United Nations CCPR/C/135/D/2703/2015

International Covenant on Civil and Political Rights

Distr.: General
17 January 2023

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning Communication No. 2703/2015*, **

Communication submitted by:	Nikita Likhovid (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communications:	4 May 2015 (initial submissions)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 December 2015
Date of adoption of Views:	6 July 2022
Subject matter:	Conviction for participation in mass event which turned violent; unfair trial; inhuman conditions of detention; freedom of expression; freedom of peaceful assembly
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to a fair hearing by an impartial tribunal; right to be presumed innocent; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; freedom of expression; right of peaceful assembly; equality before the law and equal protection of the law; effective remedy
Articles of the Covenant:	2, 7, 9 (2) and (3),10, 14 (1), (2), (3) (d) (e) (g) and (5), 19 (1) and (2) and 21
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Nikita Likhovid, a Belarussian national born in 1990. He claims that the State party has violated his rights under articles 2, 7, 9 (2) and (3), 10, 14 (1), (2), (3) (d), (e) and (g) and (5), 19 (1) and (2) and 21 of the Covenant. The Optional

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, 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 Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 19 December 2010, presidential elections were held in Belarus. The author and many other citizens gathered that day in downtown Minsk to voice their protest over what they believed was an unfair election, denouncing massive irregularities and falsifications. From approximately 9.45 to 10.30 p.m., small and violent groups of protesters started smashing the windows of the House of Government and nearby buildings. The main mass of the protesters, including the author, took part in a peaceful demonstration that was far from the violent group, separated by the journalists who were covering the event. Despite the peaceful nature of the gathering, the police used disproportionate force to disperse the crowds, beating them with batons. The author, along with hundreds of other protesters, was apprehended and taken to a police station.

2.2 On 20 December 2010, the Sovietsky district court in Minsk found the author guilty of violating article 23.34 of the Code of Administrative Offences and sentenced him to 15 days of administrative detention. According to the decision of the court, the author participated in an unauthorized gathering, shouting "long live Belarus!" and "get out" and did not comply with the police order to stop his "unlawful actions". On an unspecified date, the author appealed the district court decision to the Minsk city court, noting that he had participated in a peaceful meeting as guaranteed by national legislation.

2.3 On 27 December 2010, while the author was in administrative detention, the Minsk city Prosecutor sanctioned his arrest on suspicion of committing a crime under article 293 (2) of the Criminal Code (participation in mass disorders).[1, 2]

2.4 The author submits that while in detention, he was subjected to cruel, inhuman and degrading treatment: police coerced the author, without the presence of his lawyer, into signing a confession of damaging State property; he was held with 21 other inmates in unsanitary conditions, the cell measured 12m^2 and was nominally fit for 13 persons; there was only cold water available in the cells, where the temperature was very low; the cell was without natural light; he did not have a bed; he was allowed out of his cell to walk only once a day and to shower once every 10 days; lack of hygiene and overcrowding was conducive to the spreading of various types of diseases among inmates. His health complaints (toothache) were ignored.

2.5 On 29 March 2011, the Partizansky district court in Minsk found the author guilty of participating in mass disorders, manifested through violence against law enforcement officers, who were protecting the building of the House of Government on 11 Sovetskaya Street from a violent crowd who tried to forcefully enter the building. The court ruled that the author (together with other individuals) committed disorders and destroyed property, and sentenced him to three years and six months' imprisonment in a penal colony in Vitebsk region.[3] The Court based its ruling on evidence including video materials, witness statements and reports of forensic medical examinations. The author submits that the court erred in its assessment since he and many other participants in the event were peacefully demonstrating to express their disagreement with the results of the presidential elections. The author admitted that he hit the wooden barriers of a doorway at the entrance of the House of Government but did not cause any damage. He claims that witness statements given by victims of the incident during the court proceedings were inconsistent with those documented during the investigation, thus putting in question the credibility of those statements.

2.6 The author submits that video materials shown during the court hearing did not demonstrate that he participated in mass disorders, nor did they provide any proof that he harmed law enforcement officers. He notes that violent actions were perpetrated by a small group of people, which could be seen from the video materials, and that he was not among

[1] The author provided a copy of this document.

[2] No judge heard the author before the trial on 29 March 2011, see paragraph 2.5 below.

[3] The Court proceeding was open: the author and his counsel were present, as well as observers from the Organization for Security and Cooperation in Europe, civil society and the diplomatic community.

them. The author emphasizes that instead of targeting the violent group of protesters, the police rounded up peaceful demonstrators because they were clearly expressing their disagreement with election results by shouting "long live Belarus" and "get out".

2.7 On 8 April 2011, the author filed a cassation appeal. He also submitted additional information to his appeal dated 26 April 2011, arguing that the charges against him under article 293 (2) of the Criminal Code were unfounded and that he was specifically targeted for expressing his views while participating in a peaceful gathering. The author also claimed that his right to be presumed innocent had been violated. He referred to public statements made by the President and the Minister of Justice in the news, as well as to documentaries entitled "Square-2010, anti-revolution" and "Metal against the glass", which were shown on the national channel for several weeks after the event, mentioning the author as a person guilty of the charges brought against him. He also stated that he was kept in a cage in handcuffs during the trial. The author believes that these statements have influenced the court decision in his case. He also asked to be present at the cassation proceedings.

2.8 On 29 April 2011, the Minsk city court, with three judges sitting, rejected his cassation appeal and upheld the judgment of the lower court. The court heard the statements of both parties, examined the information on file, including witness statements and related materials. The author was not brought to the hearing of the court of cassation in person but was represented by his lawyer.

2.9 On 13 September 2011, the author was granted a presidential pardon and released from prison.[4]

2.10 In July 2014, the author filed a complaint to the Prosecutor of Minsk under the supervisory review procedure in which he challenged the legality of his conviction and complained about the police treatment and the conditions of detention. In his motion, the author also argued that his right to liberty and security was violated as he was not promptly informed of the reasons for his arrest or of the charges brought against him, claiming that the order of his arrest was issued by the Prosecutor and not by a judge. He also claimed that, despite his request, he could not attend the cassation proceedings.

2.11 On 2 December 2014, the Prosecutor of Minsk rejected the author's appeal, noting that by convicting him under article 293 of the Criminal Code, the Court had acted lawfully and in line with the provisions of national legislation. The Prosecutor also noted that the presence of the author at the hearing was not required by law, as his absence did not impede consideration of the cassation appeal. Referring to the complainant's claims over his treatment by the police and the conditions of detention, the Prosecutor stated that these claims could not be confirmed following the prosecutorial probe.

Complaint

3.1 The author alleges a violation of his rights under articles 2, 7, 9 (2) and (3), 10, 14 (1), (2), (3) (d), (e) and (g) and (5), 19 and 21 of the Covenant. He claims that he was subjected to psychological pressure at the pretrial detention and investigation stages, with the aim of obtaining a confession, in violation of article 7 of the Covenant. Moreover, the conditions of his detention violated his rights under article 10 of the Covenant.

3.2 The author claims that the State party violated his rights under article 9 (2) and (3) of the Covenant because he was not informed of the reasons for his arrest; there were no grounds for his detention as there was no evidence that he would abscond or obstruct the administration of justice; the investigative authorities did not explore whether a lighter measure of restraint would be possible; the decisions to extend his detention were insufficiently reasoned; and his complaints and motions to release were all rejected in a perfunctory manner. He further claims that his arrest was not sanctioned by a judge.

3.3 With regard to the violation of article 14 (1) of the Covenant, the author claims that he was denied a fair trial before an independent and impartial court. The courts were biased and not independent (they did not look independent in the eyes of a reasonable observer),

[4] The author was held in detention for almost nine months, from 19 December 2010 to 13 September 2011.

relying mostly on the arguments presented by the prosecution. He submits that judges in Belarus lack impartiality and independence from the executive branch.

3.4 He alleges a violation of article 14 (2) of the Covenant brought about by the public statements of top State officials referring to him as a person guilty of the charges brought against him. During his trial he was handcuffed and kept in a cage.

3.5 The author further alleges a violation of article 14 (3) (d) of the Covenant because he was not brought to the hearing of the court of cassation in person and of article 14 (3) (e) because the court of first instance read the statements of two witnesses without summoning them.[5] The author also alleges a violation of his rights under article 14 (3) (g) of the Covenant, noting that he was coerced into signing a confession.

3.6 The author claims that his rights under article 14 (5) of the Covenant were violated because the court of cassation did not re-examine the facts of his case and limited itself to a formal revision of the judgment of the lower court.

3.7 The author claims that his participation in the protest of 19 December 2010 was an expression of the rights enshrined in the Covenant, since the main purpose of the demonstration was to peacefully express opposition to fraudulent election results with the aim of promoting democracy. He claims that even though the event was not authorized, the restrictions imposed by the State party on his rights to freedom of expression and of peaceful assembly were not in conformity with the law and not necessary in a democratic society. By arresting and convicting him, the authorities therefore violated his rights under articles 19 (1) and (2) and 21 of the Covenant.

3.8 The author asks the Committee to recommend that the State party stop his politically motivated persecution, grant him full rehabilitation and pay him monetary compensation.

State party's observations on admissibility and the merits

4.1 By note verbale of 23 February 2016, the State party submitted its observations on the admissibility and the merits of the complaint and noted that on 29 March 2011, the author was found guilty of a criminal offence under article 293 (2) of the Criminal Code and sentenced to three years and six months of imprisonment in a high-security colony.

4.2 The State party observes that the court appraised all the evidence and rendered its decision, the detailed analysis of which could be found in the court ruling.

4.3 The State party refers to the author's statement made during the court proceedings and observes that on19 December 2010, while he was under the influence of the crowd, he hit the wooden barriers of a doorway of the House of Government in an effort to open the entrance door of the building. According to the statements given by law enforcement officers, who were protecting the building from a violent crowd, the participants in the mass event acted aggressively, trying to force their way into the building, causing bodily harm and inflicting injuries on law enforcement personnel. The State party observes that these statements were confirmed by testimonies, video materials, crime scene examinations and forensic medical reports.

4.4 The State party disagrees with the author's argument that the court was biased and observes that it assessed the evidence presented by both parties. The legality and relevance of the decision was assessed by the Minsk city court, which rejected the author's cassation appeal and upheld the ruling of the lower court. Subsequently, the decision of the Partizansky district court entered into force on 29 April 2011.

4.5 The State party states that the author's appeal under the supervisory review procedure in 2014 was rejected on 2 December 2014.

[5] Over 25 witnesses/police officers made statements during the first instance court proceedings. Materials on file show that the author raised the absence of two witnesses during the hearings. The cassation court looked into this claim and noted that the statements of the two witnesses were not taken into account when the first instance court rendered its decision.

4.6 The State party observes that the author's right to a fair and public hearing by a competent, independent and impartial tribunal established by law was fully guaranteed, in accordance with article 14 of the Covenant.

4.7 The State party further observes that the author did not seek a supervisory review before the Supreme Court or the Prosecutor General. Thus, the author failed to exhaust all available domestic remedies as required by article 2 of the Optional Protocol to the Covenant.

4.8 In the light of this, the State party notes that the author's complaint should be treated as an abuse of the right to submit a communication and therefore considered by the Committee as inadmissible.

4.9 The State party concludes that on 13 September 2011, the author was released from prison following a presidential pardon.

Author's comments on the State party's observations

5.1 In a letter dated 9 March 2016, the author expressed disagreement with the State party's arguments that he had not exhausted all available domestic remedies by failing to appeal the decisions of the Court under the supervisory review procedure and, with reference to the Committee's jurisprudence, he notes that the supervisory review is a common discretionary review process in former Soviet republics, which the Committee has previously considered not to constitute an effective remedy for the purpose of exhaustion of domestic remedies.[6] He concludes that all available and effective domestic remedies have been exhausted in his case.

5.2 The author notes the systemic nature of the lack of independence of the judiciary in the country and in that context refers to the reports of international institutions stating that the executive power and the President of Belarus exercise full control over the appointment and dismissal of judges, their tenure and the allocation of financial support.[7] According to the author, in those reports factual interference by the executive power in the work of the judiciary was noted, showing that the courts were biased and took the side of the prosecution.

5.3 The author reiterates that his right to a fair trial, as guaranteed in article 14 (1) of the Covenant, was violated, since the courts were biased and not independent. The courts indulged in criticism, expressed doubt about the trustworthiness of the author's testimony and often overruled defence motions while sustaining those of the prosecution.

5.4 The author maintains his claims of a violation of article 14 (3) (e) of the Covenant because the court read the statements of two witnesses without summoning them. He submits that most of the motions of the defence were rejected during the court hearing, including a request that all video materials covering the mass event be shown.

5.5 The author reiterates his claims under article 14 (2) of the Covenant, noting that top State officials failed to refrain from making public statements and accused him of committing a crime throughout the investigation and court proceedings. He alleges that such incriminating statements must have influenced the outcome of the court hearings. He also notes that contrary to the views expressed by the Committee in its general comments, he was handcuffed and kept in a cage during the trial, thus presented to the court in a manner indicating that he was a dangerous criminal.[8]

5.6 The author concludes that he was not brought to the hearing of the court of cassation in person and therefore his rights under article 14 (3) (d) of the Covenant were violated. He notes that the court rejected his request to be present at the cassation proceedings, reasoning that his presence was not obligated by the law. The author submits that, as a result of this decision, he was restricted in his right to defend himself and present his arguments, which led to his conviction and imprisonment.

[6] Reference is made to *Iskiyaev v. Uzbekistan* (CCPR/C/95/D/1418/2005), para. 6.1.

[7] Reference is made to the report on a fact-finding mission to Belarus undertaken from 12 to 17 June 2000 by the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2001/65/Add.1).

[8] Reference is made to general comment No. 32 (2007), para. 30.

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 takes note of the State party's observations, which imply that the author has not exhausted all available domestic remedies as his claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[9] It also considers that filing requests for supervisory review to the Chair of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute 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.[10] In the absence of further information or explanations by the State party in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee takes note of the author's submission that the State party violated its obligations under article 2 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[11] Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes the author's claim under article 7 of the Covenant that he was subjected to psychological pressure by the police at the pretrial detention and investigation stages, with the aim of obtaining a confession. In the absence of any further information in support of the author's allegations, the Committee considers that the author has failed to sufficiently substantiate his claim for the purposes of admissibility and therefore declares this claim inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claims that the courts were biased and not independent, relying mostly on the arguments presented by the prosecution, thus acting contrary to the provisions of article 14 (1) of the Covenant. In the absence of any further pertinent information on file, the Committee concludes however that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 As to the alleged violation of the author's rights under article 14 (3) (e) and (g), the Committee considers that these claims have been insufficiently substantiated, for purposes of admissibility. In the absence of any further pertinent information on file, the Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes the author's claim that his rights under article 14 (5) of the Covenant have been violated as the cassation court did not re-examine the facts of his case

[9] See *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.

[10] See, for example, *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

[11] See, for example, *Rodriguez Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay*, para. 9.4.

and limited itself to a formal revision of the lower court's judgment. The Committee notes, however, that the decision of Minsk city court of 29 April 2011, at which the author was represented by his lawyer, did not merely refer to the procedural aspects of the hearing by the district court, but heard the statements of both parties and examined the "information on file", including witness statements and related materials (para 2.8 above), which indicates that the court did engage in an evaluation of facts and evidence and did not limit itself to reviewing points of law. Accordingly, the Committee finds the author's claims under article 14 (5) to be insufficiently substantiated for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.[12]

6.9 The Committee considers that the author has sufficiently substantiated the remaining claims, under articles 9 (2) and (3), 10, 14 (2) and (3) (d), 19 and 21 of the Covenant, for the purposes of admissibility. It therefore declares this part of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication 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 author's claim, under article 9 of the Covenant, that he was not promptly informed about the reasons for his arrest and the charges against him and that his pretrial detention was also unlawful as it was not justified. The first time he was brought before a judge was more than three months after his arrest. In the absence of any further information, therefore, the Committee concludes that there has been a violation of article 9 (2) of the Covenant.

7.3 The Committee further notes the author's claim that the author's remand in custody was sanctioned by the Prosecutor, who is not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that the above-mentioned provision entitles a detained person charged with a criminal offence to judicial control of his or her detention. It is inherent to the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with.[13] The Committee recalls that a Prosecutor cannot be regarded as having the institutional objectivity and impartiality necessary to exercise judicial power within the meaning of article 9 (3) of the Covenant[14] and concludes that there has been a violation of that provision.

7.4 The Committee notes the author's claim that he was held in a small cell with no personal bed under extremely poor sanitary and hygiene conditions. He was held with 21 other inmates in a cell which measured only 12m^2 and was nominally fit for 13 persons; there was only cold water available in the cells where the temperature was very low; the cell was without natural light; he was allowed out of his cell to walk only once a day and to shower once every 10 days; and the lack of hygiene and overcrowding was conducive to the spread of various types of diseases among inmates. His health complaints (toothache) were ignored. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated humanely in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.[15] Materials on file demonstrate that in responding to the author's motion under the supervisory review proceedings, the Minsk Prosecutor briefly noted that the author's allegations could not be confirmed. The Committee notes however that the State party did not provide any information in response to the author's allegations about his conditions of detention. In those circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee considers, as it has repeatedly found in respect of similar substantiated claims,[16] that the author's conditions of

[12] See, for example, *Volchek v. Belarus* (CCPR/C/129/D/2337/2014), para. 6.7.

[13] See, for example, *Kulomin v. Hungary* (CCPR/C/50/D/521/1992), para. 11.3; and *Platonov v. Russian Federation* (CCPR/C/85/D/1218/2003), para. 7.2.

[14] Human Rights Committee, general comment No. 35 (2014), para. 32.

[15] See, for example, *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

[16] See, for example, *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.

detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore also contrary to article 10 (1) of the Covenant.

7.5 With regard to the allegations of violations of article 14 (2), the Committee notes the author's claim that his right to be presumed innocent has been violated, because of documentaries shown on the national channel and top State officials publicly referring to him as having participated in mass disorders and being guilty of having committed crimes in connection with the protest of 19 December 2010 before his guilt had been duly established by the court. The author also claimed that he was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case. The State party did not contest those allegations. The Committee recalls that the accused person's right to be presumed innocent until proven guilty by a competent court is guaranteed by the Covenant. In the absence of any relevant information from the State party, the Committee concludes that the facts as described by the author disclose a violation of article 14 (2) of the Covenant.

7.6 Referring to article 14 (3) (d) of the Covenant, the Committee notes the author's claim that he was denied the right to participate in the cassation appeal hearing on 29 April 2011. In that regard, the Committee notes that the author had requested to be present in the court in person and that the court followed domestic law in rejecting his written request (paras. 2.11 and 5.6 above). The Committee also notes that the author was represented by his lawyer at the cassation hearing, who had also represented him throughout the criminal proceedings against him. The Committee finds, however, that article 14 (3) (d) of the Covenant applies to the present case, since under the appeal proceedings the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence, as the State party itself acknowledges (para. 4.4 above). The Committee recalls that article 14 (3) (d) of the Covenant states that accused persons are entitled to be present during their trial and that proceedings in the absence of the accused are only permissible if that is in the interest of the proper administration of justice or when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Accordingly, in the absence of adequate explanations by the State party as to the specific reasons for refusing the author's wish to be present at the cassation hearing, the Committee finds that the facts before it disclose a violation of article 14 (3) (d) of the Covenant.

7.7 The Committee notes the author's claim that, by sentencing him to three years and six months' imprisonment under article 293 (2) of the Criminal Code for participating in an unauthorized but peaceful public gathering, the State party disproportionately interfered in the exercise of his right to freedom of peaceful assembly under article 21 of the Covenant. The Committee recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including a spontaneous one, at a public location. While the right to freedom of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions. Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21.[17]

7.8 The Committee notes the State party's argument that the during the protests, the author acted aggressively, hit the wooden barriers of a doorway of the House of Government in an effort to open the entrance door of the building. It recalls that the right to freedom of peaceful assembly may by definition not be exercised in a violent way, while "violence" in this context typically entails the use by participants of physical force that is likely to result in injury or death, or serious damage to property.[18] The Committee notes that there is not always a clear dividing line between assemblies that are peaceful and those that are violent, but that there is a presumption in favour of considering assemblies to be peaceful.[19] The conduct of specific participants in an assembly may be deemed violent if the authorities can present credible evidence that before or during the event, those participants are inciting others to use violence,

[17] Human Rights Committee, general comment No. 37 (2020), para. 36.
[18] Ibid., para. 15.
[19] Ibid., para. 17.

and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent.[20] The Committee also emphasizes that isolated instances where that is the case will not suffice to taint an entire assembly as no longer peaceful, only where the incitement to or intention of committing violence is widespread, or if the leaders or organizers of the assembly themselves convey that message. In the absence of any relevant information from the State party rebutting the author's arguments that although acknowledging having hit the wooden barriers of doorways of the House of Government, he was neither part of the violent group of people who participated in the mass disorders, nor that he had harmed law enforcement officers, as could be seen from the video materials shown during the court hearing (paras. 2.5 and 2.6 above), the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.[21]

7.9 The Committee notes the author's claim that his criminal conviction under article 293 (2) of the Criminal Code constituted a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not in conformity with the law and were not necessary in a democratic society. The author argued that the State party's authorities prosecuted him and sentenced him to three years and six months' imprisonment for exercising his right to freedom of expression. The Committee also notes the author's claim that he was prosecuted for publicly expressing his disagreement with election results on 19 December 2010 in front of the House of Government. The Committee further notes the author's submission that the police, instead of controlling the violent group of protesters, rounded up peaceful demonstrators because they were shouting "long live Belarus" and "get out".

7.10 The Committee refers to its general comment No. 34 (2011), in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and that such freedoms are essential for any society. They constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only to the extent that those restrictions are provided by law and only if they are necessary (a) for the 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. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions 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.[22] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.[23] In the present case, the Committee observes, however, that neither the State party nor the courts have provided sufficient explanation as to how the restrictions and the sanction imposed on the author in the exercise of his right to freedom of expression were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant, namely that they were the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected. Accordingly, the Committee finds that the State party violated the author's rights under article 19 (2) of the Covenant.

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 articles 9 (2) and (3), 10 (1), 14 (2) and (3) (d), 19 and 21.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State

[20] Ibid., para. 19.

[21] See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 6.11.

[22] Human Rights Committee, general comment No. 34 (2011), para. 22.

[23] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

party is obligated, inter alia, to provide adequate compensation to the author, including reimbursement of any legal costs incurred, as well as appropriate measures of satisfaction. The State party is also under an obligation to take steps 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 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.