



International Covenant on Civil and Political Rights

Distr.: General
8 December 2011

Original: English

Human Rights Committee

Communication No. 1316/2004

Views adopted by the Committee at its 103rd session, 17 October to 4 November 2011

<i>Submitted by:</i>	Mecheslav Gryb (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	9 July 2004 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 30 September 2004 (not issued in document form); communication No. 1316/2004 – decision of admissibility adopted on 30 March 2009
<i>Date of adoption of Views:</i>	26 October 2011
<i>Subject matter:</i>	Refusal by minister to issue a lawyer's licence
<i>Substantive issue:</i>	Unfair trial; discrimination/persecution on political grounds
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Articles of the Covenant:</i>	2; 14; 19, 21; 26
<i>Article of the Optional Protocol:</i>	2

On 26 October 2011, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1316/2004.

[Annex]

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 (103rd session)

concerning

Communication No. 1316/2004**

Submitted by: Mecheslav Gryb (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 9 July 2004 (initial submission)
Decision on admissibility: 30 March 2009

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

Meeting on 26 October 2011

Having concluded its consideration of communication No. 1316/2004, submitted to the Human Rights Committee by Mr. Mecheslav Gryb 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 Mr. Mecheslav Gryb, a Belarusian national born in 1938, who claims to be a victim of violation, by Belarus, of his rights under articles 2, 14 and 26 of the Covenant. Although the author does not invoke it in his initial communication, in a later submission he raises questions that appear to invoke article 21 of the Covenant. The author is unrepresented. The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as presented by the author

2.1 The author is a politician and former Chairman of the Belarusian Supreme Soviet (1994–1996). Since 1997, he has been a member of the Minsk Bar. Pursuant to Presidential

** The following members of the Committee participated in the examination of the present communication: Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

Decree No. 12 of 3 May 1997 on certain measures for the amelioration of the lawyers' and notaries' activities in Belarus, the author's lawyer's licence was cancelled.¹ He was offered the possibility of retaking the bar examination with the Qualification Commission on lawyers' activities (hereafter the Commission) established by the Ministry of Justice. This he did, successfully, on 1 July 1997.

2.2 According to the author, the examination was partial, because of the allegedly biased attitude shown by Commission members, including its Chairman. He believes that this was because he was an opposition leader who criticized openly the regime in place. For the same reason, allegedly, the Minister of Justice ("the Minister") refused to issue his lawyer's licence following his examination. As the author learned later, on 7 July 1997, without informing him, the Minister had ordered issuance of his licence to be postponed. This decision was based on the discovery that, in March 1997, the author had been fined by a court because of his participation, on 15 March 1997, in an unauthorized street rally commemorating the third anniversary of the adoption of the 1994 Belarus Constitution.²

2.3 On 30 July 1997, the Minister refused to issue a lawyer's licence to the author on a permanent basis, allegedly on the pretext that the latter had breached the legislation then in force and the rules of professional ethics. The refusal was allegedly based on the Regulations on the Qualification Commission (hereafter the Regulations).

2.4 On this point, the author contends that when he retook the examination, the Minister of Justice had no power to postpone or to refuse the issuance of licences to those who passed the qualifying examination. The Regulations were adopted by the Minister of Justice on 4 June 1997. On 29 July 1997, the same Minister modified them and, *inter alia*, obtained the right to deny the issuance of licences; the Minister applied his new prerogatives retroactively to the author's case. Thus, according to the author, the Minister's refusal was unlawful, and the retroactive application of the amended version of the Regulations to his case adversely affected his situation.³

2.5 The author claims that the Minister's refusal was also contrary to article 10 of the Law on the Lawyers (1993). This provision unequivocally lists all those situations under which a licence may not be issued. According to him, committing an administrative offence should not have led to the refusal of the issuance of his lawyer's licence. In addition, according to the author, in March 1997, he still benefited from parliamentary immunity. A Member of Parliament can only be prosecuted with the Parliament's specific acquiescence. However, in his case, the Prosecutor General allegedly abused his power and, on 17 March 1997, gave written instructions to have the author's administrative liability engaged, without consulting Parliament. The author adds that he complained to a court in this connection, but his claims were rejected (no exact dates provided).

¹ By virtue of legislative changes, all lawyers' licences of individuals who had the status of civil servants when they passed their qualification examinations were annulled. This was the situation of the author, given that his status of a State official was equal to that of a civil servant when he had passed his lawyer's examination.

² In fact, the author was fined, by decision of the Partizansky District Court of Minsk on 20 March 1997, confirmed by the Minsk City Court on 21 May 1997, for his participation in an unauthorized rally that took place on 15 March 1997.

³ The author points out that, pursuant to article 67 of the Law on normative legal acts, a legal act cannot be retroactive if its application would adversely affect the legal situation of those concerned. In addition, article 104, paragraph 6, of the Belarusian Constitution (1996) stipulates that laws cannot have a retroactive effect to the exception of situations when their application limits or eliminates the responsibility of the citizens.

2.6 The author complained against the Ministerial refusal of 30 July 1997 to the Court of the Moscow District in Minsk, but his complaint was rejected on 18 August 1997. He appealed to the Minsk City Court, the Chairman of the Minsk City Court and the Supreme Court. On 5 September, 24 December 1997 and 18 March 1998, respectively, his appeals were rejected.

2.7 According to the author, the modification of the Regulations of 29 July 1997 was unlawful and aimed at permitting the punishment of lawyers who were opponents to the regime in place. The outcome of the court proceedings against him allegedly also confirmed the author's suspicion that the case had been decided beforehand. He adds that judges are not independent in Belarus.

2.8 On 17 August 2004, the author reiterates that the Minister's decision was preordained and proved the acts of discrimination that he was subjected to as a politician, because of his political opinions and because of his attachment to the values of democracy. In 1996, he was given a life pension as a former Chairman of the Supreme Council of Belarus, equivalent to 75 per cent of the salary of the actual Supreme Council's Chairman. This pension was never updated, however, and was equal, in 2004, to 3,600 Belarusian roubles (1.5 US dollars) per month. Other former Chairpersons of the Supreme Council, also opponents to the regime in place, were placed in the same situation as the author. At the same time, the Belarusian President has granted by Decree personal pensions to several former Chairpersons of the Supreme Council and other high-ranked officials of the Belarusian Soviet Socialist Republic, or the Republic of Belarus, who supported his policy. These pensions are equal to 75 per cent of the actual salary of the Prime Minister of Belarus.

2.9 The author affirms, without providing details, that since 1998 he and his wife have been excluded unlawfully from a special medical-care entitlement and that his complaint about this to the Office of the President remained unanswered.

2.10 In addition, the author is unable to work as a lawyer. In 1998, he started working as a lecturer in a private law institute. However, when the authorities learned this, the Institute's Rector was requested to dismiss him immediately.

2.11 The author argues that it is impossible to obtain a new lawyer's licence, given that the Qualification Commission is composed of representatives of the Presidential administration, Ministry of Justice officials, or lawyers, and it is headed by the Deputy Minister of Justice. Thus, since 1997 his situation has not improved.

The complaint

3.1 The author claims that his right to have a fair trial, as protected by article 14, was violated, because his case was examined neither by a competent nor by an independent or impartial court, in particular as judges in Belarus depend on the Ministry of Justice, and the respondent in his case was the Ministry of Justice.

3.2 The author invokes a violation of his rights under articles 2 and 26, as he did not benefit of the equal protection of the law and he was persecuted because of his political opinions. For this reason, his lawyer's licence was not issued following an unlawful decision of the Minister of Justice. The author has also claimed that he cannot find work; he never received his special pension as a former Chairperson of the Supreme Soviet; and he has lost his special medical-care entitlement.

State party's observations on admissibility and merits

4.1 On 17 December 2004, the State party explained that pursuant to article 11 of the Law on Lawyers, the Qualification Commission is empowered to determine who is entitled

to practise as a lawyer. On 29 February 1996, the Commission conducted an examination of the author, who was then a Member of the Parliament. On the basis of the Commission's decision, the Ministry of Justice issued the author lawyer's licence No. 1238 on 27 May 1996.

4.2 According to the State party, it later became clear that when taking the examination, the author had the status of civil servant (State employee). In accordance with the (new) law then in force, the author's lawyer's licence was cancelled. The same applied to all individuals who were civil servants when they passed the lawyers' examination. Given that the author was no longer a civil servant, however, he was offered the possibility of retaking the examination. On this basis, on 1 July 1997, he again sat the examination, and the Commission concluded that he could be issued a lawyer's licence. The Commission did not reveal any ground, for purposes of article 10 of the Law on Lawyers, to deny to the author the right to practise as a lawyer.

4.3 The State party notes that, according to article 32 of the Regulations on the Qualification Commission (No 1902/12 of 4 June 1997), the Minister of Justice is empowered to postpone the issuance of a lawyer's licence or to annul it, when it is established that the Commission's decision does not correspond to the facts of the case, that it is against the legislation in force, against norms of professional ethics of lawyers or if other information attesting that an individual is unable to exercise the legal profession exists.

4.4 By order No. 75 of 7 July 1997, the Minister of Justice postponed the issuance of the author's lawyers' licence, and by order No. 91 of 30 July 1997, the Minister refused to issue the licence. The first order was based on the verification of the circumstances of the commission of an administrative offence by the author. The refusal to issue the licence was grounded on the fact that the author had indeed breached the legislation in force and norms of the lawyers' professional ethics, as he had committed an administrative offence by participating in an unauthorized meeting on 15 March 1997, offence for which he was fined by the Partizansky District Court of Minsk on 20 March 1997.

4.5 The State party explains that the author's administrative offence constituted a misconduct, incompatible with the functions of a lawyer, and contrary to the requirements of article 18, part 2, of the Law on Lawyers, and the lawyers' ethic rules that require lawyers to act within the law, and to maintain constantly the highest professional standard.

4.6 Given that this fact had not been taken into account by the Qualification Commission when it decided on the author's case, the Minister of Justice was entitled to postpone or to refuse issuance of the author's lawyer's licence. The author's contention that the Ministry of Justice should not have taken into account his fining is contrary to the law in force.

4.7 According to the State party, the author's contention that the Minister of Justice has no right to modify the Commission's Regulations and to establish the modalities for postponement or refusal to issue licences is groundless. The Minister is empowered to do so by law, in particular by Decree No. 12 of 3 May 1997 on certain measures to improve lawyers and notaries.

4.8 The State party points out that the author asked the courts to declare the Minister's orders unlawful and to oblige the Ministry of Justice to issue him a lawyer's licence. On 18 August 1997, the Court of the Moscow District in Minsk rejected his claim. This decision was confirmed on appeal, on 25 September 1997, by the Minsk City Court. The State party contends that these court decisions are lawful and fully grounded. The courts found that the Partizansky District Court of Minsk had fined the author in March 1997. In that light, they correctly concluded that the orders of the Minister, taken within his competency, were lawful, given that the author had breached the law in force.

4.9 The State party adds that the Supreme Court also examined the author's complaints under the supervisory review procedure, and checked the lawfulness and the grounds of the lower courts' decisions. The Supreme Court found no reason to challenge these decisions.

4.10 The State party notes that at present, the author could request the Ministry of Justice to take a new legal examination with the Qualification Commission.

Author's comments on the State party's observations

5.1 On 21 January 2005, the author affirmed that in most aspects, the information of the State party does not correspond to reality. He had been issued a lawyer's licence initially in 1996. At that time, he was a member of the Supreme Council of Belarus, held a law degree and the title of "Honoured lawyer of the Republic of Belarus". In November 1996, the Supreme Council was dissolved, and the author was no longer a Member of Parliament.

5.2 In January 1997, he started work as a lawyer at the Minsk City Bar. On 3 May 1997, the Belarusian President issued the decree prohibiting civil servants from receiving lawyers' licences and all lawyers' licences issued to civil servants were annulled. Individuals who were no longer civil servants when the decree was adopted could retake the qualification examination. According to the author, the decree had thus a retroactive effect and infringed the rights of those who have had obtained their lawyer's licence prior to its adoption. It also allegedly violated article 104 of the Constitution, pursuant to which laws do not have a retroactive effect, with the exception of situations where their application does not limit or annul the liability of the citizens.

5.3 The author reiterates that the Minister of Justice had no right to refuse licences to those who had passed the lawyers' qualification examination. The Minister allegedly obtained this right on 29 July 1997 only, after the modification of the Qualification Commission's Regulations. This, according to the author, contradicts the Belarusian Constitution and is also allegedly contrary to article 67 of the Law on the normative acts, pursuant to which legal acts cannot apply retroactively. The author reiterates that the refusal to issue him a lawyer's licence constitutes a premeditated act of open persecution against him because of his opposition activities.

5.4 The author further claims that the mere participation in a meeting (authorized or unauthorized) cannot, according to him lead to the prohibition to practise as lawyer. In its reply, the State party has only repeated "the accusations that were invented" against him.

Additional submissions by the parties

6.1 On 15 November 2005, the State party reiterates that, in 1997, the author's lawyer's licence was cancelled due to a reform. The same applied for all lawyers in this situation. He passed a new examination; shortly after, however, it became clear that he had been fined, in March 1997, by a court and this decision had entered into force.

6.2 Under the Qualification Commission's Regulations (4 June 1997), the Minister of Justice was empowered to refuse to issue lawyers' licence in certain situations. Committing an administrative offence is incompatible with the functions of a lawyer. By his activities, the author had breached paragraph 18, part 2, of the Law on Lawyers, and, in accordance with article 32 of the Qualification Commission Regulations, the Minister of Justice correctly refused to issue his lawyer's licence. The Minister's refusal was confirmed by the courts. According to article 24 of the Law on Lawyers, there is no possibility to act as a lawyer for an individual who has committed an offence that is incompatible with lawyers' functions. Thus, nothing shows that in the present case, the Ministry of Justice had acted on a biased manner. In addition, the author could retake the examination.

7.1 On 29 August 2007, the author once again contests the State party's observations, affirms that in November 1996, the Belarus Parliament was dissolved illegally, and thus he thereby lost his status of Member of Parliament. The author claims that the meeting of 15 March 1997 was authorized by the Minsk City Council. He was fined because, due to the big number of participants, he made few steps on the street, trying to walk around some participants. According to him, by fining him, the authorities violated his right to peaceful assembly. This latter fact would also appear to raise issues under article 21, although this provision had not been expressly invoked by the author. The authorities have applied the laws against him in an arbitrary manner, which is confirmed, according to the author, by the fact that the amount of his fine was particularly high, and the most important ever determined at that time.

7.2 The author reiterates that as a consequence of the Minister's refusal, he cannot work, and since 1998, he lives on his pension of former member of the Ministry of Internal Affairs. His life pension as a former Chairman of the Supreme Soviet was not paid to him, which shows, according to him, that he is persecuted on political grounds.

8.1 On 2 May 2008, the State party explained that the Belarus General Prosecution Office, in 2005, checked the legality of the Court of the Moscow District of Minsk of 18 August 1997 on the author's complaint against the Minister of Justice. The court rejected the author's complaint, and this was confirmed by the Minsk City Court on 25 September 1997. His further complaint to the Supreme Court was rejected by the deputy Chairman of the Supreme Court.

8.2 The State party reiterates that the Minister of Justice was empowered to postpone or refuse to issue lawyers' licences. In this case, on 7 July 1997, he postponed the issuance of the licence in order to verify the circumstances of the administrative offence committed by the author. On 30 July, the Minister refused to issue the lawyer's licence. In light of the fact that the author had been fined by court for his participation in the meeting in 1997, the courts concluded that the Minister had acted within his powers, and his orders were found to be lawful and the decision fully grounded.

Committee's decision on admissibility

9.1 The Committee examined the admissibility of the communication at its ninety-fifth session, on 30 March 2009. It noted, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter was not being examined under any other international procedure of investigation or settlement, and that it was uncontested that domestic remedies have been exhausted.

9.2 It further noted the author's claims that, in violation of the requirements of article 14 of the Covenant, his case was examined neither by a competent nor an impartial or independent court. He also contends, without providing further explanations, that in his case, the judges failed to reply to a number of issues he had raised. He finally affirmed that judges in Belarus are not independent, as they are subordinated to the Ministry of Justice. The State party has in turn replied that all decisions in the author's case were lawful and fully grounded. The Committee noted that the author's allegations related primarily to the evaluation of facts and evidence; it recalled that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice,⁴ and decided that this

⁴ See, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

part of the communication is inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

9.3 Similarly, in the absence of any other pertinent information or explanations, the Committee considered that the author's blanket claim about the lack of independence of the State party's judiciary was not sufficiently substantiated, for purposes of admissibility, and was inadmissible under article 2 of the Optional Protocol.

9.4 The Committee further noted the author's claim of being a victim of discrimination because he was deprived of his special medical-care entitlements and his letters in this respect remained unanswered. His pension as a former Chairman of the Supreme Council was also never updated or paid to him, whereas, at the same time, other high-level officials, loyal to the regime in place, including former Chairpersons of the Supreme Soviet – i.e. exactly in his situation – were granted personal life pensions by Presidential Decree. The Committee noted that the State party had not specifically commented on these allegations, but, in the absence of any other pertinent information or explanations in this relation, and given that, from the documents on file, it was not possible to verify whether these allegations were ever drawn to the State party's competent authorities and courts, the Committee considered that this part of the communication was insufficiently substantiated and was therefore inadmissible under article 2 of the Optional Protocol.

9.5 The Committee finally noted that it was uncontested that the author's lawyer's licence was not issued because he had breached the legislation in force, by attending an unauthorized street rally in March 1997, an act which constitutes an administrative offence in Belarus. The author claimed that in violation of article 2 of the Covenant, this fact was arbitrarily exploited by the Minister of Justice, in order to punish him for his political opinions. The Committee noted that, although not explicitly invoked by the author, his claims raised issues under article 21 (see para. 7.1 above). In view of the intimate connection of the acts protected by articles 19 and 21, the Committee considered that the communication may also raise issues under article 19 of the Covenant. In particular, the Committee decided that it should examine whether the refusal to issue the licence, as a result of the administrative fine, had not breached the author's rights under these articles. The Committee found that that the author's allegations in this connection had met the requirements for substantiation for purposes of admissibility. Accordingly, it declared this part of the communication admissible, as far as it raised issues under articles 19 and 21 alone or read together with article 2, and 26, of the Covenant.

State party's additional observations

10.1 By Note Verbale of 24 March 2009,⁵ the State party presented additional information. It recalls its previous observations and adds that the author's allegations that the Ministry of Justice should not have taken into account the fact that he had participated in an unauthorized rally in order not to issue his lawyer's licence are in contradiction with the current legislation, in particular article 24 of the Law on Lawyers. The State party explains that if a lawyer commits an administrative offence, he/she commits an action which is incompatible with the lawyers' activity and thus it was not possible to issue a lawyer's licence to the author. Therefore, the Ministry of Justice cannot be seen as having acted in a biased manner in this case.

⁵ The State party's submission was received after the adoption of the Committee's decision of admissibility.

10.2 Lawyers' licences are issued for a period of five years in Belarus, and accordingly, at present the author is in a position to request to undergo again the lawyer's qualification examination with the Ministry of Justice.

10.3 The State party adds that on 18 August 1997, the Moscow District Court of Minsk rejected the author's complaint against the refusal of the Minister of Justice to issue him a lawyer's licence. This decision was confirmed on appeal by the Minsk City Court on 25 September 1997. In March 1998, the author complained to the Supreme Court under the supervisory review proceedings. His complaints were rejected by a Deputy Chairman of the Supreme Court. The author did not complain to other officials empowered to decide whether to request a supervisory review of a civil case and thus, according to the State party, domestic remedies have not been exhausted in the present case.

Author's comments

11.1 The author presented comments on 3 June 2011. He first notes that the State party has not presented comments to the Committee's admissibility decision and has not provided information on the alleged violations of his rights under articles 19 and 21, of the Covenant and has not explained the reasons which could justify the limitations of his rights under these provisions.

11.2 As far as the issue of non-exhaustion is concerned, the author recalls that he had asked the Supreme Court to have his case examined under the supervisory proceedings, but without success. Under article 439 of the Civil Procedure Code, a supervisory review may be initiated by the Chairperson of the Supreme Court (or his/her deputies), and the Chairpersons of the Minsk Region or City Court and their deputies.

11.3 The author further notes that he was fined for having participated in an unauthorized rally in commemoration of the adoption of the new Constitution of Belarus. He participated in the rally not in his capacity of a lawyer, but as an ordinary citizen. He was fined pursuant a decree of the President, and not under the provisions of a law, thus in violation of article 21 of the Covenant.

11.4 The author further points out that pursuant to the provisions of the Basic Principles on the Role of Lawyers, lawyers "like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession". Notwithstanding, the author has been fined for his participation in a rally, and this subsequently served for not having him issued a lawyer's licence, even if he had passed his qualification examination.

11.5 The author finally notes that before the refusal to issue him a licence on 30 July 1997, the Ministry of Justice has never done so, on the basis of participation to a peaceful assembly by a lawyer. According to him, the Ministry failed to do so after 30 July 1997. This shows, according to the author, that he was targeted and treated in a discriminatory manner, due to his opposition political activities and due to his criticisms against the regime in place.

Additional information by the State party

12.1 By Note Verbale of 10 August 2011, the State party provided additional information. It recalls the facts of the case and adds that in February 1997, the author requested the examination of his case under the supervisory review proceedings of the

Supreme Court of Belarus. His complaint was rejected by decision of a Deputy Chairman of the Supreme Court. Pursuant to article 439, paragraph 1, of the Civil Procedure Code, supervisory review can be ordered by the Chairman of the Supreme Court or his/her deputies or the Prosecutor General or his/her deputies. The State party adds that the Civil Procedure Code does not prevent submitting of further complaints to the same supervisory jurisdiction. Thus, according to the State party, the author has not exhausted available domestic remedies.

12.2 The Committee notes that the State party has not formally sought the review of the admissibility decision in the present case, adopted on 30 March 2009.

Consideration of the merits

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

13.2 The author has claimed that following his participation in a peaceful rally in commemoration of the anniversary of the adoption of a 1994 Constitution of Belarus, he was fined and for this reason, he was not issued a lawyer's licence, even if he had passed a qualification examination. He claimed that he was a victim of discrimination on political grounds, as he belonged to an opposition movement critical to the regime in place, and that no other lawyers in such situation were refused issuance of lawyer's licence. The Committee considers that these claims raise issues under articles 19 and 21, and 26 read together with article 2, of the Covenant. The State party has not addressed these claims specifically considering these provisions of the Covenant, but has explained that the author's licence was not issued because, by having his administrative liability engaged for participation in an unauthorized meeting in violation of a Presidential Decree on Mass Actions, he had breached his duties as a lawyer set out in the Law on Lawyers.

13.3 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 It notes further that the rights and freedoms set up in articles 19 and 21 of the Covenant are not absolute and may be subject to limitations in certain situations. Under article 19, paragraph 3, such limitations must be provided by law and necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (*ordre public*) or public health or morals. Similarly, 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 in conformity with the law and 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 rights and freedoms of others.

13.4 The Committee notes that in the present case, the State party has limited itself in explaining that the author had been fined lawfully, under the provisions of the Code of Administrative Offences, which, as a consequence, had led to the subsequent non-issuance of his licence as a lawyer, in light of the provisions of the Law on Lawyers. The Committee notes that the State party, however, has not adduced any explanation on how the non-issuance of the author's lawyer's licence was justified and necessary, for purposes of article 19, paragraph 3, and/or the second sentence of article 21, of the Covenant. In the circumstances of the present case, and in absence of any other pertinent information on file,

⁶ See general comment No. 34 (2011) on article 19, para. 2.

the Committee considers that the author's rights under article 19, paragraph 2, and article 21, of the Covenant, have been violated in the present case.

13.5 In light of the above conclusion, the Committee decides not to examine separately the author's claims under article 26, read together with article 2, of the Covenant.

14. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 19, paragraph 2, and 21 of the Covenant.

15. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which should include the reissuance of the author's lawyer's license, and reparation, including adequate compensation. The State party should also ensure that no similar violations occur in the future.

16. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised 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 recognised in the Covenant and to provide an effective and enforceable remedy in case that 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. In addition, it requests the State party to publish the Committee's Views, to have them translated in Belarusian language and widely distributed in the two official languages of 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.]
