



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### **Views adopted by the Committee under the Optional Protocol, concerning communications No. 3672/2019, No. 3673/2019, No. 3682/2019, No. 3691/2019, No. 3692/2019, No. 3694/2019, No. 3695/2019, No. 3738/2020, No. 3745/2020, No. 3746/2020, No. 3747/2020, No. 3748/2020, No. 3749/2020, No. 3753/2020, No. 3763/2020, No. 3765/2020, No. 3801/2020, No. 3820/2020, No. 3823/2020, No. 3826/2020 and No. 3830/2020\*, \*\***

*Communications submitted by:*

Leonid Kulakov (communication No. 3672/2019), Viktor Rubtsov (communication No. 3673/2019), Maiya Naumova (communications No. 3682/2019 and No. 3691/2019), Aleksandr Abramovich (communications No. 3692/2019 and No. 3826/2020), Pavel Mrochko (communication No. 3694/2019), Tamara Zaitseva (communication No. 3695/2019), Mikhail Vorontsov (communication No. 3738/2020), Elena Yanushkovskaya (communications No. 3745/2020–No. 3749/2020 and No. 3753/2020), Aleksandr Dubrovskikh (communication No. 3763/2020), Evgeny Batura (communication No. 3765/2020), Boris Anikeev (communications No. 3801/2020 and No. 3830/2020), Tatyana Severinets (communication No. 3820/2020) and Irina Tretyakova (communication No. 3823/2020) (see counsel representation in annex)

*Alleged victims:*

The authors

*State party:*

Belarus

*Dates of communication:*

See annex

\* Adopted by the Committee at its 141st session (1–23 July 2024).

\*\* Pursuant to rule 97 (3) of its rules of procedure and the strategy adopted at its 140th session (A/79/40, para. 22), the Committee decided to join the communications for examination. The following members of the Committee participated in the examination of the communications: 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.



<i>Document references:</i>	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party (see dates of transmission in annex) (not issued in document form)
<i>Date of adoption of Views:</i>	17 July 2024
<i>Subject matter:</i>	Sanctions imposed for participation in unauthorized peaceful protests
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Freedom of expression; right to peaceful assembly
<i>Articles of the Covenant:</i>	19 and 21, in some cases read in conjunction with article 2 (2) and (3)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The authors of the communications are Leonid Kulakov, Viktor Rubtsov, Maiya Naumova, Aleksandr Abramovich, Pavel Mrochko, Tamara Zaitseva, Mikhail Vorontsov, Elena Yanushkovskaya, Aleksandr Dubrovskikh, Evgeny Batura, Boris Anikeev, Tatyana Severinets and Irina Tretyakova, all of whom are nationals of Belarus. They claim that the State party has violated their rights under articles 2, 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The authors of communications No. 3682/2019, No. 3738/2020, No. 3745/2020 to No. 3749/2020, No. 3753/2020, No. 3763/2020, No. 3820/2020, No. 3823/2020 and No. 3826/2020 are represented by counsel, whereas in the other cases, the authors are not represented.

1.2 The 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 jurisprudence, the State party continues to be subject to the application of the Optional Protocol with regard to the communications considered herein.<sup>1</sup>

1.3 On 17 July 2024, the Committee, pursuant to rule 97 (3) of its rules of procedure and the strategy it adopted at its 140th session aimed at addressing the high number of communications pending consideration,<sup>2</sup> decided to join 21 communications (see annex) for examination and the issuance of a joint decision thereon. Pursuant to the strategy, such decisions, to be adopted in a simplified format, relate to communications in which similar factual elements and claims are raised and for which the Committee has identified the structural nature and policy underlying the violations and has developed consistent jurisprudence over the years.

### **Factual background**

2. Between 2016 and 2020, the authors participated in or made public calls for participation in unauthorized peaceful protests in various cities in the State party. They were apprehended by the police and charged with an administrative offence under article 23.34, violation of the established procedure for conducting public events, of the Code of Administrative Offences. All the authors were tried and sentenced by local district courts to various administrative fines and, in some instances, to administrative detention, with periods ranging from 5 to 10 days. The authors unsuccessfully appealed the decisions of the court of first instance to the appellate courts. The authors submit that they have not attempted to lodge supervisory review appeals with the judicial or prosecutorial authorities. They refer to the

<sup>1</sup> 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).

<sup>2</sup> A/79/40, para. 22.

ineffectiveness of those remedies, citing the Committee's established jurisprudence, as their reason for not doing so.<sup>3</sup>

### **Complaint**

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

3.2 The authors of communications No. 3672/2019, No. 3673/2019, No. 3691/2019, No. 3692/2019, No. 3694/2019, No. 3695/2019, No. 3801/2020 and No. 3830/2020 also claim that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant.

### **State party's observations on admissibility and the merits**

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

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

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

5.1 The authors reject the State party's assertion about the effectiveness of supervisory review appeals lodged before judicial and prosecutorial authorities. They note that such appeals depend on the discretionary power of a judge or prosecutor and cannot be considered an effective remedy for the purposes of the exhaustion of domestic remedies, as the Committee has recognized in its jurisprudence.

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

### **Issues and proceedings before the Committee**

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol. The Committee takes note of the State party's argument that the authors have failed to seek a supervisory review by the prosecutorial or judicial authorities of the impugned decisions. The Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to the chairperson of a court directed against court decisions that have entered into force,<sup>4</sup> or to a prosecutor's office requesting a review of court decisions that have taken effect,<sup>5</sup> constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such

<sup>3</sup> For additional information on the exhaustion of domestic remedies, including the domestic court proceedings and the sanctions imposed, see annex.

<sup>4</sup> *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012), para. 7.3.

<sup>5</sup> *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.

requests would provide an effective remedy in the circumstances of the case. In the absence of any new information from the State party that would allow the Committee to reach a different conclusion, and given its previous jurisprudence, the Committee considers that the authors have exhausted all available effective domestic remedies and that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communications.

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

6.3 The Committee takes note of the claims made by the same authors that the State party has violated their rights under articles 19 and 21, read in conjunction with article 2 (2), of the Covenant. The Committee notes that the authors have alleged a violation of their rights under articles 19 and 21 of the Covenant resulting from the interpretation and application of the existing laws of the State party. 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 an examination of the violation of the authors' rights under articles 19 and 21,<sup>6</sup> and considers that the authors' claims in this regard are incompatible with article 2 of the Covenant and are therefore inadmissible under article 3 of the Optional Protocol.

6.4 The Committee finds the claims of all the authors under articles 19 and 21 of the Covenant to have been sufficiently substantiated, and it proceeds with its consideration of the merits.

6.5 The Committee has considered the communications in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol. The Committee notes that it has found a violation of articles 19 and 21 of the Covenant in similar cases in respect of the same laws and practices of the State party in a number of earlier communications.<sup>7</sup> There is nothing in the factual background or legal claims of the communications concerned that would lead the Committee to a different conclusion on the merits of the claims therein. Having considered the communications in the light of all the information made available to it by the parties, and having due regard for its previous jurisprudence on the subject, the Committee considers that, by sanctioning the authors for participation in peaceful – albeit unauthorized – protests, the State party has violated their rights under articles 19 and 21 of the Covenant.

7. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to take appropriate steps to reimburse the current value of the fines and any legal costs incurred by the authors in relation to the domestic proceedings against them (see annex). The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. The Committee therefore recommends that the State party revise its normative framework, in particular the Public Events Act, consistent with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under articles 19 and 21 may be fully enjoyed in the State party.

8. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there had been a violation of the Covenant. The communications considered in the present Views were submitted for consideration before the State party's denunciation of the Optional Protocol became effective, on 8 February 2023. Given that, pursuant to article 2 of the Covenant, the State party has

<sup>6</sup> *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.

<sup>7</sup> *Malei v. Belarus* (CCPR/C/129/D/2404/2014), paras. 9.4 and 9.7; *Tolchina et al. v. Belarus* (CCPR/C/132/D/2857/2016), paras. 7.6 and 7.9; *Zavadskaya et al. v. Belarus* (CCPR/C/132/D/2865/2016), paras. 7.6 and 7.9; and *Vasilevich et al. v. Belarus*, paras. 7.7 and 7.10.

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.

## Annex

## Key procedural information and additional details, by communication

<i>Author</i>	<i>Communication No.</i>	<i>Counsel representation</i>	<i>Date of communication (initial submission)</i>	<i>Date of transmission to the State party</i>	<i>Relevant court decisions</i>	<i>Type of sanction</i>	<i>Applicable domestic law</i>
Leonid Kulakov	3672/2019	Not represented by counsel	17 October 2018	10 December 2019	First instance: 23 March 2018, Pervomayskiy District Court  Appeal: 6 April 2018, Minsk City Court	Administrative detention for 10 days	Code of Administrative Offences, art. 23.34 (3)
					First instance: 27 August 2018, Pervomayskiy District Court  Appeal: 21 September 2018, Minsk City Court	Fine of 980 Belarusian roubles (approximately €410)	Code of Administrative Offences, art. 23.34 (3)
Victor Rubtsov	3673/2019	Not represented by counsel	8 December 2017	10 December 2019	First instance: 19 October 2017, Zheleznodorozhniy District Court  Appeal: 22 November 2017, Gomel Regional Court	Administrative detention for 5 days	Code of Administrative Offences, art. 23.34 (3)
Maiya Naumova	3682/2019	Represented by counsel, Kristina Rikhter	30 September 2019	10 December 2019	First instance: 2 January 2019, Central District Court  Appeal: 8 February 2019, Minsk City Court	Fine of 1 020 Belarusian roubles (approx. €425)	Code of Administrative Offences, art. 23.34 (3)
Maiya Naumova	3691/2019	Not represented by counsel	16 October 2018	7 January 2020	First instance: 7 August 2018, Pervomayskiy District Court  Appeal: 2 October 2018, Minsk City Court	Fine of 980 Belarusian roubles (approximately €410)	Code of Administrative Offences, art. 23.34 (3)

<i>Author</i>	<i>Communication No.</i>	<i>Counsel representation</i>	<i>Date of communication (initial submission)</i>	<i>Date of transmission to the State party</i>	<i>Relevant court decisions</i>	<i>Type of sanction</i>	<i>Applicable domestic law</i>
Aleksandr Abramovich	3692/2019	Not represented by counsel	16 October 2018	7 January 2020	First instance: 27 August 2018, Moskovskiy District Court Appeal: 21 September 2018, Minsk City Court	Fine of 1,225 Belarusian roubles (approx. €510)	Code of Administrative Offences, art. 23.34 (3)
Pavel Mrochko	3694/2019	Not represented by counsel	26 September 2018	7 January 2020	First instance: 27 August 2018, Moskovskiy District Court Appeal: 18 September 2018, Minsk City Court	Fine of 490 Belarusian roubles (approx. €205)	Code of Administrative Offences, art. 23.34 (1)
Tamara Zaitseva	3695/2019	Not represented by counsel	27 September 2018	7 January 2020	First instance: 27 August 2018, Moskovskiy District Court Appeal: 18 September 2018, Minsk City Court	Fine of 612.50 Belarusian roubles (approximately €255)	Code of Administrative Offences, art. 23.34 (1)
Mikhail Vorontsov	3738/2020	Represented by counsel, Viktoriya Fedorova	16 April 2020	1 May 2020	First instance: 8 January 2020, Moskovskiy District Court Appeal: 31 January 2020, Minsk City Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Elena Yanushkovskaya	3745/2020	Represented by counsel, Pavel Levinov	27 February 2020	12 May 2020	First instance: 21 January 2020, Zheleznodorozhniy District Court Appeal: 12 February 2020, Vitebsk Regional Court	Fine of 675 Belarusian roubles (approx. €285)	Code of Administrative Offences, art. 23.34 (1)
Elena Yanushkovskaya	3746/2020	Represented by counsel, Pavel Levinov	19 March 2020	12 May 2020	First instance: 23 January 2020, Vitebskiy District Court Appeal: 19 February 2020, Vitebsk Regional Court	Fine of 675 Belarusian roubles (approx. €285)	represented by counsel, Pavel Levinov Administrative Offences, art. 23.34 (1)

<i>Author</i>	<i>Communication No.</i>	<i>Counsel representation</i>	<i>Date of communication (initial submission)</i>	<i>Date of transmission to the State party</i>	<i>Relevant court decisions</i>	<i>Type of sanction</i>	<i>Applicable domestic law</i>
Elena Yanushkovskaya	3747/2020	Represented by counsel, Pavel Levinov	27 April 2020	12 May 2020	First instance: 9 January 2020, Central District Court Appeal: 28 February 2020, Minsk City Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Elena Yanushkovskaya	3748/2020	Represented by counsel, Pavel Levinov	29 April 2020	12 May 2020	First instance: 9 January 2020, Central District Court Appeal: 28 February 2020, Minsk City Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Elena Yanushkovskaya	3749/2020	Represented by counsel, Pavel Levinov	31 March 2020	12 May 2020	First instance: 24 January 2020, Vitebskiy District Court Appeal: 19 February 2020, Vitebsk Regional Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Elena Yanushkovskaya	3753/2020	Represented by counsel, Pavel Levinov	11 May 2020	13 May 2020	First instance: 18 February 2020, Vitebskiy District Court Appeal: 11 March 2020, Vitebsk Regional Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Aleksandr Dubrovskikh	3763/2020	Represented by counsel, Pavel Levinov	10 March 2020	10 June 2020	First instance: 14 January 2020, Oktyabrskiy District Court Appeal: 19 February 2020, Vitebsk Regional Court	Fine of 810 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Evgeny Batura	3765/2020	Not represented by counsel	26 October 2019	14 June 2020	First instance: 22 December 2018, Central District Court Appeal: 5 February 2019, Minsk City Court	Fine of 490 Belarusian roubles (approx. €205)	Code of Administrative Offences, art. 23.34 (1)
Boris Anikeev	3801/2020	Not represented by counsel	12 September 2018	5 August 2020	First instance: 2 August 2018, Zheleznodorozhniy District Court Appeal: 29 August 2018, Gomel Regional Court	Fine of 196 Belarusian roubles (approx. €80)	Code of Administrative Offences, art. 23.34 (1)



<i>Author</i>	<i>Communication No.</i>	<i>Counsel representation</i>	<i>Date of communication (initial submission)</i>	<i>Date of transmission to the State party</i>	<i>Relevant court decisions</i>	<i>Type of sanction</i>	<i>Applicable domestic law</i>
Tatyana Severinets	3820/2020	Represented by counsel, Pavel Levinov	15 September 2017	24 September 2020	First instance: 21 March 2017, Oktyabrskiy District Court Appeal: 12 April 2017, Vitebsk Regional Court	Fine of 1,150 Belarusian roubles (approx. €575)	Code of Administrative Offences, art. 23.34 (3)
Irina Tretyakova	3823/2020	Represented by counsel, Pavel Levinov	15 September 2017	8 October 2020	First instance: 27 March 2017, Oktyabrskiy District Court Appeal: 19 April 2017, Vitebsk Regional Court	Fine of 690 Belarusian roubles (approx. €340)	Code of Administrative Offences, art. 23.34 (1)
Aleksandr Abramovich	3826/2020	Represented by counsel, Oleg Matskevich	13 March 2018	14 October 2020	First instance: 9 March 2016, Central District Court Appeal: 5 April 2016, Minsk City Court  First instance: 24 March 2016, Central District Court Appeal: 22 April 2016, Minsk City Court  First instance: 10 October 2016, Moskovskiy District Court Appeal: 25 November 2016, Minsk City Court	Fine of 3,150,000 Belarusian roubles (approx. €160)  Fine of 2,100,000 Belarusian roubles (approx. €105)  Fine of 1 050 Belarusian roubles (approx. €505)	Code of Administrative Offences, art. 23.34 (1)  Code of Administrative Offences, art. 23.34 (1)  Code of Administrative Offences, art. 23.34 (3)
Boris Anikeev	3830/2020	Not represented by counsel	27 November 2017	22 October 2020	First instance: 19 October 2017, Zheleznodorozhniy District Court Appeal: 17 November 2017, Gomel Regional Court	Administrative detention for 5 days	Code of Administrative Offences, art. 23.34 (3)