



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 1838/2008**

**Views adopted by the Committee at its 103rd session,  
17 October to 4 November 2011**

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| <i>Submitted by:</i>                      | Maria Tulzhenkova (not represented by counsel)  |
| <i>Alleged victim:</i>                    | The author  |
| <i>State party:</i>                       | Belarus   |
| <i>Date of communication:</i>             | 27 October 2008 (initial submission)  |
| <i>Document references:</i>               | Special Rapporteur's rule 97 decision, transmitted to the State party on 10 December 2008 (not issued in document form) |
| <i>Date of adoption of Views:</i>         | 26 October 2011   |
| <i>Subject matter:</i>                    | Imposition of a fine for non-compliance with the legal requirements on the organization of mass events                  |
| <i>Procedural issues:</i>                 | Exhaustion of domestic remedies   |
| <i>Substantive issues:</i>                | Restrictions on freedom of expression, including freedom to impart information  |
| <i>Articles of the Covenant:</i>          | 19, paragraph 2   |
| <i>Articles of the Optional Protocol:</i> | 5, paragraph 2 (b)  |

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (103rd session)**

concerning

#### **Communication No. 1838/2008\***

*Submitted by:* Maria Tulzhenkova (not represented by counsel)

*Alleged victim:* The author

*State Party:* Belarus

*Date of communication:* 27 October 2008 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 26 October 2011,*

*Having concluded* its consideration of communication No. 1838/2008, submitted to the Human Rights Committee by Ms. Maria Tulzhenkova under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication, and the State party,

*Adopts the following:*

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication, dated 27 October 2008, is Maria Tulzhenkova, a Belarus national born in 1986. She claims to be a victim of violation by Belarus of her rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

#### **Factual background**

2.1 On 14 March 2008, the author was distributing leaflets with information about an upcoming peaceful gathering in Gomel. She was arrested by police and a report that she had committed an administrative offence under article 23.34, part 1, of the Belarus Code of

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\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabían Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

Two individual opinions signed by Committee members Fabían Omar Salvioli and Rajsoomer Lallah are appended to the present Views.

Administrative Offences was drawn up. This provision establishes administrative liability for violation of the procedure for organizing or holding gatherings, meetings, demonstrations, street marches and other mass events. The author submits that the organization of mass events is regulated by the Law on Mass Events in the Republic of Belarus (hereinafter Law on Mass Events). According to article 8 of the Law, before permission to hold the mass event is received, its organizer(s) and also other persons do not have the right to announce in mass media the date, place and time of its holding, prepare and distribute leaflets, posters and other materials for this purpose. Since the author was distributing leaflets with information about an upcoming peaceful gathering for which she did not yet have permission, police officers considered that she had breached the law. Accordingly, a report on the commission of an administrative offence was drawn up by police and transmitted to the Central District Court of Gomel.

2.2 On 17 March 2008, the Central District Court of Gomel found the author guilty of having committed an administrative offence under article 23.34, part 1, of the Code on Administrative Offences and imposed a fine of 350'000 roubles.<sup>1</sup> The court specifically stated that the author was advertising a mass event before the permission to hold said event was received from the authorities, thus breaching the order for organizing and holding mass events. The author claims that the court based its reasoning only on the police report and did not consider whether the restriction of her right to impart information was necessary to achieve any of the legitimate aims set out in article 19 of the Covenant. She claims that, in the absence of any well-founded explanation justifying the court's conclusion, the penalty imposed on her is not justified by the necessity to protect national security or public order, public health or morals or for respect of the rights and reputation of others, and therefore amounts to a violation of her rights under article 19 of the Covenant. The author further claims that her arguments about the unlawfulness of the administrative penalty imposed on her are supported by the Committee's Views in respect of communication No. 780/1997, *Laptsevich v. Belarus*.

2.3 The author claims that she has exhausted all domestic remedies. On 11 April 2008, the Gomel Regional Court upheld the decision of the Central District Court and rejected the author's appeal. On 17 October 2008, her application under supervisory review was rejected by the Chairman of the Supreme Court of Belarus. The author claims that national courts refused to qualify her actions pursuant to the norms enshrined in the Covenant. In particular, the author drew the court's attention to articles 26 and 27 of the Vienna Convention on the Law of Treaties, according to which treaty provisions must be complied with in good faith and parties may not invoke the provisions of its internal law as justification for its failure to comply with a treaty. She also recalls that under article 15 of the Law on International Treaties, the universally recognized principles of international law and international treaties to which Belarus is a State party are part of the domestic law.

### **The complaint**

3. The author claims that the above facts constitute a violation of her rights under article 19, paragraph 2, of the Covenant. She adds that the provisions of the Law on Mass Events which restrict the right to freely impart information run counter to the international obligations assumed by Belarus, because the restrictions in question do not meet the requirement of necessity: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals. She maintains that the requirements provided for under the domestic law are incompatible with

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<sup>1</sup> According to online exchange converters, on 17 March 2008 (date of the fine), this amount was equivalent to US\$162.7 or €103.76. At present (10 October 2011), due to an unprecedented devaluation of the Belarusian rouble, the amount is worth US\$62.25 or €46.53.

article 19 of the Covenant and constitute an impermissible restriction of her right to freedom of expression, including freedom to impart information under article 19, paragraph 2.

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

4.1 On 19 February 2009, the State party provided its observations on the admissibility and merits of the communication. It submits that on 17 March 2008, Ms. Tulzhenkova was held administratively liable under article 23.34, part 1, of the Belarus Code of Administrative Offences for violation of the procedure for organizing and holding of mass events. According to article 8 of the Law on Mass Events of 20 December 1997, before permission to hold the mass event is received, its organizer(s) and also other persons do not have the right to announce in mass media the date, place and time of its holding, prepare and distribute leaflets, posters and other materials for this purpose. At the time of distribution by Ms. Tulzhenkova of leaflets calling for the holding of a mass event on 25 March 2008, no permission to hold the mass event in question had been received. Thus, Ms. Tulzhenkova was administratively sanctioned in accordance with the requirements of national legislation.

4.2 The State party further submits that under domestic law, Ms. Tulzhenkova had the possibility to appeal the decision of the Central District Court of Gomel to the Chairman of the Supreme Court, as well as to file a motion to the General Prosecutor, requesting him to lodge an objection with the Chairman of the Supreme Court. The decision of the Chairman of the Supreme Court is final and not subject to further appeal. Pursuant to article 12.11, parts 3 and 4, of the Procedural-Executive Code of Administrative Offences, an objection to a decision on an administrative offence that has entered into force may be lodged within six months from the date of its entry into force. An objection filed after the time limit cannot be considered. The author lodged no complaint to the Prosecution's Office. Therefore, she has not exhausted all available domestic remedies and there are no reasons to believe that the application of those remedies would have been unavailable or ineffective.

#### **Author's comments on the State party's observations**

5.1 In her comments dated 11 April 2009, the author submits that the State party in its observations has not indicated why the requirement of the national legislation to seek prior permission for holding a peaceful gathering with the purpose of disseminating information in her particular case would be a permissible restriction of her right, within the meaning of article 19, paragraph 3, of the Covenant. Notwithstanding the intentions of legislative organs, a national law may in itself be in violation of the Covenant if its application results in restrictions on or violations of the rights and freedoms guaranteed under the Covenant.

5.2 As to the State party's claim that she has not exhausted all available domestic remedies, the author submits that, according to the Committee's jurisprudence, in States where the decision on the review of court decisions under the supervisory procedure is dependent on the discretionary power of a limited number of officials, the exhaustion of domestic remedies is limited to the cassation proceedings. The author further recalls that she had availed herself of the right to file an application for supervisory review with the Chairman of the Supreme Court of Belarus. However, she did not file an application for supervisory review to the Prosecutor's Office, since this does not constitute an effective domestic remedy. She also recalls that, according to the established practice of the Human Rights Committee, domestic remedies must only be exhausted to the extent that they are both available and effective. Therefore, all domestic remedies have been exhausted once the court examined her cassation appeal.

**State party's further observations**

6.1 On 26 May 2009, the State party submitted that article 35 of the Constitution guarantees the freedom to hold assemblies, gatherings, street marches, demonstrations and pickets that do not disrupt public order and do not violate the rights of other citizens. The procedure for holding such events is provided by law. In this respect, the provisions of the Law on Mass Events are aimed at creating conditions for the realization of citizens' constitutional rights and freedoms and the protection of public safety and public order during the holding of such events on streets, squares and other public locations. The State party further reiterates the information submitted in its earlier observations (see para. 4.1 above) concerning the legal basis for the administrative sanction imposed on the author, and recalls that at the time of distribution by Ms. Tulzhenkova of leaflets calling for the holding of a mass event on 25 March 2008, no permission to hold the mass event in question had been received, and therefore she was administratively sanctioned in accordance with the requirements of domestic law.

6.2 The State party further submits that, according to article 19, paragraph 2, of the Covenant, every individual has the right to freedom of expression; this right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his own choice. However, article 19, paragraph 3, of the Covenant, imposes on the rights holder special duties and responsibilities, and thus the right to freedom of expression may be subjected to certain restrictions that shall be provided by law and are necessary: (a) for respect of the rights or reputation of others; and (b) for the protection of national security or public order, public health or morals. Article 21 of the Covenant recognizes the right to peaceful assembly. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

6.3 The Republic of Belarus, as a State party to the Covenant, has incorporated the provisions of articles 19 and 21 into the domestic legal system. In conformity with article 23 of the Constitution, restrictions upon the rights and freedoms of individuals are only permitted in the instances specified by law, in the interest of national security, public order, protection of public health and morals as well as of rights and freedoms of other persons. The analysis of article 35 of the Constitution, which guarantees the right to freedom of public events, clearly demonstrates that the Constitution establishes the legislative framework for the procedure of holding such events. Presently, the order of organizing and holding assemblies, gatherings, street marches, demonstrations and pickets is regulated by the Law on Mass Events of 7 August 2003. The freedom of expression, as guaranteed under the Constitution, may be subject to restrictions only in instances provided by law, in the interest of national security, public order, protection of public health and morals as well as of rights and freedoms of other persons. Therefore, the restrictions provided for under Belarusian law do not run counter to its international obligations and are aimed at protecting national security and public order – in particular, this concerns the provisions of article 23.34 of the Belarus Code of Administrative Offences and article 8 of the Law on Mass Events.

**Further comments by the author**

7.1 By letter of 14 November 2009, the author refutes the State party's arguments that the administrative sanction imposed on her for violation of the procedure for organizing and holding mass events was prescribed by law and was in conformity with the permissible restrictions set out in article 19 of the Covenant. Belarus is under an obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights

recognized in the Covenant, and also to take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant. The restriction set out in article 8 of the Law on Mass Events, according to which it is prohibited to announce in mass media the date, place and time of a mass event, as well as prepare and distribute leaflets, posters and other materials for this purpose before the permission to hold said event is received, does not meet the requirement of necessity for the respect of the rights and reputation of others, the protection of national security or public order, public health or morals and, consequently, every time this provision is applied, it results in a violation of article 19, paragraph 2, of the Covenant.

7.2 The author does not share the view of the State party that, since the existing restrictions on the right to freedom of expression provided for under the domestic legislation are aimed at protecting the national security and public order, these restrictions are not contrary to the international obligations of Belarus. This argument would be valid only if the national courts would have had qualified her actions as falling under any of the permissible restrictions within the meaning of article 19. Since the State party has failed to substantiate why the prohibition on the preparation and dissemination of information regarding an upcoming mass event was necessary for one of the legitimate grounds set out in article 19, paragraph 3, such a restriction constitutes a violation of her rights under article 19 of the Covenant. When a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself, and each time the State party must justify that the imposed restrictions are “necessary” to achieve one of the legitimate purposes.

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

### **Consideration of admissibility**

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2(a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With regard to the requirement laid down in article 5, paragraph 2(b), of the Optional Protocol, the Committee takes note of the State party’s argument that the author failed to file an application for supervisory review to the General Prosecutor, requesting him to lodge an objection with the Chairman of the Supreme Court, and therefore she has not exhausted all available domestic remedies. The Committee further notes the author’s explanation that her application for supervisory review was rejected by the Chairman of the Supreme Court of Belarus and that she did not lodge an application with the Prosecutor’s Office, since the supervisory proceedings do not constitute an effective domestic remedy. In this regard, the Committee recalls its jurisprudence, according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary means of appeal which is dependent on the discretionary power of a judge or prosecutor and is limited to issues of law only.<sup>2</sup> In such circumstances, the Committee

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<sup>2</sup> See, for example, communications No. 1537/2006, *Yekaterina Gerashchenko v. Belarus*, decision of inadmissibility adopted on 23 October 2009, para. 6.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

considers that it is not precluded, for purposes of admissibility, under article 5, paragraph 2(b), of the Optional Protocol, from examining the communication.

8.4 In the Committee's view, the author has sufficiently substantiated, for purposes of admissibility, the claims under article 19, paragraph 2, of the Covenant. The other admissibility requirements having been met, the Committee considers the communication admissible and proceeds to its examination on the merits.

### **Consideration of the merits**

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's claims that the administrative sanction imposed on her for distributing leaflets containing information about an upcoming peaceful gathering before permission to hold the event in question had been granted, as required under the domestic law, constitutes an unjustified restriction on her freedom to impart information, as protected by article 19, paragraph 2, of the Covenant. It further notes the State party's contention that the author was administratively sanctioned in accordance with the requirements of national legislation for having breached the procedure for the organization and holding of mass events. In the present case, the Committee has to consider whether the restrictions imposed on the author's right to freedom of expression are justified under any of the criteria set out in article 19, paragraph 3. The Committee observes that article 19 provides for certain restrictions only as provided by law and necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. It recalls that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; such freedoms are essential for any society and constitute the foundation stone for every free and democratic society.<sup>3</sup> Any restrictions to the exercise of such freedoms must conform to strict tests of necessity and proportionality and "be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."<sup>4</sup>

9.3 The Committee observes that, in the present case, the State party has argued that the provisions of the Law on Mass Events are aimed at creating conditions for the realization of citizens' constitutional rights and freedoms and the protection of public safety and public order during the holding of such events on streets, squares and other public locations. However, the State party has not supplied any specific indication of what dangers would have been created by the early distribution of the information contained in the author's leaflet. The Committee considers that, in the circumstances of the case, the State party has not shown how the fine imposed on the author was justified under any of the criteria set out in article 19, paragraph 3. It therefore concludes that the author's rights under article 19, paragraph 2, of the Covenant, have been violated.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

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<sup>3</sup> See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40*, vol. I (A/66/40 (Vol. I)), annex V

<sup>4</sup> *Ibid.*, para. 22.

11. Pursuant to article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including reimbursement of the value of the fine at the exchange rate in effect as at March 2008 and any legal costs incurred by the author, as well as compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. 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 or not 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, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views, to have them translated into Belarusian, and widely distributed in the two official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### Individual opinion of Committee member, Mr. Fabián Salvioli (concurring)

1. I agree with the decision of the Human Rights Committee in the case of communication No. 1838/2008, *Tulzhenkova v. Belarus*, concerning the violation of article 19 of the Covenant, regarding the imposition of an administrative sanction, citing violation of article 8 of the Law on Mass Events of the Republic of Belarus, according to which no one has the right to announce in the mass media the date, place and time of a meeting, or to prepare and distribute leaflets, posters and other materials for this purpose, before permission to hold the mass event has been granted.

2. However, for the reasons set out below, I consider that the Committee should have concluded that in the case at hand the State party has also committed a violation of article 2, paragraph 2, of the International Covenant on Civil and Political Rights. The Committee should also have indicated in its Views that the State party should amend the legislation which was applied against the author and which is incompatible with the Covenant.

3. Since becoming a member of the Committee, I have taken the view that the Committee has, of its own volition and incomprehensibly, restricted its competence to determining violations of the Covenant in the absence of a specific legal claim. Provided the facts clearly demonstrate such violations, the Committee can and must – in accordance with the principle of *iura novit curiae* (“the court knows the law”) – examine the legal framework of the case. The legal basis and explanation of why this does not mean that States parties will be left without a defence can be found in paragraphs 3 to 5 of my partially dissenting opinion in the case of *Weerawansa v. Sri Lanka*, to which I refer so as to avoid repeating them.<sup>5</sup>

4. It should be mentioned that in the case, *Tulzhenkova v. Belarus*, the author asserts, with reference to the legislation applied against her, that “a national law may in itself be in violation of the Covenant if its application results in restrictions on or violations of the rights and freedoms guaranteed under the Covenant”.

#### (a) Violation of article 2, paragraph 2, of the Covenant

5. The international responsibility of the State party may be engaged, inter alia, by an act or omission on the part of any of its branches, including, of course, the legislative branch or any other branch with legislative powers by virtue of the Constitution. Article 2, paragraph 2, of the Covenant specifies: “Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Although the obligation laid down in article 2, paragraph 2, is general in nature, failure to fulfil it may engage the international responsibility of the State party.

6. The provision in question is of a self-executing nature. The Committee, quite rightly, has indicated in its general comment No. 31 that: “The obligations of the Covenant

<sup>5</sup> See communication No. 1406/2005, *Anura Weerawansa v. Sri Lanka*, appendix: partially dissenting opinion of Mr Fabián Salvioli.

in general and article 2 in particular are binding on every State party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local are in a position to engage the responsibility of the State party.”<sup>6</sup>

7. Just as States parties to the Covenant must adopt legislative measures to give effect to rights, they also bear a negative obligation, deriving from article 2, paragraph 2, not to adopt legislative measures which violate the Covenant; if it does so, the State party commits per se a violation of the obligations laid down in article 2, paragraph 2.

8. The Republic of Belarus ratified the Covenant on 12 November 1973. Since then, it has assumed the express obligation to take the necessary steps to introduce appropriate legislative or other measures to give effect to the rights recognized in the Covenant (art. 2, para. 2), and consequently, the obligation not to adopt norms that are contrary to the rights established in the Covenant. In addition, Belarus acceded to the Optional Protocol to the Covenant on 30 December 1992, thereby recognizing the competence of the Committee to consider communications from individuals.

9. The Republic of Belarus adopted the Law on Mass Events on 20 December 1997; in so doing, it committed a violation of the Covenant, regardless of whether the Law was applied. Subsequently, the author submitted a claim to the Committee because the Law on Mass Events was applied against her; the Committee should have indicated in its Views that not only had the State party violated article 19, but also that the adoption of that Law violated article 2, paragraph 2, of the Covenant.

10. The Law on Mass Events was applied directly to the case; accordingly, the conclusion that there has been a violation of article 2, paragraph 2 in the Tulzhenkova case is neither abstract nor merely of academic interest. Finally, it should not be overlooked that the violations determined by the Committee have a direct impact on any reparation which it may determine when it decides each individual case.

**(b) Reparation in the Tulzhenkova case**

11. Paragraph 11 of the Committee’s Views is insufficient in that it indicates that “The State party is also under an obligation to take steps to prevent similar violations in the future ...” but goes no further. How is the State party to comply with that part of the Committee’s Views, if it does not amend the legislation which the Committee has found to be in violation of the Covenant? Undoubtedly, the Committee should have indicated that the Republic of Belarus should amend the domestic legislation in question (article 8 of the Law on Mass Events), so as to bring it into line with its obligations under the International Covenant on Civil and Political Rights. To keep in force a law that is per se incompatible with the Covenant is in itself inconsistent with current international standards regarding reparation for cases of human rights violations.

12. Accordingly, it is essential for the Committee to adopt a less ambiguous position in respect of non-pecuniary reparation, and especially in respect of measures of restitution, satisfaction and non-repetition. The clearer a decision taken by the Committee, the easier it will be for a State party to comply with it.

*(Signed)* Fabián Salvioli

<sup>6</sup> The Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**Individual opinion of Committee member, Mr. Rajsoomer Lallah  
(concurring)**

I observe that the findings of the Committee (para. 9.3) relate to the particular circumstances of the communication, namely the inadequacy or absence of any information provided by the State Party to justify the restrictions which might otherwise have possibly been permissible under article 19, paragraph 3 of the Covenant. The Committee has consequently found a violation of the author's basic right to freedom of expression under article 19, paragraph 2, of the Covenant, as specifically claimed by her.

Clearly, the violation found arose from the application of a law which does not specify that it is inapplicable in circumstances where it is not proved that the restrictions to freedom of expression go beyond what is permissible under article 19, paragraph 3(b), of the Covenant.

For the reasons explained in the separate opinion I gave in the case of *Adonis v. Philippines* (communication No. 1838/2008), it is my opinion that my colleague Salvioli's concerns, regarding failure by the State Party in its obligation to adopt appropriate legislation, could have been sufficiently allayed by a request for a review of the legislation in pursuance of article 2, paragraph 2, of the Covenant.

In my view, in paragraph 11 of the Views, it would perhaps have been more constructive and practical to add a request of the kind the Committee usually makes when questionable or otherwise faulty legislation turns out to be the source of the particular violation found. To this end, paragraph 11 of the Views could have included something to the effect that, in pursuance of article 2, paragraph 2, the State Party should review its legislation.

(Signed) Rajsoomer Lallah

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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