United Nations CCPR/C/139/D/2730/2016

International Covenant on Civil and Political Rights

Distr.: General
7 February 2024

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2730/2016*, **

Communication submitted by:	Mikhail Matskevich (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	9 December 2014 (initial submissions)
Document references:	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 August 2016 (not issued in document form)
Date of adoption of Views:	24 October 2023
Subject matter:	Administrative detention for participating in peaceful assemblies; freedom of expression
Procedural issues:	Exhaustion of domestic remedies; substantiation
Substantive issues:	Freedom of assembly; freedom of expression
Articles of the Covenant:	9 (3), 10, 14 (1), 19 and 21
Articles of the Optional Protocol:	None

1.1 The author of the communication is Mikhail Matskevich, a national of Belarus born in 1989. He claims that the State party has violated his rights under articles 9 (3), 10, 14 (1), 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not 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 party continues to be subject to the application of the Optional Protocol in respect of the present communication.[1]

* 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.

[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).

Facts as submitted by the author

2.1 On 24 December 2010, the author participated in a peaceful demonstration of solidarity with fellow citizens who had earlier been arrested during the protest action in Minsk against the results of the 2010 presidential election. The author and 10 to 15 other participants silently stood near the Minsk Offenders' Detention Centre and held lighted candles. As a result, at approximately 7.00 p.m., the participants were arrested by unidentified individuals in civilian clothing who took them to the Offenders' Detention Centre, where they were charged with holding an unauthorized mass event in violation of part 1 of article 23.34 of the Code of Administrative Offences.

2.2 On 27 December 2010, at approximately 3 p.m., the author was taken to Moskovsky District Court, also in Minsk, which found him to have violated part 1 of article 23.34 of the Code of Administrative Offences and sentenced him to a 10-day administrative detention.

2.3 On an unspecified date, the author appealed that decision to Minsk City Court, which rejected the author's appeal on 11 February 2011, thereby upholding the lower court's decision. Minsk City Court found the author's claims regarding violation of his freedom of speech and freedom of peaceful assembly to be groundless, asserting that the enjoyment of those freedoms is not absolute and comes with the obligation to exercise them in accordance with the law.

2.4 Subsequently, the author filed a request for a supervisory review to the Chairperson of Minsk City Court. On 17 August 2011 his appeal was denied, and the previous court's decision was upheld.

2.5 Thereafter, the author lodged a second request for a supervisory review with the Supreme Court of Belarus. On 10 October 2011, the Chairperson of the Supreme Court annulled the lower court's decisions and sent the case to a de novo hearing on the grounds of identification of procedural violations in the filing of the administrative charges. On 5 December 2011, Moskovsky District Court examined the revised case and once again found the author to have violated part 1 of article 23.34 of the Code of Administrative Offences, resentencing him to 10 days of administrative detention. However, since that decision repeated the ruling of 27 December 2010, the author's previous period of administrative detention was duly taken into account. On unspecified dates, the author appealed to Minsk City Court, to the Chairperson of Minsk City Court and to the Chairperson of the Supreme Court. The appeals were dismissed on 27 December 2011, 29 February 2012 and 21 November 2012 respectively.

2.6 On an unspecified date, the author also filed a civil lawsuit against the Main Department of Internal Affairs, seeking compensation for damages for the degrading conditions while he was detained at the Offenders' Detention Centre. On 5 August 2013, Moskovsky District Court refused to open civil proceedings, stating that matters relating to procedure and to detention conditions were not subject to judicial review under civil law. The author submits that he has thus exhausted all available and effective domestic remedies.

Complaint

3.1 The author contends that the period of his detention exceeded 48 hours before he was brought before a judge; he states that his detention lasted for 69 hours. He explains that he was detained on 24 December 2010 at 7 p.m. and was only brought before the judge on 27 December 2010 at approximately 3 p.m. He submits that national authorities did not justify such an excessive period of detention, which discloses a violation of article 9 (3) of the Covenant.

3.2 The author claims a violation of his rights under article 10 of the Covenant regarding his conditions of detention.[2] He argues that the cell did not have enough beds, had a low temperature, was overcrowded, and failed to meet health and sanitary standards, resulting in

[2] At this stage, the author did not provide any documents explaining the exhaustion of domestic remedies with regard to article 10. The first time that he mentioned his exhaustion of domestic remedies and provided relevant documentation was in his reply to the State party's observations in 2019.

12 people being crammed into an area of 25 square metres with almost no access to daylight. The author adds that he was denied the right to make a phone call, despite his numerous requests. He also claims that, while serving his 10-day administrative detention, he was not taken for a walk, the toilet in his cell was not separated off from the rest of the cell, which did not ensure privacy, and mice were seen in his cell.

3.3 The author also claims a violation of his rights under article 14 (1) of the Covenant, as Moskovsky District Court was neither independent nor impartial when reviewing his claim for compensation for damages. He contends that the court's refusal to review the case amounts to a denial of access to justice in civil proceedings.

3.4 In addition, the author claims a violation of his rights under articles 19 and 21 of the Covenant, asserting that the limitations imposed by law on freedom of expression and peaceful assembly were unnecessary and disproportionate. He argues that his participation in a peaceful assembly did not harm the rights of others, national security, or public health or morals, and that the national courts failed to provide legal justification for the restrictions, violating his rights under the Covenant. To substantiate his position, the author also invokes the Committee's general comment No. 34 (2011),[3] according to which restrictions must not be overbroad: "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected".

3.5 The author asks the Committee to conclude that Belarus has violated articles 9 (3), 10, 14 (1), 19 and 21 of the Covenant, to emphasize to the State party the need to bring its legislation on the right of peaceful assembly and freedom of expression into line with the requirements of the Covenant and to avoid the occurrence of similar violations in the future, and to provide him with adequate financial compensation of €1,000.

State party's observations on admissibility and the merits

4.1 On 28 November 2016, the State party submitted its observations in relation to the facts on which the communication is based. The State party confirms that on 27 December 2010, the author was found to have violated the procedure for organizing and conducting mass events under part 1 of article 23.24 of the Code of Administrative Offences, for which he was convicted to 10 days of administrative detention. The author's appeals were duly considered by the higher courts, which did not find any grounds for overturning that decision. Therefore, the author's right to a fair and open trial was fully guaranteed, in line with the requirements of article 14 (1) of the Covenant.

4.2 The State party further submits that the author's arguments regarding a violation of article 14 (1) of the Covenant are groundless, since claims for material compensation for moral damage relating to conditions of detention are not subject to judicial review in civil proceedings. In this connection, pursuant to article 245 (1) of the Code of Civil Procedure, the author's request for proceedings to be instituted was justifiably refused. The State party adds that in accordance with article 438 (5) of the Code of Civil Procedure, a supervisory review complaint against a court judgment in civil cases may be lodged with the Prosecutor General of Belarus and his deputies if the complaint is dismissed by the Minsk City Prosecutor. In this regard, the State party notes that the author has not filed any supervisory review appeals against the above-mentioned judgment with the Prosecutor General's Office.

4.3 Regarding the author's allegations of an alleged violation of his right under article 9 (3) of the Covenant, the State party finds this claim unfounded, as this article does not contain specific time limits but merely refers to the right of a person arrested or detained on a criminal charge to be tried within a reasonable time or released. In this context, the State party notes that the author's administrative detention was conducted pursuant to subpart 1 of part 2 of article 8.4 of the Code of Administrative Offences, which stipulates that individuals subject to administrative proceedings may not be detained for more than 72 hours. This provision of the Code of Administrative Offences was examined by the Constitutional Court of Belarus,

[3] See para. 34.

and by the Court's decision of 5 July 2013 (No. P-238/213) it was found to comply with the Constitution of Belarus.

4.4 With regard to article 10 of the Covenant on the right of a person deprived of his or her liberty to be treated with humanity and with respect for the inherent dignity of the human person, the State party explains that in line with article 18.1 of the Code of Administrative Procedure and Enforcement, the execution of administrative detention orders falls within the jurisdiction of the internal affairs agencies. In this respect, the State party points out that the author did not complain to the Office of the Public Prosecutor or the Ministry of Internal Affairs regarding his detention conditions.

4.5 As regards articles 19 and 21 of the Covenant, the State party contends that the author's rights to freedom of expression and to peaceful assembly have not been violated. Under the Public Events Act, the organization and holding of mass events, including picketing, are intended to create conditions for the realization of the constitutional rights and freedoms of citizens and to ensure public safety and order in the course of such events. Meanwhile, the restrictive measures set forth in the Public Events Act do not contradict the norms of the Covenant, as rights under article 19 (3) of the Covenant may be subject to certain restrictions, which are to be prescribed by law, and which are necessary for respect of the rights or reputation of others and for the protection of national security, public order, or public health or morals.

4.6 The State party further explains that in accordance with the provisions of the Code of Administrative Procedure and Enforcement, a court's decision on an administrative offence that has entered into force may be reviewed by the Chairperson of a higher court, regardless of the existence of a complaint or an objection by a prosecutor. According to the State party, the Chairperson of the Supreme Court of Belarus did not directly examine the author's appeal, as the answer to the author was sent by the Acting Deputy Chairperson. Therefore, the State party contends that pending the decision of the Chairperson of the Supreme Court of Belarus himself, the author has not exhausted all available domestic remedies.

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

5.1 On 16 July 2019, in his comments on the State party's observations of 28 November 2016, the author provided the following information. In regard to the information provided by the State party relating to a violation of article 9 (3) of the Covenant, the author contests the State party's allegations that his complaint is invalid because this article "does not contain specific time limits but merely refers to the right of a person arrested or detained on a criminal charge to be tried within a reasonable time or released". The author considers such an interpretation of article 9 (3) to be fundamentally flawed, since the absence of a specific time limit would completely undermine the very essence of the protection of this right, giving any State party an excuse not to set a time limit at all.

5.2 The author further argues that the very existence of article 9 (3) provides for a reasonable, legal time limit that would guarantee the protection of the individual against violations by States parties. In this regard, the author refers to the Committee's Views in *Kovsh v. Belarus*,[4] where the Committee explains that pretrial detention should be used in exceptional cases and should be as short as possible. In the same Views, the Committee insists that in order to ensure that this limitation is respected, article 9 (3) requires that detention be subject to prompt judicial control. "Prompt initiation of judicial oversight also constitutes an important safeguard against the risk of ill-treatment of the detained person. This judicial control of detention must be automatic and cannot be made to depend on a previous application by the detained person. The period for evaluating promptness begins at the time of arrest and not at the time when the person arrives in a place of detention."

5.3 The author submits that he was neither explained the reason for such a long period of detention, nor told the time and date when the court hearing would take place. The author asserts that the meaning of the term "promptly" in article 9 (3) of the Covenant must be determined on a case-by-case basis pursuant to the Committee's general comment No. 8 (1982) and that according to the Committee's jurisprudence it should not exceed a few

[4] CCPR/C/107/D/1787/2008.

days.[5] The author points out that the Committee has repeatedly recommended that the period of time that a person is detained by the police before being brought before a judge should not exceed 48 hours. Therefore, in order to comply with article 9 (3) of the Covenant, any exceeding of this period requires specific justification. However, there was no justification for a period of 69 hours in the author's case, with the author being detained on 24 December 2010 at 7 p.m. and being brought before the judge on 27 December 2010 at approximately 3 p.m.

5.4 As to the State party's observations regarding violations of articles 19 and 21 of the Covenant, the author reiterates his claims and refers to the Committee's general comment No. 34 (2011), emphasizing that restrictions on freedom of expression and peaceful assembly must not be overbroad and should be proportional to the interest being protected.

5.5 Concerning article 10 of the Covenant, the author challenges the State party's arguments about failure to exhaust domestic remedies. In this regard, he explains that in August 2011, he submitted a complaint regarding his detention conditions to the Office of the Public Prosecutor, which forwarded it on to the Main Department of Internal Affairs as the competent authority.[6] According to the reply of the Main Department of Internal Affairs, dated 24 August 2011, the author's claims were investigated and no violations in the work of the detention centre personnel were found. The author submits that his appeals to the Office of Public Prosecutor were futile. He contends that this illustrates the ineffectiveness of such forms of domestic remedy.

5.6 As to his claim under article 14 (1) of the Covenant, the author explains that in order to prove the existence of violations and to receive compensation for his moral suffering and financial expenses, he lodged a civil lawsuit with Moskovsky District Court. However, the Court refused to initiate a civil case, citing lack of jurisdiction. Therefore, the author claims that the Court's refusal to hear the case, which would have determined the right to receive material compensation for moral damage, amounts to a denial of access to justice in civil proceedings, in violation of article 14 (1) of the Covenant.

5.7 Regarding the State party's objection stating that the author had not exhausted all available domestic remedies on the grounds that the author's complaint had only been examined by the Acting Deputy Chairperson of the Supreme Court and not by the Chairperson himself, the author explains the following. Firstly, his supervisory review appeal was sent to the Supreme Court of Belarus in the name of the Chairperson of the Supreme Court of Belarus. The author does not know why it was not examined by him but was instead forwarded to the Acting Deputy President of the Supreme Court for that purpose. Secondly, the author submits that according to the Committee's jurisprudence, the supervisory review procedure is not considered an effective domestic remedy in Belarus. In this respect, the author refers to the Committee's Views in *Schumilin v. Belarus*.[7] Accordingly, the author considers that he has exhausted all effective domestic remedies.

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.

[5] The author cites the Committee's Views in *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008).

[6] The author has not provided this information before and only raised it in his comments on the State party's observations. The exact date of the complaint is unknown. In the case file, there are only the dates of the replies to his complaint. The author explains that he filed several complaints about the conditions of detention in 2011, first with the General and City Prosecutor's Offices, then with the Ministry of the Interior, which replied to him that no violations had been found, and then again with the City Prosecutor's Office. The last reply was sent by the City Prosecutor's Office on 28 October 2011, stating that his complaint had already been examined by the competent authority, which had determined that there had been no violations of the conditions of detention. The author has not appealed these decisions to the court or to other bodies.

[7] CCPR/C/105/D/1784/2008.

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 With regard to the requirement laid down in article 5 (2) (b) of the Optional Protocol, the Committee takes note of the State party's argument that the author failed to exhaust all effective domestic remedies in relation to his claims under articles 19 and 21 of the Covenant, since his complaint was examined by the Acting Deputy Chairperson instead of the Chairperson of the Supreme Court himself.

6.4 In this respect, the Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to the Chairperson of a court, directed against court decisions that have entered into force and depend on the discretionary power of a judge, constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such a request would provide an effective remedy in the circumstances of the case. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect, constitutes an extraordinary remedy and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[8] In the present case, the Committee notes that the State party did not provide any information on the effectiveness of the supervisory review procedure in cases related to administrative convictions imposed on participants in demonstrations such as the one examined in the present Views. Therefore, the Committee concludes that the author has exhausted all available effective domestic remedies and that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.5 The Committee takes note of the State party's argument that the author has not appealed against his conditions of detention to the Office of the Public Prosecutor or the Ministry of Internal Affairs and, therefore, has not exhausted domestic remedies regarding his claims under article 10 of the Covenant. The Committee notes in this regard a copy of the author's complaint to the Office of the Public Prosecutor, which was forwarded on to the Ministry of Internal Affairs, to which he received a reply on 24 August 2011, stating that no violations in the work of the detention centre personnel had been found. The Committee observes that the author has not duly appealed the decision of the Ministry of Internal Affairs to the national courts or other competent State authorities. In the light of the foregoing, the Committee considers that the requirements of article 5 (2) (b) are not satisfied as regards the author's complaint under article 10 of the Covenant.

6.6 As to the alleged violation of the author's right under article 14 (1) of the Covenant on the grounds that the court refused to examine the author's claims for compensatory moral damages resulting from his poor conditions of detention, the Committee considers that, in the circumstances of the present communication, this claim has been insufficiently substantiated for the purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee takes notes of the author's claims that the State party violated his rights under article 9 (3) of the Covenant as he was detained for 69 hours from the time of the actual detention until the time he was brought before a judge, in violation of the requirements of promptness. The Committee notes that article 9 (3) applies to persons arrested or detained on criminal charges. The Committee must therefore decide whether the author's administrative detention falls within the scope of article 9 (3) of the Covenant and whether this part of the communication is admissible under article 3 of the Optional Protocol. In this regard, the Committee recalls that, although criminal charges relate in principle to acts declared to be punishable under domestic criminal law,[9] the concept of a "criminal charge"

[8] *Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3; and *Vasilevich et al. v. Belarus* (CCPR/C/137/D/2693/2015, 2898/2016, 3002/2017 and 3084/2017), para. 6.3.

[9] See the Committee's general comment No. 35 (2014), para. 31.

must be understood within the meaning of the Covenant.[10] According to the Committee's general comment No. 32 (2007),[11] the notion of criminal charges may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity. In the present case, the author was punished for an administrative offence and was sanctioned with 10 days of administrative detention. The Committee considers that such a penalty was aimed at sanctioning the author for his actions and serving as a deterrent for future similar offences – objectives analogous with the general goal of the criminal law.[12] Therefore, the Committee finds that these claims fall under the protection of article 9 (3) of the Covenant.

6.8 The Committee considers that the author's claims under articles 9 (3), 19 and 21 of the Covenant are sufficiently substantiated for purposes of admissibility, declares them admissible, and proceeds to examine them on their 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 takes note of the author's claims that his rights under both article 19 and article 21 of the Covenant were violated by the unnecessary limitations imposed by law on the right to freedom of expression and the right of peaceful assembly and by the disproportionate sanctions in the form of a 10-day administrative detention imposed on him by the courts, as specified in detail in paragraphs 2.2 and 2.3 above. The Committee also notes the State party's contention that the author was lawfully subjected to administrative liability under part 1 of article 23.34 of the Code of Administrative Offences, for having taken part in an unauthorized mass event. Considering the author's claim that his right of peaceful assembly was unreasonably restricted by the State party given that a 10-day administrative detention was imposed on him for taking part in a peaceful public event with an expressive function, the first issue before the Committee is to determine whether the restrictions imposed were justified under article 21 of the Covenant.

7.3 In this respect, the Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for public expression of an individual's views and opinions and indispensable in a democratic society. Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, assemblies with a political message should enjoy a heightened level of accommodation and protection.[13] The peaceful assemblies covered by article 21 may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelight vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.[14] The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience, and no restriction to this right is permissible, unless it: (a) is imposed in conformity with the law; and (b) is necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), protection of public health or morals or protection of the rights and freedoms of others.[15] When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.[16] The State party is thus under an obligation to justify the limitation of the

[10] See the Committee's general comment No. 32 (2007), para. 15. See also *Osiyuk v. Belarus* (CCPR/C/96/D/1311/2004), para. 7.3; and *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 13.7.

[11] See para. 15.

[12] *Volchek v. Belarus* (CCPR/C/129/D/2337/2014), para. 6.5; and *Berlinov v. Belarus* (CCPR/C/133/D/2708/2015), para. 6.5.

[13] See the Committee's general comment No. 37 (2020), para. 32.

[14] Ibid., para. 6.

[15] Ibid., para. 22.

[16] Ibid., para. 36.

right protected by article 21 of the Covenant.[17] A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences.

7.4 In the present case, the Committee must consider whether the restrictions imposed on the author's right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. In the light of the information available on file, the author was sentenced by the domestic courts to a 10-day administrative detention for participating in a peaceful assembly in violation of the provisions of the Public Events Act. The Committee notes, however, that the domestic courts did not provide any justification or explanation as to how, in practice, the author's participation in the peaceful assembly had violated the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others, as set out in article 21 of the Covenant. Neither has the State party provided any justification for restricting the author's rights under article 21 in its submission before the Committee or information to show that the sanction imposed was the least intrusive one or proportionate to the interest that it sought to protect. In the absence of any further explanations from the State party regarding the matter, the Committee concludes that the State party has violated the author's rights under article 21 of the Covenant.[18]

7.5 As to the author's claims regarding a violation of his rights under article 19 of the Covenant, the Committee must establish whether the application of part 1 of article 23.34 of the Code of Administrative Offences to the author's case, resulting in his 10-day administrative detention, is justified under any of the criteria set out in article 19 (3). In this regard, the Committee recalls its general comment No. 34 (2011), in which it stated, inter alia, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society. [19] It notes that article 19 (3) of the Covenant allows for certain restrictions on the freedom of expression, including on the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary: (a) for respect of the rights or 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 that might achieve the relevant protective function and be proportionate to the interest being protected.[20] The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate.[21]

7.6 In the present context, the Committee observes that the State party has merely argued that the right to freedom of expression, as guaranteed by article 19 (2) of the Covenant, may be subject to limitations as provided for by law. The Committee further observes that the State party failed to contest the author's assertion that his actions did not harm the rights or reputations of others, disclose State secrets, or infringe upon public order or health. Nor did the State party invoke specific grounds justifying the restrictions imposed on the author's activity within the meaning of article 19 (3) of the Covenant. The State party has also failed to demonstrate that the measures selected were the least intrusive in nature or were proportionate to the interest that it sought to protect. In the light of this, the Committee finds that, in the circumstances of the case, the administrative detention imposed on the author, although based on domestic law, was not justified pursuant to the conditions set out in

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

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

[19] See the Committee's general comment No. 34 (2011), para. 2.

[20] Ibid., para. 34.

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

article 19 (3) of the Covenant. Therefore, the Committee concludes that the author's rights under article 19 of the Covenant have been violated.[22]

7.7 Regarding the author's claim under article 9 (3) of the Covenant that he was detained for 69 hours from the moment of the actual detention on 24 December 2010 and only brought before a judge on 27 December 2010, in violation of the requirements of promptness, the Committee notes that the author was apprehended on the eve of a public holiday,[23] for having participated in an unauthorized peaceful assembly. The Committee observes that the State party has failed to demonstrate and apply alternative and less intrusive measures than the author's arrest. For instance, one such alternative measure could have been to summon the author to appear in court, thereby avoiding the protracted detention period. In this context, the Committee supports its position, indicated in its general comment No. 35 (2014), that 48 hours is ordinarily sufficient to prepare an individual for the judicial hearing and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.[24] The Committee notes that not only should this requirement apply equally to cases involving prolonged administrative detention, but also that it should be even stricter in cases of minor offences, such as the present case. The Committee also notes that the State party also did not provide any information on the existence of exceptional circumstances in the present case to justify a delay in bringing the author before a judge, limiting itself to asserting that article 9 (3) did not contain specific time limits but merely referred to the right of a person arrested or detained on a criminal charge to be tried within a reasonable time or released. In the light of these circumstances, the Committee considers that the facts before it reveal a violation of article 9 (3) 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 (3), 19 and 21 of the Covenant.

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

10. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has 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.

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[22] *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.5; *Zhagiparov v. Kazakhstan*, para. 13.4; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.

[23] The Catholic Christmas, which is considered a public holiday in Belarus and is celebrated on 25 December.

[24] See the Committee's general comment No. 35 (2014), para. 33.