for the overthrow of government, the organization of mass riots or other unlawful action; (6) the State party's authorities (police officers) interfered with the peaceful assembly and expression of their opinion by the participants; (7) there is no information that the commemoration resulted in the infliction of moral suffering or bodily injuries to anyone; and (8) no individuals whose rights were infringed by the commemoration have been identified.

7.2 The author states that the commemoration took place in woodland where the execution of the victims of political repression was carried out and not at the parking lot or on the motorway. He notes that the State party's authorities have failed to identify the organizers of the event and instead have randomly punished selected participants of the commemoration. The author reiterates his argument that, by taking part in a peaceful assembly, he had legitimately expressed his opinion about the political repression that took place during the Stalinist regime. Consequently, the police officers' demand that the commemoration be stopped was not aimed at suppressing the author's unlawful actions but rather at depriving him of the right to peaceful assembly and the right to freedom of expression.

Additional submissions from the State party

8.1 By note verbale of 25 May 2009, the State party reiterates its earlier arguments, summarized in paragraphs 6.2-6.5 above, and adds that article 19, paragraph 3, of the Covenant provides for the possibility to subject the exercise of the rights provided for in paragraph 2 of this article to certain restrictions. Article 21 of the Covenant guarantees the right of peaceful assembly. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

8.2 The State party argues that Belarus has implemented provisions of the Covenant, including articles 19 and 21 thereof, into its national legislation.⁴ At the same time, article 23 of the Constitution allows for restrictions upon personal rights and freedoms but only in the instances specified by law, in the interest of national security, public order, protection of public health and morals, as well as of the rights and freedoms of other persons.

Additional submissions from the author

9. On 21 July 2009, the author submitted that his political opinions in general differ from those of the current establishment in Belarus and that he has been punished on numerous occasions for taking part in peaceful assemblies and expressing his views. He concludes that in violation of article 2, paragraph 1, of the Covenant, the State party has failed to take the necessary measures to ensure exercise of his right of peaceful assembly and the right to freedom of expression due to his political and other opinions and, in particular, his negative attitude to the Stalinist repressions in Soviet Russia. The author, therefore, respectfully requests the Committee to determine that his rights under article 19, paragraph 2, and article 21 of the Covenant have been violated.

⁴ Reference is made to articles 33 and 35 of the Constitution.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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 case is admissible under the Optional Protocol to the Covenant.

10.2 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. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

10.3 The Committee considers that the author's claims under article 19, paragraph 2, and article 21 of the Covenant are sufficiently substantiated, for purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

Consideration of the merits

11.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

11.2 The Committee notes the author's claim that, by breaking up, on 30 October 2007, the commemoration to honour the victims of the Stalinist repressions in Soviet Russia, the State party's authorities violated his right to freedom of expression under article 19, paragraph 2, of the Covenant, since he was taken away from the commemoration and subsequently fined 620,000 Belarusian roubles for publicly expressing personal and other interests during the unauthorized "picket". It further notes the State party's contention that the author was subjected to administrative liability under article 23.34, part 3, of the Code on Administrative Offences for having breached the procedure for organizing and holding mass events.

11.3 The first issue before the Committee is whether or not the application of article 23.34, part 3, of the Code on Administrative Offences to the author's case, resulting in the termination of the commemoration and the subsequent fine, constituted a restriction within the meaning of article 19, paragraph 3, on the author's right to freedom of expression. The Committee notes that article 23.34, part 3, of the Code on Administrative Offences establishes administrative liability for violation of the established procedure for organizing or conducting a mass event. It also notes that since the State party imposed a "procedure for holding mass events", it effectively established restrictions regarding the exercise of the freedom to impart information, guaranteed by article 19, paragraph 2, of the Covenant.⁵

11.4 The second issue is, therefore, whether in the present case such restrictions are justified under article 19, paragraph 3, of the Covenant, i.e. are provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society.⁶ Any restrictions on their exercise must conform to the strict tests of necessity and proportionality

⁵ Communication No. 780/1997, *Laptsevich v. Belarus*, Views adopted on 20 March 2000, para. 8.1.

⁶ See Human Rights Committee general comment No. 34 (2011) on article 19, Freedoms of opinion and expression, para. 2.

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

11.5 The Committee observes that, in the present case, the State party has argued that the provisions of the Law on Mass Events are aimed at creating the conditions for the exercise of the constitutional rights and freedoms of citizens and the protection of public safety and public order in the course of such mass events. The Committee also observes that the author has argued that article 23.34 of the Code on Administrative Offences does not apply to him, since it does not provide for administrative liability for mere participation in a mass event. Furthermore, since such commemorations are not governed by Belarusian laws, the participants at the commemoration that took place on 30 October 2007 did not request authorization for the organization of a mass event from the competent authorities. In this regard, the Committee notes that the author and the State party disagree on whether the commemoration in question constituted a “mass event” that was subject to the “procedure for holding mass events” established by the Law on Mass Events, whether article 23.34 of the Code on Administrative Offences proscribes mere participation in a mass event and whether the author displayed any flags, or other symbols or propaganda materials.

11.6 Even if the sanctions imposed on the author were permitted under national law, the Committee notes that the State party has not advanced any argument as to why they were necessary for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant, and what dangers would have been created by the author’s publicly expressing his negative attitude to the Stalinist repressions in Soviet Russia. The Committee concludes that in the absence of any pertinent explanations from the State party, the restrictions on the exercise of the author’s right to freedom of expression cannot be deemed necessary for the protection of national security or of public order (*ordre public*) or for respect for the rights or reputations of others. The Committee therefore finds that the author’s rights under article 19, paragraph 2, of the Covenant have been violated in the present case.

11.7 The Committee further notes the author’s claim that his right to freedom of assembly under article 21 of the Covenant was violated, since he was arbitrarily prevented from holding a peaceful assembly. In this context, the Committee recalls that the rights and freedoms set forth in article 21 of the Covenant are 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 imposed (1) in conformity with the law and (2) which are necessary in a democratic society in 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.⁸

11.8 In the present case, the Committee must consider whether the restrictions imposed on the author’s right to freedom of assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. The Committee notes the State party’s assertion that the restrictions were in accordance with the law. However, the State party has not provided any information as to how, in practice, commemorating the victims of the Stalinist repressions would violate 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 as set out in article 21 of the Covenant. Accordingly, the Committee concludes that in the present case, the State party has also violated the author’s right under article 21 of the Covenant.

⁷ Ibid., para. 22.

⁸ See communication No. 1604/2007, *Zalesskaya v. Belarus*, Views adopted 28 March 2011, para. 10.6.

12. 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 by Belarus of article 19, paragraph 2, and article 21 of the Covenant.

13. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including reimbursement of the value of the fine as at October 2007, any legal costs incurred by the author and compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

14. 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 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.

[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.]
