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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 communication No. 2919/2016[1*, 2**]

Communication submitted by:	Viktoria Fedorova (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	13 November 2016 (initial submissions)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 December 2016 (not issued in document form)
Date of adoption of Views:	24 October 2022
Subject matter:	Refusal of authorities to share information on conditions of detention; unfair trial
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to seek and receive information; fair trial; effective remedy
Articles of the Covenant:	2 (3) (a), 14 (1) and 19 (2)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Viktoria Fedorova, a national of Belarus born in 1989. She claims that the State party has violated her rights under articles 2 (3) (a), 14 (1)

[1] * Adopted by the Committee at its 136th session (10 October–4 November 2022).

[2] ** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobaujah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

and 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author submits that she is a human rights defender of the Human Rights Defenders against Torture initiative, one of the main purposes of which is to monitor the conditions of detention facilities. On 14 September 2015, the author sent letters to five district police departments for the Kalinkavitski, Narawlyanski, Rahachowski, Svietlahorsk and Zhlobinski Districts in Gomel Region, requesting them to provide information on the conditions of detention in their respective temporary detention centres. The author asked specific questions about the conditions of detention of persons serving an administrative detention for a period from 3 to 72 hours.[3]

2.2 On various dates, all five district police departments indicated they could not respond to the author, since the information was classified and could be used exclusively for "internal purposes". On 23 October 2015, the author filed a complaint with Gomel Regional Police Department, noting that the five district police departments had violated her right to receive and disseminate information under article 34 of the Constitution. In this context, the author argued that the police had failed to explain why the restrictions imposed on her right to receive information on the conditions of detention of persons in temporary detention facilities were necessary to ensure respect for the rights or reputations of others, as well as for the protection of national security, public order, public health or morals. In her complaint, the author also noted that she sought information in relation to the activities of State institutions that were open to the public and subsequently could not be restricted in accordance with article 16 of the law No. 455-Z on information, informatization and protection of information of 10 November 2008 (which provides a list of the types of information that should not be restricted). The author also noted that the resolution of the Council of Ministers regulating the distribution of classified information did not contain a reference to the information on conditions of detention.[4]

2.3 The author submits that the information she sought was aimed at ensuring that the district police departments were implementing the decree of the Ministry of Internal Affairs regulating the conditions of detention of persons serving an administrative arrest in the specialized institutions of internal affairs[5] and at monitoring the implementation of that decree. The author adds that she did not seek information about specific detainees but rather about their accommodation and conditions of detention, which is information related to by-laws and is open to the public. The author explains that, as a human rights defender

[3] The author asked for the following information: the number of cells in the detention centre, their sizes and the number of persons they could accommodate; if information on the set of rights and obligations of detainees was available in the cells; if all cells were equipped with beds, tables, chairs, bedside tables and clothes-hangers; if each detained person had access to a bed, mattress, pillow, blanket, sheets, pillowcase and towel; if every detainee was provided with water and with such toilet and hygiene articles as were necessary for health and cleanliness; if cells were equipped with toilets, including flush barrels, as well as with wash basins, and if hot water was available; if the privacy of detainees was respected when using toilets; whether detainees had access to clean drinking water; if detained persons had access to hot water for taking a shower, including during the shutdown of the central hot water supply; if there was artificial ventilation available in the cells; if detainees had access to food, including information on how it was prepared and delivered; if there was an area for detainees to take an outdoor walk and, if so, what was its size and was any sports equipment available; whether all detainees could have a daily one-hour walk; whether there were medical personnel and enough medicines; if there was a room for worship; whether detainees could receive postal parcels and transfers, including groceries; if there was a possibility to watch television, listen to the radio, make a phone call, read the latest press and send and receive correspondence; whether detainees could talk to their lawyers in private; if there was a library and, if so, whether it contained the necessary amount of legal literature; if there were board games and how many; and if detainees were forced to work.

[4] Resolution No. 783 of 12 August 2014, appendix (setting out a list of information that could be restricted).

[5] Decree No. 194, issued by the Ministry of Internal Affairs on 8 August 2007.

dealing with conditions of detention of persons charged with administrative offences, accessing this information was of crucial importance for her professional work.

2.4 On 24 November 2015, Gomel Regional Police Department rejected the author's appeal and reiterated the arguments put forward by the district police departments, stating that the information she was seeking was classified and could be used exclusively for internal purposes, and therefore could not be disclosed.

2.5 On 7 December 2015, the author appealed the decisions of the district police departments to the respective district courts of Gomel Region, claiming that these State institutions, by refusing to provide information, acted unlawfully and violated her rights to seek and receive information in relation to the activities of State institutions, which are guaranteed by the Constitution and article 19 (2) of the Covenant.

2.6 On 29 December 2015, all five district courts dismissed the author's appeals on the grounds that the subject matter fell outside their jurisdictions and noted that article 353 of the Civil Procedure Code provided for the right to challenge in court an action or omission of a State body or a State official if a person considered that his or her rights and freedoms had been violated. The courts established that no administrative charges had been brought against the author herself, nor had she been subjected to administrative arrest. The courts referred to various rules and procedures regulating the detention of persons who had been subjected to administrative arrest[6] and noted that the author failed to demonstrate that she had obstacles in accessing the publicly available information concerning the activities of the respective State institutions. In this context, the Courts concluded that the author's complaint did not contain grounds for legal proceedings to be initiated.

2.7 The author appealed the decisions to Gomel Regional Court, stating that her right to a fair trial had been violated because the district courts had dismissed her complaint on the basis of a lack of jurisdiction. She further argued that the information she sought could not be found in the by-laws adopted by the State party. She argued that the information she requested would reflect the real state of affairs in temporary detention centres run by the respective district police departments. On various dates, the Regional Court upheld the decisions of the district courts and dismissed the author's appeals.

2.8 The author submits that the State party did not fulfil its obligations and failed to ensure her access to a competent court, and notes that the right to access to information, which she contested, falls under scope of article 14 (1) of the Covenant. In this context, she submits that the Committee has recognized in its jurisprudence that this article protects administrative, labour and civil rights in general, not only in the field of private law.[7] She observes that the rights enshrined in article 19 of the Covenant cannot be left outside the scope of the procedural safeguards prescribed by its article 14, since this would leave unprotected certain rights explicitly mentioned in the Covenant that are highly important in democratic systems.

2.9 The author did not pursue the supervisory review procedure with the Prosecutor General or the Chair of the Supreme Court, noting that according to the Committee's jurisprudence, such a review is not considered as an effective remedy. The author has thus exhausted all domestic remedies.

Complaint

3.1 The author claims that her right to an effective remedy, as envisaged in article 2 (3) (a) of the Covenant, was violated because the national authorities denied her right to a fair trial and failed to investigate her claims related to restrictions imposed on access to information.

[6] Resolution No. 996 of the Council of Ministers of 21 November 2013 and resolution No. 313 of the Ministry of Internal Affairs of 20 October 2015.

[7] *Sinitsin v. Belarus* (CCPR/C/88/D/1047/2002), appendix, para. 2.

3.2 The author submits that, by failing to provide her with an effective judicial remedy for a violation of her right to access information, the State party has also violated her rights under 14 (1) of the Covenant. She adds that her right to fair trial was violated because the courts unlawfully dismissed her complaint on the basis of a lack of jurisdiction.

3.3 The author claims a violation of her rights under article 19 (2) of the Covenant on the grounds that the authorities failed to explain why the restrictions imposed on her rights to seek and receive information were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others.

State party's observations on admissibility and the merits

4.1 By note verbale of 22 February 2017, the State party submitted its observations on the admissibility and merits of the complaint and noted that, on 14 September 2015, the author had submitted a written request to police departments of Kalinkavitski, Narawlyanski, Rahachowski, Svietlahorsk and Zhlobinski Districts, asking them to provide information in relation to the conditions of detention in their temporary detention isolation centres.

4.2 The State party observes that the district and regional police departments responded to the author, explaining the legal principles regulating the detention of persons subjected to administrative arrest and detained in temporary detention and isolation centres. The State party notes that the police departments gave a reasoned answer to the author, noting that they were not in a position to comply with her request since some of the information requested could be used exclusively for internal purposes.

4.3 The State party further observes that the author appealed against the decision of the police before the courts of Kalinkavitski, Narawlyanski, Rahachowski, Svietlahorsk and Zhlobinski Districts. The district courts rejected the appeals, noting that civil proceedings based on the author's complaints concerning the actions of the territorial departments of internal affairs had been terminated due to the lack of jurisdiction over the subject matter. The courts ruled that information on the activities of the detention centres could be found in the by-laws of the State party, which were publicly available, and noted that there were no obstacles in accessing it. The district courts argued that there were no grounds for initiating civil proceedings, since the author had not been deprived of the opportunity to exercise her rights in full or partially, as provided for in the by-laws, nor had she been performing any official duty in requesting the information.

4.4 The State party notes that, in a series of decisions during the period January-March 2016, Gomel Regional Court upheld the decisions of the lower instance courts and dismissed the author's appeal.

4.5 The State party observes that the author did not seek a supervisory review by the Chair of the Supreme Court or the Prosecutor General. Thus, the author failed to exhaust all available domestic remedies as required by article 2 of the Optional Protocol. In light of this, the State party notes that the author's complaint should be treated as an abuse of the right to submit a communication, and therefore considered by the Committee as inadmissible under the article 3 of the Optional Protocol.

4.6 The State party disagrees with author's claims that her rights under article 19 of the Covenant were violated and observes that, according to its national legislation, official information the distribution of which may be restricted includes information not classified as a State secret that is related to the activities of a State body or legal entity, the dissemination or provision of which may cause harm to national security, public order, morals, rights, freedoms and the legitimate interests of individuals, including their honour and dignity, personal and family life, as well as the rights and legitimate interests of legal

entities.[8] The decision to classify information as restricted official information is made by the head of a State body or legal entity or by a person authorized by them.

4.7 The State party further observes that all the necessary information in relation to the methods of operation of temporary detention centres can be found in the public domain, including in the official publication source – the National Legal Internet Portal.[9]

4.8 The State party also observes that certain aspects of the functioning of temporary detention centres may be considered as restricted information, particularly if they relate to methods for guarding persons held in custody or the security arrangements for and layout of the facility. The State party argues that the restriction imposed on the author's right to access information was necessary in the interests of national security, public order, the protection of public health, morals or the rights and freedoms of others, and were in line with article 19 (3) (b) of the Covenant.

4.9 The State party adds that the competent authorities conduct regular inspections of the temporary detention centres to ensure that these institutions are administered in strict accordance with existing national laws and regulations, and also in line with paragraph 55 of the Standard Minimum Rules for the Treatment of Prisoners.[10]

4.10 The State party finally observes that the Prosecutor General's Office conducts regular inspections of temporary detection centres and their cells, and interviews detainees.

Author's comments on the State party's observations on admissibility and the merits

5.1 In her letter of 17 April 2017, the author disagreed with the State party's arguments that she had not exhausted all available domestic remedies by failing to appeal the decisions of the district courts under the supervisory review procedures. The author maintains that an appeal under the supervisory review procedure does not constitute an effective remedy, noting that it is subject to the prosecutor's discretion and does not entail consideration of the case on its merits. She reiterates that all available and effective domestic remedies have therefore been exhausted in her case.

5.2 The author submits that the State party's observations distort the main essence of her request. She maintains that she sought the information from the district police offices because, as a human rights defender, she wanted to monitor the situation in the temporary detention centres.

5.3 The author disagrees with the State party's observations about the availability of such information in the public domain and notes that her request was not in relation to the information contained in national normative acts, but concerned the real situation in detention facilities that are not open to the public.

5.4 Concerning the State party's arguments that some parts of the information requested were of a classified nature, the author notes that the district police departments, in their responses, failed to mention which information in particular was classified and subsequently not available for public dissemination.

5.5 The author observes that, as a human rights defender, she has a right to seek, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.[11] She concludes that access to accurate information about the conditions of detention is an important element of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, as well as

[8] Law No. 455-Z on information, informatization and protection of information, art. 18 (1).

[9] See http://law.by/.

[10] These rules have since been superseded by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

[11] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 6.

the right to be treated with humanity and with respect for the inherent dignity of the human person.

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 takes note of the State party's position that the author has not exhausted all available domestic remedies, as her claims for a supervisory review have not been examined by the Prosecutor General or the Chair of the Supreme Court. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a prosecutor's office requesting a review of court decisions that have taken effect, which is dependent on the discretionary power of the prosecutor, does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[12] It also considers that requests for supervisory review by the chair of a court of court decisions that have entered into force, which depend on the discretionary power of a judge, constitute 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.[13] In the absence of further information or explanations by the State party in the present case, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication. The Committee also sees no grounds to consider the communication to be an abuse of the right of submission on the grounds invoked by the State party and, accordingly, finds that it is not prevented by the requirements of article 3 of the Optional Protocol from examining the complaint.

6.4 The Committee notes the author's claim that her rights under article 2 (3) of the Covenant have been violated, as the State party did not provide her with effective means of protection of her Covenant rights. The Committee recalls, however, that article 2 (3) of the Covenant can be invoked by individuals only in conjunction with other articles of the Covenant, and cannot, in and of itself, give rise to a claim under the Optional Protocol.[14] The Committee therefore considers that the author's contentions in that regard are inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes the author's claims that her rights under article 14 (1) of the Covenant were violated because the courts unlawfully dismissed her complaint on the basis of a lack of jurisdiction and failed to provide her with an effective judicial remedy for a violation of her right of access to information (see para. 2.6 above). It considers, however, that the author has failed to sufficiently substantiate her allegations for the purpose of admissibility. Accordingly, this part of communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further considers that the remaining part of the author's claims under article 19 (2) of the Covenant have been sufficiently substantiated for the purposes of

[12] *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Rubtsov v. Belarus* (CCPR/C/131/D/2679/2015), para 6.3; and *Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para 6.3.

[13] *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; and *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

[14] *A.W.K* v. *New Zealand* (CCPR/C/112/D/1998/2010), para. 9.4.

admissibility. It therefore declares this part of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the national authorities failed to explain how the restriction on her right to seek and receive information were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others. The Committee also notes the author's claim that, in the absence of such justifications, her rights under article 19 (2) of the Covenant were violated.

7.3 The Committee recalls in that respect its general comment No. 34 (2011), in which it points out, inter alia, that the freedom of expression is essential for any society and a foundation stone for every free and democratic society.[15] It notes that article 19 (2) requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers.[16] This article embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.[17]

7.4 In the present communication, the Committee notes the author's claims that the State party restricted her right to seek and receive information by refusing to provide her with information on the conditions of detention in temporary detention centres run by police departments of the Kalinkavitski, Narawlyanski, Rahachowski, Svietlahorsk and Zhlobinski Districts of Gomel Region. She specifically argued that, as a human rights defender of the Human Rights Defenders against Torture initiative, she needed this information in order to monitor the detention facilities, noting that accessing this information was very important for her professional work. The Committee also notes that, in her request to the police authorities, the author has sought information in relation to the number and size of the cells, the number of beds they accommodate and the availability of hygiene articles, toilets, cold and hot water and other necessary items for health and hygiene that could be used by persons serving an administrative detention for periods from 3 to 72 hours. The Committee further notes that the State party refused to provide this information on the grounds that (a) some of the information was classified and could be used exclusively for internal purposes and (b) information on the activities of the detention centres could be found in the by-laws of the State party that were publicly available.

7.5 The Committee recalls its position in relation to press and media freedom that the right of access to information includes a right of the media to have access to information on public affairs[18] and the right of the general public to receive media output.[19] The Committee considers that the realization of these functions is not limited to the media or professional journalists, and that they can also be exercised by public associations or private individuals.[20] In this context, the Committee notes that the author in the present case is a human rights defender, working in the area of prevention of torture in detention facilities and, as such, she can be seen as having special watchdog functions on issues of public interest. When, in the exercise of such watchdog functions on matters of legitimate public concern, associations or private individuals need to access State-held information, as in the

15 Para. 2.
16 General comment No. 34 (2011), para. 11.
17 Ibid., para. 18.
18 *Gauthier v. Canada* (CCPR/C/65/D/633/1995), para. 13.4.
19 *Mavlonov and Sa'di v. Uzbekistan* (CCPR/C/95/D/1334/2004), para. 8.4.
20 *Toktakunov v. Kyrgyzstan* (CCPR/C/101/D/1470/2006), para. 7.4.

present case, such requests for information warrant similar protection by the Covenant to that afforded to the press. The delivery of information to an individual can, in turn, permit it to circulate it in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State. In these circumstances, the Committee is of the opinion that the State party had an obligation either to provide the author with the information requested or to justify any restrictions of the right to receive State-held information under article 19 (3) of the Covenant.

7.6 The Committee recalls 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 reputations 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 must be proportionate to the interest to be protected.[21] 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.[22]

7.7 The Committee notes the State party's argument that, in accordance with national legislation, some of the information requested by the author was classified and therefore could be used exclusively for internal purposes. The Committee notes, however, that the State party did not explain why and how the information requested by the author would pose a security risk and was of a classified nature such that its distribution was restricted, nor on which grounds under article 19 (3) this restriction was permissible. Nor did the State party answer the author's argument that the information requested could not be found in the text of by-laws and was not publicly available. In the absence of any pertinent explanations from the State party, the restrictions on the author's exercise of her right to access information on the conditions of detention (see para. 2.1 above) held by public bodies cannot be deemed necessary for the protection of national security or of public order (*ordre public*), public health or morals, or for respect of the rights or reputations of others, the Committee concludes that the rights of the author under article 19 (2) have been violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of 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 author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the author with the requested information and to take appropriate steps to reimburse any legal costs she has incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy 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

[21] General comment No. 34 (2011), para. 34.

[22] *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.