



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 2911/2016, No. 3081/2017, No. 3137/2018 and No. 3150/2018**,*

<i>Communications submitted by:</i>	Larisa Shchiryakova (represented by counsel, Leonid Sudalenko), Tatiana Smotkina (represented by counsel, Pavel Levinov), Tamara Shchepiyotkina (represented by counsel, Leonid Sudalenko) and Dmitry Lupach (represented by counsel, Pavel Levinov)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Dates of communications:</i>	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)
<i>Document references:</i>	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) (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2023
<i>Subject matter:</i>	Sanction of journalists for producing and distributing mass media products without appropriate accreditation

* Reissued for technical reasons on 7 June 2023.

** Adopted by the Committee at its 137th session (27 February–24 March 2023).

*** 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, Kobaujah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	2 (2) and (3) and 19
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The authors of the communications are Larisa Shchiryakova (communication No. 2911/2016), Tatiana Smotkina (communication No. 3081/2017), Dmitry Lupach (communication No. 3137/2018) and Tamara Shchepiyotkina (communication No. 3150/2018), 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 Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The authors are represented by counsel.

1.2 On 22 February 2023, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to join communications No. 2911/2016, No. 3081/2017, No. 3137/2018 and No. 3150/2018, which had been submitted by four different authors, for a joint decision, in view of their substantial factual and legal similarity.

Facts as submitted by the authors

2.1 All the authors are journalists. On various dates between 2015 and 2017, they carried out interviews on different topics in Belarus and posted audio and/or video recordings thereof on Poland-based media websites Belsat and 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 recording the interviews without being accredited by the Ministry of Foreign Affairs as journalists working for foreign mass media, as required by Law No. 427-Z on Mass Media of 17 July 2008. As a result, fines ranging from 220 to 335 euros were imposed on all of them. All the authors unsuccessfully appealed their administrative sentences before the regional courts.

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

Larisa Shchiryakova (communication No. 2911/2016)

2.3 On 20 November 2015, the author conducted and recorded interviews in the Gomel region on the topic of orphaned children and later posted the video on the Internet. On an unspecified date, the video was broadcast by the satellite television channel Belsat. On 13 January 2016, the Gomel District Court fined the author 4,620,000 Belarusian roubles (approximately 220 euros) for violating article 22.9 (2) of the Administrative Offences Code. On 23 January 2016, the author filed a cassation appeal with the Gomel Regional Court, which rejected her complaint on 24 February 2016. The author appealed under the supervisory review procedure 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 procedure to the Gomel Regional Prosecutor's Office on 31 May 2016 and to the Prosecutor General's Office on 23 June 2016. Those appeals were rejected on 20 June and 14 July 2016, respectively.

2.4 On 18 February 2016, the author recorded a meeting of the regional institutions on the topic of refugees and interviewed participants in the meeting. She later posted the video on the Internet. On an unspecified date, the video was broadcast by the satellite television channel Belsat. On 15 April 2016, the Gomel District Court fined the author 7,350,000 Belarusian roubles (approximately 335 euros) for violating article 22.9 (2) of the Administrative Offences Code. On 17 April 2016, the author filed a cassation appeal with the Gomel Regional Court, which was rejected on 20 May 2016. The author appealed under the supervisory review procedure to the Chair of the Gomel Regional Court and the Chair of the Supreme Court on 30 May and 11 July 2016, respectively. Both appeals were rejected on 6 July and 19 August 2016, respectively. The author appealed under the supervisory review procedure 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.

Tatiana Smotkina (communication No. 3081/2017)

2.5 On 8 June 2015, the author took photographs and interviewed a municipal government official about a public event for children entitled "Positive ways", which had been organized by the local cultural department. On 9 June 2015, the interview was posted on the website of the online radio station Radio Racja. On 28 July 2015, the Glubokoye District Court fined the author 4,500,000 Belarussian roubles (approximately 268 euros) for violating article 22.9 (2) of the Administrative Offences Code. On 14 August 2015, the author appealed the decision of the Glubokoye District Court to the Vitebsk Regional Court. On 19 August 2015, the Vitebsk Regional Court dismissed the appeal, arguing that the author was not accredited as a journalist in either Belarus or in international mass media outlets, and since 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 Vitebsk Regional Court to the Supreme Court. On 14 March 2016, the Supreme Court did not find grounds for re-adjudication of the case and rejected the complaint.

Dmitry Lupach (communication No. 3137/2018)

2.6 On 26 August 2017, the author recorded an interview with Mr. P. and later posted it on the satellite television channel Belsat. On 6 October 2017, the Glubokoye District Court in Vitebsk fined the author 690 Belarusian roubles (approximately 300 euros) for violating article 22.9 (2) of the Administrative Offences Code. On 16 October 2017, the author filed an appeal with the Vitebsk Regional Court, which was rejected on 25 October 2017. The author did not appeal under the supervisory review procedure.

Tamara Shchepiyotkina (communication No. 3150/2018)

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 posted the audio recording on the Internet. It was later broadcast by the online radio station, Radio Racja. On 15 November 2017, the Beryozovka District Court in Brest Region fined the author 575 Belarusian roubles (approximately 250 euros) for violating article 22.9 (2) of the Administrative Offences Code. On 20 November 2017, the author filed an appeal with the Brest Regional Court, which rejected the appeal on 14 December 2017. The author did not appeal under the supervisory review procedure.

Complaint

3. The authors claim that, by requiring them to have accreditation for performing their professional duties, the State party has unnecessarily limited their right to freedom of expression and has violated their rights under article 19 of the Covenant. Ms. Shchiryakova and Ms. Shchepiyotkina also claim that the State party violated their rights under article 19, in conjunction with article 2 (2) and 2 (3) (b), of the Covenant.

State party's observations on admissibility and the merits

4.1 In notes verbales dated 21 September 2018,¹ 12 February 2018,² 14 May 2018³ and 8 May 2018,⁴ the State party submitted its observations on admissibility and the merits of the communications.

4.2 With respect to communication No. 2911/2016, the State party submits that the author has used all available domestic remedies and had an opportunity to have her claims considered by the domestic courts.

¹ In relation to communication No. 2911/2016.

² In relation to communication No. 3081/2017.

³ In relation to communication No. 3137/2018.

⁴ In relation to communication No. 3150/2018.

4.3 With respect to communications Nos. 3081/2017, 3137/2018 and 3150/2018, the State party submits that the authors have failed to exhaust all available domestic remedies: Ms. Smotkina (communication No. 3081/2017) has not submitted an appeal to the Prosecutor General's Office; and Mr. Lupach (communication No. 3137/2018) and Ms. Shchepyotkina (communication No. 3150/2018) have not appealed to the Chair of a higher court or to the Chair of the Supreme Court or to the Prosecutor's Office. The State party submits that, in 2017, 97 per cent (3,665 out of 3,766) of prosecutorial protests were accepted and considered by the courts and that it is an effective remedy. The State party considers that those authors fail to meet the requirements of articles 2 and 3 of the Optional Protocol owing to non-exhaustion of domestic remedies and abuse of the right of submission.

4.4 Regarding all the communications, the State party submits that the requirement for journalists to be accredited is aimed at creating conditions for the 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 on admissibility and the merits

5.1 On 5 November 2018,⁵ 12 June 2018,⁶ 13 June 2018⁷ and 5 July 2018,⁸ the authors submitted their comments on the State party's observations. Addressing the State party's arguments as to the inadmissibility of their communications for failure to exhaust domestic remedies, Ms. Smotkina, Mr. Lupach and Ms. Shchepyotkina 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, Ms. Shchiryakova argues that any restriction on the rights under article 19 (2) of the Covenant must meet the requirements of necessity and proportionality under article 19 (3) of the Covenant. With reference to the Committee's jurisprudence,⁹ the author claims that the State party has to substantiate that the restrictions were necessary and proportionate in each 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. She notes that, in her case, the State party could not prove that the sanctions applied for collecting and disseminating information were necessary and proportionate. Moreover, the requirement of accreditation was not applicable in her case as she was not seeking privileged access to any place or event.

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 Ms. Smotkina, Mr. Lupach and Ms. Shchepyotkina failed to file requests for supervisory review with the Regional Prosecutor and the Prosecutor General or with the Chair or Deputy Chair of a higher court and the Chair of the Supreme Court. In this context, the Committee considers that filing a request for supervisory review with a higher court of court decisions that have taken effect and depending on the discretionary power of a judge constitutes an extraordinary remedy for which the State party must show that there is a reasonable prospect that such request would

⁵ In relation to communication No. 2911/2016.

⁶ In relation to communication No. 3081/2017.

⁷ In relation to communication No. 3137/2018.

⁸ In relation to communication No. 3150/2018.

⁹ *Koktish v. Belarus* (CCPR/C/111/D/1985/2010).

provide an effective remedy in the circumstances of the case. The Committee recalls its jurisprudence, according to which a petition for supervisory review submitted to a prosecutor's office that is dependent on the discretionary power of the prosecutor for supervisory review of court decisions that have taken effect does not constitute a remedy that must be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹⁰ The Committee notes that the appeals for supervisory review submitted by Ms. Shchiryakova, Mr. Lupach and Ms. Shchepiyotkina to a higher court, and the appeal of Ms. Shchiryakova to the Regional Prosecutor's Office were not effective, and that the circumstances under which sanctions were imposed are similar in all the cases. The Committee notes that, in the present cases, the authors have exhausted all effective domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communications.

6.4 The Committee notes the claims of Ms. Shchiryakova and Ms. Shchepiyotkina that the State party violated their rights under article 19, read in conjunction with article 2 (2), of the Covenant. The Committee considers that the provisions of article 2 of the Covenant cannot be invoked as 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.¹¹ In that respect, the Committee notes that Ms. Shchiryakova and Ms. Shchepiyotkina 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. Therefore, the Committee does not consider the examination of whether the State party has also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with article 19, to be distinct from examination of the violation of these authors' rights under article 19 of the Covenant. Accordingly, the Committee considers that the authors' claims in that regard are incompatible with article 2 of the Covenant and are thus inadmissible under article 3 of the Optional Protocol.

6.5 The Committee also notes the claims of Ms. Shchiryakova and Ms. Shchepiyotkina under article 19, read in conjunction with article 2 (3), of the Covenant. However, in the absence of further pertinent information on file, the Committee considers that these authors have failed to sufficiently substantiate those claims for the purposes of admissibility. Accordingly, it declares this part of the communications inadmissible under article 2 of the Optional Protocol.

6.6 Lastly, the Committee notes that the facts, as submitted by the four authors in their respective communications, raise issues under article 19 of the Covenant. The Committee considers that the authors have sufficiently substantiated their claims under article 19 of the Covenant for the purposes of admissibility. It declares the communications admissible and proceeds with its consideration of the merits.

Consideration 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 the State party has violated their right to freedom of expression under article 19 of the Covenant by fining them for exercising journalistic activity in the form of carrying out interviews in Belarus and subsequently posting the recordings in foreign mass media, without accreditation issued by the Ministry of Foreign Affairs as journalists working for foreign mass media, in accordance with Law No. 427-Z on Mass Media. The Committee also notes the authors' claims that, owing to their activities as journalists, they were charged under article 22.9 (2) of the Administrative Offences Code for failing to comply with the requirements of the said Law. The Committee further notes the authors' argument that the authorities have failed to explain how the

¹⁰ *Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; and *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3.

¹¹ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4.

restrictions imposed on their rights were necessary and proportionate under article 19 (3) of the Covenant.

7.3 The Committee must therefore consider whether the restrictions imposed on the authors' freedom to seek, receive 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 its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, *inter alia*, that 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) of the Covenant 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 reputations of others; or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Furthermore, 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.¹² The Committee recalls that the onus is on the State party to demonstrate that restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.¹³

7.4 The Committee observes that, in the present cases, the authors were sanctioned with significant fines on the basis of the Law on Mass Media, which prohibits journalists from producing products in Belarus for subsequent dissemination in foreign mass media without being accredited as a representative of the foreign media. The Committee refers in this respect to its general comment No. 34 (2011) on freedoms of opinion and expression, in which it 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 places and/or events (para. 44). Furthermore, such schemes should be applied in a manner that is non-discriminatory and meets the requirements of article 19 and other provisions of the Covenant. The Committee observes that, in the present cases, the State party relies on the provisions of article 22.9 (2) of the Law on Mass Media to justify the restrictions imposed on the authors' freedom of expression. The State party invokes the broad goal of creating conditions for the realization of citizens' constitutional rights as a reason for requiring that journalists be accredited, but does not explain or justify the statement. The Committee considers that the restriction imposed on the authors, which was 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, was 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. The Committee therefore concludes that the authors' rights under article 19 (2) of the Covenant have been violated.¹⁴

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

¹² General comment No. 34 (2011) on the freedoms of opinion and expression, para. 34.

¹³ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3; and *Zhukovsky v Belarus*, para. 7.3.

¹⁴ *Parfenenka v. Belarus* (CCPR/C/134/D/2737/2016), para. 7.6.

communications,¹⁵ and recommends that the State party revise its normative framework, in particular its Law on Mass Media, consistent with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under article 19 may be fully enjoyed in the State party.

10. 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 present 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 case law, the State party continues to be subject to the application of the Optional Protocol in respect of the present communications.¹⁶ 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.

¹⁵ *Zhukovsky v. Belarus*; and *Shchiryakova v. Belarus* (CCPR/C/135/D/2848/2016).

¹⁶ See, for example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; and *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11.