CCPR/C/140/D/3140/2018, CCPR/C/140/D/3147/2018
CCPR/C/140/D/3151/2018, CCPR/C/140/D/3169/2018
CCPR/C/140/D/3170/2018, CCPR/C/140/D/3173/2018

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Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 3140/2018, No. 3147/2018, No. 3151/2018, No. 3169/2018, No. 3170/2018 and No. 3173/2018*, **

Communication submitted by:	Konstantin Chernov, Aleksandr Karankevich, Elena Kisel, Pavel Kraitsev, Denis Kraitsev and Elena Kren (all represented by counsel, Boris Bukhel)
Alleged victims:	The authors
State party:	Belarus
Dates of communications:	29 December 2017 (communication No. 3147/2018), 30 December 2017 (the remaining communications)
Document references:	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 March 2018 (communication No. 3140/2018), 20 March 2018 (communication No. 3147/2018), 21 March 2018 (communication No. 3151/2018), 28 March 2018 (communications No. 3169/2018 and No. 3170/2018) and 3 April 2018 (communication No. 3173/2018)
Date of adoption of Views:	21 March 2024
Subject matter:	Sanction for participating in a peaceful assembly
Procedural issues:	Admissibility – exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Freedom of assembly; freedom of opinion and expression
Articles of the Covenant:	2 (2) and (3), 14 (1), 19 and 21
Articles of the Optional Protocol:	2 and 3

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, 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.

1.1 The authors of the communications are Konstantin Chernov (communication No. 3140/2018), Aleksandr Karankevich (communication No. 3147/2018), Elena Kisel (communication No. 3151/2018), Pavel Kraitsev (communication No. 3169/2018), Denis Kraitsev (communication No. 3170/2018) and Elena Kren (communication No. 3173/2018), nationals of Belarus born in 1994, 1981, 1996, 1985, 1980 and 1980, respectively. They claim that the State party has violated their rights under articles 14 (1), 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are represented by counsel.

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 in respect of the present communications.[1]

1.3 On 21 March 2024, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to join communications No. 3140/2018, No. 3147/2018, No. 3151/2018, No. 3169/2018, No. 3170/2018 and No. 3173/2018, submitted by six different authors, for a joint decision, in view of their substantial factual and legal similarity.

Facts as submitted by the authors

2.1 The communications relate to administrative convictions under article 23.34 of the Code of Administrative Offences (violation of the procedure for organizing and holding mass events). The facts relevant to each communication are summarized below.

Communications No. 3140/2018, No. 3151/2018 and No. 3173/2018

2.2 On 15 March 2017, the authors participated in an unauthorized peaceful demonstration in Mahiliou to protest against a presidential decree on the prevention of social dependency.[2] The authors were apprehended by the police and spent the night in pretrial detention while police officers prepared administrative records to charge them with an administrative offence under article 23.34 of the Code of Administrative Offences.

2.3 On 16 March 2017, Leninsky District Court of Mahiliou city found the authors guilty of administrative offences and imposed fines of between 230 and 460 roubles. The authors submit that the amounts of the fines were significant, as they were equal to 35 to 70 per cent of the average monthly salary in the country, according to data of the national statistics agency.

2.4 On unspecified dates, the authors appealed the fines to Mahiliou Regional Court. The appeals were rejected on 13 April 2017 for the authors of communications No. 3140/2018 and No. 3151/2018, and on 4 May 2017 for the author of communication 3173/2018.

Communications No. 3147/2018, No. 3169/2018 and No. 3170/2018

2.5 On 25 March 2017, the authors participated in an unauthorized peaceful demonstration in Minsk to protest against a presidential decree on the prevention of social dependency. The authors were apprehended by the police and spent two nights in pretrial detention while police officers prepared administrative records to charge them with an administrative offence under article 23.34 of the Code of Administrative Offences.

2.6 On 27 March 2017, Frunzyensky District Court of Minsk found the authors guilty of administrative offences and imposed on each of them a fine of 345 roubles. The authors

[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] The decree established the obligation of citizens of Belarus, foreign citizens permanently residing on the territory of Belarus, and stateless persons who did not participate in the financing of State expenditures, or who participated for fewer than 183 calendar days during the previous year, to pay a fee to the State.

submit that the amounts of the fines were significant, as they were equal to 53 per cent of the average monthly salary in the country, according to data of the national statistics agency.

2.7 On unspecified dates, the authors appealed the fines to Minsk City Court. The appeals were rejected on 13 April 2017 for the authors of communications No. 3169/2018 and No. 3170/2018, and on 17 April 2017 for the author of communication No. 3147/2018.

Supervisory review

2.8 All of 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 relevant Views.

Complaint

3.1 The authors 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 by imposing unnecessary limitations on their freedoms of expression and of assembly.

3.2 The authors also claim that the domestic courts were not impartial and fair while adjudicating their cases, and failed to apply provisions of the Covenant, in violation of article 14 (1), read in conjunction with article 2 (2) and (3), of the Covenant.

State party's observations on admissibility and the merits

4.1 In notes verbales dated 8 May 2018 (communications No. 3147/2018 and No. 3151/2018), 1 June 2018 (communications No. 3170/2018 and No. 3173/2018), 1 March 2019 (communication No. 3169/2018) and 4 April 2019 (communication No. 3140/2018), the State party submitted its observations on admissibility and the merits of the communications.

4.2 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. It notes that in 2017, the procuratorial authorities in the State party filed 3,766 protests (appeals) against decisions concerning administrative offences as part of the supervisory review procedure, of which 3,655 (97 per cent) were granted. The State party considers that those figures show that the supervisory review procedure is effective and, therefore, the authors have not exhausted all available domestic legal remedies.

4.3 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 (Law No. 114-Z of 1997), which includes provisions setting out the conditions for the exercise of the constitutional rights and freedoms of citizens when such events are held in streets, squares and other 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.

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

5.1 In submissions dated 2 August 2018 (communication No. 3140/2018) and 11 August 2018 (the remaining communications), the authors provided the following comments on the State party's observations.

5.2 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 are limited to consideration of the issues of law rather than facts and evidence.

5.3 The authors note that both the Committee[3] and the European Court of Human Rights[4] have acknowledged that supervisory review procedures in former Soviet States depend on discretionary powers of supervising authorities and cannot be considered an effective remedy for the purpose of exhaustion of domestic remedies. The authors argue that it is next to impossible to observe the six-month deadline stipulated in the domestic legislation for challenging a judgment on an administrative offence if the appeal is to be submitted to the Chair of the regional court and later to the Chair of the Supreme Court. Such appeals are examined in rotation by several of the Chair's deputies. The Chair of the Supreme Court has five deputies, whereas the Prosecutor General has four deputies. The State party does not explain to which deputy the authors had to address their appeals in order to ensure that the appeals were examined directly by the Chair of the Supreme Court or the Prosecutor General.

5.4 The authors note that, while it refers to the Public Events Act, the State party does not mention that it has failed to comply with the recommendations on amending that law that were contained in a joint opinion adopted in 2012 by the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. They also note that the State party has not complied with the Committee's recommendations to bring the law into compliance with the State's international obligations.[5] The authors conclude that both the Public Events Law itself and its application in their specific cases have resulted in violations of their rights under articles 19 and 21 of the Covenant.

5.5 Regarding the statistics provided by the State party, the authors note that the State party does not indicate how many of those cases related to the exercise of the right to freedom of expression and the right to peaceful assembly. According to statistics on the website of the Ministry of Internal Affairs, the Ministry registered 3.9 million administrative offences in 2017. The authors submit, therefore, that the number of prosecutorial appeals cited by the State party represents less than 0.1 per cent of the total number of cases concerning administrative offences in the country.

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 communications are 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 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 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 requests would provide an effective remedy in the circumstances of the case.[6] 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

[3] *Iskiyaev v. Uzbekistan* (CCPR/C/95/D/1418/2005), para. 6.1 (footnote 7).
[4] Reference is made to European Court of Human Rights, *Tumilovich v. Russia*, Application No. 47033/99, decision of inadmissibility, 22 June 1999.
[5] Reference is made to, inter alia, *Kuznetsov et al. v. Belarus* (CCPR/C/111/D/1976/2010) and *Evrezov v. Belarus* (CCPR/C/114/D/1988/2010).
[6] *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3.

does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[7]

6.4 While welcoming the statistics provided by the State party on the high rate of successful protests raised by prosecutorial authorities against judicial judgments on administrative offences in 2017, the Committee observes that the State party has not disclosed the total number of supervisory review appeals submitted to prosecutors over the same period, or the percentage of that total that the figures provided represent. Neither has the State provided any specific information on the effectiveness of the supervisory review procedure in cases related to administrative convictions imposed on participants of public rallies such as those examined in the present Views. The absence of those data prevents the Committee from reaching a different conclusion, compared to its previous case law, on the effectiveness of the supervisory review by prosecutorial authorities. The Committee concludes 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.

6.5 The Committee takes note of the authors' claims that the State party has violated their rights under articles 14 (1), 19 and 21, read in conjunction with article 2 (2), of the Covenant. The Committee recalls that the provisions of article 2 cannot be invoked in 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.[8] 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. 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.

6.6 The Committee also takes note of the authors' claims under articles 14 (1), 19 and 21 of the Covenant, read in conjunction with article 2 (3). 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.

6.7 The Committee notes that the facts, as submitted by the authors in their respective communications, raise issues under articles 19 and 21 of the Covenant. The Committee therefore considers the claims under articles 19 and 21 raised in the six communications to be sufficiently substantiated for the purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee takes note of the authors' claims that the State party has violated their rights under articles 19 and 21 of the Covenant, as significant fines were imposed on them for participating in peaceful public events and for expressing their views, as specified in paragraphs 2.2 and 2.5 above.

7.3 Considering the authors' claim that their right to peaceful assembly was unreasonably restricted by the State party by its imposition of significant fines for participating in peaceful

[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.

[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.

public events, the Committee notes that the issue before it is to determine whether the restrictions imposed were justified under article 21 of the Covenant.

7.4 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.[9] 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.[10] The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience,[11] and no restriction to this right is permissible, unless it is: (a) imposed in conformity with the law; and (b) 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. 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.[12] The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[13]

7.5 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. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities. Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.[14] Where authorization regimes persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Notification regimes, for their part, must not in practice function as authorization systems.[15]

7.6 In the present case, the Committee must consider whether the restrictions imposed on the authors' right of peaceful assembly are justified under any of the criteria set out in the second sentence of article 21 of the Covenant. According to the information available on file, the domestic courts imposed significant fines on the authors for participating in peaceful assemblies 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 authors' participation in such peaceful assemblies 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 authors' rights under article 21 in its submissions before the Committee. In the absence of any further explanations from the State party regarding the matter, the Committee concludes that the State party has violated the authors' rights under article 21 of the Covenant.[16]

[9] Human Rights Committee, general comment No. 37 (2020), para. 32.
[10] Ibid., para. 6.
[11] Ibid., para. 22.
[12] Ibid., para. 36.
[13] *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.
[14] Human Rights Committee, general comment No. 37 (2020), para. 71.
[15] Ibid., para. 73.
[16] *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.

7.7 The Committee also takes note of the authors' claims that their right to freedom of expression has been restricted in violation of article 19 of the Covenant, since they were found guilty of an administrative offence and sentenced to pay significant administrative fines for participating in peaceful rallies with an expressive function. The issue before the Committee is therefore to determine whether the restrictions imposed on the authors' freedom of expression can be justified under any of the criteria set out in article 19 (3) of the Covenant.

7.8 The Committee recalls paragraph 2 of its general comment No. 34 (2011), in which it states, inter alia, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society. It notes that article 19 (3) of the Covenant allows for certain restrictions on the freedom of expression, including 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 reputation 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 proportionate to the interest being protected.[17] The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate.[18]

7.9 The Committee observes that imposing heavy administrative fines on the authors for participating in peaceful, albeit unauthorized, meetings with an expressive function raises serious doubts as to the necessity and proportionality of the restrictions on the authors' rights under article 19 of the Covenant. The Committee observes in this regard that the State party has failed to invoke and justify any specific grounds to support the necessity of such restrictions as required under article 19 (3) of the Covenant.[19] The State party has also failed to demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the cases before it, the restrictions imposed on the authors and the imposed sanctions, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the authors' rights under article 19 of the Covenant have been violated.[20]

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of articles 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 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 provide the authors with adequate compensation, including reimbursement of the fines and any legal costs incurred by the authors. 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), 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 had 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

[17] Human Rights Committee, general comment No. 34 (2011), para. 34.

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

[19] *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5; and *Vasilevich et al. v. Belarus*, para. 7.10.

[20] *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.5; *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 13.4; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.

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.