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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 communication No. 3095/2018*, **

Communication submitted by:	Pavel Katorzhevsky (represented by counsel, Leonid Sudalenko)
Alleged victim:	The author
State party:	Belarus
Date of communication:	7 June 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 January 2018 (not issued in document form)
Date of adoption of Views:	13 October 2023
Subject matter:	Conviction for distribution of extremist materials for sharing an article criticizing authorities
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Freedom of expression
Articles of the Covenant:	2 (2) and (3) and 19 (2) and (3)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is Pavel Katorzhevsky, a Belarusian national born in 1995. He claims that the State party has violated his rights under article 2 (2) and (3), read in conjunction with article 19 (2) and (3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

1.2 The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

party continues to be subject to the application of the Optional Protocol in respect of the present communication.[1]

Facts as submitted by the author

2.1 On 26 November 2016, the author shared a link on his profile page on the social network VKontakte to an article entitled "Idiocy and fake honour to the victims of war in a capital city gymnasium", [2] dated 26 November 2016, which was posted on "vk.com/rdbelarus", a public group on VKontakte. On 2 March 2017, the post came to the attention of the police, who drew up a report on the discovery of extremist material. On 13 March 2017, the author was summoned to the police station in Gomel and charged with dissemination of informational products included in the State List of Extremist Materials – an administrative offence under article 17.11 (2) of the Code of Administrative Offences of Belarus.[3] On 2 May 2017, the Central District Court of Gomel found Mr. Katorzhevsky guilty and fined him 230 roubles (around 110 euros).

2.2 The Court based its decision on the following grounds: "Mr. Katorzhevsky disseminated informational products included in the State List of Extremist Materials, as informational products placed on vk.com/rdbelarus were declared extremist materials by a decision of the District Court of Minsk of 10 November 2016 (in force as from 22 November 2016)".

2.3 On 10 May 2017 the author challenged the decision, requesting an individualized assessment from the Court of the article that had been shared with regard to its potential threat to national security or public order, or to public health or morals. On 2 June 2017, Gomel Regional Court rejected the appeal.

2.4 The author submits that he did not attempt to apply for supervisory review to the General Prosecutor's Office of Belarus or the Supreme Court of Belarus since he does not consider it to be an effective remedy, and refers to the Committee's jurisprudence on the matter.[4] The author contends that he has exhausted all available and effective domestic remedies.

Complaint

3.1 The author submits that the authorities failed to justify the limitation of his freedom to distribute information as provided by article 19 (3) of the Covenant. He argues that even if the sanction imposed on him was permitted under domestic law, the State party did not show that in his particular case it was necessary and in line with any of the legitimate aims set out in article 19 (3). The author refers to article 27 of the Vienna Convention on the Law of Treaties, in which it is established that a State party may not invoke the provisions of its internal law as a justification for its failure to fulfil treaty obligations. The author argues that he was fined for disseminating an article which did not pose a threat to national security, public order or the rights and freedoms of others.

3.2 The author also claims a violation of his rights under article 2 (2) and (3), read in conjunction with article 19, of the Covenant.

State party's observations on admissibility and the merits

4.1 On 5 March 2018, the State party submitted its observations, noting that the author had not exhausted all the available domestic remedies as required under article 2 of the Optional Protocol. He did not lodge a request for supervisory review with the Chair of Gomel Regional Court under article 12.11 (1) and (2) of the Procedural and Executive Code of

[1] See, for example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; and *Shchiryakova et al. v. Belarus* (CCPR/C/137/D/2911/2016, 3081/2017, 3137/2018 and 3150/2018).

[2] See https://revbel.org/2016/11/marazm-i-pokazushnaya-pochest-pogibshim-v-vojne-v-stolichnoj-gimnazii/ (in Russian).

[3] Law No. 194-Z of 21 April 2003, as amended by Law No. 358-Z of 20 April 2016.

[4] The author referred to *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008).

Administrative Offences of Belarus[5] or a request to the prosecutor's office under article 12.11 (1) of the same Code. In addition, the State party contends that the communication should be declared inadmissible under article 3 of the Optional Protocol as the author abused his right to petition.

4.2 The State party also argues that the restrictive measures do not contravene the Covenant and emphasizes that article 19 (3) of the Covenant expressly allows for restrictions of the right to freedom of expression for respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals.

4.3 The State party referred to the Law on Countering Extremism,[6] which defines the legal and organizational foundations for countering extremism with the aim of protecting the rights, freedoms and lawful interests of individuals, the constitutional order, and the territorial integrity of Belarus, ensuring the safety of society and the security of the State.[7] The State party indicated that, according to article 14 (1) of that Law, "the dissemination of informational products which call for extremist activities or promote such activities, and their production, publishing, storage and transportation for the purpose of dissemination, are prohibited". The State party also stated that, according to article 14 (3) of the Law, "informational products are declared extremist materials by the decision of a court delivered following a request from the State authority responsible for countering extremism", and that, according to article 14 (5) of the Law, "the court's decision to declare the informational products as extremist materials can be appealed against in courts". After coming into force, a copy of the court's decision is forwarded to the Ministry of Information to include the informational products concerned in the State List of Extremist Materials (under art. 14 (6) of the Law). The State List of Extremist Materials (containing the names only of the extremist materials concerned) must be published on the official website of the Ministry of Information, as well as in the *Respublika*, *Narodnaya Gazeta* and *Zvyazda* newspapers, whereas "the content (substance) of the informational products declared to be extremist materials is not to be disclosed" (under art. 14 (6) of the Law).

4.4 The State party further reiterated the reasoning behind the national court's decision of 2 May 2017, and stated that by the decision of the Central District Court of Minsk of 10 November 2016, in force as of 22 November 2016, the informational products published on the Internet on vk.com had been declared extremist materials and included in the State List of Extremist Materials. Therefore, the prohibition imposed on the author had been decided in accordance with the law.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 5 June 2018, the author commented on the State party's observations. He reiterated that he did not lodge applications for supervisory review because he did not consider that such applications constituted an effective legal remedy. He submitted that an effective remedy was one that could provide the author with compensation and offer him a reasonable prospect of redress. The author also referred to the jurisprudence of the Committee[8] in that regard, as well as to the position of the European Court of Human Rights,[9] which are both of the view that applications for supervisory review constitute extraordinary remedies, the use of which depends on discretionary powers, and that they therefore do not constitute effective remedies.

5.2 The author maintained that the State party had violated his right to freedom of expression, enshrined in article 19 (2) of the Covenant. Regarding the State party's argument that the limitation of the author's rights was allowed under article 19 of the Covenant, the author referred to the Committee's standard that any restriction must be proportionate,

[5] Law No. 194-Z of 20 December 2006.

[6] Law No. 203-Z of 4 January 2007. The State party referred to the preamble and art. 14 of the Law on Countering Extremism as amended by Law No. 435-Z of 26 October 2012 and Law No. 358-Z of 20 April 2016.

[7] As stated in the preamble to the Law.

[8] The author referred to *Iskiyaev v. Uzbekistan* (CCPR/C/95/D/1418/2005).

[9] The author referred to European Court of Human Rights, *Tumilovich v. Russia* (application No. 47033/99), decision of 22 June 1999.

provided for by law, and necessary to achieve the specific goals it pursues.[10] The author contends that the State party has failed to demonstrate why the restrictions on his right to express his opinion were necessary for even one legitimate purpose under article 19 (3) of the Covenant.

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 case 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 challenge to the admissibility of the communication on the grounds of failure to exhaust domestic remedies, namely the author's failure to apply to the Chair of Gomel Regional Court and to the prosecutor's office for supervisory review of the decision delivered by Gomel Regional Court on 2 June 2017. The Committee recalls its jurisprudence, according to which an application for supervisory review of court decisions that have entered into force and depend on the discretionary power either of a judge or a prosecutor does not constitute a remedy which must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[11] Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

6.4 The Committee further notes the author's claim that his rights under article 19, read in conjunction with article 2 (2), of the Covenant, were violated. The Committee also considers that the provisions of article 2 cannot be invoked as 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.[12] The Committee notes, however, that the author has already alleged a violation of his rights under article 19, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider that an examination of whether the State party also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with article 19, is distinct from the examination of the violation of the author's rights under article 19. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated his claim under article 19 of the Covenant for the purposes of admissibility. Accordingly, it declares this part of the claim admissible and proceeds to examine it on its merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's allegations that the authorities violated his rights under article 19 of the Covenant, as he was convicted and fined for sharing a link on the

[10] The author referred to *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), in which the Committee disagreed with the State party prioritizing national legislation over rights enshrined in the Covenant.

[11] *Romanchik v. Belarus* (CCPR/C/135/D/3240/2018), para. 6.3; *Belenky v. Belarus* (CCPR/C/135/D/2860/2016), para. 8.3; *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.

[12] *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

social media network VKontakte to an article entitled "Idiocy and fake honour to the victims of war in a capital city gymnasium".[13] The author claims that the State party violated his right to freedom of expression as it failed to justify the limitation of his freedom to distribute information as provided by article 19 (3) of the Covenant. The State party argued that the restrictive measures did not contravene the Covenant since they were applied in accordance with the Law on Countering Extremism.

7.3 The Committee notes that the issue before it is to determine whether the restrictions imposed were justified under article 19 (3) of the Covenant. In that respect, it recalls its general comment No. 34 (2011), in which it stated, inter alia, that freedom of expression is essential for any society and a foundation stone for every free and democratic society.[14] It notes that article 19 (3) of the Covenant allows restrictions on freedom of expression, including on the freedom to impart information and ideas, only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputations of others; or (b) for the protection of national security or public order (*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 which might achieve the relevant protective function and proportionate to the interest to be protected.[15] The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.[16]

7.4 The Committee notes the State party's submission that in the present case, the restrictions of the right to freedom of expression for the protection of national security or of public order were governed by the Law on Countering Extremism (see para. 4.3 above). The Committee observes that according to article 1 of the Law, "extremist materials are informational products (printed, audio, audiovisual and other informational messages and/or materials, posters, banners and other visual agitation, and advertising products) intended for public use, distributed publicly or distributed in any way, containing calls for extremist activities, or promoting such activities, and recognized as extremist materials by a court decision". The Committee also notes that when convicting the author, the national courts referred to the decision of the Central District Court of Minsk of 10 November 2016 by which all "informational products" (which include posts to websites and social media platforms) published on vk.com/rdbelarus[17] were declared to be extremist materials and were included in the State List of Extremist Materials.[18]

7.5 The Committee notes that the author posted a link to the article, which had been published on 26 November 2016, after the court decision finding all the informational products on the website to be extremist materials had been delivered. The Committee also notes that on 10 November 2016, the Central District Court of Minsk did not examine the article shared by the author to assess and determine its nature. The Committee observes that, as acknowledged by the State party (see para. 4.4 above), all the informational products (posts) that were published on the mentioned websites before and after the delivery of the court's decision of 10 November 2016 are automatically declared extremist materials without an individualized assessment of each informational product (post).

7.6 The Committee recalls that any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination systems, including

[13] See https://revbel.org/2016/11/marazm-i-pokazushnaya-pochest-pogibshim-v-vojne-v-stolichnoj-gimnazii/.

[14] See para. 2.

[15] See the Committee's general comment No. 34 (2011), para. 34.

[16] See, for example, *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

[17] Where "rd" stands for "revolutionary action" in Belarusian, with the name of the public group being "Revolutionary Action". The public group on VKontakte represents the external website of "Revolutionary Action", the latter being located at https://revbel.org. According to the information in the public group on VKontakte and on the external website, it is "an organization uniting members of the anarchist movement". The article, shared by the author, draws attention to the formalism of a school event held in honour of veterans of the Second World War and to a lack of reforms carried out by the local authorities.

[18] State List of Extremist Materials, Ministry of Information of Belarus, available at http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov/.

systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with article 19 (3) of the Covenant.[19] Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3.[20]

7.7 The Committee observes that in his appeal to Gomel Regional Court, the author requested the authorities to carry out an individualized assessment of the article entitled "Idiocy and fake honour to the victims of war in a capital city gymnasium", relying on article 19 (3) of the Covenant. However, the appeal court merely acknowledged and upheld the decision of the Central District Court of Minsk of 10 November 2016. The Committee reiterates that even if the sanctions imposed on the author were permitted under domestic law, the State party must show that they were necessary for one of the legitimate aims set out in article 19 (3).[21] The Committee further observes that the State party has failed to invoke any specific grounds related to the author to support the necessity of the restrictions imposed on him, as is required under article 19 (3) of the Covenant.[22]

7.8 In particular, the Committee notes that the court decisions made no individualized assessment of the author's case and have not provided any explanation as to why the conviction and fine imposed on him were necessary and the least intrusive among the measures which might achieve the relevant protective function and were proportionate to the interest to be protected. It therefore considers that the author's right to freedom of expression under article 19 (2) of the Covenant has 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 of the author's rights under article 19 (2) of the Covenant.

9. Pursuant to 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 party is obligated to take appropriate steps to reimburse the fine and any legal costs incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there had been a violation of the Covenant. The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 8 February 2023. Since, 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.

[19] See the Committee's general comment No. 34 (2011), para. 43.
[20] Ibid.
[21] *Laptsevich v. Belarus* (CCPR/C/68/D/780/1997), para. 8.3.
[22] *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.