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Human Rights Committee

Information received from Belarus on follow-up to the concluding observations on its fifth periodic report*

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Follow-up information relating to paragraph 12 of the concluding observations (CCPR/C/BLR/CO/5)

1. Belarus reiterates the position set out in its fifth periodic report that Belarus fully meets its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights.

2. The principle of the sovereign equality of all States enshrined in the Charter of the United Nations is a fundamental principle of international law and one of its peremptory norms (jus cogens). This principle implies, inter alia, an understanding of State sovereignty as a State's supreme authority (including judicial authority) within its own territory and its autonomy and independence in international relations. A comparison of this principle with the principle of faithful observance of obligations under international law (pacta sunt servanda) leads to the conclusion that the decisions of any international inter-State organizations and their bodies may only become binding and thereby represent an exception to the principle of State sovereignty when the State, in the exercise of its sovereign rights, has expressed its consent to be bound by an international treaty that clearly and unequivocally provides that such decisions are binding on States parties.

3. Expert bodies established to monitor the implementation of international treaties assist States to implement the provisions of the relevant international treaty more comprehensively and effectively. However, the States themselves decide whether and to what extent to apply such recommendations, depending on how well founded they are, especially in cases where there is good reason to doubt their objectivity and impartiality.

4. Belarus, like other States parties to the Optional Protocol, considers the Committee's decisions on communications to be of a recommendatory nature. All the Committee's decisions are brought to the attention of the competent public authorities and must also be communicated to the Supreme Court and the Office of the Procurator General.

5. National legislation provides for an effective mechanism to appeal against judicial decisions.

6. The procedure for the review of final decisions in cases involving administrative offences is regulated by articles 13.12 to 13.15 of the Code of Administrative Procedure and Enforcement.

7. Under article 13.12 (1) and (2) of the Code, a person who is the subject of a final court decision on an administrative offence may appeal against the decision to the president of a higher court.

8. A final court decision on an administrative offence may also be reviewed if a procurator files a protest against it (Code of Administrative Procedure and Enforcement, article 13.12 (1)).

9. Article 13.12 (3) of the Code establishes a six-month period from the date on which a decision on an administrative offence becomes final during which an appeal (or a protest) against the decision may be lodged.

10. The procedure for the review of final judgments, rulings or decisions in criminal cases is set out in articles 404 to 417 of the Code of Criminal Procedure.

11. In accordance with article 404 (2) of the Code, protests under the supervisory procedure may be lodged: by the President of the Supreme Court and the Procurator General against judgments, rulings and decisions of any court in Belarus except for the decisions of the Plenum of the Supreme Court; by Vice-Presidents of the Supreme Court and Deputy Procurators General against judgments, rulings and decisions of any court in Belarus except for the decisions of the Presidium and the Plenum of the Supreme Court; and by the presidents of provincial courts and Minsk City Court and procurators of the provinces and Minsk, in their own jurisdictions, against judgments, rulings and decisions of district and city courts and appellate rulings of the criminal division of the provincial courts or Minsk City Court, as applicable.

12. Respect for the fair trial guarantees provided for in article 14 of the Covenant is ensured in part through procuratorial supervision of criminal proceedings given that, under article 25 of the Code of Criminal Procedure, the procurator is required at all stages of proceedings to take timely measures as prescribed by law to remedy violations of the law, regardless of who is responsible for such violations.

13. A final judicial decision in a civil case may be reviewed under the supervisory procedure in accordance with articles 435 to 437 of the Code of Civil Procedure.

14. Pursuant to article 439 of the Code, protests under the supervisory procedure may be lodged: by the President of the Supreme Court and the Procurator General against judicial decisions of any court in Belarus except for the decisions of the Plenum of the Supreme Court; by Vice-Presidents of the Supreme Court and Deputy Procurators General against judicial decisions of any court in Belarus except for the decisions of the Presidium and the Plenum of the Supreme Court; and by the presidents of provincial courts and Minsk City Court and procurators of the provinces and Minsk against decisions and rulings of district and city courts and rulings of the civil divisions of the provincial courts and Minsk City Court, pursuant to an appeal (or private appeal) or protest (or private protest) or both.

15. Article 436 of the Code provides that supervisory appeals may be filed within one year of the date on which the judicial decision becomes final.

16. According to court statistics on cases relating to administrative offences, the number of decisions set aside or amended following reviews was 581 in 2017, 525 in 2018, 463 in 2019 and 435 in 2020.

17. In criminal cases, the number of judgments set aside or amended under the supervisory procedure was 459 in 2017, 529 in 2018, 437 in 2019 and 286 in 2020.

18. In civil cases, the number of decisions set aside or amended under the supervisory procedure was 253 in 2017, 249 in 2018, 210 in 2019 and 213 in 2020.

19. The statistics demonstrate the effectiveness and efficiency of the procedures for the appeal of final judicial decisions provided for in national legislation.

20. Moreover, discussions are under way regarding the need to improve the provisions of criminal procedure law relating to the review of final judgments, rulings and decisions (supervisory proceedings).

Follow-up information relating to paragraph 28 of the concluding observations

21. Article 6 (2) of the Covenant provides that, in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

22. The national legislation of Belarus is not contrary to the rules of international law.

23. Article 24 of the Constitution provides that everyone has the right to life. The State safeguards this right against unlawful infringements of any kind. Pending its abolition, the death penalty may be used in accordance with the law as an exceptional punishment for especially serious offences and only pursuant to a court judgment.

24. In accordance with article 59 (1) of the Criminal Code, use of the death penalty is permitted as an exceptional punishment for certain especially serious offences involving intentional deprivation of life in aggravating circumstances.

25. Under article 67 (2) of the Criminal Code, the death penalty is not imposed for planning and attempted commission of an offence.

26. In accordance with article 69-1 (2) of the Criminal Code (version of 26 May 2021), the death penalty does not apply to offenders who fulfil the obligations set out in a pretrial

cooperation agreement. Such offenders are sentenced to deprivation of liberty for a period established in the special section of the Criminal Code.

27. The death penalty may not be imposed on persons who were under 18 years of age at the time of the offence, any women, or men over 65 years of age at the time of sentencing.

28. In accordance with article 28 of the Criminal Code, persons who committed a socially dangerous act while in a state of mental incompetence, meaning that they were unable to recognize the actual nature and social danger posed by their actions or omissions or control them owing to a mental disorder or illness, are not criminally responsible. A court may order coercive security measures and compulsory treatment in respect of persons found to be mentally incompetent. Accordingly, such persons may not be sentenced to the death penalty.

29. In accordance with article 92 (1) of the Criminal Code, persons who, after sentencing, develop a mental disorder or illness rendering them unable to recognize the actual nature and significance of their actions or control them are to be exempted by the courts from serving their sentence.

30. Pursuant to article 176 (2) and (3) of the Penalties Enforcement Code, if a person sentenced to death is found to have a mental disorder or illness rendering him or her incapable of understanding the implications of his or her actions, the death sentence is not carried out. In respect of such persons, the court suspends enforcement of the death sentence and decides whether to order coercive security measures and compulsory treatment.

31. Therefore, the criminal law of Belarus establishes broader restrictions on the use of the death penalty than article 6 (5) of the Covenant, pursuant to which sentence of death must not be imposed for crimes committed by persons below 18 years of age and must not be carried out on pregnant women.

32. Persons sentenced to death and their counsel may lodge an appeal for review of a final judgment under the supervisory procedure (Code of Criminal Procedure, art. 408) and may petition the Head of State for clemency.

33. The courts of general jurisdiction in Belarus handed down death sentences as exceptional punishments for especially serious offences in respect of five persons in 2017, two persons in 2018, two persons in 2019 and three persons in 2020.

34. On 10 January 2020, Mahilioŭ Provincial Court sentenced I.N. Kostev and S.N. Kostev to the death penalty as an exceptional punishment for committing the offences provided for in articles 139 (2), 205 (2), 218 (3), 14 (1) and 206 (2) of the Criminal Code.

35. The sentence became final on 22 May 2020.

36. I.N. Kostev and S.N. Kostev petitioned the President of Belarus for clemency, which was granted.

37. The death sentence handed down by the court against I.N. Kostev and S.N. Kostev was commuted to life imprisonment.

38. A bill on an appeals procedure to review first-instance judgments and decisions of the Supreme Court is currently under development.

Follow-up information relating to paragraph 53 of the concluding observations

39. The organization and conduct of mass events is regulated by the Mass Events Act (No. 114-Z of 30 December 1997) to enable citizens to enjoy their constitutional rights and freedoms and to ensure public safety and order when such events are held in streets, squares and other public places.

40. The Act has been amended 13 times since it entered into force. The Constitutional Court has examined the constitutionality of these amendments under the mandatory preliminary review procedure.

41. The restrictions set out in the Act are not contrary to international standards.

42. In accordance with article 29 (2) of the Universal Declaration of Human Rights, in the exercise of his or her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

43. In turn, the Covenant provides that the rights to freedom of expression and peaceful assembly carry with them special duties and responsibilities and may therefore be subject to certain restrictions, which must be provided by law and necessary for respect of the rights or reputations of others or for the protection of national security, public order or public health or morals.

44. In accordance with the approaches developed in the practice of the European Court of Human Rights, "authorisation procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature" (judgment of 10 July 2012, para. 40).

45. The holding of mass events in various public places of a city affects the rights not only of participants in them but of other citizens who are not participating. Pursuant to the second paragraph of article 23 of the Constitution, no one may enjoy advantages and privileges that are contrary to the law.

46. The restrictive measures provided for in the Act are consistent with article 23 of the Constitution, do not impair the essence of constitutional rights and freedoms or deprive them of their effectiveness, are applied only in the circumstances prescribed by law and are proportionate to the public and national interests and individual rights and freedoms being protected. These restrictions on individual rights and freedoms serve only as a legal remedy for the protection of public order and security, public health and morals and the rights and freedoms of others.

47. Article 7 of the Act provides that the decision of the leader or deputy leader of a local executive and administrative authority to prohibit a mass event or change its format, date, location or time may be challenged in court.

48. The first paragraph of article 15 of the Act provides that persons who have violated the established procedures for organizing or conducting mass events will be held liable in accordance with national legislation.

49. Article 24.23 of the Code of Administrative Offences provides for liability for violation of the procedures for organizing or conducting mass events.

50. The Criminal Code establishes liability for repeated violations of the procedures for organizing or conducting mass events (art. 342-2). Public calls to organize or conduct illegal meetings, rallies, marches, demonstrations or pickets and the recruitment of participants for such events also give rise to liability (Criminal Code, art. 369-3).

51. Prosecution for the commission of unlawful acts under article 24.23 of the Code of Administrative Offences or articles 342-2 and 369-3 of the Criminal Code cannot be considered persecution, punishment or harassment within the meaning of articles 19 (3) and 21 of the Covenant.

52. As a guarantee of effective freedom of assembly, national legislation includes a provision prohibiting government agencies, political parties, trade unions, other organizations and individuals from interfering with or obstructing the holding of mass events conducted in accordance with the legal requirements. Moreover, the unlawful obstruction of meetings, rallies, demonstrations, marches and pickets or of participation in such events gives rise to both administrative liability (under article 10.6 of the Code of Administrative Offences) and criminal liability (under article 196 of the Criminal Code).

53. In addition, citizens and organizations whose rights and legitimate interests have been infringed by the actions or omissions of internal affairs officials are entitled to complain to a higher-level government agency or official, procurator or court. As established in article 174 of the Code of Criminal Procedure, decisions on statements of claim or reports of offences

committed by officials of the procuratorial service, the Investigative Committee, the internal affairs and national security authorities and the financial investigation service of the State Audit Committee in connection with their official or professional activities fall within the exclusive competence of the pretrial investigation authorities according to their jurisdiction and of the procurator in the manner prescribed in chapter 49 of the Code of Criminal Procedure.

54. We also wish to provide information regarding Dzmitry Paliyenka attesting to the lack of credibility of the facts relied on by the Committee to include his case in its concluding observations on the fifth periodic report of Belarus.

55. On 12 October 2016, Central District Court in Minsk found Mr. Paliyenka guilty of advertising a pornographic video over the Internet and of using violence to obstruct the legitimate activities of an internal affairs official. Under articles 343 (2) and 364 of the Criminal Code, he was sentenced to 2 years' deprivation of liberty.

56. Article 77 (1) of the Criminal Code was applied in respect of Mr. Paliyenka, whose 2-year sentence was deferred for two years.

57. For the duration of the deferment period, Mr. Paliyenka was ordered by the court not to change his place of residence without the consent of the Internal Affairs Department, not to leave the district or city of his place of residence for personal reasons for more than one month, to find employment within two months after the sentence becomes final and to report regularly for registration at the Internal Affairs Department of his place of residence.

58. In accordance with article 107 of the Criminal Code, Mr. Paliyenka was ordered to undergo compulsory outpatient observation and treatment for chronic alcoholism.

59. The legality and validity of the judgment of Central District Court in Minsk of 12 October 2016, which had not yet become final, was reviewed by Minsk City Court following an appeal by Mr. Paliyenka.

60. In an appellate ruling of 27 December 2016, the criminal division of Minsk City Court upheld the verdict against Mr. Paliyenka and rejected his appeal.

61. The judgment of Central District Court in Minsk of 12 October 2016 in respect of Mr. Paliyenka became final on 27 December 2016.

62. On 7 April 2017, Zavodskoy District Court in Minsk handed down a decision to overturn the deferred 2-year prison sentence passed on Mr. Paliyenka by Central District Court in Minsk on 12 October 2016.

63. Mr. Paliyenka was sent to an ordinary regime correctional colony to serve his 2-year prison sentence.

64. In accordance with article 77 (6) of the Criminal Code, if a convicted person whose sentence has been deferred, despite an official warning, does not fulfil his or her court-ordered obligations or has twice been subject to administrative penalties for repeated violations of public order or commits another administrative offence punishable by administrative detention, a court may overturn the deferred sentence and have the convicted person sent to serve the sentence indicated in the judgment, on the recommendation of the authority monitoring the convicted person's conduct or at the request of the person charged with supervising the convicted person.

65. The court found that, despite an official warning issued on 8 February 2017 by the probation office of Zavodskoy District in Minsk, Mr. Paliyenka had been subject to administrative proceedings for violations of public order on more than one occasion.

66. On 10 March 2017, the Moskovsky District Court in Minsk found Mr. Paliyenka guilty of committing administrative offences under articles 17.1 and 23.4 of the Code of Administrative Offences (version in force until 28 February 2021) and imposed the administrative penalty of 7 weeks of administrative detention.

67. On 20 March 2017, the Zavodskoy District Court in Minsk found Mr. Paliyenka guilty of committing an administrative offence under article 23.34 (3) of the Code of Administrative

Offences (version in force until 28 February 2021) and imposed the administrative penalty of 15 weeks of administrative detention.

68. The decision of Zavodskoy District Court in Minsk of 7 April 2017 to overturn Mr. Paliyenka's deferred sentence became final on 7 April 2017.

69. Mr. Paliyenka's appeals against the decision of Central District Court in Minsk of 12 October 2016, lodged under the supervisory procedure with Minsk City Court and the Supreme Court, were considered and rejected owing to a lack of grounds for the lodging of a protest, of which Mr. Paliyenka was notified (in letters No. 4u-196 of 5 April 2018 and No. 02-n/832 of 15 August 2018).

70. Mr. Paliyenka's appeals against the decision of Zavodskoy District Court in Minsk of 7 April 2017, lodged under the supervisory procedure with Minsk City Court and the Supreme Court, were considered and were also rejected owing to a lack of grounds for the lodging of a protest, of which Mr. Paliyenka was notified (in letters No. 4u-195 of 20 April 2018 and No. 04-04/1873 of 15 November 2018).

71. Mr. Paliyenka was proved guilty of the offences for which he was convicted by the case file.

72. The courts examined the facts of the cases comprehensively, fully and impartially. The evidence gathered was weighed up appropriately.

73. In our view, Mr. Paliyenka's right under article 14 of the Covenant to a fair hearing by a competent, independent and impartial tribunal established by law and to review of his case by a higher tribunal according to law was fully upheld in accordance with the criminal procedure legislation.