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# Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination against Women**

## Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 157/2020*,**

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| *Communication submitted by*: | E.D. and M.D. (represented by counsel, Tatsiana Lishankova) |
| *Alleged victims*: | The authors |
| *State party*: | Belarus |
| *Date of communication*: | 10 April 2020 |
| *References*: | Transmitted to the State party on 8 May 2020 (not issued in document form) |
| *Date of adoption of views*: | 12 February 2024 |

1. The communication is submitted by E.D. and M.D., Belarusian nationals, born in 1984 and 1988, respectively. The authors claim to be victims of a violation by Belarus of their rights under articles 1, 2 (a)–(f), 3 and 5 (a) of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 3 September 1981 and 3 May 2004, respectively. The authors are represented by counsel, Tatsiana Lishankova.

### Facts as submitted by the authors

2.1 On 15 March 2017, E.D. (the first author) participated in an authorized mass event with her face covered by a mask, which is allegedly contrary to the law on mass events of Belarus. As a result, a record of administrative offence was drawn up by the police and, on 16 March, she was sentenced by the Central District Court of Minsk to 12 days of administrative arrest. On the same day, she went on a hunger strike. From 16 to 24 March, E.D. was held at the central detention facility of the Main Internal Affairs Directorate of the Minsk City Executive Committee (hereinafter referred to as "TSIP"). On 24 March, she was transferred to the temporary detention facility of

* Adopted by the Committee at its eighty-seventh session (29 January–16 February 2024).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Marianne Mikko, Maya Morsy, Ana Peláez Narváez, Rhoda Reddock, Elgun Safarov, Genoveva Tisheva and Jie Xia.

the Internal Affairs Department of the Zhodzina City Executive Committee (hereinafter referred to as "IVS"), where she was held until her release on 27 March.

2.2 On 15 March 2017, M.D. (the second author) was detained on suspicion of committing minor hooliganism[1] while on her way to an authorized mass event. As a result, on 16 March, the Pyershamayski District Court of Minsk sentenced her to 14 days of administrative arrest. From 16 to 24 March, she was held at TSIP. On 24 March, she was transferred to IVS, where she was held until her release on 29 March.

2.3 Both authors submit that the conditions of their detention at TSIP were humiliating and discriminatory to them as women. In particular, they were denied the opportunity to properly maintain their personal hygiene, as they were forced to wash themselves in their cells. Given the significant lack of female officers at the detention facility, the cells were generally monitored by men. Each of their cells had two video cameras installed in the ceiling, so male TSIP officers could watch them while they were changing clothes, washing themselves or using the toilet. Male officers could also watch them at all times through peepholes in the cell doors, including when the authors were undressed. E.D. also claims that she saw two video cameras in the women's shower. In addition, there were no menstrual hygiene products at the detention facility, so the authors had to use cloth or cotton wool instead and had to explain their needs to male officers.

2.4 As for their detention at IVS, both authors submit that there was no hot water in their cells and that they were allowed to take a shower only once a week. They stated that the IVS administration denied them the possibility of following basic hygiene practices and did not provide M.D. with soap or toilet paper. The cells were very cold, and the authors had to wash themselves with cold water, which they say was not only degrading but also dangerous to their health.

2.5 Owing to the conditions of her detention, M.D. contracted a urinary tract infection and was later diagnosed with cystitis. The medical doctor at the detention facility did not examine her after she informed him of her health problem. Upon arrival at IVS on 24 March, E.D. was ordered to undress and perform sit-ups, which was not only humiliating but also dangerous in view of her poor health, as she was extremely weak from the hunger strike that she had begun on 16 March 2017.

2.6 Both authors also submit that all the officers at IVS were male and that the officers could watch them through a peephole or otherwise at any moment, including when the authors were using the toilet or washing themselves. The sanitary facilities in the cells had no walls or screens, so the authors had no privacy, notably from male officers.

**Exhaustion of domestic remedies**

2.7 Both authors filed separate complaints concerning the conditions of detention at TSIP with the Main Internal Affairs Directorate of the Minsk City Executive Committee and the Prosecutor's Office of the City of Minsk. Likewise, they lodged separate complaints about the detention conditions and discrimination on the grounds of sex at IVS with the Internal Affairs Department of the Minsk Regional Executive Committee and the Prosecutor's Office of the Minsk Region. They also participated in collective complaints about detention conditions at both facilities.[2] Their discrimination claims were not addressed by the respective authorities.

[1] No further information was provided in this regard, nor was any copy of the relevant court decision submitted.

[2] The authors did not provide copies of the collective complaints that they have joined.

2.8 Both authors also filed separate complaints concerning discrimination on the grounds of sex at the detention facilities with the Ministry of Internal Affairs. In its response, the Ministry informed the authors that the inquiries initiated to follow up on their complaints did not reveal any violation of the applicable legislation. Dissatisfied with the authorities' response, E.D. and M.D. lodged separate complaints with the Central District Court of Minsk concerning the inaction by the Ministry of Internal Affairs. On 30 August 2018, the court merged the authors' complaints into a single case.

2.9 On 31 August 2018, following hearings held in the absence of the authors, the Central District Court of Minsk dismissed their complaints. During the proceedings, the court examined the results of the inquiries into the authors' complaints, but the documents were classified and were not appended to the case file materials. The Ministry of Internal Affairs also rejected the request by E.D. to examine the results of the inquiries.

2.10 On 8 October 2018, the authors appealed the decision of the Central District Court of Minsk to the Minsk City Court, which upheld the lower court's decision on 15 November. The decision from 31 August entered into force on the same date. The authors claim that they have thus exhausted the available domestic remedies.

**Complaint**

3.1 The authors claim that their rights under articles 1, 2 (a)–(f), 3 and 5 (a) of the Convention have been violated by the State party.

3.2 In particular, the authors submit that the State party did not take into account their specific needs as women, including their physiological needs, while in detention, which amounted to discrimination on the grounds of sex in violation of article 1 of the Convention.

3.3 The authors further claim that the poor conditions at the two detention facilities do not accommodate adequately the specific needs of female detainees, and that the lack of knowledge regarding gender discrimination on the part of the authorities demonstrates the State party's failure to comply with article 2 (d) of the Convention. In particular, the State party failed to ensure that its public authorities and institutions act in conformity with the obligation to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women.

3.4 The authors submit that the legislation of the State party does not contain any special provisions defining discrimination against women or any provisions providing for special measures or sanctions with a view to eliminating discrimination against women. The authors claim that the State party failed to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, in violation of article 2 (f) of the Convention. The authors clarify that the State party has therefore failed to "enact legislation that prohibits discrimination in all fields of women's lives under the Convention and throughout their lifespan", as requested by the Committee in general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

3.5 The authors also claim that the lack of special legislation on eliminating discrimination against women prevented them from defending their case effectively before the State party's authorities, contrary to article 2 (a) and (b) of the Convention.

3.6 The authors allege that they were denied the opportunity to acquaint themselves with the results of the inquiries initiated by the Ministry of Internal Affairs as a follow-up to their complaints. The national courts examined yet rejected their discrimination claims. The authors claim that the State party therefore violated article

2 (c) of the Convention, by failing to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

3.7 The authors allege that the State party is also in breach of article 2 (e) of the Convention, since it did not take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

3.8 The authors further refer to the fact that both facilities lack any special area, building or cells specifically designated to accommodate female detainees. They claim that those conditions amount to a failure to take in all fields all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men, and, accordingly, violate article 3 of the Convention.

3.9 The authors allege that the State party failed to ensure the protection of the authors' dignity, privacy and physical and psychological safety in the detention facilities. It thus also failed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of discriminatory practices, contrary to article 5 (a) of the Convention.[3]

3.10 In view of the above, the authors request that the Committee call upon the State party to remedy the violations of their rights and to provide them due reparation in the form of monetary compensation. The authors further request that the Committee recommend that the State party take measures to prevent similar violations in the future, notably: increase the number of female officers in detention facilities; arrange proper training for the respective personnel on women's specific needs and their rights; ensure women detainees' physical and psychological security, including through the prevention of monitoring by male officers; ensure access to gender-sensitive medical services; ensure access to hygiene facilities and supplies that are essential to meeting women's specific needs; properly investigate claims of discrimination against women and punish those responsible; and enact legislation expressly prohibiting all forms of discrimination against women.

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

4.1 On 21 December 2020, the State party submitted its observations regarding the authors' communication. The State party describes the factual circumstances of the case. It explains that, although the authorities had agreed to the demonstration on 15 March 2017, participants violated the allowed format and procedure (by using unregistered flags, concealing their faces, etc.). The agreed maximum number of participants (1,000 people) was also exceeded, as some 1,600 people gathered. Organizers of the event did not take the necessary measures to stop this.

4.2 Before the start of the event, the authors were detained by the police: E.D., for concealing her face with a mask and for disobeying lawful demands from a police officer; and M.D., for minor hooliganism and for disobeying lawful demands from a police officer. Police officers drew up protocols on the authors' violations of the relevant articles of the code on administrative offences. The court sentenced the authors to administrative detention (E.D. for 12 days and M.D. for 14 days).

4.3 According to data from the unified State register of offences, E.D. had previously been held liable for administrative violations on six occasions, and M.D.

[3] The authors refer to *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008) and *Abramova v. Belarus* (CEDAW/C/49/D/23/2009).

on four occasions. The authors had the right to appeal the court decisions on their administrative detention but never exercised that right.

4.4 E.D. served her administrative detention from 16 to 24 March 2017 at TSIP and from 24 to 27 March 2017 at IVS. M.D. served her administrative sentence from 16 to 24 March 2017 at TSIP and from 24 to 29 March 2017 at IVS.

4.5 Without appealing the court decisions regarding their administrative detention, the authors lodged complaints regarding unsatisfactory detention conditions and discrimination at TSIP and IVS to the Ministry of Internal Affairs, the Main Internal Affairs Directorate of the Minsk City Executive Committee, the Internal Affairs Department of the Minsk Regional Executive Committee, the Prosecutor's Office of Minsk and the Prosecutor's Office of the Minsk Region. Following those complaints, investigations were conducted, and the authors were informed that no signs of violations committed by police officers had been found.

4.6 The legal status of women detained at penal system institutions is regulated by the Code of Criminal Procedure and the law on the procedure and conditions of detention, Act No. 215-Z of 16 June 2003 (hereinafter referred to as the "Detention Act"). Article 2 of the Act, on the principles of detention, stipulates that discrimination against detainees on the basis of gender is prohibited. The detention of persons is carried out in accordance with the principles of legality, humanism, equality of all citizens before the law and respect for human dignity, and in accordance with the Constitution of Belarus, generally recognized principles and norms of international law, and international treaties, and should not be accompanied by cruel or inhumane treatment, which may cause harm to the physical or mental health of a detainee. Detainees have equal rights, regardless of gender, nationality, economic and social status, membership in associations or religion.

4.7 In accordance with article 31 of the Detention Act, regarding separate placement in cells, detainees' personalities and psychological compatibility are taken into account when they are placed in cells. Men and women are accommodated separately. Supervision during sanitary processing and the personal search of a detainee are carried out by an employee of the pretrial detention centre who is of the same gender as the detainee. To uphold these standards, female employees are included in the staff of TSIP and IVS, which meets the requirements of paragraph 3 of rule 81 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) regarding the supervision of women prisoners by women staff members.

4.8 The procedures for the reception and accommodation of detained persons, their material support, the provision of medical care, the safeguarding of sanitary and epidemiological well-being, and meetings between detained persons and their counsel are established by the internal regulations of facilities where administrative detention sentences are served, approved by the Ministry of Internal Affairs in its resolution 313 of 20 October 2015.

4.9 During the period of detention at TSIP (eight days), the authors were given the opportunity to take a shower once, which does not contradict paragraph 44 of the internal regulations (at least once a week).

4.10 In accordance with the requirements of paragraphs 37 and 39 of the internal regulations, all TSIP cells are equipped with washbasins and taps with running water. Cooled boiled water for drinking is provided to the cells every day and on demand, which is also consistent with paragraph 2 of rule 22 of the Nelson Mandela Rules.

4.11 Detained women are provided with personal hygiene products in accordance with paragraph 38 of the internal regulations.[4] The specified procedure complies with rule 5 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

4.12 Standards for microclimatic conditions in cells at TSIP and IVS, standards for sanitary facilities per person kept in a cell and requirements for cell lighting, ventilation and heating systems are established in the code on administrative offences.

4.13 The cells at TSIP and IVS have central water heating. During the heating season, the temperature in the cells and the rest of the premises is maintained at a minimum of 18°C. All cells at TSIP and IVS are equipped with a mechanical supply and exhaust ventilation system and with a natural exhaust system.

4.14 The norms for sanitary facilities per person in cells at TSIP and IVS fully comply with the requirements of part 1 of article 18.7 of the code on administrative offences and amount to 4 $m^2$ per person.

4.15 According to paragraph 116 of the internal regulations, meetings between the authors and their counsel were held in a specially equipped room at TSIP. In this regard, the presence of metal bars in front of the authors while they communicated with counsel did not violate the applicable legislation. At the same time, the requirements of article 117 of the internal regulations on ensuring private confidential communication between a detained person and counsel without limit on the number and duration of conversations were observed.

4.16 In accordance with subclause 7.2 of the model regulations for the centre for isolation of offenders of the Internal Affairs Authority, approved by the Ministry of Internal Affairs in Order No. 393 of 26 August 2013, to fulfil their assigned tasks, TSIP officers and civilian personnel conduct surveillance and supervision of detained persons. The guard at the internal post for the surveillance of detainees held in cells at IVS is obliged to walk around the cells at least every 15 minutes and conduct constant monitoring of the detainees using the observation peepholes in cell doors and technical means of surveillance. The same actions are performed by the guard at the internal post for the surveillance of detainees held in cells at TSIP. The premises of TSIP and IVS must be equipped with high-resolution security surveillance systems that offer the ability to view video recordings and display images from television cameras at the workplace of the internal affairs department officer (TSIP and IVS) so that detainees and prisoners can be monitored remotely and the performance by officers of their duties can be overseen.

4.17 Based on the foregoing, the Ministry of Internal Affairs finds the authors' claims regarding the illegal placement of surveillance cameras in TSIP cells and the conducting of regular surveillance of detainees by TSIP and IVS officers unsubstantiated. In view of the above, the results of the investigation confirm that the authors have no substantiated arguments regarding the commission of actions against them that violated the Nelson Mandela Rules, the Bangkok Rules or the legislation of Belarus.

4.18 The authors filed complaints with the Central District Court of Minsk against the actions (inaction) of the Ministry of Internal Affairs. On 30 August 2018, the civil cases on the authors' complaints were merged into one civil case. On 31 August, the authors' complaints were denied. The court assessed all the arguments and evidence

[4] The amount of personal hygiene products issued to women for a three-day period is 10 g of soap and 2.5 m of toilet paper. When sanitary pads or tampons are needed, six items are provided for three days.

presented by the parties and all circumstances relevant to the case and came to the justified conclusion that there had been no violations.

4.19 Each of the claims described by the authors in their communication was subject to an investigation conducted by the Ministry of Internal Affairs, which entailed requests for the necessary documents and written explanations from TSIP and IVS officers. As a result of the investigation, a report was prepared, in which it was indicated that there had been no signs of violations of applicable laws and regulations by officers in connection with the detention of the authors. Therefore, the responses provided to the authors by the Ministry of Internal Affairs correspond to the findings of the investigation into the authors' complaints, and the court reasonably denied the authors' complaints against the actions (inaction) of the Ministry of Internal Affairs. Thus, the authors' claims regarding violation by the State party of articles 1, 2 (a)–(f) and 3 of the Convention are unsubstantiated.

4.20 On 15 November 2018, the decision of the Central District Court of Minsk of 31 August 2018 was upheld by the Civil Division of the Minsk City Court. Thus, the decision of the Central District Court of Minsk of 31 August 2018 entered into legal force on 15 November 2018. The authors had the right to submit a supervisory review complaint against the decision of the Civil Division of the Minsk City Court of 15 November 2018 but have not exercised this right. The deadline for submitting a supervisory review complaint has already expired, but the authors may still lodge it with the Prosecutor's Office under certain conditions. Given the above, there are no grounds to believe that the authors have exhausted all domestic remedies available in the State party. Therefore, the authors' communication is inadmissible.

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

5.1 On 7 October 2021, the authors provided their comments on the State party's observations. The authors emphasized that the State party had confirmed that E.D. was held from 16 to 24 March 2017 at TSIP and from 24 to 27 March 2017 at IVS. The State party also confirmed that M.D. was held from 16 to 24 March 2017 at TSIP and from 24 to 29 March 2017 at IVS.

5.2 The authors state that information about the administrative sanctions previously imposed on them provided by the State party is not relevant to the consideration of the present communication.

5.3 The authors argue that the assertion by the State party that the authors never appealed the decisions on their administrative detention is not accurate. The authors indeed never appealed the pretrial detention by police officers, as the authors were brought before the court promptly thereafter. Nevertheless, they both appealed the court decisions on their administrative detention. On 16 March 2017, E.D. filed an appeal with the Minsk City Court against the decision of the Central District Court of Minsk. On 24 March, the appeal was considered and denied. M.D. also appealed the court decision on her administrative detention, but no documents confirming the appeal have been preserved. At the same time, the authors note that the existence or absence of appeals against the pretrial detention or detention imposed by the court cannot affect the consideration of the present communication filed in connection with the discrimination in detention.

5.4 Regarding the statement by the State party that investigations were conducted and the authors were informed of the results, the authors indicate that those responses from the authorities merely stated that no violations had been identified. They did not contain information on the time periods over which the investigations were conducted, which procedure was used or which authorities had conducted the investigations. The authors reiterate that the State party has not provided them with

the results of those investigations. The State party also has not attached to its observations any documents in which its statements concerning the investigations are confirmed.

5.5 The State party provided excerpts from various laws and regulations in its observations. The authors reiterate that Belarus does not have any separate law prohibiting discrimination of any kind, including discrimination against women. According to paragraph 10 of general recommendation No. 28:

> States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors. Discrimination can occur through the failure of States to take necessary legislative measures to ensure the full realization of women's rights, the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws.

According to paragraph 15 of the general recommendation: "The term 'discrimination in all its forms' clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging." Thus, in the absence of special legislation against discrimination, the forms of discrimination committed against the authors may be repeated in the future.

5.6 The authors further emphasize that the assertion by the State party that "female employees are included in the staff of TSIP and IVS" is not supported by any evidence.

5.7 In indicating that "during the period of detention at TSIP (eight days), the authors were given the opportunity to take a shower once, which does not contradict paragraph 44 of the internal regulations (at least once a week)", the State party confirms the authors' claim that they were given an opportunity to take a shower only once.

5.8 The State party also does not deny the fact that the authors were under surveillance while kept in detention. The State party provided no evidence that there were female employees at TSIP or IVS during the period when the authors were detained. The State party did not refute the authors' claims that male officers were looking through the peepholes, that the video cameras located in the cells at TSIP were aimed at the washbasins or that male officers could see the female prisoners when they tried to wash themselves. According to paragraph 9 of general recommendation No. 28: "The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto (…). This entails obligations of means or conduct and obligations of results." The internal regulations regarding showering once a week apply to all detainees, but those rules discriminate against women who have to wash themselves under permanent surveillance by male officers. The authors note that the State party did not refute their claims that, at TSIP and IVS, the toilets are visible from the peepholes and that male officers were able to observe women on the toilet.

5.9 Lastly, the State party argues that the authors have not exhausted all available domestic remedies since they have not lodged supervisory review complaints against the decision of the Central District Court of Minsk of 30 August 2018. The authors emphasize that lodging a supervisory appeal does not guarantee the review of a civil case but allows only the submission of an application to the official who decides whether to bring the appeal before the court. The authors note the practice of the Human Rights Committee concerning the role of the supervisory review for the exhaustion of domestic remedies. When considering communications on violations of

the rights of victims in criminal proceedings, the Committee noted that the filing of supervisory complaints does not constitute an "appeal" within the meaning of article 14 (5) of the International Covenant on Civil and Political Rights. For example, in the views adopted by the Committee on communication No. 2120/2011 (*Kovaleva and Kozyar v. Belarus*, CCPR/C/106/D/2120/2011), the Committee noted in paragraph 11.6 regarding the supervisory review:

> Such review only applies to already executory decisions and thus constitutes an extraordinary means of appeal which is dependent on the discretionary power of judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence and therefore cannot be characterized as an "appeal", for the purposes of article 14, paragraph 5.

The procedure of supervisory review of final court decisions is an extraordinary remedy, is discretionary in nature and is limited to consideration of legal issues only; therefore, it is not an effective remedy for the purposes of article 5 (2) (b) of the Optional Protocol to the International Covenant on Civil and Political Rights.[5] As in the case of criminal proceedings, the filing of a supervisory review complaint is not an effective remedy in civil proceedings. In view of the above, the applicants maintain their original submission in full.

## Issues and proceedings before the Committee

*Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the communication ought to be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies because the authors have neither brought supervisory review complaints against the decision of the Civil Division of the Minsk City Court of 15 November 2018 to the President of the Supreme Court of Belarus nor filed complaints against the courts' decisions with a prosecutor's office. The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In that connection, the Committee recalls that requests for supervisory review to the president of a court directed against court decisions that have entered into force depend on the discretionary power of a judge and constitute an extraordinary remedy. The State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. In the present case, however, the State party has not shown whether and in how many cases petitions to the President of the Supreme Court for supervisory review procedures were applied successfully in cases akin to the one at stake. The Committee also notes that a petition to a prosecutor's office 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 4 (1)

[5] See Human Rights Committee, *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), *Korolko v. Russian Federation* (CCPR/C/100/D/1344/2005), *Umarov v. Uzbekistan* (CCPR/C/100/D/1449/2006), *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006), *P.L. v. Belarus* (CCPR/C/102/D/1814/2008) and *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008).

of the Optional Protocol.[6] The Committee therefore considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

6.4 The Committee notes the authors' claims that they were not able to acquaint themselves with the results of the inquiries initiated by the Ministry of Internal Affairs and that the courts examined yet rejected their discrimination claims, thus failing to ensure the protection of the women against discrimination. The Committee, however, considers that the authors did not substantiate these claims to a sufficient degree for the purpose of admissibility. The Committee therefore declares the authors' claims under article 2 (c) of the Convention insufficiently substantiated for the purpose of admissibility and inadmissible under article 2 of the Optional Protocol.

6.5 The Committee declares the communication admissible, as far as it raises issues under articles 1, 2 (a), (b) and (d)–(f), 3 and 5 (a) of the Convention, and proceeds with its consideration of the merits. The Committee also finds that the communication raises issues of substance under article 12 of the Convention.

*Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State party, as provided for in article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the authors' claims that their detention in poor, unhygienic and degrading conditions at both detention facilities, where their specific needs as women, including physiological needs, were not taken into account, amounted to discrimination on the grounds of sex. It further notes the authors' assertions that the detention facilities lack any special area, building or cell designed to accommodate female detainees and that the State party failed to ensure the protection of their dignity, privacy and physical and psychological safety in the facilities, which constitutes a violation by Belarus of its obligations under articles 1, 2 (a), (b) and (d)–(f), 3 and 5 (a) of the Convention.

7.3 The Committee observes that the State party has not provided sufficient clarifications on the substance of these allegations but rather has limited itself to a general description of the premises of the detention facilities (e.g. the cells, equipment and furniture), including reference to isolated examples, such as the provision of cooled boiled water for drinking once per day or one episode in which the authors were allowed to take a shower. In the view of the Committee, although this description may be of relevance, it does not necessarily address the substance of the authors' claims, for instance that toilet facilities were open to the extent that the authors would be visible to male guards when using them. Furthermore, the State party did not comment in any way on the authors' allegations that staff working at the detention facility were exclusively male and that, as a result, the authors were subjected to gender-based discrimination.

7.4 The Committee recalls that, in accordance with article 3 of the Convention and rule 81 of the Nelson Mandela Rules, women prisoners shall be attended and supervised by women officers. It further recalls its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, according to which discrimination against women within the meaning of article 1 encompasses gender-based violence, defining it in paragraph 6 of general recommendation No. 19 as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict

[6] See, mutatis mutandis, *Malei v. Belarus* (CCPR/C/129/D/2404/2014), para. 8.4, and *V.P. v. Belarus* (CEDAW/C/79/D/131/2018), para. 6.3.

physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty". [7] In accordance with paragraph 7 (b) of general recommendation No. 19, the Committee reiterates that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms", including the "right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment", constitutes discrimination within the meaning of article 1 of the Convention.[8]

7.5 The Committee recalls that the fact that detention facilities do not address the specific needs of women constitutes discrimination within the meaning of article 1 of the Convention. Thus, in line with article 4 (2) of the Convention, principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex) states that special measures designed to address the specific needs of women prisoners shall not be deemed to be discriminatory. The need for a gender-sensitive approach to problems faced by women prisoners was also endorsed by the Assembly by its adoption, in resolution 65/229, of the Bangkok Rules.

7.6 In the present case, besides the poor conditions of detention, the authors claim that all staff working at the detention facility were men. As women detainees, they were supervised by male guards, who had unrestricted visual and physical access to them and other detained women. The Committee recalls in this respect that, according to rule 81 of the Nelson Mandela Rules:

> 1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
>
> 2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
>
> 3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

This important safeguard, based on non-discrimination against women in line with article 1 of the Convention, has been reaffirmed by the Committee in its concluding observations on the reports of States parties, [9] as well as by the Human Rights Committee in paragraph 15 of its general comment No. 28 (2000) on the equality of rights between men and women and in the report of the Special Rapporteur on violence against women, its causes and consequences.[10]

7.7 The Committee notes that the guards were in a position to use the peepholes to watch the authors in the course of private activities, such as using the toilet, which was located inside the cell and was blocked from view on only one side by a screen intended to give an impression of privacy but that did not obstruct the view of the toilet from the door. These allegations have not been challenged by the State party. The Committee recalls that respect for the privacy and dignity of women prisoners must be a high priority for prison staff. The Committee considers that the abusive treatment of the authors by penitentiary officials, namely male prison staff, including unjustified interference with their privacy, constitutes discrimination within the

[7] See also general recommendation No. 28, para. 19.

[8] In this regard, see CAT/C/54/2, paras. 63 and 64.

[9] See, for example, the concluding observations of the Committee on the sixth periodic report of Yemen (CEDAW/C/YEM/CO/6).

[10] E/CN.4/2000/68/Add.3, para. 44; see also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 10, and CAT/OP/27/1.

meaning of articles 1 and 5 (a) of the Convention, as explained in general recommendation No. 35. The Committee is of the opinion that the specific unwelcome conduct of a sexual nature of the male guards amounts to sexual harassment, which is a form of gender-based violence and which may be humiliating and may further constitute a health and safety problem. The Committee considers that, in the present case, the authors suffered harm to their dignity, moral damage and prejudice owing to the humiliating and degrading treatment, sexual harassment and negative health consequences suffered during detention. Accordingly, the Committee concludes that the State party failed to meet its obligations under articles 2 and 5 (a) of the Convention.[11]

7.8 In accordance with article 7 (3) of the Optional Protocol and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations under articles 1, 2 (a), (b) and (d)–(f), 3, 5 (a) and 12 of the Convention.

8. The Committee makes the following recommendations to the State party:

(a) Concerning the authors of the communication:

(i) Provide full reparation, including adequate compensation, to the authors, commensurate with the gravity of the violations of their rights;

(ii) Provide appropriate health services to address the negative health consequences suffered by the authors, both physical and psychological;

(b) In general:

(i) Take measures to ensure the protection of the dignity and privacy, as well as the physical and psychological safety, of women detainees in all detention facilities, including adequate accommodation and materials required to meet women's specific hygiene needs, in line with the Convention, as well as with the Bangkok Rules;

(ii) Ensure access to gender-specific health care for women detainees, including appropriate psychological services in detention facilities and prisons;

(iii) Ensure that allegations by women detainees of intersectional discrimination and cruel, inhuman or degrading treatment are effectively investigated;

(iv) Provide safeguards to protect women detainees from all forms of abuse, including gender-specific abuse, and ensure that women detainees are searched and supervised by properly trained women staff, in line with the Convention, as well as with the Bangkok Rules and with national law implementation and monitoring;

(v) Ensure that all personnel assigned to work with detainees (both men and women) receive appropriate training relating to the gender-specific needs and human rights of women detainees, in line with the Convention, as well as the Bangkok Rules;

(vi) Formulate policies, guidelines and comprehensive programmes that ensure that the needs of women detainees and prisoners are met with regard to their dignity and fundamental human rights;

(vii) Recognize sexual harassment at detention facilities as a form of discrimination and gender-based violence against women, and develop guidelines, protocols and standards to address the proper conduct of guards in

[11] See *Abramova v. Belarus*, para. 7.7, and *R.G. v. Kyrgyzstan* (CEDAW/C/77/D/133/2018).

these circumstances, ensuring that women detainees have effective redress in this regard.

9. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the present views and recommendations and to have them translated into the official national languages and widely disseminated in the State party in order to reach all sectors of society.