

INDIVIDUAL COMMUNICATION
TO THE HUMAN RIGHTS COMMITTEE

June 2, 2014

The communication to the address:
The Human Rights Committee
c/o Office of the High Commissioner for Human Rights
United Nations Office
8-14 avenue de la Paix
1211 Geneva 10, Switzerland

Individual communication is submitted for consideration according to the First Optional Protocol to the International Covenant on Civil and Political Rights.

I. INFORMATION ON THE AUTHOR OF THE COMMUNICATION

Surname: Malashenak
Name: Siarhei Aleksandrovich



II. STEPS TAKEN BY THE ALLEGED VICTIM TO EXHAUST ALL THE DOMESTIC REMEDIES:

1. October 8, 2012, MalashenakSiarhei was sentenced to the administrative penalty in form of fine of 300,000 Belarussian rubles under the part 1 art. 23. 34¹ of the Code of Administrative Offences of the Republic of Belarus for a violation of the procedure established for carrying out picketingby the City Court of Novopolotsk of Vitebsk region (Attachment 1). This decision was appealed totheVitebskRegionalCourt (Attachment 2);
2. October 31, 2012, VitebskRegionalCourt left the decision without changes, and the claim without upholding (Attachment 3). This decision was appealed as supervision to the president of theVitebskRegionalCourt (Attachment 4);
3. The president of the Vitebsk Regional Court in his answer of April 11, 2013 mentioned that “there are no reasons for reconsideration of decisions made on the case under the motives

¹[1] – part. 1 art. 23.34 of the Code of Administrative Offences of the Republic of Belarus: *Violation of the procedure established for carrying out meeting, street procession, demonstration, picketing, also public call for organization or carrying out meeting, street procession, demonstration, picketing with violation of procedure established for their organization or carrying out, if there is no formal components of a crime in these acts, the participants of such events are sentenced to admonition or fine of up to thirty basic units or administrative detention.*

mentioned in the claim” (Attachment 5). Claim was submitted as supervision to the Supreme Court of the Republic of Belarus (Attachment 6);

4. Supreme Court in its answer of June 13, 2013 didn't found reasons for repeal of the decision. (Attachment 7).

Thus, all the effective domestic remedies were fully exhausted.

III. FACTS OF THE COMMUNICATION

SiarheiMalashenak was at the road bridge at Kalinina Street in Novopolotsk with the intention to publicly express his opinion. He hung out the piece of fabric with the slogan “FREEDOM FOR BELARUSSIAN POLITICAL PRISONERS” with the aim to attract public attention to the fact that there are political prisoners in Belarus. While hanging it out he was arrested by police officers and got to the Police Department of Novopolotsk. Then, by the City Court of Novopolotsk, Malashenak was sentenced to administrative penalty under the part 1 art. 23.34 of the Code of Administrative Offences of the Republic of Belarus “Violation of the procedure established for organization or holding of mass events”. Namely he was accused of violation of the procedure established for carrying out picketing and sentenced to the fine of 300,000 Belarussian rubles, that to that period of time was equivalent to 35\$;

SiarheiMalashenak confirm and doesn't deny the fact that October 8, 2012 at 6:40 a.m. he was at the road bridge at Kalinina Street in Novopolotsk with the intention to publicly express his opinion. He hung out the banner with the slogan “FREEDOM FOR BELARUSSIAN POLITICAL PRISONERS” with the aim to attract public attention to the fact that there are political prisoners in Belarus.

Anyrestriction of the right to freedom of expression has to be provided by law and has to be directed at achieving one of the issues from subparagraphs (a) and (b) of the paragraph 3 art. 19, namely:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order or of public health or morals.

Arrest of SiarheiMalashenak and his sentence to the fine because of his expressing of personal opinion is a restriction of the freedom of expression.

This restriction is provided by laws – part 1 art 23.34 of the Code of Administrative Offences and Law onMassEvents, where carrying out of any meeting without permission of the authorities is interdict by law². As national law defines picketing like “*public expression of socio-political, group, personal and other interests or protest (without procession), including through a hunger strike on any problems with or without using of posters, banners, and other*

²Article 5. Application for carrying out mass event

Application for carrying out mass event (hereinafter - application) is filed by organizer (s) to the local executive and administrative body at whose territory the mass event is planning, unless otherwise provided in the second and third paragraphs of this article.

If mass event is planning to be carried out at several administrative-territorial units or expected number of participants will exceed 1,000 (for meetings, rallies, street processions, demonstrations and picketing) or 1500 (for other mass events), the application is filed to the appropriate Regional Executive Committee. In Minsk, the application is filed to the Minsk City Executive Committee ...

means by citizen or group of citizens. Mass presence of citizens in a predetermined public place (including in the open air) at a specified time with the intention to perform predetermined actions, organized (including with using of Internet or other information networks) for the public expression of their socio-political interests or protest is equated to picketing”, so any citizen’s acts of expressing of opinion could be qualified as meeting. Despite the fact that SiarheiMalashenak didn’t carried out a meeting and according to that didn’t ask a permission of authorities to carry it out, his actions were qualified as meeting. The Committee has already given an assessment to the similar actions of the state bodies in the decision №412/1990 Auli Kivenmaa v. Finland;

Acts of SiarheiMalashenak, namely hanging out the banner with the slogan “FREEDOM FOR BELARUSSIAN POLITICAL PRISONERS” didn’t discredit the rights or reputations of others. Police officers while making all the procedural documents also didn’t mentioned any proof of such a discredit.

Placing the banner on the rails of the road bridge didn’t make any threat to national security or public order or public health or morals.

The Court, subjecting Malashenok to the administrative penalty, didn’t analyze how his acts contradict interests of the protection of national security or public order or public health or morals. There was also no proof of violation of rights and freedoms of others, wasn’t examined the question if Malashenok’s acts caused any harm. Thus, the state didn’t justify why it was necessary to sentence Malashenak to the fine only because he came to the bridge and showed banner with the slogan “FREEDOM FOR BELARUSSIAN POLITICAL PRISONERS”;

From above-listed arguments it follows that imposed restrictions wasn’t directed at achieving issues listed in paragraph 3 art.19 of the International Covenant on Civil and Political Rights and was not necessary for protecting any legitimate issue;

Such actions of police officers and representatives of the state can be considered as violation of the right to freedom of expression i.e. right to freedom of impart information and ideas of all kinds recognized in art.19 of the International Covenant on Civil and Political Rights;

Using of legal remedies didn’t lead to restoration of violated rights and that was the reason to send this individual communication to the Human Rights Committee.

According to the First Optional Protocol to the International Covenant on Civil and Political Rights I ask the Human Rights Committee:

1. Ask to acknowledge the violation of my rights by the Republic of Belarus under the art. 19 of the International Covenant on Civil and Political Rights;
2. Give recommendations to the Republic of Belarus to reconsider the case of SiarheiMalashenak;
3. Give a recommendation to the Republic of Belarus to change the part of the Law on Mass Events: fix that the meeting is deliberate and temporary meeting of people with the aim to express the common interests, namely, acts made by the group of people not the one person;
4. Give the recommendation to the state to compensate SiarheiMalashenak for the fine of \$35 he paid.