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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3126/2018*, **

Communication submitted by:	Anna Krasulina (represented by counsel, Leonid Sudalenko)
Alleged victim:	The author
State party:	Belarus
Date of communication:	30 September 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 February 2018 (not issued in document form)
Date of adoption of Views:	23 July 2021
Subject matters:	Refusal to authorize the holding of a public event; sanctioning of the author for participating in an unauthorized peaceful assembly
Procedural issues:	Exhaustion of domestic remedies; effective domestic remedies
Substantive issues:	Freedom of assembly; freedom of opinion and expression
Articles of the Covenant:	2 (2)–(3), 19 and 21
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is Anna Krasulina, a national of the Russian Federation born in 1969. The author claims that the State party has violated her rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

Facts as submitted by the author

2.1 On 28 July 2016, the author, together with other people, was holding a poster on which was written "The mother remembers. And you?" in Independence Avenue, in Minsk.[1] On the same date, police officers charged the author with an administrative offence under article 23.34 (regulating the procedure for organizing or holding mass events) of the Code of Administrative Offences for expressing her opinion by participating in a peaceful meeting without obtaining prior authorization.

2.2 On 19 August 2016, the Moscow District Court in Minsk found the author guilty under article 23.34 of the Code of Administrative Offences and fined her 420 Belarusian roubles (about €200). On 23 August 2016, the author submitted a cassation appeal to the Minsk City Court, which was rejected on 16 September 2016. The author has not appealed under the supervisory review procedure. She argues that, according to the Committee's jurisprudence, such review is not considered an effective remedy.

Complaint

3.1 The author claims that the sanctions imposed on her for expressing her opinion by participating in a peaceful meeting were not justified on the grounds set out in articles 19 (3) and 21 of the Covenant.

3.2 The author also claims that, under article 2 of the Covenant, the State party has assumed an obligation to respect the rights guaranteed in the Covenant and committed itself to adopting the legislation necessary to fulfil that obligation and to providing effective domestic remedies in order to protect those rights. The decision of the Moscow District Court sanctioning her for expressing her opinion through a peaceful assembly on the basis of the law regulating public events of 30 December 1997 is a violation of her rights under articles 19 and 21, read in conjunction with article 2 (2)–(3), of the Covenant.

3.3 The author asks the Committee to find a violation of articles 19 and 21, read alone and in conjunction with article 2 (2)–(3), of the Covenant.

State party's observations on admissibility and the merits

4.1 By a note verbale dated 27 March 2018, the State party submitted its observations. According to the State party, the author could have submitted supervisory review appeals to the Chair of the Minsk Regional Court and to the Chair of the Supreme Court, as well as to the prosecutor's office. These remedies are guaranteed by article 12.11 of the law on the procedures and for the implementation of the Code of Administrative Offences. The author could have submitted such appeals within six months after 16 September 2016, when the court decision in her case entered into force.

4.2 Regarding the author's claim that supervisory review by the prosecutor's office would be ineffective, the State party submits that, in 2017, 3,766 claims in administrative offence cases were brought before the prosecutor's office. Of that total, 3,665 cases (97 per cent) were reviewed by the courts, which proves the efficiency of the supervisory review procedure in cases concerning administrative offences.

4.3 The State party submits that the author has failed to substantiate her claims of violations of articles 2 (2)–(3), 19 and 21 of the Covenant. In this regard, the State party states that the rights to freedom of expression and peaceful assembly are guaranteed by articles 33 and 35 of the Constitution of Belarus. The limitations provided for in the law regulating public events, are aimed at setting the conditions for realization of their rights by individuals and cannot be regarded as violating articles 19 and 21 of the Covenant.

4.4 The State party concludes that the communication should be found inadmissible under articles 2 and 3 of the Optional Protocol for failure by the author to exhaust domestic remedies, for abuse of right to submission and for lack of substantiation of the claims.

[1] The event concerned a cassation court hearing on 1 August 2016 in a case relating to the recognition of Yury Zavadsky, who had disappeared, as being dead.

Author's comments on the State party's observations

5.1 On 6 June 2018, the author submitted her comments on the State party's observations. She claims that the supervisory review procedure is discretionary in nature and does not guarantee that the appeal will be transmitted to the court for consideration. Moreover, even if it is accepted for consideration, the courts will not review the case on the merits. The author claims that the requirement of exhaustion under article 5 (2) (b) of the Optional Protocol applies only if the remedies are effective and available. She submits that the Committee does not consider the supervisory review procedure in Belarus to be an effective remedy.[2]

5.2 The author claims that it is in practice impossible to submit appeals under the supervisory review procedure on time to both the Chair of the Minsk Regional Court and the Chair of the Supreme Court. The Chair of the Supreme Court has five deputies, several of whom may review the appeal. The Prosecutor General has four deputies. The State party does not explain which deputy needs to be addressed so that the appeal is reviewed personally by the Chair of the Supreme Court or by the Prosecutor General.

5.3 As for the statistics provided by the State party, the author observes that, in 2017, 3.9 million administrative offences were recorded by the internal affairs agencies. The statistics presented by the State party concern some 0.1 per cent of the total number of administrative offences recorded. The State party does not specify which of the claims mentioned concerned cases related to the rights of freedom of expression and assembly.

5.4 Regarding the State party's observations that the law regulating public events complies with the requirements of articles 19 and 21 of the Covenant, the author states that the European Commission for Democracy through Law (Venice Commission), the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the Committee itself, in a number of Views concerning Belarus, have found numerous inadequacies and suggested amending the law in line with international standards.[3] The failure of the State party to do so, together with its legislative and executive practice, has led to violations of the author's rights under articles 19 and 21 of the Covenant.

Issues and proceedings before the Committee

Considerations 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.

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 observation that the author failed to exhaust domestic remedies because she did not submit supervisory review appeals to the Chair of the Minsk Regional Court and to the Chair of the Supreme Court or to the prosecutor's office. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[4] It also considers that filing requests for supervisory review to the Chair of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy and that the State party must show that there is a reasonable prospect

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

[3] The author refers to *Kirsanov v. Belarus* (CCPR/C/110/D/1864/2009), *Evrezov v. Belarus* (CCPR/C/114/D/1988/2010) and *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), among others.

[4] See *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para 9.3.

that such requests would provide an effective remedy in the circumstances of the case.[5] In the absence of detailed and relevant information from the State party on the effectiveness of the supervisory review procedure in administrative cases concerning sanctions imposed for exercising the rights to freedom of expression and assembly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee takes note of the author's submission that the State party violated her rights under article 2 (2), read in conjunction with articles 19 and 21, of the Covenant. The Committee reiterates 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.[6] The Committee notes, however, that the author has already alleged a violation of her rights under articles 19 and 21, 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, of the Covenant, to be distinct from the examination of the violation of the author's rights under articles 19 and 21 of the Covenant. The Committee therefore considers that the author's claims in that regard are incompatible with article 2 of the Covenant and are therefore inadmissible under article 3 of the Optional Protocol.

6.5 The Committee also takes note of the author's claims under articles 19 and 21, read in conjunction with article 2 (3), of the Covenant. In the absence of any additional pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 In conclusion, the Committee considers that the author has sufficiently substantiated her remaining claims, raising issues under articles 19 and 21 of the Covenant, for the purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication 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 notes the author's claims that her rights to freedom of expression and assembly have been restricted in violation of articles 19 and 21 of the Covenant, as she was sanctioned for expressing her opinion by participating in a peaceful meeting without obtaining prior authorization. The Committee must therefore consider whether the restrictions imposed on the author's rights in the present case are justified under any of the criteria set out in articles 19 (3) and 21 of the Covenant.

7.3 The Committee recalls that the right to freedom of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, essential for the public expression of an individual's views and opinions and indispensable in a democratic society.[7] Peaceful assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.[8] 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 protecting national security,

[5] See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

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

[7] General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

[8] General comment No. 37 (2020) on the right of peaceful assembly, para. 6.

public safety, the public order, public health or morals or 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.[9] The State party is therefore under an obligation to justify the limitation of the right protected by article 21 of the Covenant and to demonstrate that such limitation does not serve as a disproportionate obstacle to the exercise of the right.[10]

7.4 In the present case, the Committee observes that the State party relied only upon the provisions of the law regulating public events, which requires the local executive authorities to authorize the holding of a peaceful assembly, a requirement that in itself restricts the right to freedom of peaceful assembly.[11] The Committee recalls that having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.[12] Where such requirements 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.[13] Such systems should also be not unduly bureaucratic.[14]

7.5 The Committee notes the State party's observation that the procedure for organizing public events set out in the law regulating such events is necessary for the preservation of the rights of others and that, therefore, the law is sufficient grounds for limiting the right to freedom of peaceful assembly. In this respect, the Committee notes that article 21 of the Covenant sets out two inseparable conditions: limitations should be based on domestic law and, at the same time, they should be necessary in a democratic society in the interests of protecting national security, public safety, the public order, public health or morals or the rights and freedoms of others. Moreover, the limitations should be proportionate to the objective they aim to achieve, which requires a value assessment by the State authorities, weighing the nature and detrimental impact of the interference against the resultant benefit to one of the grounds for interfering.[15] Establishing whether a restriction is necessary requires therefore not only a legal but also a factual assessment. 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. In the present case, the State party has not attempted to demonstrate that the sanction, consisting of a considerable fine imposed on the author for participating in a peaceful unauthorized assembly, was necessary and proportionate under article 21 of the Covenant. The Committee therefore concludes that the State party has violated article 21 of the Covenant.

7.6 The Committee also notes the author's claim that her freedom of expression has been restricted unlawfully as she was found guilty of an administrative offence and sanctioned with a fine of some €200 for participating in the above-mentioned public event. The issue before the Committee is therefore to determine whether the sanction imposed on the author by the domestic authorities amounts to a violation of article 19 of the Covenant.

7.7 The Committee recalls its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.[16] 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, 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

[9] Ibid., para. 36.
[10] See, e.g. *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.
[11] *Insenova v. Kazakhstan* (CCPR/C/126/D/2542/2015-CCPR/C/126/D/2543/2015), para. 9.7.
[12] General comment No. 37 (2020), para. 70.
[13] Ibid., para. 73.
[14] Ibid., para. 70.
[15] Ibid., para. 40.
[16] General comment No. 34 (2011), para. 2.

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 of the Covenant were necessary and proportionate.[18]

7.8 The Committee observes that imposing a significant fine on the author for participating in a peaceful, albeit unauthorized, event raises serious doubts as to the necessity and proportionality of the restrictions on the rights protected under article 19 of the Covenant. The Committee observes in this regard that the State party has failed to invoke any specific grounds to support the necessity of such restrictions, as required under article 19 (3) of the Covenant.[19] Nor did the State party 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 case, the restrictions imposed on the author, 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 author's 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 a violation by the State party of the author's rights under 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 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 to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognized by articles 19 and 21.

10. Bearing in mind that, by 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 and that, 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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[17] Ibid., para. 34.

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

[19] See, e.g. *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

[20] See, e.g. *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.