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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2862/2016*, **, ***

Communication submitted by:	Aleh Aheyeu
Alleged victim:	The author
State party:	Belarus
Date of communication:	19 August 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 November 2016 (not issued in document form)
Date of adoption of Views:	15 July 2021
Subject matters:	Restriction to freedom of expression of a defence attorney; permissible restrictions to freedom of expression; fair trial
Procedural issues:	Level of substantiation of claims
Substantive issues:	Freedom of expression; fair trial guarantees
Articles of the Covenant:	14 (1)–(2), (3) (a)–(b) and (d) and 19
Article of the Optional Protocol:	2

1. The author is Aleh Aheyeu, a national of Belarus born in 1977. He claims that the State party has violated his rights under article 14 (1)–(2), 3 (a)–(b) and (d) and 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 From 2004 to 14 February 2011, the author worked as a lawyer and was a member of the Minsk City Bar.

* 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: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** An individual opinion by Committee member José Manuel Santos Pais (partially dissenting) is annexed to the present Views.

2.2 On 20 December 2010, the author was retained by Ales Mikhalevich, the former candidate in the presidential elections of 19 December 2010. Mr. Mikhalevich had been arrested that same day and brought to the investigation detention centre of the Committee of State Security on charges of having organized mass disorder and a meeting to protest the results of the elections held on 19 December 2010. In the detention centre, Mr. Mikhalevich and other detainees were refused medical care, prevented from receiving parcels from their families, obstructed in their attempts to access their lawyers and subjected to torture.

2.3 On 23 December 2010, comments by the author regarding the receipt of parcels in the Committee of State Security detention centre were published by euroradio.by, an online broadcaster, in an article reporting that the investigator in Mr. Mikhalevich's case was surprised that no parcels were accepted by the detention centre. According to the article, no parcels were accepted during the first three days of Mr. Mikhalevich's detention.[1]

2.4 On 29 December 2010, a statement was posted on the web page of the Ministry of Justice about reported breaches of the law on advocates. In the statement, it was alleged that some lawyers representing people who had participated on 19 and 20 December in the organization of mass disorders and in an attempt to seize State institutions, destroy property and conduct an armed resistance against the representatives of power, had committed grave breaches of the rules of professional ethics of advocates and the relevant legislation, including the law on advocates. According to the statement, some of those lawyers had, in particular, abused their right of representation by disseminating false information regarding the conduct of the investigation, their ability to represent their clients, their clients' health status and the conditions of detention, as well as biased information on the work of the law enforcement authorities.

2.5 On 5 January 2011, the Ministry of Justice issued a warning to the author, noting that, according to the information disseminated by euroradio.by on 23 December 2010, the author had incorrectly spoken about the work of the Committee of State Security pretrial detention centre, that his statements went beyond the limits set to regulate the work of advocates and the provisions of the law on advocates and contradicted the rules of professional ethics of advocates. Based on rule 75 of the regulation on the licensing of certain activities, the Ministry of Justice recommended that the author take measures to ensure that no false information was supplied to the media. The author was given until 15 January 2011 to report on the measures taken. Under rule 76 of the aforementioned regulation, in case of non-compliance with the recommendations, the author's lawyer's licence would be cancelled.

2.6 As a result, on 13 January 2011, the author sent a letter to the chief editor of euroradio.by asking him not to publish information related to the author without his consent. The author informed the Ministry of Justice of this on the same day.

2.7 From 14 January to 14 February 2011, at the recommendation of the Committee of State Security, a working group of the Ministry of Justice was established. The working group conducted an audit of the work of the lawyers of the Minsk City Bar, investigating whether legislation regulating the work of advocates was being respected. Pursuant to that audit, a number of contracts were seized from the author's office.

2.8 On 14 February 2011, a meeting of the Qualification Commission on the work of advocates was held. The Qualification Commission concluded that the author's lawyer's licence had to be cancelled, as, in less than 12 months since the recommendation of 5 January 2011, the author had committed an offence incompatible with the legislation regulating the work of advocates. On the same day, the Minister of Justice signed a ruling on the annulment of the author's lawyer's licence.

2.9 The author only learned of this decision on 17 February 2011, when he was notified of the cancellation of his lawyer's licence.

2.10 The author appealed the cancellation ruling of the Minister of Justice to Moskovsky District Court in Minsk, pointing out that his right to freedom of expression had been violated

[1] The author's statement that parcels were normally received in the Committee of State Security detention centre on Mondays, Wednesdays and Fridays but that maybe things had changed and parcels were accepted every day was also broadcast.

and arguing that the sanction for a bona fide expression of an opinion, which was made in his client's interests and in order to satisfy the public interest regarding the preliminary detention, was unlawful. The Court rejected the appeal on 26 April 2011. On 29 June 2011, the author appealed to Minsk City Court, which rejected the appeal on 28 November 2011.

2.11 The author adds that, in its 1997 concluding observations on Belarus, the Human Rights Committee expressed concern at the powers of the Ministry of Justice over lawyers' licences, which undermined the principle of the independence of lawyers. The State party was asked to take all measures necessary to ensure the independence of judges and lawyers from any political or other pressure, but has failed to do so. To the contrary, in 2011, the Ministry of Justice performed its role as a licensing body in a manner amounting to interference in the professional activities of lawyers, repression against specific lawyers and an attack on the independence of the judiciary.

Complaint

3.1 The author claims that his rights under articles 14 (1)–(2), (3) (a)–(b) and (d) and 19 (2) of the Covenant have been violated.

3.2 He claims that, by prohibiting him from carrying out his professional activities and by sanctioning him for having expressed an opinion, his right to freedom of expression has been unduly restricted. The author submits that freedom of expression is important for lawyers, as it allows them to express themselves publicly on matters of public interest. The Basic Principles on the Role of Lawyers proclaims the right of lawyers to freedom of expression and opinion, in particular the right to take part in public discussions on issues related to the law, the administration of justice, the prevention and protection of human rights and the obligation to always be guided by the law and lawyers' professional ethics. In its general comment No. 34 (2011), the Human Rights Committee observed that restrictions on the right to freedom of expression are permissible only under the particular conditions set out in article 19 (3) of the Covenant. Moreover, any restrictions on the right to freedom of expression must be provided by law and comply strictly with the principles of necessity and proportionality.

3.3 The author claims that the Ministry of Justice justified applying a sanction against him:

(a) Under article 18 of the law on advocates (pursuant to which a lawyer, in the exercise of his or her duties, enjoys freedom of expression orally and in writing within the limits set by the aims of his or her profession and the provisions of the law);

(b) Under rules 3 and 9 of the rules of professional ethics of advocates, under which a lawyer must respect the law and comply with the norms of professional ethics, constantly maintaining the honour and dignity of the profession, as a lawyer is a participant in the administration of justice and a public activist, and maintaining also personal honour and dignity. The professional obligation to respect the lawful rights and interests of clients is carried out freely and independently, with dignity and tact, honestly, diligently and in a confidential manner, with no interference or pressure.

3.4 The author notes that nothing in the above-mentioned provisions prohibits a lawyer from making public statements if they are not contrary to professional ethics. He points out that nothing in his statement constitutes a violation of professional ethics.

3.5 Thus, the author submits that sanctioning him for a statement was not required under any of the provisions of article 19 (3) of the Covenant, in other words it was not necessary to protect the rights and reputation of others, or to promote national security, public order, health or morals. Accordingly, his right to freedom of expression was restricted unlawfully.

3.6 The author further claims that article 14 applies to proceedings involving the cancellation of a lawyer's licence. The right to representation is private in nature, based on a private contract for judicial assistance between the lawyer and the person to be represented. Article 14 (1) of the Covenant covers deprivation of the right to a defence. The author points to a similar approach to the profession of lawyers that was adopted by the European Court of Human Rights in *H. v Belgium* (30 November 1987) and *Buzescu v. Romania* (24 May 2005).

3.7 The author adds that special guarantees for lawyers performing their functions have been established at the international level. The Basic Principles on the Role of Lawyers provide that all charges made against lawyers performing their duties are subject to an objective examination through an appropriate procedure by an independent body or court. The International Court of Justice interprets the notion of appropriate procedure as a process carried out in line with the right to a fair trial as set out in article 14 of the Covenant and article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). In such a process, lawyers must be informed of the nature and the grounds of the charges against them; lawyers and their representatives must have sufficient time and opportunities to prepare their defence and explain their position; and they must have an opportunity to challenge the statements and evidence of their guilt, including through the calling and interrogation of witnesses.

3.8 The State party's law at the material time contained provisions according to which the issue of a violation of the rules of professional ethics of advocates must be examined by the relevant regulatory body, i.e. the Presidium of the Minsk City Bar, which is empowered to deal with disciplinary matters (see the law on advocates, art. 21, and the ruling of the Committee of Ministers No. 23 of 10 March 2009 on certain measures regarding the application of disciplinary measures to lawyers). Those provisions prescribed the examination of charges against a lawyer by an independent body attendant with certain procedural guarantees of fairness, including lawyers' participation in the proceedings.

3.9 Contrary to the guarantees under article 14 (1) and (3) of the Covenant, however, the author's case was examined by a non-independent body, the Qualification Commission of the Ministry of Justice. The Qualification Commission is headed by a deputy Minister of Justice and the majority of its members belong to the executive branch (seven come from the Ministry of Justice, two are judges, one is employed by the State university, one is employed by the Ministry of Internal Affairs, one is employed by Parliament and only six are lawyers). On 14 February 2011, when the author's case was examined, only four of the six lawyers were present. Two of those lawyers could not attend as they were notified only one hour before the meeting. The Qualification Commission did not seek any clarifications regarding the author from the Minsk City Bar. The author points out that the head of the Minsk City Bar was dismissed from his functions on 18 February 2011, as he had made a public statement to the media in support of the lawyers whose licences had been cancelled on 14 February 2011.

3.10 The author was never informed of the charges against him and learned about them only when the Qualification Commission decided to cancel his licence; he was not invited to the meeting. Thus, the proceedings took place in his absence and he was prevented from preparing and expressing a defence, from challenging the charges and the composition of the Qualification Commission and from seeking the withdrawal of the three members of the Qualification Commission who represented the Ministry of Justice and had participated directly in the examination of his case. The author claims that these failures constitute a violation of his rights under article 14 (1) and (3) (a)–(b) and (d) of the Covenant.

3.11 In his case, the Ministry of Justice applied legislation contrary to the Covenant. The regulation on licensing allows comprehensive control over lawyers' activities, including over their receipt of all information related to their activities, and non-provision of such information is punishable. It empowers the Ministry to adopt sanctions against lawyers, including sanctions amounting to a deprivation of status, bypassing the existing disciplinary proceedings within the professional association. The regulation disregards the special guarantees safeguarding lawyers' activities, including confidentiality, assessments of lawyers' professional behaviour only by an independent body and fair procedures, once liability is at issue. The application of the regulation against the author is contrary to the principle of the independence of lawyers at the basis of the right to a defence and receipt of judicial assistance.

3.12 The author claims that the above-mentioned considerations reveal a violation of his rights under articles 19 (2) and 14 (1)–(2) and 3 (a)–(b) and (d) of the Covenant. He requests that the State party provide him with an effective remedy, including the restoration of his professional licence and payment of adequate compensation, and that it take measures to

ensure that similar violations do not occur again in the future, including by aligning the law on advocates with the Covenant and international standards on the independence of lawyers.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 23 January 2017, the State party presented its observations on admissibility and the merits. The State party emphasizes that the Ministry of Justice decided, on 14 February 2011, to revoke the author's lawyer's licence for having obstructed activities aimed at monitoring the implementation of the licensing legislation by a licensing body and for having provided incorrect information regarding grave violations in the way that contractual obligations were handled.

4.2 The author appealed against that decision. On 26 April 2011, Moskovsky District Court in Minsk rejected his appeal. The legality of that decision was further examined by Minsk City Court. In a ruling of 28 November 2011, Minsk City Court rejected the author's appeal and confirmed the initial judgment of the District Court.

4.3 Under articles 436 and 437 of the Code of Criminal Procedure, decisions that have obtained force of *res judicata* can be re-examined in the context of an order of supervision. Under article 439 of the Code, supervisory protest motions can be introduced by the Chair of the Supreme Court or his or her deputies, the chairs of the regional courts or Minsk City Court or the Prosecutor General or his or her deputies. The author could have challenged the decision of Moskovsky District Court in Minsk, once it had obtained a force of *res judicata*, under the supervisory review procedure but failed to do so. Neither did he appeal under the supervisory review procedure to the office of the prosecutor. Thus, the author failed to exhaust the available domestic remedies and his communication should be deemed inadmissible.

4.4 The State party notes that the author claims that, in fact, the decision of the Ministry of Justice amounts to punishment for a statement he made in public, in the interests of his client, and that the actions by the Ministry can thus be seen as constituting a restriction on the author's right to freedom of expression in violation of article 19 of the Covenant. The State party observes that the conclusions on the author's persecution by the licensing body constitute a personal opinion by the author, are of a speculative nature and cannot be objectively verified.

4.5 In addition, the obligation set out in the law on advocates to respect the norms of professional ethics cannot be seen as a restriction of article 19 (3) of the Covenant. Thus, the author's rights under the Covenant have not been violated.

Author's comments on the State party's observations

5.1 The author presented his comments on the State party's observations in a letter dated 12 April 2017. He notes, first, that appeals under the supervisory review proceedings do not constitute an effective domestic remedy to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. He clarifies that a supervisory review appeal does not entail a re-examination of the case. An applicant contacts an official first – the chair of a court or a prosecutor – with a request to introduce a supervisory protest. In itself, the appeal is not the initiation of the procedure, it is just a request made to an official to examine the possibility of starting the procedure. It is only when the chair of a court or a prosecutor introduces a supervisory protest motion that the procedure is initiated. The supervisory protests are examined by a collegial body, the presidium of the court. In addition, requests for supervisory review are examined by the officials unilaterally, not in open session.

5.2 Under article 5 (2) (b) of the Optional Protocol, the Committee cannot examine a communication if the domestic remedies have not been exhausted. However, according to the Committee's constant practice, this concerns only the remedies that are available and accessible. The Committee has concluded that supervisory review proceedings aimed at challenging decisions that have obtained force of *res judicata*, which depend on the discretionary powers of an official, are strictly limited to questions of law. Accordingly, the Committee considers that the supervisory review proceedings do not constitute an effective remedy for the purposes of article 5 (2) (b) of the Optional Protocol.

5.3 Furthermore, the author objects to the State party's observation regarding the absence of a violation of his rights under article 19 (2) of the Covenant. Because of the decision of the Qualification Commission of 14 February 2011, the author lost his lawyer's licence, including for a second violation of the licensing legislation. As a first violation, the authorities revealed the recommendation by the Ministry of Justice of 5 January 2011, according to which he expressed himself in an incorrect manner regarding the work of the Committee of State Security detention centre. This was considered to have gone beyond the limits set by the aim of the law on advocates and to be contrary to the rules of professional ethics of advocates. Under article 75 of the regulation on the licensing of certain activities, the Ministry of Justice recommended that the author not provide false information to the media. The author was warned that, under article 76 of the regulation on the licensing of certain activities, in case of non-compliance with the recommendation, his licence would be withdrawn. The author believes that the realization of his right to freedom of expression in the interests of his client in the interview to euroradio.by was assessed by the Ministry of Justice as an incorrect form of representation of the work of the Committee of State Security detention centre.

5.4 In reply to the recommendation, the author wrote to the Ministry of Justice on 13 January 2011. In that communication, he emphasizes that, in the course of his professional activities, he enjoys the right to freedom of expression, orally and in writing, within the limits set by the aim of the law on advocacy and the rules guiding lawyers' professional ethics. However, despite this, the interview in question was one of the reasons why the author's lawyer's licence was cancelled.

5.5 The author reiterates that the analysis of his statement reveals no violation of the law on advocates or the rules of professional ethics of advocates. The statement was made in a correct form and did not exceed the limits of permissible criticism against the State organs in charge of ensuring that those arrested were detained in adequate conditions. In itself, the statement is not even a criticism and it does not exceed the ordinary professional duties of a lawyer consulting and providing information regarding the manner in which parcels are made available to those detained. The statement received attention because of the apparent public interest in the issue of respect for the rights of those detained, including the author's client, a former presidential candidate arrested at the end of the elections. Thus, the statement was rather a good-faith commentary on an issue of public interest and should have been open for public discussion.

5.6 Thus, the Ministry of Justice reacted to the author's statement posted on euroradio.by by issuing a recommendation whose non-compliance was liable to sanction, i.e. to the withdrawal of the author's lawyer's licence. Thus, by adopting the sanctions in question for a public statement before the media, the author's right to freedom of expression was violated.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) 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 that the State party has challenged the admissibility of the communication on the basis that the author failed to submit an appeal under the supervisory review proceedings to the Supreme Court or to the Office of the Prosecutor General. The Committee recalls, first, that appeals against decisions that have acquired force of *res judicata* dependent on the discretionary power of the office of the prosecutor do not constitute a remedy for the purposes of article 5 (2) (b) of the Optional Protocol. As regards a similar appeal to the Supreme Court, the Committee recalls that it constitutes an extraordinary appeal, depending on the discretionary powers of a judge.[2] Hence, it is for the State party to show

[2] See, for example, *Aleksandrov v. Belarus* (CCPR/C/111/D/1933/2010), para. 6.3.

that such an appeal would be effective in the case at hand. In the absence of any such information from the State party, the Committee considers that it is not prevented by article 5 (2) (b) from examining the communication.

6.4 Regarding the author's claims under article 14 (2)–(3) of the Covenant, the Committee recalls that the guarantees under these provisions apply in the context of the determination of criminal charges. In the present case, the author was accused of violating the legislation regulating the work of advocates and of breaching the rules of professional ethics of advocates but was not formally subjected to a criminal prosecution or charged officially for a crime. In these circumstances, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims raising issues under articles 14 (1) and 19 (2) of the Covenant. It declares them admissible and proceeds with its examination 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 claim of a violation of article 14 (1) of the Covenant. The author claims that the guarantees under article 14 (1) apply to proceedings related to the cancellation of a lawyer's licence, as this provision covers deprivation of the right to defence, and the right in question is private in nature, based on a private contract for judicial assistance with the person to be represented.[3]

7.3 In the author's opinion, the sanction he was subjected to was not disciplinary in nature as it was imposed by a State organ and not by a disciplinary body of the Minsk City Bar. In addition, under the regulation on licensing, the licences of all kinds of holders may be cancelled, i.e. the provisions on licensing are of a general nature. Moreover, the author submits that cancelling his licence was equivalent to prohibiting him from practising his profession. In other words, it was an extremely severe measure, one commensurate with the measure established under article 51 of the Criminal Code regarding the prohibition on performing specific activities. Thus, article 14 of the Covenant applies in this case.

7.4 The Committee recalls[4] that the concept of determination of rights and obligations "in a suit at law" is complex. It is formulated differently in the various language versions of the Covenant, all of which are, however, considered equally authentic pursuant to article 53 of the Covenant, and the *travaux préparatoires* do not resolve the discrepancies in the various languages. The Committee notes that the concept of a "suit at law" or its equivalents in other language texts is based on the nature of the right in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights.[5] The concept encompasses: (a) judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law; and (b) equivalent notions in the area of administrative law such as the termination of employment of civil servants for other than disciplinary reasons, the determination of social security benefits or the pension rights of soldiers, or procedures regarding the use of public land or the taking of private property. In addition, it may cover other procedures that, however, must be assessed on a case-by-case basis in the light of the nature of the right in question.[6] The Committee considers that, in the present case, the third scenario would apply and finds that the proceedings surrounding the cancellation of the author's lawyer's licence fall within the ambit of the concept of a "suit at law" since they involved the determination of civil rights and obligations.

7.5 The Committee notes that, regarding the procedure followed by the Ministry of Justice, the author claims that he was never notified of the proceedings aimed at verifying his work

[3] See the decisions of the European Court of Human Rights in *H. v. Belgium* (30 November 1987) and *Buzescu v. Romania* (24 May 2005).

[4] General comment No. 32 (2007), para. 16.

[5] Ibid. See also, for example, Human Rights Committee, *Y.L. v. Canada*, communication No. 112/1981.

[6] General comment No. 32 (2007), para. 16.

as a lawyer, was not told that the Qualification Commission was examining his case and thus did not know about the case against him or how to mount a defence. The author claims that other avenues existed, such as the disciplinary one before the Minsk City Bar, which could have been but were not invoked in this case. In addition, the grounds for establishing the Qualification Commission by the Committee of State Security remained secret. In this context, a number of professional documents was seized from the author's office, such as clients' contracts, personal accounts, monthly reports to the Minsk City Bar on concrete cases and the honoraria received, which were later used in the proceedings against him. Furthermore, the author only learned from the head of the Minsk City Bar on 14 February 2011 that his licence was about to be annulled, shortly before the Ministry of Justice officially notified him of the annulment on 16 February 2011.

7.6 The Committee notes the author's claims that the assessment of his professional activities and the decision to cancel his lawyer's licence were carried out by an executive body that bypassed the professional regulatory body. The Committee also notes the author's claim that he was prevented from providing any explanation in his defence and from being represented by a lawyer. The Committee further notes that none of these claims have been addressed or refuted by the State party and decides therefore to give them due weight.

7.7 The Committee considers that the facts as submitted regarding the circumstances surrounding the revocation of the author's lawyer's licence and the manner in which that was done reveal a grave and unjustifiable interference by the State party's authorities with the fundamental principle of the independence of the legal profession.[7]

7.8 In addition, the Committee considers that the very gravity of the sanction in the proceedings in question, which resulted in the revocation of the author's licence to practise law, required faithful adherence to and respect of all due process and fair trial guarantees. The Committee notes the author's submission that he was not notified of the proceedings against him, was not allowed to defend himself against the allegations made and could not be legally represented. Furthermore, the proceedings themselves bypassed the professional regulatory body and were conducted by a body composed of members of the executive. The Committee considers that such procedures were clearly arbitrary, biased and in violation of the principle of the independence of the legal profession, and thereby incompatible with the fundamental guarantees set out in article 14 (1) of the Covenant, which require accused persons to receive a fair hearing by a competent, independent and impartial tribunal established by law.

7.9 In the light of the above considerations, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 14 (1) of the Covenant.

7.10 The author further claims that, by sanctioning him through the cancellation of his lawyer's licence, the State party has unduly restricted and violated his right to freedom of expression as protected by article 19 (2) of the Covenant. The State party has denied violating the author's rights under the Covenant. The State party emphasizes that the conclusions on the author's persecution by the licensing body are only his personal opinion, are speculative and cannot be objectively confirmed. In addition, the State party submits that the obligation under the law on advocates to respect professional ethics cannot be seen as a restriction on the rights guaranteed under article 19 (3) of the Covenant.

7.11 With reference to paragraph 13 of its general comment No. 34 (2011), the Committee recalls that freedom of expression implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and that the public also has a corresponding right to receive media output. The Committee notes that lawyers, like other citizens, are entitled to freedom of expression. In particular, lawyers shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.[8]

7.12 The Committee notes that the author has been sanctioned by the withdrawal of his licence to practise law, in part for having made a public statement before the media regarding

[7] See the Basic Principles on the Role of Lawyers.

[8] Ibid.

the rights of detainees to receive parcels. Among those detainees was the author's client, a former presidential candidate, who was arrested at the end of the elections and kept in the detention centre of the Committee of State Security. The Committee considers that the very fact that the author was sanctioned for having spoken to the media amounts to a restriction on his right to freedom of expression.

7.13 The Committee must therefore assess whether the restriction on the author's right under article 19 (2) is permitted by one of the grounds listed under article 19 (3) of the Covenant. In this connection, the Committee recalls that the right protected under article 19 (2) is not absolute and may be subject to certain restrictions. Any restrictions, however, must be provided by law and be imposed only on one of the grounds set out in article 19 (3), namely if they are necessary for the protection of the rights or reputations of others or in the interest of national security, public order, public health or morals. The Committee also recalls that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.[9]

7.14 In the present case, the Committee notes that it is uncontested that the author has been severely sanctioned, in part for having made a public statement to the media. The Committee also notes that neither the State party, in the context of the present communication, nor the domestic authorities dealing with the matter, including the courts, have provided any explanation of relevance to justify the restriction of the author's rights under article 19 (2) for the purposes of article 19 (3) of the Covenant. In the absence of any such justification, the Committee considers that the author's right to freedom of expression as protected under article 19 (2) of the Covenant has been unjustifiably restricted and violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 14 (1) and 19 (2) of the Covenant.

9. In accordance with 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 obliged, inter alia, to take appropriate steps to provide the author with adequate compensation, including for any legal costs incurred by him, and to ensure that the author's lawyer's licence is restored. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee considers that, pursuant to its obligations under article 2 (2) of the Covenant, the State party must review its legislation and practice, as applied in this case, with a view to ensuring that the rights under articles 19 of the Covenant are fully enjoyed in the State party.[10]

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 should a violation have been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present 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.

[9] See *Korneenko v. Belarus* (CCPR/C/95/D/1553/2007).

[10] See, for example, *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 11; *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 9; and *Govsha et al. v. Belarus* (CCPR/C/105/D/1790/2008), para. 11.

Annex

Individual opinion of Committee member José Manuel Santos Pais (partially dissenting)

1. I concur with the conclusion reached by the Committee in its Views concerning communication No. 2862/2016 that the State party has violated the author's rights under article 19 (3) of the Covenant. I have doubts, however, that the violation of the author's rights was merely under article 14 (1) of the Covenant and did not extend to other fair trial guarantees.

2. I note, in this respect, that author claims violations of his rights not only under article 14 (1) but also under article 14 (2) and (3) of the Covenant. The Committee has not, however, accepted the author's claims under those last two paragraphs, considering that the guarantees under those provisions applied exclusively in the context of the determination of criminal charges (para. 6.4).[1] In the case at hand, according to the Committee, the proceedings surrounding the cancellation of the author's lawyer's licence fall rather within the ambit of the concept of rights and obligations "in a suit at law", since they involve the determination of civil rights and obligations (para. 7.4). While understanding this reasoning, I favour a different conclusion.

3. The possible relation of the author with his clients is just an indirect consequence of the violations to which he was subjected. The main issue in this case is indeed the direct infringement of the author's right to act as a lawyer without undue interference by any branch of government, particularly the executive branch.

4. The author has been subjected to the most serious sanction that a practising lawyer may face, in other words to disbarment, which ultimately prevents him from continuing to exercise his profession. This type of sanction is normally applied within a criminal procedure and for various serious charges. According to the State party's domestic law, a lawyer should be sanctioned by the relevant regulatory body, which, in the case at hand, is the Presidium of the Minsk City Bar, which is empowered to deal with disciplinary matters (by the law on advocates, art. 21, and the ruling of the Committee of Ministers No. 23 of 10 March 2009 on certain measures regarding the application of disciplinary measures to lawyers). These provisions prescribe the examination of charges against a lawyer by an independent body attendant with procedural guarantees of fairness, including the lawyers' participation in the proceedings (paras. 3.7–3.8). Instead, the author's case was examined by a non-independent body, the Qualification Commission of the Ministry of Justice, which is headed by a deputy Minister of Justice and a majority of whose members belong to the executive branch. The basic requirements for a fair trial before a court of law were not met (para. 3.9).

5. The author was therefore not subjected to disciplinary proceedings by the competent body according to the relevant domestic provisions on the legal profession. Nor was he subjected to any criminal proceedings, which prevented him from availing himself of his basic right to a defence set out in article 14 (2)–(3) of the Covenant. By endorsing a formal notion of criminal charges, which in this case and for that very reason were carefully avoided by the Ministry of Justice, the Committee concurs to justify this type of behaviour by the State party and therefore weakens the position of victims and lowers the threshold for the respect of their rights and freedoms.

6. The Committee has consistently acknowledged that, while the requirements of article 14 (1) of the Covenant generally apply to criminal cases and suits at law, the notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification

[1] Unless otherwise indicated, the paragraph numbers in parentheses refer to the Views to which the present individual opinion is annexed.

in domestic law, must be regarded as penal because of their purpose, character or severity.[2] As the Committee has stated in paragraph 15 of its general comment No. 32 (2007):

> The right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed, according to the second sentence of article 14, paragraph 1, in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law. Criminal charges relate in principle to acts declared to be punishable under domestic criminal law. The notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.

7. This is precisely what happened in the case at hand, where the sanction imposed was of the utmost severity for quite a trivial reason, outside any formal criminal proceedings, and also outside the judicial system itself, thus preventing the author from availing himself of the most fundamental right to a defence. Taking into account the purpose of the penalty, both deterrent and punitive, the sanction has to be considered criminal in nature and is in fact similar to the one prescribed in article 51 of the Criminal Code of Belarus regarding the prohibition on performing specific activities (para. 7.3). Furthermore, the case of the author seems unfortunately not to be isolated but reveals a worrying pattern of behaviour of the State party in relation to lawyers (paras. 2.4 and 2.11).

8. In the past, the Committee has considered, in cases where detention has been imposed within administrative proceedings for an administrative offence, that some detention regimes that result in confinement bypass the strict controls imposed by the rules of criminal procedure. In the case at hand, the rationale by the State party seems to have been the same. However, here there were no proceedings before a court of law, but instead an arbitrary sanction issued by a political authority and imposed on the author outside any formal type of proceeding, either administrative or criminal.

9. I would therefore have concluded that the State party has violated article 14 (1), (2) and (3) of the Covenant. Such a conclusion would have preserved, for the author, all the rights to a defence prescribed in criminal procedures.

[2] See, for example, *Perterer v. Austria* (CCPR/C/81/D/1015/2001), para. 9.2.