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|  |  | CCPR/C/141/D/JC/2 (see Annex for full list) | |
|  | **Advance unedited version** | | Distr.: General  24 July 2024  English |

**Human Rights Committee**

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 3672/2019, 3673/2019, 3682/2019, 3691/2019, 3692/2019, 3694/2019, 3695/2019, 3738/2020, 3745/2020, 3746/2020, 3747/2020, 3748/2020, 3749/2020, 3753/2020, 3763/2020, 3765/2020, 3801/2020, 3820/2020, 3823/2020, 3826/2020 and 3830/2020[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communications submitted by:* Leonid Kulakov (communication No. 3672/2019), [Viktor Rubtsov](javascript:OpenSavedWindow(108955,3);) (communication No. 3673/2019), [Maiya Naumova](javascript:OpenSavedWindow(115150,3);) (communication No. 3682/2019, represented by counsel, [Kristina Rikhter](javascript:OpenSavedWindow(115151,1);)), [Maiya Naumova](javascript:OpenSavedWindow(115150,3);) (communication No. 3691/2019), [Aleksandr Abramovich](javascript:OpenSavedWindow(108959,1);) (communication No. 3692/2019), [Pavel Mrochko](javascript:OpenSavedWindow(109579,1);) (communication No. 3694/2019), [Tamara Zaitseva](javascript:OpenSavedWindow(109580,3);) (communication No. 3695/2019), [Mikhail Vorontsov](javascript:OpenSavedWindow(119365,3);) (communication No. 3738/2020, represented by counsel, [Viktoriya Fedorova](javascript:OpenSavedWindow(119364,1);)), [Elena Yanushkovskaya](javascript:OpenSavedWindow(118773,3);) (communications No. 3745-49/2020 and 3753/2020, represented by counsel, [Pavel](javascript:OpenSavedWindow(119364,1);) Levinov), [Aleksandr Dubrovskih](javascript:OpenSavedWindow(119064,3);) (communication No. 3763/2020, represented by counsel, [Pavel](javascript:OpenSavedWindow(119364,1);) Levinov), [Evgeny Batura](javascript:OpenSavedWindow(115757,3);) (communication No. 3765/2020), [Boris Anikeev](javascript:OpenSavedWindow(35510,3);) (communications Nos. 3801/2020 and 3830/2020), [Tatyana Severinets](javascript:OpenSavedWindow(3441,3);) (communication No. 3820/2020, represented by counsel, [Pavel](javascript:OpenSavedWindow(119364,1);) Levinov), [Irina Tretyakova](javascript:OpenSavedWindow(120292,3);) (communication No. 3823/2020, represented by counsel, [Pavel](javascript:OpenSavedWindow(119364,1);) Levinov), and [Aleksandr Abramovich](javascript:OpenSavedWindow(3510,3);) (communication No. 3826/2020, represented by counsel, [Oleg Matskevich](javascript:OpenSavedWindow(109203,1);))

*Alleged victims:* The authors

*State party:* Belarus

*Dates of communications:* See Annex

*Document references:* Decisions taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on various dates (see Annex)

*Date of adoption of Views:* 17 July 2024

*Subject matter:* Sanction for participation in an unauthorized peaceful protest

*Procedural issues:* Exhaustion of domestic remedies; substantiation of claims

*Substantive issues:* Freedom of expression; right to peaceful assembly

*Articles of the Covenant:* 2, 19 and 21

*Articles of the Optional Protocol:* 2, 3 and 5 (2) (b)

1.1 The authors of the communications are Leonid Kulakov (communication No. 3672/2019), [Viktor Rubtsov](javascript:OpenSavedWindow(108955,3);) (communication No. 3673/2019), [Maiya Naumova](javascript:OpenSavedWindow(115150,3);) (communication No. 3682/2019), [Maiya Naumova](javascript:OpenSavedWindow(115150,3);) (communication No. 3691/2019), [Aleksandr Abramovich](javascript:OpenSavedWindow(108959,1);) (communication No. 3692/2019), [Pavel Mrochko](javascript:OpenSavedWindow(109579,1);) (communication No. 3694/2019), [Tamara Zaitseva](javascript:OpenSavedWindow(109580,3);) (communication No. 3695/2019), [Mikhail Vorontsov](javascript:OpenSavedWindow(119365,3);) (communication No. 3738/2020), [Elena Yanushkovskaya](javascript:OpenSavedWindow(118773,3);) (communications No. 3745-3749/2020 and 3753/2020), [Aleksandr Dubrovskih](javascript:OpenSavedWindow(119064,3);) (communication No. 3763/2020), [Evgeny Batura](javascript:OpenSavedWindow(115757,3);) (communication No. 3765/2020), [Boris Anikeev](javascript:OpenSavedWindow(35510,3);) (communications Nos. 3801/2020 and 3830/2020), [Tatyana Severinets](javascript:OpenSavedWindow(3441,3);) (communication No. 3820/2020), [Irina Tretyakova](javascript:OpenSavedWindow(120292,3);) (communication No. 3823/2020), and [Aleksandr Abramovich](javascript:OpenSavedWindow(3510,3);) (communication No. 3826/2020), all nationals of Belarus. They claim that the State party has violated their rights under articles 2, 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The authors of communications Nos. 3682/2019, 3738/2020, 3745-3749/2020, 3753/2020, 3763/2020, 3820/2020, 3823/2020 and 3826/2020 are represented by counsel, while the others are unrepresented.

1.2 The present communications were 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 as regards the present communications.[[3]](#footnote-4)

1.3 On 17 July 2024, pursuant to rule 97 (3) of its rules of procedure and its strategy adopted at the 140th session aiming at addressing the high number of communications pending its consideration and adoption, the Committee decided **to join 21 communications** (see the Annex for details) for a joint decision.[[4]](#footnote-5) Such decisions, to be adopted in a simplified format, ***relate to communications raising similar factual elements and claims, and for which the Committee*** ***has identified the underpinning structural and policy nature of the violations and developed a consistent jurisprudence over the years***.

Factual background

2. Between 2016 and 2020, the authors participated or made public calls for participation in unauthorized peaceful protests in different cities in the State party. They were apprehended by the police and charged with an administrative offence under article 23.34 of the Code of Administrative Offenses (violation of the established procedure for conducting mass events). All authors were tried and sentenced by local district courts to various administrative fines and in some instances to administrative arrest ranging from 5 to 10 days. The authors unsuccessfully appealed the first-instance court decisions to appellate courts. The authors submit that they have not attempted to lodge supervisory review appeals with judicial or prosecutorial authorities. As their reason for not doing so, they refer to the ineffectiveness of those remedies, citing the Committee’s established jurisprudence.[[5]](#footnote-6)

Complaint

3.1 All authors claim that the State party has violated their rights under articles 19 and 21 of the Covenant.

3.2 The authors of communications 3672/2019, 3673/2019, 3691/2019, 3692/2019, 3694/2019, 3695/2019, 3801/2020 and 3830/2020 also claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant.

State party’s observations on admissibility and the merits

4.1 The State party notes that domestic legislation provides for the possibility to appeal a court ruling concerning an administrative offence to the Chair of a higher court or a prosecutor through a supervisory review procedure. The State party rejects the authors’ assertion that the procedure of supervisory appeal in administrative cases can be considered an ineffective remedy.

4.2 The State party submits that the provisions guaranteeing freedom of opinion and expression and freedom of assembly, when the exercise of those freedoms does not violate law and order and the rights of other citizens of Belarus, are enshrined in articles 33 and 35 of the Constitution. The organization and holding of public events are regulated by the Public Events Act, which includes provisions setting out the conditions for the exercise of the constitutional rights and freedoms of citizens when such events are held in public places, with a view to ensuring public safety and order. Therefore, the State party concludes that the allegations put forward by the authors concerning violations of their rights under articles 19 and 21 of the Covenant are unsubstantiated.

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

5.1 The authors reject the State party’s assertions about the effectiveness of the supervisory review appeals before judicial and prosecutorial authorities. They note that such appeals depend on the discretionary power of a judge or prosecutor and cannot be considered an effective remedy for the purpose of exhaustion of domestic remedies as recognized by the Committee in its case law.

5.2 The authors reiterate their claims that their rights under articles 19 and 21 of the Covenant have been violated. They also note that the State party has not complied with the Committee’s recommendations to bring the Public Events Act into compliance with the State’s international obligations.

Committee’s considerations on admissibility and the merits

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. The Committee notes the State party’s argument that the authors have failed to seek a supervisory review, by prosecutorial and judicial authorities, of the impugned decisions. The Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to a president of a court, directed against court decisions that have entered into force, [[6]](#footnote-7) or to a prosecutor’s office, requesting a review of court decisions that have taken effect, [[7]](#footnote-8) constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. In the absence of any new information from the State party that would allow the Committee to reach a different conclusion, compared to its previous case law, the Committee considers that the authors have 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.

6.2 The Committee notes that the authors of 8 communications mentioned in para. 3.2 claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant. In the absence, however, of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate those claims for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.3 The Committee also notes the claims by the same authors that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2), of the Covenant. The Committee notes that the authors have alleged a violation of their rights under articles 19 and 21 of the Covenant resulting from the interpretation and application of the existing laws of the State party and the Committee does not consider the examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, to be distinct from an examination of the violation of the authors’ rights under articles 19 and 21 of the Covenant.[[8]](#footnote-9) The Committee therefore considers that the authors’ claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol. The Committee finds the authors’ claims under articles 19 and 21 of the Covenant sufficiently substantiated and proceeds to the considerations of the merits.

6.4 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. The Committee notes that ***it has found a violation of articles 19 and 21 of the Covenant in similar cases in respect of the same laws and practices of the State party in a number of earlier communications***.[[9]](#footnote-10) There is nothing in the factual background or legal claims of the present communications that would lead the Committee to a different conclusion on the merits. Having considered the communications in the light of all the information made available to it by the parties and having regard to its previous jurisprudence on the subject, the Committee considers ***that by sanctioning the authors for participation in peaceful protests, although unauthorized, the State party has violated their rights under articles 19 and 21 of the Covenant***.

7. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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 current value of the fines and any legal costs incurred by the authors in relation to the domestic proceedings against them (see Annex for details). The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. The Committee therefore recommends ***that the State party revise its normative framework, in particular its Law on Mass Media, consistent with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under articles 19 and 21 may be fully enjoyed in the State party.***

8. On becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant. The present communications were 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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*Annex*

Key procedural information and additional details, by communication

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| **Author/**  **Communication No.** | **Date of**  **submission** | **Document references (Date of transmittal to the State party)** | **Relevant court**  **decisions** | **Type of sanction** | **Applicable domestic law** |
| Leonid Kulakov  3672/2020 | 17 October 2018 | 10 December 2019 | Episode #1  First instance: 23 March 2018, Pervomayskiy District Court of Minsk City  Appeal: 6 April 2018, Minsk City Court  Episode #2  First instance: 27 August 2018, Pervomayskiy District Court of Minsk City  Appeal: 21 September 2018, Minsk City Court | Episode #1  Administrative arrest for 10 days  Episode #2  Fine in the amount of 980 Belarussian Roubles (approximately 410 EUR) | Episode #1  Art. 23.34 (3) of the Code of Administrative Offenses  Episode #2  Art. 23.34 (3) of the Code of Administrative Offenses |
| Victor Rubtsov  3673/2019 | 8 December 2017 | 10 December 2019 | First instance: 19 October 2017, Zheleznodorozhniy District Court of Gomel City  Appeal: 22 November 2017, Gomel Regional Court | Administrative arrest for 5 days | Art. 23.34 (3) of the Code of Administrative Offenses |
| Maiya Naumova  3682/2019 | 30 September 2019 | 10 December 2019 | First instance: 2 January 2019, Central District Court of Minsk City  Appeal: 8 February 2019, Minsk City Court | Fine in the amount of 1,020 Belarussian Roubles (approximately 425 EUR) | Art. 23.34 (3) of the Code of Administrative Offenses |
| Maiya Naumova  3691/2019 | 16 October 2018 | 7 January 2020 | First instance: 7 August 2018, Pervomayskiy District Court of Minsk City  Appeal: 2 October 2018, Minsk City Court | Fine in the amount of 980 Belarussian Roubles (approximately 410 EUR) | Art. 23.34 (3) of the Code of Administrative Offenses |
| Aleksandr Abramovich  3692/2019 | 16 October 2018 | 7 January 2020 | First instance: 27 August 2018, Moskovskiy District Court of Minsk City  Appeal: 21 September 2018, Minsk City Court | Fine in the amount of 1,225 Belarussian Roubles (approximately 510 EUR) | Art. 23.34 (3) of the Code of Administrative Offenses |
| Pavel Mrochko  3694/2019 | 26 September 2018 | 7 January 2020 | First instance: 27 August 2018, Moskovskiy District Court of Minsk City  Appeal: 18 September 2018, Minsk City Court | Fine in the amount of 490 Belarussian Roubles (approximately 205 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Tamara Zaitseva  3695/2019 | 27 September 2018 | 7 January 2020 | First instance: 27 August 2018, Moskovskiy District Court of Minsk City  Appeal: 18 September 2018, Minsk City Court | Fine in the amount of 612,5 Belarussian Roubles (approximately 255 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Mikhail Vorontsov  3738/2019 | 16 April 2020 | 1 May 2020 | First instance: 8 January 2020, Moskovskiy District Court of Minsk City  Appeal: 31 January 2020, Minsk City Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3745/2020 | 27 February 2020 | 12 May 2020 | First instance: 21 January 2020, Zheleznodorozhniy District Court of Vitebsk City  Appeal: 12 February 2020, Vitebsk Regional Court | Fine in the amount of 675 Belarussian Roubles (approximately 285 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3746/2020 | 19 March 2020 | 12 May 2020 | First instance: 23 January 2020, Vitebskiy District Court of Vitebsk City  Appeal: 19 February 2020, Vitebsk Regional Court | Fine in the amount of 675 Belarussian Roubles (approximately 285 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3747/2020 | 27 April 2020 | 12 May 2020 | First instance: 9 January 2020, Central District Court of Minsk City  Appeal: 28 February 2020, Minsk City Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3748/2020 | 29 April 2020 | 12 May 2020 | First instance: 9 January 2020, Central District Court of Minsk City  Appeal: 28 February 2020, Minsk City Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3749/2020 | 31 March 2020 | 12 May 2020 | First instance: 24 January 2020, Vitebskiy District Court of Vitebsk City  Appeal: 19 February 2020, Vitebsk Regional Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Elena  Yanushkovskaya  3753/2020 | 11 May 2020 | 13 May 2020 | First instance: 18 February 2020, Vitebskiy District Court of Vitebsk City  Appeal: 11 March 2020, Vitebsk Regional Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Aleksandr Dubrovskikh  3763/2020 | 10 March 2020 | 10 June 2020 | First instance: 14 January 2020, Oktyabrskiy District Court of Vitebsk City  Appeal: 19 February 2020, Vitebsk Regional Court | Fine in the amount of 810 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Evgeny Batura  3765/2020 | 26 October 2019 | 14 June 2020 | First instance: 22 December 2018, Central District Court of Minsk City  Appeal: 5 February 2019, Minsk City Court | Fine in the amount of 490 Belarussian Roubles (approximately 205 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Boris Anikeev  3801/2020 | 12 September 2018 | 5 August 2020 | First instance: 2 August 2018, Zheleznodorozhniy District Court of Gomel City  Appeal: 29 August 2018, Gomel Regional Court | Fine in the amount of 196 Belarussian Roubles (approximately 80 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Tatyana Severinets  3820/2020 | 15 September 2017 | 24 September 2020 | First instance: 21 March 2017, Oktyabrskiy District Court of Vitebsk City  Appeal: 12 April 2017, Vitebsk Regional Court | Fine in the amount of 1,150 Belarussian Roubles (approximately 575 EUR) | Art. 23.34 (3) of the Code of Administrative Offenses |
| Irina Tretyakova  3823/2020 | 15 September 2017 | 8 October 2020 | First instance: 27 March 2017, Oktyabrskiy District Court of Vitebsk City  Appeal: 19 April 2017, Vitebsk Regional Court | Fine in the amount of 690 Belarussian Roubles (approximately 340 EUR) | Art. 23.34 (1) of the Code of Administrative Offenses |
| Aleksandr Abramovich  3826/2020 | 13 March 2018 | 14 October 2020 | Episode #1  First instance: 9 March 2016, Central District Court of Minsk City  Appeal: 5 April 2016, Minsk City Court  Episode #2  First instance: 24 March 2016, Central District Court of Minsk City  Appeal: 22 April 2016, Minsk City Court  Episode #3  First instance: 10 October 2016, Moskovskiy District Court of Minsk City  Appeal: 25 November 2016, Minsk City Court | Episode #1  Fine in the amount of 3,150,000 (old) Belarussian Roubles (approximately 160 EUR)  Episode #2  Fine in the amount of 2,100,000 (old) Belarussian Roubles (approximately 105 EUR)  Episode #3  Fine in the amount of 1,050 (new) Belarussian Roubles (approximately 505 EUR) | Episode #1  Art. 23.34 (1) of the Code of Administrative Offenses  Episode #2  Art. 23.34 (1) of the Code of Administrative Offenses  Episode #3  Art. 23.34 (3) of the Code of Administrative Offenses |
| Boris Anikeev  3830/2020 | 27 November 2017 | 22 October 2020 | First instance: 19 October 2017, Zheleznodorozhniy District Court of Gomel City  Appeal: 17 November 2017, Gomel Regional Court | Administrative arrest for 5 days | Art. 23.34 (3) of the Code of Administrative Offenses |

1. \* Adopted by the Committee at its 141th session (1-23 July 2024). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gomez Martinez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernan Quezada Cabrera, José Manuel Santos Pais, Changrok Soh,Tijana Surlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu. [↑](#footnote-ref-3)
3. See e.g. *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; *Shchiryakova et al. v. Belarus* (CCPR /C/137/DR/2911/2016). [↑](#footnote-ref-4)
4. Committee’s Annual report for the 138-140th sessions, para. 22. [↑](#footnote-ref-5)
5. See the Annex for additional information on exhaustion of domestic remedies, including domestic court proceedings and fines imposed. [↑](#footnote-ref-6)
6. *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3. [↑](#footnote-ref-7)
7. *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. [↑](#footnote-ref-8)
8. *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.; *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; and *Vasilevich et al. v. Belarus*, para. 6.4. [↑](#footnote-ref-9)
9. *Malei v. Belarus* (CCPR/C/129/D/2404/2014), para 9.4 and 9.7; *Tolchina et al. v. Belarus* (CCPR/C/132/D/2857/2016), para 7.6 and 7.9; *Zavadskaya et al. v. Belarus* (CCPR/C/132/D/2865/2016), para 7.6 and 7.9; and *Vasilevich et al. v. Belarus* (CCPR/C/137/D/2693/2015, 2898/2016, 3002/2017 and 3084/2017), paras. 7.7 and 7.10. [↑](#footnote-ref-10)