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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 2712/2015, 2897/2016, 2909/2016, 2910/2016, 2915/2016*,**

Communications submitted by:	Aleksandr Protsko (not represented), Eduard Nelyubovich, Yury Lyashenko, Natalya Shchukina, Vladimir Katsora, Andrey Tolchin, Ekaterina Tolchina, Vasily Polyakov; Valery Klimov (represented by counsel, Leonid Sudalenko)
Alleged victims:	The authors
State party:	Belarus
Dates of communications:	19 December 2011 (communication No. 2712/2015); 27 May 2016 (communication No. 2897/2016); 21 May 2016 (communication No. 2909/2016); 27 July 2016 (communication No. 2910/2016); 21 October 2016 (communication No. 2915/2016) (initial submissions)
Document references:	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 24 December 2015 (communication No. 2712/2015); 13 December 2016 (communication No. 2897/2016); 28 December 2016 (communication No. 2909/2016); 30 December 2016 (communication No. 2910/2016) and 28 December 2016 (communication No. 2915/2016)
Date of adoption of Views:	18 October 2022
Subject matter:	Refusal to authorize public events
Procedural issue:	Exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Freedom of assembly; freedom of expression
Articles of the Covenant:	2 (2) and (3), 19 and 21
Articles of the Optional Protocol:	2, 3 and 5(2)(b)

* Adopted by the Committee at its 136th session (10 october-4 November 2022).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

Please recycle

1.1 The authors of the communications are Aleksandr Protsko (communication No. 2712/2015), Eduard Nelyubovich (communication No. 2897/2016), Yury Lyashenko (communication No. 2909/2016), Natalya Shchukina, Vladimir Katsora, Andrey Tolchin, Ekaterina Tolchina, Vasily Polyakov (communication No. 2910/2016) and Valery Klimov (communication No. 2915/2016). The authors are nationals of Belarus born in 1953, 1962, 1968, 1944, 1957, 1959, 1975, 1969 and 1948, respectively. They claim that the State party has violated their rights under articles 2 (2), (3), 19 and 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author in communication No. 2712/2015 is not represented. The authors in all the other communications are represented by counsel.

1.2 On 18 October 2022, pursuant to rule 97 (3), of the Committee's rules of procedure, the Committee decided to join communications Nos. 2712/2015, 2897/2016, 2909/2016, 2910/2016 and 2915/2016, for a joint decision, in view of substantial factual and legal similarities.

The facts as submitted by the authors

2.1 The authors in all the communications submit that they applied to the local authorities of the State party, seeking to obtain authorizations for holding public events, which they planned to organize on various matters of public concern in different locations in the Gomel Region. However, their requests were refused with reference to the failure to comply with the provisions of the domestic legislation on holding public events. Their respective complaints lodged before the domestic courts against the decisions of the local authorities were also rejected.

2.2 The facts relevant to each individual communication are summarized below.

Communication No. 2712/2015, Aleksandr Protsko v. Belarus

2.3 On 14 September 2010, the author requested the Gomel City Executive Committee (the City Executive Committee) to authorise the holding of a picket planned for 2 October 2010 in front of the "Davydovsky" market at Studencheskiy Lane in Gomel. The purpose of the picket was to protest against a criminal prosecution of the author's daughter and the latter's discreditation by the media.

2.4 On 24 September 2010, the City Executive Committee refused to authorise the picket on the grounds that the venue chosen by the author did not correspond to the specific location for holding public events in the city established by Decision of the City Executive Committee No. 299 of 2 April 2008 "On Mass Events in the city of Gomel". Furthermore, in violation of the above Decision, the author failed to conclude contracts with relevant service providers to ensure public order and medical care during the event and cleaning after the event.

2.5 The author challenged the above refusal before the Tsentralny District Court of Gomel (the district court), complaining that the refusal constituted an unnecessary limitation of his right to freedom of assembly and expression. On 21 October 2010, the district court rejected the author's complaint, having found that he failed to comply with the requirements, established by the City Executive Committee's Decision No. 299 in that the venue chosen for the event did not correspond to the specific location permitted for holding public events in the city, and that the author had failed to conclude contracts with the relevant services to ensure public order and medical care during and cleaning after the event, as well as to specify in his request before the City Executive Committee the information on the measures undertaken to ensuring public order and medical care during and cleaning after the event. On 14 December 2010, the Gomel Regional Court upheld the decision of the district court on appeal.

2.6 The author's further appeals lodged in the framework of the supervisory review procedure before the Chairs of the Gomel Regional Court and the Supreme Court were rejected on 4 February and 28 March 2011, respectively. The author did not lodge a supervisory review appeal before the Prosecutor's Office, considering this legal avenue to be ineffective.

Communication No. 2897/2016, Eduard Nelyubovich v. Belarus

2.7 On 12 February, 14 October 2014 and 30 January 2015, the author requested the Gomel City Executive Committee to issue authorisations for holding three separate mass events in Gomel – a picket, street procession and a flash mob, respectively. The holding of the picket and the street procession was planned for, respectively, 15 March and 7 November 2014 at the pedestrian part of the Sovetskaya Street, with participation of up to 30 participants. The holding of a flash mob was planned for 22 February 2015 on the Lenina Square, with participation of up to 50 persons. The purposes of the events were, respectively, to protest against systematic violations by the City Executive Committee of the rights to freedom of assembly and expression guaranteed by the Constitution and the international treaties ratified by Belarus; to protest against the support by the Russian Federation of separatism in Ukraine and express solidarity with the Ukrainian people in their will to live in the European Union; to celebrate the anniversary of the escape of the former President of Ukraine, Mr. Y., to the Russian Federation. All the three requests contained an undertaking by the author to cover expenses relating to medical care during the events and cleaning after the events.

2.8 On 3 March and 28 October 2014, and on 13 February 2015, respectively, the City Executive Committee refused to authorise the events, referring to the failure by the author to comply with its Decision No. 775 of 15 August 2013 "On Mass Events in Gomel". In particular, it was found that the venues chosen for the events did not correspond to the specific locations, designated for holding public events in the city, and that the author failed to conclude the required contracts with the city services to ensure medical care during and cleaning after the events.

2.9 The author challenged the refusals in the framework of three separate sets of proceedings before the Tsentralny District Court of Gomel, complaining that the refusals to issue the authorisations constituted an unjustified interference with his rights to freedom of assembly and expression. On 8 April and 3 December 2014, and on 24 March 2015, respectively, the district court rejected the complaints, having found that no public events were permitted in the chosen venues, and that the author had failed to conclude the relevant contracts to ensure medical care during and cleaning after the events, thereby failing to comply with the relevant provisions of the domestic legislation on public events. On 5 June 2014, 12 March and 5 May 2015, respectively, the Gomel Regional Court upheld the decisions of the district court on appeal.

2.10 The author's supervisory review appeals lodged before the Chair of the Gomel Regional Court were rejected on 26 January, 19 and 30 October 2015. His further supervisory review appeals lodged before the Supreme Court were rejected on 27 February, 26 November and 29 December 2015.

2.11 The author submitted further supervisory review appeals before the Gomel Regional Prosecutor and the Office of the Prosecutor General. His appeals were rejected on 19 and 23 January and on 19 February 2016 - by the Gomel Regional Prosecutor; and on 9 March, 4 April and 18 May 2016 – by the Deputy Prosecutor General.

Communication No. 2909/2016, Yury Lyashenko v. Belarus

2.12 The author is a person with a disability. On 5 November 2014, he requested the Svetlogorsky District Executive Committee of the Gomel Region (the District Executive Committee) to authorise the holding of a picket on 22 November 2014 at the central square in front of the building of the District Executive Committee in the town of Svetlogorsk, with participation of up to 10 persons. The purpose of the event was to protest against the failure to respect the rights of persons with disabilities in the course of the renovation of the residential building, where the author was living.

2.13 On 13 November 2014, the District Executive Committee refused to grant the authorisation, referring to the failure by the author to comply with the requirements for holding public events, established by its Decision No. 494 of 2 April 2008 "On Mass Events in the Svetlogorsky District", as the venue chosen for the event did not correspond to the location permitted by the Decision for holding public events in the town.

2.14 The author challenged the decision to refuse the authorisation before the Svetlogorsky District Court. In its decision of 26 January 2015, the court established that the specific location, designated by Decision No. 494 for holding public events in the town, was in an unsatisfactory state and could not be used for the specified purpose. The court also found that the venue proposed by the author in his request for authorization of the public event did not meet the requirements of Art. 9 (3) of Law No. 114-3 of 30 December 1997 "On Mass Events in the Republic of Belarus" (the Law on Mass Events), as it was located at a distance of less than 50 meters from the building of the District Executive Committee in Svetlogorsk. The court further rejected the author's complaint, having arrived at a conclusion that the refusal to hold the planned event was lawful, as the venue proposed by the author did not correspond to the requirements of the Law on Mass Events. On 24 March 2015, the above decision of the Svetlogorsky District Court was upheld on appeal by the Gomel Regional Court.

2.15 The author lodged further consecutive supervisory review appeals before the Chair of the Gomel Regional Court, the Supreme Court, the Gomel Regional Prosecutor´s Office and the Office of the Prosecutor General. His appeals were rejected on 18 May and 18 September 2015, 22 February and 21 April 2016, respectively.

Communication No. 2910/2016, Natalya Shchukina et al. v. Belarus

2.16 On 10 September 2015, the authors requested the Gomel City Executive Committee to authorize several street processions planned for 30 September 2015 in various locations in the city of Gomel. The purpose of the events was to draw public attention to possible falsifications of the upcoming presidential elections in the State party, and to the right of everyone to refuse to participate in the early voting procedure.

2.17 On 24 September 2015, the City Executive Committee rejected the authors' requests on the grounds of their failure to comply with the requirements for holding public events established by its Decision No. 775 of 15 August 2013 "On Mass Events in the City of Gomel" and by article 9 (3) of the Law On Mass Events. In particular, it was established that the authors failed to conclude contracts with relevant city services to ensure medical care during and cleaning after the events, and the planned itinerary of one of the events was located at a distance of less than 50 meters from the buildings of the local executive and administrative authorities.

2.18 The authors challenged the refusal before the Tsentralny District Court of Gomel. On 27 October 2015, the district court rejected the complaint, having established that the relevant requirements of the domestic legislation on organization and conduct of mass events was not complied with, as all the authors failed to conclude the contracts required under the relevant provisions of Decision No. 775, and the planned itinerary of one of the events was located at a distance of less than 50 meters from the building of the local executive and administrative authorities. On 15 December 2015, the Gomel Regional Court upheld the above decision on appeal.

2.19 The authors submitted supervisory review appeals to the Chairs of the Gomel Regional Court and the Supreme Court, as well as to the Gomel Regional Prosecutor and the Prosecutor General, which were rejected on 9 February, 4 April, 27 May and 21 July 2016, respectively.

Communication No. 2915/2016, Valery Klimov v. Belarus

2.20 The author is the Chair of the Gomel branch of the Belarusian party "Spravedlivy Mir". On 21 September 2015, he, on behalf of the party, requested the Gomel City Executive Committee to issue an authorisation for holding pickets in various locations in Gomel, planned for 8, 9 and 10 October 2015. The purpose of the events was to campaign against the re-election of Mr. Lukashenko at the upcoming presidential elections.

2.21 On 25 September 2015, the City Executive Committee refused to issue the authorisation on the grounds that the planned locations did not correspond to the list of those allocated for holding mass events by Decision No. 775 of 15 August 2013 "On Mass Events in the City of Gomel", and that the author failed to conclude contracts with service providers to ensure medical care during and cleaning after the events, as required by the above Decision.

2.22 The author complained before the Tsentralny District Court of Gomel, challenging, in particular, the decision by the City Executive Committee to refuse the authorisation of the planned pickets. On 3 November 2015, the district court rejected the complaint on the grounds that the requirements established by the relevant domestic legislation for holding mass events were not complied with, as no contracts were concluded with the relevant service providers and the venues chosen for holding the events did not correspond to the locations permitted under Decision No. 775. On 22 December 2015, the Gomel Regional Court, acting as a court of appeal, upheld the above decision of the district court in its respective part concerning the refusal by the City Executive Committee to issue the authorisation.

2.23 The author lodged supervisory review appeals before the Chairs of the Gomel Regional Court and the Supreme Court, which were rejected on 25 February and 2 May 2016, respectively. The author did not pursue the appeal under the supervisory review procedure before the Prosecutor's Office, considering this legal venue to be ineffective.

The complaint

3.1 The authors claim that the respective refusals by the authorities of the State party to authorise the planned public events amount to a violation of their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3) of the Covenant. They submit that the contested decisions by the local executive and administrative authorities and domestic courts constituted a restriction on their respective rights, which was not necessary in a democratic society and was in breach of the relevant international obligations of the State party under the Covenant. They claim that neither the relevant local executive and administrative authorities, nor the domestic courts considered whether the restrictions imposed on their rights were justified by reasons of national security or public safety, public order or protection of public health or morals, or whether they were necessary for the protection of the rights and freedoms of others.

3.2 The authors claim that the provisions of the Law On Mass Events are vague and subject to different interpretations, in violation of articles 19 and 21, read in conjunction with article 2 (2) of the Covenant. .

3.3 The authors ask the Committee to find a violation of their rights under articles 19 and 21 of the Covenant, read in conjunction with article 2 (2) and (3), and to recommend to the State party to bring its national legislation in conformity with the standards of the Covenant. The author in communication No. 2712/2015 also asks the Committee to recommend to the State party to reimburse his expenses incurred in connection with the proceedings in his case and pay him compensation for moral damage in the amount of 3 000 Euros.

State party's observations on admissibility and merits

4.1 By notes verbales of 10[1], 22[2], 24[3] February and 3 March 2017[4], the State party submitted its observations on admissibility and merits of the communications. In its observations in respect of admissibility of all the communications, the State party submits that the authors failed to exhaust all available domestic remedies, as the possibilities for lodging further supervisory review appeals in their respective cases were not fully exhausted. Thus, it was open for the authors to submit further appeals in the framework of the supervisory review procedure before the Chair or Deputy Chair of the Supreme Court and the competent prosecutor, in particular, the Prosecutor General or Deputy Prosecutor General.

4.2 In what concerns the merits of the communications, the State party argues that the authors' respective complaints are unfounded, noting in this respect that the impugned decisions of the domestic authorities and courts in the authors' cases were taken in accordance with the relevant provisions of the domestic legislation, in particular, the Law on Mass Events, which provides for the right of local executive and administrative authorities

[1] In relation to communication no. 2897/2016.
[2] In relation to communications nos. 2909/2016 and 2915/2016.
[3] In relation to communication no. 2712/2015.
[4] In relation to communication no. 2910/2016.

to determine a specific location for holding mass events, as well as the locations, where public events are not allowed to take place. Furthermore, under the domestic legislation, the responsibility to take measures for ensuring medical care during and cleaning after a public event is imposed on organizers of such events. The provisions of the domestic legislation are aimed at creating conditions for the realization of the constitutional rights and freedoms, at ensuring public safety and order during mass events, as well as at increasing the personal responsibility of organizers of public events. Given that the authors failed to respect the requirements established by the domestic legislation for holding public events, the refusals to authorize their respective requests were lawful.

4.3 The State party further argues that the relevant domestic legislation on public events is consistent with the provisions of the Constitution of the Republic of Belarus and does not contradict articles 19 and 21 of the Covenant, which allow States to impose, through its national legislation, such restrictions on the rights and freedoms at issue that are necessary in a democratic society in the interests of national security or public safety, public order, protection of health or morals or protection of the rights and freedoms of others. The State party notes in this respect that holding mass events in various public places affects the rights of other persons, who do not take part in the events. Measures should be taken to ensure public safety and the rights of the participants of public events, as well as the rights of those, who do not take part in such events. The procedure established by the domestic legislation for organizing and holding mass events, taking into account the provisions of articles 19 (3) and 21 of the Covenant, cannot be regarded as a restriction of the authors' rights.

Authors' comments on the State party's observations

5.1 On 12 March 2016[5], 17 March[6], 10 May[7] and 9 June 2017[8], the authors submitted their comments on the State party's observations. Addressing the State party's arguments as to the inadmissibility of the communications for failure to exhaust domestic remedies, the authors in communications nos. 2897/2016, 2909/2016, 2910/2016 and 2915/2016 submit that they lodged, unsuccessfully, their supervisory review appeals, which were all rejected. They further note that the supervisory review procedure does not constitute an effective domestic remedy, as it does not entail a fresh examination of the case and its outcome depends on the sole discretion of the relevant prosecutor or judge. They additionally note that the current domestic legislation does not provide for the possibility to directly lodge a complaint before the Constitutional Court.

5.2 In response to the State party's observations on the merits, the author in communication no. 2712/2015 argues, with reference to the Committee's jurisprudence on the subject matter,[9] that the domestic courts failed to provide a justification for the restrictions on his rights to freedom of expression and peaceful assembly.

5.3 In their respective comments, the authors in communications nos. 2897/2016, 2909/2016, 2910/2016 and 2915/2016 contend that the current domestic legislation on mass events and the practice of its application by the authorities of the State party resulted in a violation of their rights under articles 19 and 21 of the Covenant. They further submit that the State party has failed to implement the views adopted by the Committee in a number of similar cases[10] and to comply with recommendations on amending the national legislation set out in the joint

[5] Comments in relation to the SP's observations in communication no. 2712/2015.

[6] Comments in relation to the SP's observations in communications nos. 2897/2016, 2909/2016 and 2915/2016.

[7] Comments in relation to the SP's observations in communication no. 2910/2016.

[8] Repeated submission of comments in relation to the SP's observations on communication no. 2897/2016. It transpires from the file that the author repeatedly submitted the same comments as those, which had already been submitted on 17 March 2017.

[9] Reference is made to *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011) and *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008).

[10] Reference is made to *Kirsanov v. Belarus* (CCPR/C/110/D/1864/2009); *Kuznetsov et al. v. Belarus* (CCPR/C/111/D/1976/2010); *Evrezov v. Belarus* (CCPR/C/114/D/1988/2010); *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010); Evrezov *et al. v. Belarus* (CCPR/C/112/D/1999/2010); and *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011).

opinion of 16-17 March 2012 of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights "On the Law on Mass Events of the Republic of Belarus".[11]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the authors have failed to seek a supervisory review of the impugned decisions in their cases by the Prosecutor's Office or by the Chair or Deputy Chair of the Supreme Court of Belarus. In this context, the Committee considers that filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. The Committee also notes the authors' argument corroborated by the materials on file that they indeed appealed, unsuccessfully, the decisions in their cases under the supervisory review procedure before the president of a court[12] (see paras. 2.6, 2.10 – 2.11, 2.15, 2.19 and 2.23 above). The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[13] The Committee notes that in the present case, the authors have exhausted all available domestic remedies, including those that constitute a supervisory review procedure, and therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the authors' claims that the State party violated their rights under articles 19 and 21, read in conjunction with article 2 (2) of the Covenant. The Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. [14] The Committee notes, however, that the authors have already alleged a violation of their rights under articles 19 and 21 of the Covenant, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider the examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, to be

[11] The authors refer to the European Commission's for Democracy through Law (Venice Commission) and the OSCE Office's for Democratic Institutions and Human Rights joint opinion "On the Law on Mass Events of the Republic of Belarus", adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012).

[12] According to the documents on file, the authors in all the communications complained in the framework of the supervisory review procedure before the Chair of the Supreme Court. The authors in communications Nos. 2897/2016, 2909/2016 and 2910/2016 further pursued their supervisory review appeals before the Prosecutor's Office, complaining before the respective regional prosecutor and the Prosecutor General (see paras. 2.11, 2.15 and 2.19 above).

[13] *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

[14] *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.; *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4.

distinct from examination of the violation of the authors' rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the authors' claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee further notes the authors' claims under articles 19 and 21 of the Covenant, read in conjunction with article 2 (3). In the absence however of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee finally notes that the facts, as submitted by the authors in their respective communications, raise issues under articles 19(2) and 21 of the Covenant, taken separately. The Committee, therefore, consider the communications, in their respective parts, sufficiently substantiated for the purposes of admissibility, and proceeds with their consideration of the merits.

Considerations of the merits

7.1 The Committee has considered the communications in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claims that their rights to freedom of expression and assembly have been restricted in violation of both article 19 (2) and article 21 of the Covenant, as they were denied the authorisation to organise public assemblies of a peaceful nature, the detailed information on which is specified in paras. 2.3, 2.7, 2.12, 2.16 and 2.20 above. It also notes the authors' argument that the authorities failed to explain why the restrictions imposed on their rights were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others, as required, respectively, by article 19 (3) and the second sentence of article 21 of the Covenant.

7.3 Considering the authors' claim that their right of peaceful assembly was unreasonably restricted by the State party on account of the refusal to issue authorisations for holding peaceful public events, the Committee notes that the issue before it is to determine whether the restrictions imposed were justified under article 21 of the Covenant.

7.4 In its general comment No. 37 (2020), the Committee stated that peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.[15] Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed or of the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city. The Committee further notes that the requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21.[16]

7.5 The Committee further recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for public expression of an individual's views and opinions and indispensable in a democratic society. Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, assemblies with a political message should enjoy a heightened level of accommodation and protection.[17] Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and

[15] General comment No. 37 (2020) on the right of peaceful assembly (article 21), para. 55.

[16] Ibid., para. 64.

[17] Ibid, para. 32; see General comment No. 34 (2011) on the freedoms of opinion and expression, paras. 34, 37–38 and 42–43.

flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.[18] The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,[19] and no restriction to this right is permissible, unless it (a) is imposed in conformity with the law; and (b) is necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), 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 of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.[20] The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[21]

7.6 In the present cases, the Committee must consider whether the restrictions imposed on the authors' right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In light of the information available on file, the authors' applications seeking authorization from the authorities for holding the requested public events were refused on the grounds that the venues chosen were not permissible under the relevant provisions of domestic legislation in that they either did not correspond to the specific locations designated by the local executive and administrative authorities for holding public events or were located at a distance of less than 50 m from the premises of public institutions. Furthermore, the relevant executive and administrative authorities refused to authorise the events because the authors failed to conclude contracts required under domestic legislation to ensure public order and medical care during and cleaning of the locations after the planned events. In this context, the Committee notes that neither the respective City or District Executive Committees nor domestic courts have provided any justification or explanation as to how, in practice, the authors' requested public events would have violated 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. The State party also failed to show that any alternative measures were taken to facilitate the exercise of the authors' rights under said article 21.

7.7 In the absence of any further explanations from the State party regarding the matter, the Committee concludes that the State party has violated the authors' rights under article 21 of the Covenant.[22]

7.8 The Committee further notes the authors' claims that their right to freedom of expression has been restricted in violation of article 19 (2) of the Covenant, as their requests for authorization of the peaceful assemblies aimed at publicly expressing their opinion on matters of public concern were refused by the authorities of the State party. The issue before the Committee is therefore to determine whether the restrictions imposed on the authors' freedom of expression can be justified under any of the criteria set out in article 19 (3) of the Covenant.

7.9 The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.[23] It notes that article 19 (3) of the Convention allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary (a) for respect of the rights or reputation of others; or (b) for the protection of national security or public order

[18] General comment No. 37 (2020), para 6.

[19] Ibid., para. 22.

[20] Ibid., para 36.

[21] See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

[22] See, e.g., *Vladimir Malei v. Belarus* (CCPR/C/129/D/2404/2014), para 9.7; *Tolchina v Belarus* (CCPR/C/132/D/2857/2016), para 7.6; *Zavadskaya et al v. Belarus* (CCPR/C/132/D/2865/2016), para 7.6; *Popova v Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.6; and *Sadykov v Kazakhstan* (CCPR/C/129/D/2456/2014), para.. 7.7.

[23] General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

(*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature – that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected.[24] The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.[25]

7.10 The Committee observes in this respect that limiting holding of a public assembly to certain predetermined locations hinders the possibility for participants and organisers of the assembly to reach their target audience and effectively express their views on matters of public concern.[26] Such practice does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee observes that neither the State party, nor the domestic courts have invoked any specific grounds to support the necessity of the restrictions imposed on the authors as required under article 19 (3) of the Covenant.[27] Nor has the State party demonstrated that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the cases before it, the restrictions imposed on the authors, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. In the absence of any further information or explanation by the State party, the Committee concludes that the rights of the authors under article 19 of the Covenant have been violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the authors' rights under articles 19 and 21 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the authors with adequate compensation, including reimbursement of any legal costs they have incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications, and thus the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

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 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 when it has been determined that a violation has occurred, 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 the official languages of the State party.

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[24] Ibid., para. 34.

[25] *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

[26] See General comment No. 37 (2020), paras. 1-2, 4, 9, 12, 22, 32, 48-49, 55.

[27] See, e.g., *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.