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|  |  | CCPR/C/137/D/2911/2016, CCPR/C/137/D/3081/2017CCPR/C/137/D/3137/2018, CCPR/C/137/D/3150/2018 |
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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 2911/2016, 3081/2017, 3137/2018 3150/2018[[1]](#footnote-2)\*’[[2]](#footnote-3)\*\*

*Communications submitted by:* Larisa Shchiryakova (represented by counsel, Leonid Sudalenko), Tatiana Smotkina (represented by counsel, Pavel Levinov), Tamara Shchepyotkina (represented by counsel, Leonid Sudalenko), and Dmitry Lupach (represented by counsel, Pavel Levinov).

*Alleged victims:* The authors

*State party:* Belarus

*Dates of communications:* 20 October 2016 (communication No. 2911/2016); 24 February 2017 (communication No. 3081/2017); 8 November 2017 (communication No. 3137/2018); and 27 December 2017 (communication No. 3150/2018) (initial submissions)

*Document references:* Decisions taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 30 December 2016 (communication No. 2911/2016); 19 December 2017 (communication No. 3081/2017); 16 March 2018 (communication No. 3137/2018) and 21 March 2018 (communication No. 3150/2018)

*Date of adoption of Views:* 14 March 2023

*Subject matter:* Sanctioning of journalists for production and distribution of mass media products without appropriate accreditation

*Procedural issue:* Exhaustion of domestic remedies; substantiation of claims

*Substantive issues:* Freedom of expression

*Articles of the Covenant:* 2 (2) and (3), 19

*Articles of the Optional Protocol:* 2, 3 and 5(2)(b)

1.1 The authors of the communications are Larisa Shchiryakova (the first author) (communication No. 2911/2016), Tatiana Smotkina (the second author) (communication No. 3081/2017), Dmitry Lupach (the third author) (communication No. 3137/2018), and Tamara Shchepyotkina (the fourth author) (communication No. 3150/2018). The authors are nationals of Belarus born in 1973, 1976, 1967 and 1952, respectively. They claim that the State party has violated their rights under articles 2 (2), 2 (3) and 19 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The authors are represented by counsels.

1.2 On 22 February 2023, pursuant to rule 97 (3) of the Committee’s rules of procedure, the Committee decided to join communications 2911/2016, 3081/2017, 3137/2018 and 3150/2018 submitted by four different authors, for a joint decision, in view of substantial factual and legal similarity.

 The facts as submitted by the authors

2.1 All authors are journalists. On various dates between 2015 and 2017, they carried out interviews on different topics in Belarus and posted audio/video recordings thereof at Polish internet media ‘Belsat’ and/or radio ‘Racja’. They were all found guilty by courts in Belarus of violating article 22.9 (2) of the Administrative Offences Code (unlawful production and distribution of mass media products) for taking the interviews without being accredited at the Ministry of Foreign Affairs as journalists working for foreign mass media, as required by the Law on the Mass Media No. 427-З of 17 July 2008. As a result, fines ranging from 220 to 335 EUR were imposed on all of them. All authors unsuccessfully appealed their administrative sentences to the regional courts.

2.2 The facts relevant to each individual communication are summarized below.

 Communication No. 2911/2016, Larisa Shchiryakova v. Belarus

2.3 On 20 November 2015, the author conducted interviews in Gomel region on the topic of orphaned children and later posted the video report on the internet. On an unspecified date, the video was broadcasted by the Polish satellite channel ‘Belsat’. On 13 January 2016, the Gomel District Court in Gomel region fined the author to 4 620 000 Belarussian roubles (some 220 EUR) for violating article 22.9 (2) of the Administrative Offences Code. On 23 January 2016, the author filed a cassation appeal to the Gomel Regional Court, which rejected her complaint on 24 February 2016. The author appealed under the supervisory review proceedings to the Chair of the Gomel Regional Court on 2 March 2016 and to the Chair of the Supreme Court on 8 April 2016. Both appeals were rejected on 7 April and 26 May 2016, respectively. The author appealed under the supervisory review proceedings to the Gomel Regional Prosecutor’s Office on 31 May 2016 and to the Prosecutor General’s Office on 23 June 2016. Her appeals were rejected on 20 June and 14 July 2016, respectively.

2.4 On 18 February 2016, the author carried out a video recording of a meeting of the regional state institutions on the topic of refugees, and interviewed participants in the meeting. She posted the video report on the internet. On an unspecified date, the video was broadcasted by the Polish satellite channel ‘Belsat’. On 15 April 2016, the Gomel District Court in Gomel region fined the author to 7 350 000 Belarussian roubles (some 335 EUR) for violating article 22.9 (2) of the Administrative Offences Code. On 17 April 2016, the author filed a cassation appeal to the Regional Court in Gomel, which rejected it on 20 May 2016. The author appealed under the supervisory review proceedings to the Chairs of the Gomel Regional Court on 30 May 2016 and of the Supreme Court on 11 July 2016. Both appeals were rejected on 6 July and 19 August 2016, respectively. The author appealed under the supervisory review proceedings to the Gomel Regional Prosecutor’s Office on 30 August 2016 and to the Prosecutor General’s Office on 16 September 2016. Her appeals were rejected on 9 September and 13 October 2016, respectively.

 Communication No. 3081/2017, Tatiana Smotkina v. Belarus

2.5 On 8 June 2015, the author took photos and interviewed a municipal official about the children’s public event titled “Positive ways” organised by the local cultural department. On 9 June 2015, the interview prepared by the author was posted on the internet site of the Polish radio station “Radue Ratsia”. On 28 July 2015, the Court of Glybokskogo district fined the author to 4 500 000 Belarussian roubles (some 268 EUR) for violating article 22.9 (2) of the Administrative Offences Code. On 14 August 2015, the author appealed the decision of the Court of the Glybokskogo District to the Vitebsky Regional Court. On 19 August 2015, the Vitebsky Regional Court dismissed the appeal arguing that the author did not have an accreditation as a journalist neither in Belarus nor in international mass media outlets and as her publication was posted on the website of a foreign radio station, she had illegally produced and distributed mass media products. In January 2016, the author appealed the decision of the Vitebsky Regional Court to the Supreme Court of Belarus Republic. On 14 March 2016, the Supreme Court of Belarus Republic did not find grounds for the re-adjudication of the case and rejected the complaint.

 Communication No. 3137/2018, Dmitry Lupach v. Belarus

2.6 On 26 August 2017, the author took a video-interview with Mr. P. and later published it on an independent TV web-site belsat.eu. On 6 October 2017, the Court of Gluboksky District of Vitebsk region fined the author to 690 Belarussian roubles (some 300 EUR) for violating article 22.9 (2) of the Administrative Offences Code. On 16 October 2017, the author filed an appeal to the Vitebsk Regional Court. The appeal was rejected by the Vitebsk Regional Court on 25 October 2017. The author has not appealed further under the supervisory review proceedings.

 Communication No. 3150/2018, Tamara Shchepyotkina v. Belarus

2.7 On 28 September 2017, the author interviewed several people about an upcoming court case in the building of the Kobrin District Court, Brest Region. She then placed the audio report in the Internet. It was later broadcasted by Polish radio company ‘Racja’. On 15 November 2017, the Court of Berezovsky District of Brest region fined the author to 575 Belarussian roubles (some 250 EUR) for violating article 22.9 (2) of the Administrative Offences Code. On 20 November 2017, the author filed an appeal to the Brest Regional Court, which rejected the appeal on 14 December 2017. The author has not appealed further under the supervisory review proceedings.

 The complaints

3. The authors claim that the State party has violated their rights under article 19 of the Covenant. By requesting an accreditation for performing their professional duties, the State party unnecessarily limited their freedom of expression. The first and the fourth authors further claim violation of article 19 in conjunction with articles 2 (2) and 2 (3) (b) of the Covenant.

 State party’s observations on admissibility and merits

4.1 By notes verbales of 21 September 2018,[[3]](#footnote-4) 12 February 2018,[[4]](#footnote-5) 14 May 2018[[5]](#footnote-6) and 8 May 2018,[[6]](#footnote-7) the State party submitted its observations on admissibility and merits of the communications.

4.2 In respect of communication 2911/2016, the State party submits that the author used all available domestic remedies and had an opportunity to have her claims considered by domestic courts.

4.3 Concerning communications Nos. 3081/2017, 3137/2018 and 3150/2018, the State party submits that the authors had failed to exhaust all available domestic remedies. The author of communication No. 3081/2017 had not submitted an appeal to the Prosecutor General. The authors of communications Nos. 3137/2018 and 3150/2018 had failed to appeal to the Chair of a higher court and of the Supreme Court, as well as to the prosecutor’s office. The State party submits that in 2017, 97% of prosecutorial protests have been accepted and considered by the courts (3665 out of 3766) and that it is an effective remedy. The State party considers that the authors had failed to meet the requirements of articles 2 and 3 of the Optional Protocol due to non-exhaustion of domestic remedies and an abuse of the right of submission.

4.4 Regarding all communications, the State party submits that the requirement for journalists to be accredited is aimed at creating conditions for realization of citizens’ constitutional rights and freedoms and cannot be interpreted as a limitation under article 19 (3) of the Covenant.

 Authors’ comments on the State party’s observations

5.1 On 5 November 2018[[7]](#footnote-8), 12 June 2018[[8]](#footnote-9), 13 June 2018[[9]](#footnote-10) and 5 July 2018[[10]](#footnote-11), the authors submitted their comments on the State party’s respective observations. Addressing the State party’s arguments as to the inadmissibility of the communications for failure to exhaust domestic remedies, the authors in communications Nos. 3081/2017, 3137/2018 and 3150/2018 submit that the supervisory review procedure does not constitute an effective domestic remedy, as it does not entail a fresh examination of the case and its outcome depends on the sole discretion of the relevant prosecutor or judge.

5.2 In response to the State party’s observations on the merits, the author in communication No. 2911/2016 argues, that any restriction on the rights under article 19 (2) has to meet requirements of necessity and proportionality under article 19 (3) of the Covenant. With reference to the Committee’s jurisprudence on the subject matter,[[11]](#footnote-12) the author claims that the State party has to substantiate that the restrictions were necessary and proportionate in each particular case. She also claims that the system of accreditation is permissible only where necessary to provide journalists with privileged access to certain places and/or events. In her case, the State party could not prove that the sanctions applied to the author for collecting and disseminatinig information were necessary and proportionate. Moreover, the requirement of accreditation was not applicable in her case as she was not seeking a privileged access to any places or events.

 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) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party’s argument that the authors in communications 3081/2017, 3137/2018 and 3150/2018 have failed to seek a supervisory review of the impugned decisions in their cases by the Prosecutor’s and Prosecutor General’s Office or by the Chair or Deputy Chair of a higher court and of the Supreme Court of Belarus. In this context, the Committee considers that filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that 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. The Committee further recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor’s office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[[12]](#footnote-13) The Committee also notes that the supervisory appeals submitted by the first, third and fourth authorts to a higher court, and the appeals of the first author to the Prosecutor’s Office, were not effective and that the circumstances under which sanctions were imposed, are similar to all authors. The Committee notes that in the present case, the authors have exhausted all effective domestic remedies, and therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the first and the fourth authors’ claims that the State party violated their rights under article 19, read in conjunction with article 2 (2) of the Covenant. The Committee reiterates that the provisions of article 2 of the Covenant cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.[[13]](#footnote-14) The Committee notes, however, that the first and fourth authors have already alleged a violation of their rights under article 19 of the Covenant, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider the examination of whether the State party has also violated its general obligations under article 2 (2), read in conjunction with article 19, to be distinct from examination of the violation of these authors’ rights under article 19 of the Covenant. The Committee therefore considers that the authors’ claims in that regard are incompatible with article 2 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee further notes the same authors’ claims under article 19, read in conjunction with article 2 (3) of the Covenant. In the absence however of any further pertinent information on file, the Committee considers that these authors have failed to sufficiently substantiate such claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee finally notes that the facts, as submitted by all the four authors in their respective communications, raise issues under article 19 of the Covenant. The Committee, therefore, consider the communications sufficiently substantiated for the purposes of admissibility, and proceeds with their consideration of the merits.

 Considerations of the merits

7.1 The Committee has considered the communications in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors’ claims that their right to freedom of expression has been restricted in violation of article 19 of the Covenant, as they were fined for exercising journalistic activity by carrying out interviews in Belarus with their subsequent publishing in foreign mass media, without an accreditation of the Ministry of Foreign Affairs as journalists working for foreign mass media in accordance with the Law the on Mass Media. The Committee notes their claim that as a result, the authors were charged under article 22.9 (2) of the Administrative Offences Code for failing to comply with the requirements of the said Law. It also notes the authors’ argument that the authorities failed to explain why the restrictions imposed on their rights were necessary and proportionate under article 19 (3) of the Covenant.

7.3 The Committee has therefore to consider whether the restrictions imposed on the authors’ freedom to gather and impart information, which they exercised as journalists, are justified under any of the criteria set out in article 19 (3) of the Covenant. The Committee recalls in that respect its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression is essential for any society and a foundation stone for every free and democratic society (para. 2). It notes that article 19 (3) allows restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputation of others; or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest to be protected.[[14]](#footnote-15) The Committee recalls that it is for the State party to demonstrate that the restrictions on the author’s rights under article 19 of the Covenant were necessary and proportionate.[[15]](#footnote-16)

7.4 The Committee observes that, in the present cases, the authors were sanctioned with a significant fine on the basis of the Law on the Mass Media, which entails the prohibition to exercize journalist activity in Belarus with further publication in foreign mass media without being accredited as a representative of the foreign media. The Committee refers in this respect to its General Comment 34 on freedoms of opinion and expression where the Committee explicitly states that general State systems of registration or licensing of journalists are incompatible with article 19 (3) of the Covenant. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain events/places[[16]](#footnote-17). Such schemes should further be applied in a manner that is non-discriminatory and meet the requirements of article 19 and other provisions of the Covenant. The Committee observes that in the present case the State party relies on the provision of the Law on the Mass Media for justifying restrictions on freedom of expression of the authors. The State party invokes in this regard a broad goal of ‘creating conditions for realization of citizens’ constitutional rights’ as a reason for requesting accreditation of journalists, but does not explain or justify such statement. The Committee considers that the restrictions imposed on the authors, which manifested on one hand, in the requirement to obtain accreditation from the Ministry of Foreign Affairs, and on the other hand, in sanctions imposed on the authors for carrying out their professional activities without such accreditation, were indeed based on domestic law. However, neither the State party nor the domestic courts have provided any explanations as to how such restrictions were justified pursuant to the conditions of necessity and proportionality as set out in article 19 (3) of the Covenant, and whether the penalties imposed (i.e. the administrative fines), even if based on law, were necessary and proportionate and in compliance with any of the legitimate purposes listed in the mentioned provisions. It therefore concludes that the authors’ rights under article 19 (2) of the Covenant have been violated.[[17]](#footnote-18)

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 article 19 (2) of the Covenant.

9. 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, inter alia, to take appropriate steps to reimburse the current value of the fine and any legal costs incurred by the authors in relation to the domestic proceedings. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications,[[18]](#footnote-19) and thus the State party should revise its normative framework, in particular its Law on the Mass Media, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under article 19 of the Covenant may be fully enjoyed in the State party.

10. On 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. The present communication was 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 case law, the State party continues to be subject to the application of the Optional Protocol as regards the present communication.[[19]](#footnote-20) Since pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

1. \* Adopted by the Committee at its 137th session (6-24 March 2023).

 \*\* The following members of the Committee participated in the examination of the communication: [Tania María Abdo Rocholl,](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/CV_ABDO_ROCHOLL.docx) Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gomez Martinez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernan Quezada Cabrera, José Manuel Santos Pais, Chongrok Soh, Tijana Surlan, Kobaujah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. In relation to communication No. 2911/2016. [↑](#footnote-ref-4)
4. In relation to communication No. 3081/2017. [↑](#footnote-ref-5)
5. In relation to communication No. 3137/2018. [↑](#footnote-ref-6)
6. In relation to communication No. 3150/2018. [↑](#footnote-ref-7)
7. In communication no. 2911/2016. [↑](#footnote-ref-8)
8. In communication no. 3081/2017. [↑](#footnote-ref-9)
9. In communication no. 3137/2018. [↑](#footnote-ref-10)
10. In communication no. 3150/2018. [↑](#footnote-ref-11)
11. Reference is made to *Koktish v. Belarus* (CCPR/C/111/D/1985/2010). [↑](#footnote-ref-12)
12. *Grygory Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Andrei Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; *Natalya Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3. [↑](#footnote-ref-13)
13. *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.; *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4. [↑](#footnote-ref-14)
14. See the Committee’s general comment No 34 (2011) on the freedoms of opinion and expression, para. 34. [↑](#footnote-ref-15)
15. *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.; *Zhukovsky v Belarus* (CCPR/C/127/D/2955/2017), para. 7.3. [↑](#footnote-ref-16)
16. See the Committee’s general comment No 34 (2011) on the freedoms of opinion and expression, para. 44. [↑](#footnote-ref-17)
17. See, e.g. *Parfenenka v. Belarus* (CCPR/C/134/DR/2737/2016), para 7.5 [↑](#footnote-ref-18)
18. See, e.g., *Zhukovsky v Belarus* (CCPR/C/127/D/2955/2017); *Shchiryakova v.* *Belarus* (CCPR/C/135/D/2848/2016) [↑](#footnote-ref-19)
19. See e.g. *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11 [↑](#footnote-ref-20)