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**AMICUS BRIEF IN SUPPORT OF MS. EKATERINA BAKHVALOVA  
AND MS. DARIA CHULTSOVA**

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Submitted by:

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Before the Minsk City Court

## TABLE OF CONTENTS

I.	INTRODUCTION AND STATEMENT OF INTEREST .....	3
II.	FACTUAL BACKGROUND .....	5
A.	Ms. Bakhvalova's Journalism .....	5
B.	Protests in Belarus.....	5
C.	Ms. Bakhvalova's Coverage of Protests in the 'Square of Change' .....	6
D.	Ms. Bakhvalova's Arrest .....	8
E.	Ms. Bakhvalova's Trial.....	9
III.	MS. BAKHVALOVA'S CHARGES AND TRIAL VIOLATED INTERNATIONAL LAW ...	11
A.	Ms. Bakhvalova's Pre-Trial and Continued Detention Was Arbitrary.....	12
B.	The Trial Court Violated Ms. Bakhvalova's Right to a Fair Trial.....	13
i.	<i>The Trial Court Violated Ms. Bakhvalova's Right to be Presumed Innocent</i> .....	13
ii.	<i>The Trial Court Infringed on Ms. Bakhvalova's Ability to Examine A Key Witness</i> .....	17
C.	Belarus Violated Ms. Bakhvalova's Right to Freedom of Expression .....	18
D.	Belarus Violated Ms. Bakhvalova's Right of Peaceful Assembly .....	20
IV.	CONCLUSION.....	22

## I. INTRODUCTION AND STATEMENT OF INTEREST

1. The Clooney Foundation for Justice (“CFJ”) submits this brief in support of the appeal of Ms. Ekaterina Bakhvalova (“Ms. Bakhvalova”) in Case No. 20121083157. For substantially the same reasons, CFJ supports the appeal of Ms. Daria Chultsova (“Ms. Chultsova”).

2. CFJ is an organization co-founded by George and Amal Clooney to advocate for justice through accountability for human rights abuses.<sup>1</sup> TrialWatch is a CFJ initiative that monitors and grades the fairness of criminal trials against those who are most vulnerable—journalists, protestors, women, LGBTQ+ persons, and minorities—and advocates for the rights of those unfairly detained.<sup>2</sup> Promoting the fairness of trials is central to CFJ’s mission.

3. As part of CFJ’s TrialWatch initiative, the American Bar Association (“ABA”) Center for Human Rights (“CHR”) monitored the trial of Ms. Bakhvalova, a journalist also known under the pseudonym Ekaterina Andreeva. Ms. Bakhvalova was charged with “organiz[ing] ... group actions that grossly violate public order and are associated with clear disobedience to the legal requests of government officials or entail disruption of transport, or active participation in such actions in the absence of signs of a more serious crime” in violation of Part 1, Article 342 of the Criminal Code of the Republic of Belarus (“Criminal Code”).<sup>3</sup> She was tried alongside her colleague and ‘camera operator’ Ms. Chultsova. The charges were based on Ms. Bakhvalova’s alleged actions in connection with a broadcasting of protest events in Minsk “live on the Belsat TV Channel” on November 15, 2020.<sup>4</sup>

4. Ms. Bakhvalova was arrested on November 15, 2020. Following the live broadcast, unidentified security forces in “black suits and balaclavas” raided the apartment in which she and Ms. Chultsova were reporting, and took them into custody.<sup>5</sup> Ms. Bakhvalova was detained until trial, first on suspicion of breaching Part 1, Article 342 of the Criminal Code,<sup>6</sup> then due to her having been found guilty of the administrative offenses of “participating in an unsanctioned mass event, as well as disobeying a police officer,”<sup>7</sup> and finally under a preventive detention order due to the charge of violating Part 1, Article 342 of the Criminal Code.<sup>8</sup>

5. The proceedings against Ms. Bakhvalova and Ms. Chultsova before the Frunzensky District Court of Minsk (the “trial court”) began on February 9, 2021 and concluded on February 18, 2021.<sup>9</sup> Trial

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<sup>1</sup> *About*, CLOONEY FOUND. FOR JUST., <https://cfj.org/about/> (last visited Mar. 29, 2021).

<sup>2</sup> *TrialWatch*, CLOONEY FOUND. FOR JUST., <https://cfj.org/project/trialwatch/> (last visited Mar. 29, 2021).

<sup>3</sup> Resolution at 2, Dec. 23, 2020. *See* UGOLOVNIY KODEKS RESPUBLIKI BELARUS [CRIMINAL CODE] pt. 1, art. 342 (“Organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of authorities or entail disruption of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime – are punishable by a fine, or arrest for up to six months, or restraint of liberty for up to three years, or imprisonment for the same period.”).

<sup>4</sup> Trial Monitor Notes, Feb. 17, 2021, at 37 [hereinafter T.M. Notes]. *See also* Judgment in the Name of the Republic of Belarus, Feb. 18, 2021, at 7 (“For those who will join the viewing of the broadcast, let me remind you that people [are] gathered here for a protest march – a march of the brave ...”) [hereinafter Judgment].

<sup>5</sup> *See* T.M. Notes, Feb. 9, 2021, at 22, 44.

<sup>6</sup> *Id.* at 44 (“On November 16, the investigator of the Frunzensky Regional Department of the Investigative Committee Igor Kudelya came to me and handed over a decision recognizing the suspect under Part 1 of Art. 342 of the Criminal Code.”).

<sup>7</sup> *Id.* at 44.

<sup>8</sup> *See id.* at 44 (“[A] day later, on November 20, [2021] they elected [Ms. Bakhvalova] a preventive measure in the form of detention.”). *See also id.* at 5-6.

<sup>9</sup> *See* T.M. Notes, Feb. 9, 2021; T.M. Notes, Feb. 16, 2021; T.M. Notes, Feb. 17, 2021; T.M. Notes, Feb. 18, 2021.

monitors observed or obtained audio recordings of each hearing.<sup>10</sup> The monitors noted that during one hearing, the trial court curtailed defense questioning of Roman Arkadyevich Pranovich (“Mr. Pranovich”)—head of the transport organization department of Minsktrans.<sup>11</sup> On February 18, 2021, the trial court convicted Ms. Bakhvalova and Ms. Chultsova and sentenced them to two years in prison.<sup>12</sup>

6. The trial court’s judgment rested on three principal conclusions: first, the trial court found that Ms. Bakhvalova had participated in an unsanctioned protest (discounting her status as a journalist because she lacked accreditation), and should be deemed to have disobeyed police orders due to the protesters’ failure to do so.<sup>13</sup> Second, it found that she had ‘organized’ the action by giving “a positive assessment,” which “call[ed] for more people to participate.”<sup>14</sup> The judgment did not take into account the findings of experts “regarding the absence in the statements of the accused ... of the signs of organizing any group actions.”<sup>15</sup> Further, the judgment interpreted what she said on her broadcast as encouraging protesters to “block the equipment of law enforcement agencies” and “resist[] the actions of law enforcement,”<sup>16</sup> and concluded that her program had kept protestors apprised of the actions and location of law enforcement.<sup>17</sup> Third, the trial court found that the protest had disrupted transport.<sup>18</sup> On these bases, the trial court concluded that Ms. Bakhvalova had breached Part 1, Article 342 of the Criminal Code.

7. Based on a review of court documents and the trial monitor’s notes, CFJ finds that Ms. Bakhvalova was arbitrarily detained and that her trial violated her rights to freedom of expression and peaceful assembly, as well as her right to a fair trial. CFJ therefore submits this amicus brief to urge the Minsk City Court to reverse the trial court’s decision and acquit Ms. Bakhvalova. On similar grounds, CFJ urges the Minsk City Court to also reverse the trial court’s decision in the case of Ms. Chultsova, and acquit her.

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<sup>10</sup> See T.M. Notes, Feb. 9, 2021 (noting that the trial monitor obtained an audio recording of the proceedings, as they were restricted from entering the courtroom during a portion of the day’s hearing); T.M. Notes, Feb. 16, 2021 (noting that the trial monitor obtained an audio recording of the proceedings, as they were restricted from entering the courtroom for the entirety of the day’s hearing); T.M. Notes, Feb. 17, 2021 (noting that the trial monitor was able to enter the courtroom for the entirety of the day’s hearing); T.M. Notes, Feb. 18, 2021 (noting that the trial monitor was able to enter the courtroom for the entirety of the day’s hearing).

<sup>11</sup> See T.M. Notes, Feb. 9, 2021, at 30-36. Notably, Roman Arkadyevich Pranovich also represented “Minsktrans” in their civil claim against Ms. Bakhvalova and Ms. Chultsova. Minsktrans was initially a civil plaintiff in the criminal case (they made a claim for 11,562 rubles and 14 kopecks) but requested to drop the claim on February 16, 2021 because the alleged damage had been reimbursed in full.

<sup>12</sup> Judgment at 20 (“SENTENCED as follows: to find Bakhvalova Ekaterina Andreeva and Chultsova Daria Dmitrievna guilty of organizing group actions that grossly violate public order and are associated with clear disobedience to the legal requirements of the authorities, which entailed disruption of transport, active participation in such actions in the absence of signs of a more serious crime, and on the basis of Part 1 of Art. 342 of the Criminal Code to impose to each of them a sentence of imprisonment for a term of 2 years serving the sentence in a correctional colony under a general regime.”).

<sup>13</sup> *Id.* at 2-3. The trial court held that the gathering violated Article 10 of the Law of the Republic of Belarus “On Mass Events in the Republic of Belarus” No. 114-3, because it did not have the appropriate permission of the Minsk City Executive Committee.

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2, 11.

<sup>17</sup> *Id.* at 2 (“[She] informed the participants of the above group actions about the measures taken by the law enforcement agencies aimed at suppressing illegal actions, their places of deployment, including the detentions carried out in the yards of houses, using special means and equipment[.]”).

<sup>18</sup> *Id.* at 3 (“[This] led to disruption of transport, including stopping the movement of urban passenger transport of the State Enterprise ‘Minsktrans’ in Minsk (bus routes No. 18, 19, 26, 26a, 29, 38, 68, 59, 76e, 89e, 105, 131, 133; trolleybus routes No. 22, 40, 92; tram routes No. 3, 4, 5).”).

## II. FACTUAL BACKGROUND

### A. Ms. Bakhvalova's Journalism

8. Ekaterina Bakhvalova is a 27-year-old Belarusian journalist.<sup>19</sup> She is known by her alias Ekaterina Andreeva, and lives in Minsk.<sup>20</sup>

9. Beginning in 2017, Ms. Bakhvalova began working as a staff correspondent for Belsat TV, one of the only independent news outlets operating in Belarus.<sup>21</sup> As Belsat TV is based in Poland, Ms. Bakhvalova sought accreditation from the Belarusian Ministry of Foreign Affairs to work in Belarus, but her request was denied.<sup>22</sup> Under Article 35 of the Law of the Republic of Belarus N. 427-Z of 2008 on Mass Media, foreign journalists in Belarus are prohibited from “executing professional activities” without accreditation.<sup>23</sup> The refusal to provide accreditation was—according to Ms. Bakhvalova—“an act of state censorship.”<sup>24</sup>

10. In the summer of 2020, Ms. Bakhvalova began regularly covering protests in Belarus as a “hot spot reporter.”<sup>25</sup> She made several dozen live broadcasts for Belsat TV in which she commented on events and interviewed protest participants.<sup>26</sup>

### B. Protests in Belarus

11. Following the Belarusian presidential elections on August 9, 2020, large protests erupted in Minsk and across the country.<sup>27</sup> According to the Rapporteur for the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, protestors were subject to roundups.<sup>28</sup> And as reported by the United Nations High Commissioner for Human Rights, they also faced

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<sup>19</sup> See Judgment at 1.

<sup>20</sup> *Id.*; ARTICLE 19, “Belarus: Prosecution for Journalists of ‘Organizing Public Order Violations’ Violates International Human Rights Standards and Is Against Common Sense” at 1 (admitted by the trial court, dated Feb. 4, 2021) [hereinafter ARTICLE 19 Report].

<sup>21</sup> See T.M. Notes, Feb. 9, 2021, at 43; *A Dangerous Time for Independent Journalism*, REPS. WITHOUT BORDERS, <https://rsf.org/en/belarus> (last visited Apr. 2, 2021) (“A few independent media outlets exist but many are forced to base themselves abroad and the authorities continue to harass them, especially the Poland-based Belsat TV ...[.]”).

<sup>22</sup> See Judgment at 3 (“On the territory of the Republic of Belarus, she does not have accreditation as a journalist, since her accreditation request was declined, which she considers an act of state censorship.”); T.M. Notes, Feb. 9, 2021, at 43.

<sup>23</sup> ЗАКОН РЕСПУБЛИКИ БЕЛАРУСЬ 17 ІЮЛЯ 2008 Г. N 427-З [LAW 427-Z OF 2008 ON MASS MEDIA] art. 35.

<sup>24</sup> See T.M. Notes, Feb. 9, 2021, at 43.

<sup>25</sup> T.M. Notes, Feb. 17, 2021, at 37.

<sup>26</sup> See T.M. Notes, Feb. 9, 2021, at 43. See also T.M. Notes, Feb. 17, 2021, at 37.

<sup>27</sup> See ARTICLE 19 Report at 1; ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, REPORT UNDER THE MOSCOW MECHANISM ON ALLEGED HUMAN RIGHTS VIOLATIONS RELATED TO THE PRESIDENTIAL ELECTIONS OF 9 AUGUST 2020 IN BELARUS 23 (2020), <https://www.osce.org/files/f/documents/2/b/469539.pdf> [hereinafter OSCE Report].

<sup>28</sup> See OSCE Report.

violence, “unnecessary or disproportionate use of force,” and “severe” penalties.<sup>29</sup> Journalists covering the protests were also harassed and detained.<sup>30</sup>

12. On November 15, 2020, there was a protest in Minsk to commemorate the death of Roman Bondarenko (“Mr. Bondarenko”).<sup>31</sup> Mr. Bondarenko had died on November 12, 2020 as a result of his beating by a group of assailants he had confronted the previous day for removing “white-red-white ribbons”—symbols of protest—from a fence.<sup>32</sup> During the November 15 protest, a large number of people gathered in “*Ploshad Peremen*” (the “Square of Change”), where the attack occurred,<sup>33</sup> chanting “Long Live Belarus,” and carrying flags of white-red-white.<sup>34</sup> In response, security forces used stun grenades, and tear gas, and subjected participants to mass detention.<sup>35</sup>

### C. Ms. Bakhvalova’s Coverage of Protests in the ‘Square of Change’

13. On November 15, 2020, the editorial staff of Belsat TV arranged for Ms. Bakhvalova and Ms. Chultsova to travel to an apartment at Minsk, Smorgovsky Tract, 1, to “cover the events that were supposed to take place on the Square of Change[.]”<sup>36</sup> They brought a video camera, tripod, wires and a blue ‘press’ vest, and arrived at the apartment at 12 p.m.<sup>37</sup> The apartment owner permitted them to set up their equipment by a window, use the internet, and go on the air.<sup>38</sup>

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<sup>29</sup> U.N. High Comm’r. for Hum. Rts., Intersessional Meeting of the Human Rights Council – The Situation in Belarus (Dec. 4, 2020), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26564&LangID=E> [hereinafter, U.N. Report on the Situation in Belarus]. See also Tanya Lokshina, *People are Seeking Change in Belarus. Instead, They’re Being Mercilessly Beaten and Detained*, HUM. RTS. WATCH (Aug. 14, 2020), <https://www.hrw.org/news/2020/08/14/people-are-seeking-change-belarus-instead-theyre-being-mercilessly-beaten-and>.

<sup>30</sup> See U.N. Report on the Situation in Belarus; *Belarus: Crackdown on Independent Journalism – Stop Prosecutions, Guarantee Freedom of Press*, HUM. RTS. WATCH (Mar. 29, 2021), <https://www.hrw.org/news/2021/03/29/belarus-crackdown-independent-journalism> (“Several journalists told Human Rights Watch that “press” vests felt like a target on their backs rather than a symbol of protection.”). See also OSCE Report at 30.

<sup>31</sup> Vladimir Soldatkin, *Hundreds Detained as Belarusians Chant Dead Protester’s Last Words*, REUTERS, Nov. 15, 2020, <https://www.reuters.com/article/us-belarus-election-protests/hundreds-detained-as-belarusians-chant-dead-protesters-last-words-idUSKBN27V08G/>.

<sup>32</sup> See ARTICLE 19 Report at 1; Anastasiia Zloblina, *Man Killed for Protecting Symbols of Peaceful Protests in Belarus*, HUM. RTS. WATCH (Nov. 13, 2020), <https://www.hrw.org/news/2020/11/13/man-killed-protecting-symbols-peaceful-protests-belarus> (“According to several witnesses, at around 10 p.m., Bandarenka, 31, tried to stop people from taking down the ribbons. He wasn’t violent but at least two men started beating him and dragged him into their minivan. Around midnight he was hospitalized with severe brain injuries. One day later, he died.”).

<sup>33</sup> See ARTICLE 19 Report at 1; Vladimir Soldatkin, *Hundreds Detained as Belarusians Chant Dead Protester’s Last Words*, REUTERS, Nov. 15, 2020, <https://www.reuters.com/article/us-belarus-election-protests/hundreds-detained-as-belarusians-chant-dead-protesters-last-words-idUSKBN27V08G/>.

<sup>34</sup> Judgment at 5.

<sup>35</sup> See Press Release, U.N. Human Rights Office of the High Commissioner, Belarus: U.N. Experts Call for Probe Into Violence Against Protesters (Nov. 19, 2020), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26520&LangID=E>.

<sup>36</sup> See T.M. Notes, Feb. 9, 2021, at 38, 43.

<sup>37</sup> *Id.* at 26, 43.

<sup>38</sup> *Id.* at 43.

14. Once live, Ms. Bakhvalova provided commentary on what she “was watching from the window,” broadcasting events occurring in the Square of Change on Belsat TV.<sup>39</sup> During the program she described those gathered for the protest as “several thousand people ... [who] stepped out onto the roadway,” in a “chain[] of solidarity.”<sup>40</sup> Ms. Bakhvalova reported to viewers that the crowd was composed of “brave” men and women, “facing these *zybazikaŭ*” without weapons.<sup>41</sup> She also stressed that they were “peaceful,” and in a “peaceful mood,”—when flares exploded and “shell[ed]” the crowd, she noted that they “did not disperse,” and praised their courage.<sup>42</sup> And during a point when the broadcast switched to another studio, Ms. Bakhvalova went to the street to record interviews with protestors in person.<sup>43</sup> She then returned to the apartment to continue the live program.<sup>44</sup>

15. While providing commentary, Ms. Bakhvalova also described a “traffic jam” in which cars slowed to disrupt the access of security forces to the Square of Change.<sup>45</sup> She explained that reports indicated that “the drivers ... [could] drive up to the Square of Change[] to help protect people from the possible arrival of special-purpose vehicles.”<sup>46</sup> At one point, the movement of transport on one of the streets halted entirely.<sup>47</sup>

16. Further, Ms. Bakhvalova explained that protestors were using ‘Telegram channels’ to organize the gathering at the Square of Change.<sup>48</sup> Ms. Bakhvalova was tracking the channels herself.<sup>49</sup> For example, when the ‘Telegram channels’ reported that “special forces and special equipment” were moving to the protest area, she shared this information on the air, after which the armed forces did appear.<sup>50</sup> During the broadcast, Ms. Bakhvalova also feared—and communicated live on air—that she herself was being targeted by security forces.<sup>51</sup>

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<sup>39</sup> T.M. Notes, Feb. 9, 2021, at 43. *See also* T.M. Notes, Feb. 17, 2021, at 37. *See also* Judgment at 7 (“For those who will join the viewing of the broadcast, let me remind you that people [are] gathered here for a protest march – a march of the brave ...”); Belsat TV, *Марш смеласці "Я выходжу". 99-ты дзень пратэстаў | Марш смеласці "Я выходжу". 99-ый день протестов*, YOUTUBE (Nov. 15, 2020), <https://www.youtube.com/watch?v=wot-rMgNqwk> (providing the full broadcast from Belsat TV).

<sup>40</sup> T.M. Notes, Feb. 17, 2021, at 26.

<sup>41</sup> *Id.* at 27 (noting that *zybazikaŭ* is a disparaging name for employees of the department for combating organized crime).

<sup>42</sup> *Id.* at 27-28 (“I am simply incredibly impressed by the courage of [these] people, the courage and their peaceful mood.”).

<sup>43</sup> T.M. Notes, Feb. 9, 2021, at 43.

<sup>44</sup> *Id.* at 44.

<sup>45</sup> T.M. Notes, Feb. 17, 2021, at 25-26 (“[C]ars slowed down their movement ... for the purpose that the security forces could not ... reach[] the gathering place of the protestors.”).

<sup>46</sup> *Id.* at 27.

<sup>47</sup> T.M. Notes, Feb. 9, 2021, at 43.

<sup>48</sup> T.M. Notes, Feb. 17, 2021, at 28 (“With the help of these channels, they spread the call to go to the Square of Changes, because now the protesters, as they write in the Telegram channels, need help.”).

<sup>49</sup> *Id.* at 27-28.

<sup>50</sup> T.M. Notes, Feb. 9, 2021, at 44; T.M. Notes, Feb. 16, 2021, at 8 (“The security forces brought a water cannon with them. The protesters left the road. All Telegram channels write that the security forces are surrounding the Square of Changes from all sides, encircling people.”).

<sup>51</sup> T.M. Notes, Feb. 17, 2021, at 28 (“We noticed that the military were lighting a lantern in our direction ... [f]rom time to time, we had to lie down on the floor, they were shining here with a light, some kind of searchlight that was attached to the weapon ... and repeatedly launched the drone.”).

#### D. Ms. Bakhvalova's Arrest

17. Ms. Bakhvalova was arrested on November 15, 2020, directly after her Belsat TV broadcast from the Square of Change. After an internet outage interrupted the program, unidentified security forces raided the apartment at Minsk, Smorgovsky Tract, 1.<sup>52</sup> They broke down the door, collected equipment and took Ms. Bakhvalova and Ms. Chultsova into custody.<sup>53</sup> According to Ms. Bakhvalova, at no point did the security forces identify themselves, or provide documentation.<sup>54</sup> The search was carried out without the “sanction of the prosecutor.”<sup>55</sup>

18. Ms. Bakhvalova was then transported to the Oktyabrskoye district police department.<sup>56</sup> While there, she felt unwell and lost consciousness, at which point an ambulance was called and she was transported to hospital.<sup>57</sup> Once discharged that evening—with recommendations to be prescribed pain medication and rest—she was transported by the police to the Central Inspection Center on Akrestsin Street.<sup>58</sup>

19. The next day, on November 16, 2020, Ms. Bakhvalova received confirmation that she was a suspect under Part 1, Article 342 of the Criminal Code.<sup>59</sup> On November 17, 2020 she was sentenced to seven days of administrative arrest for “participating in an unsanctioned mass event, as well as disobeying the police.”<sup>60</sup>

20. Ms. Bakhvalova was formally charged with violating Part 1, Article 342 of the Criminal Code on November 19, 2020.<sup>61</sup> Specifically, the Investigative Committee of the Republic of Belarus accused Ms. Bakhvalova in a resolution eventually issued on December 23, 2020 of having “collected active participants in gross violations of public order,” and persuaded and directed persons “to take specific actions that grossly violate public order,” including (1) by “making requests to drivers in private vehicles to drive up to the place of unauthorized mass events in order to block the equipment of law enforcement agencies,” and requesting “people to arrive ... in order to create a mass scale,” (2) informing people “about the activities carried out by law enforcement” such as their location and use of “special means and equipment,” and (3) “giving a positive assessment” of the protests, “thus calling for more people to participate.” It further alleged that she had not “react[ed] to [police] ... demands,” by “publicly shouting slogans, clapping hands loudly” and that because of the content of her broadcast she was responsible for “disrupti[ng] transport” because the protest had created obstacles in the road, causing damage to the Municipal Unitary Enterprise Minsktrans (“Minsktrans”)—the Minsk transport firm.<sup>62</sup>

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<sup>52</sup> See T.M. Notes, Feb. 9, 2021 at 21-22, 44.

<sup>53</sup> *Id.* at 18 (“I [Witness Dyadyul] saw that they collected the equipment in the room, the girls were taken out of the apartment, the officers arrived, they came and went, they wrote down our data, then they took the bag, a search was carried out...[.]”).

<sup>54</sup> *Id.* at 44 (“Eight fighters in dark uniform burst into the apartment, I noticed a patch on the chest with the words “special forces” on one of them. They did not introduce themselves, did not show any documents.”).

<sup>55</sup> Judgment at 14.

<sup>56</sup> T.M. Notes, Feb. 9, 2021, at 44.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* (“On November 16, the investigator of the Frunzensky Regional Department of the Investigative Committee Igor Kudelya came to me and handed over a decision recognizing the suspect under Part 1 of Art. 342 of the Criminal Code.”).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Resolution at 1, 2, Dec. 23, 2020.



21. On November 20, 2020, authorities issued a preventive detention order for Ms. Bakhvalova.<sup>63</sup> The order did not specify reasons for her pre-trial detention.<sup>64</sup> She remained in detention until and throughout the proceedings.<sup>65</sup> Despite a challenge to change the preventive measure “from detention to personal surety,” before the trial, and an additional challenge on the first day of trial—both of which were denied—no evidence was provided to or by the court to justify the need for continued detention beyond the charge itself.<sup>66</sup>

### **E. Ms. Bakhvalova’s Trial**

22. Ms. Bakhvalova’s trial began on February 9, 2021 and consisted of four hearings over the course of ten days.<sup>67</sup> She was tried alongside her colleague, Ms. Chultsova. For the entirety of the trial, Ms. Bakhvalova and Ms. Chultsova were kept in a “cage,” for which the trial court did not provide justification.<sup>68</sup>

23. On the first day of trial, February 9, 2021, defense counsel petitioned to cancel the “preventive measure” that was keeping Ms. Bakhvalova in detention, alleging that no grounds for placing her in custody had been adduced (in violation of Articles 117 and 126 of the Belarusian Criminal Code of Procedure).<sup>69</sup> The trial court denied the petition, referring to Article 126 of the Belarusian Criminal Code of Procedure, which allows for the preventive detention of those accused of committing a crime punishable by more than two years imprisonment.<sup>70</sup> The charge in this case—violating Part 1, Article 342 of the Criminal Code—carries a sentence of up to three years’ imprisonment.<sup>71</sup>

24. On February 9, 2021, the trial court curtailed defense questioning of witness Pranovich—head of the transport organization department of Minsktrans.<sup>72</sup> Mr. Pranovich was testifying for the prosecution regarding the alleged effect the protest had had on public transport. Defense counsel sought to ask “when and which [transport] route stopped,” but the court “removed” the question, ostensibly because Mr. Pranovich had already answered it.<sup>73</sup> Yet according to the trial monitor’s notes, Mr. Pranovich “did not answer the question.”<sup>74</sup> Mr. Pranovich never identified the cause of the transport disruption. Further, during the same cross-examination, the trial court removed questions aimed at identifying the specific employee(s) of Minsktrans who could provide insight into which transport routes stopped on November 15, 2020, and

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<sup>63</sup> See T.M. Notes Feb. 9, 2021, at 44 (“[A] day later, on November 20, [2020] they elected [Ms. Bakhvalova] a preventive measure in the form of detention.”).

<sup>64</sup> *Id.* at 9-10.

<sup>65</sup> See T.M. Notes, Feb. 9, 2021; T.M. Notes, Feb. 16, 2021; T.M. Notes, Feb. 17, 2021; T.M. Notes, Feb. 18, 2021.

<sup>66</sup> See Resolution on Refusal to Satisfy the Declared Application, Dec. 24, 2020, at 1; T.M. Notes, Feb. 9, 2021, at 11.

<sup>67</sup> See T.M. Notes, Feb. 9, 2021; T.M. Notes, Feb. 16, 2021; T.M. Notes, Feb. 17, 2021; T.M. Notes, Feb. 18, 2021.

<sup>68</sup> See T.M. Notes, Feb. 9, 2021, at 25; T.M. Notes, Feb. 17, 2021, at 37 (“High Court, I believe that you have most often seen people in this cage who have suffered some kind of fiasco in life. But today it’s not like that.”).

<sup>69</sup> T.M. Notes, Feb. 9, 2021, at 7-10 (noting that defense counsel argued that Ms. Bakhvalova’s permanent place of residence and identity had been established, and that her alleged crime was “less serious,” that she had never faced a criminal charge or conviction, and had no history of flight).

<sup>70</sup> *Id.* at 11.

<sup>71</sup> See UGOLOVNIY KODEKS RESPUBLIKI BELARUS [CRIMINAL CODE] pt. 1, art. 342 (“Organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of authorities or entail disruption of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime – are punishable by a fine, or arrest for up to six months, or restraint of liberty for up to three years, or imprisonment for the same period.”).

<sup>72</sup> See T.M. Notes, Feb. 9, 2021, at 30, 34, 35.

<sup>73</sup> *Id.* at 34.

<sup>74</sup> *Id.*

when.<sup>75</sup> Defense counsel subsequently explained that Mr. Pranovich’s testimony was critical because no witness “could reliably state when exactly the traffic stopped and what caused it.”<sup>76</sup>

25. Defense experts Lukashanets A.A., Koltunova E.A., and Davydov S.V. submitted reports “regarding the absence in the statements of the accused ... of the signs of organizing any group actions.”<sup>77</sup> They provided a psychological-linguistic analysis of Ms. Bakhvalova’s broadcast and found no evidence of her refusing to obey government officials, or organizing, preparing, or financing group activities.<sup>78</sup> ARTICLE 19 also provided a third-party submission, which found that there was “nothing in [Ms. Bakhvalova’s] reporting or actions on 15 November 2020 that could reasonably be interpreted as a ‘violation of public order’ or ‘organization’ of such a violation.”<sup>79</sup> It also concluded that the “prosecution violates international standards of freedom of expression and freedom of assembly.”<sup>80</sup> Similarly, the “NGO ‘Belarusian Association of Journalists’ [concluded that] the accused ... did not call on viewers and readers to participate or not participate in the ... ‘square of changes’.”<sup>81</sup> Further, witness Dyadyul Elena Viktorovna—a woman who was in the apartment with Ms. Bakhvalova while she was broadcasting, who could also see the crowd of protesters—testified during the trial that “[t]here were many people, they were peaceful.”<sup>82</sup>

26. On February 18, 2021, the trial court convicted Ms. Bakhvalova and Ms. Chultsova and sentenced them to two years in prison. Specifically, the trial court concluded that Ms. Bakhvalova had participated in and organized group actions that “grossly violat[ed] public order,” without accreditation as a media journalist on the territory of the Republic of Belarus.<sup>83</sup> It further found that during her broadcast, she “sound[ed] information” that led to others violating public order, including allegedly requesting that drivers of vehicles “drive up to the place of unauthorized mass events ... to block the equipment of law enforcement agencies,” and that people arrive at the protest site “in order to create a mass for the possibility of resisting the actions of law enforcement.”<sup>84</sup> Moreover, the trial court concluded that Ms. Bakhvalova had informed protestors “about the measures taken by law enforcement,”<sup>85</sup> further noting that she had given “a positive assessment to the illegal actions of active participants in mass events that grossly violate public order, thus calling for more people to participate.”<sup>86</sup>

27. In addition, the trial court held that the November 15, 2020 protest was in violation of Article 10 of the Law of the Republic of Belarus “On Mass Events in the Republic of Belarus” No. 114-3 because

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<sup>75</sup> T.M. Notes, Feb. 9, 2021, at 34-35 (noting that when defense counsel asked the court for their “motivat[ion]” in removing the issue, the court refused to provide it, and overruled the question).

<sup>76</sup> T.M. Notes, Feb. 17, 2021, at 23.

<sup>77</sup> See Judgment at 12; Alexander Alexandrovich Lukashanets, Specialist’s Report Conducted Upon Defense Counsel’s Request No. 5 from 20.01.2021 (admitted by the trial court); Elizaveta Arkadyvena Koltunova, Sergey Vladimirovich Davydov, Comprehensive Psychological-Linguistic Expert Conclusion No. 4 of Feb. 4, 2021 (admitted by the trial court).

<sup>78</sup> See Alexander Alexandrovich Lukashanets, Specialist’s Report Conducted Upon Defense Counsel’s Request No. 5 from 20.01.2021 (admitted by the trial court); Elizaveta Arkadyvena Koltunova, Sergey Vladimirovich Davydov, Comprehensive Psychological-Linguistic Expert Conclusion No. 4 of Feb. 4, 2021 (admitted by the trial court).

<sup>79</sup> ARTICLE 19 Report at 4.

<sup>80</sup> *Id.* at 6.

<sup>81</sup> Judgment at 13.

<sup>82</sup> T.M. Notes, Feb. 9, 2021, at 16.

<sup>83</sup> See Judgment at 1-2.

<sup>84</sup> See *id.*

<sup>85</sup> *Id.* at 2 (“[She] informed the participants of the above group actions about the measures taken by the law enforcement agencies aimed at suppressing illegal actions, their places of deployment, including the detentions carried out in the yards of houses, using special means and equipment[.]”).

<sup>86</sup> *Id.* at 12.

it did not have the appropriate permission of the Minsk City Executive Committee. The trial court specified that the protest had indeed disrupted transport, “stopping the movement of urban passenger transport of the State Enterprise ‘Minsktrans’ ... (bus routes No. 18, 19, 26, 26a, 29, 38, 68, 59, 76e, 89e, 105, 131, 133; trolleybus routes No. 22, 40, 92; tram routes No. 3, 4, 5).”<sup>87</sup> The judgment concluded that traffic had stopped on Chervyakova Street and Kakhovskaya Street after being “blocked by protestors,” and therefore, on the basis of its analysis of her broadcast, that Ms. Bakhvalova had “organized group actions that ... entailed disruption of the transport.”<sup>88</sup> It also found that she herself was “among other citizens, grossly violating public order, on ... Chervyakova Street,” blocking transport.<sup>89</sup> As reasoned by the trial court, Ms. Bakhvalova had herself “disobey[ed] police officers” and “violate[d] the work of the transport” because “the organizers of group actions that violate public order are prosecuted as perpetrators of this crime, regardless of whether they personally disobeyed legal requirements of the representative authorities... [or] personally committed any actions that led to the disruption of transport.”<sup>90</sup>

### III. MS. BAKHVALOVA’S CHARGES AND TRIAL VIOLATED INTERNATIONAL LAW

28. The rights to freedom from arbitrary detention, a fair trial, freedom of expression, and peaceful assembly are fundamental tenets of international human rights law.<sup>91</sup> Article 9(1) of the International Covenant on Civil and Political Rights (“ICCPR”) guarantees the right to be free from arbitrary arrest or detention.<sup>92</sup> Article 14(1) provides for the right to a fair and public trial.<sup>93</sup> Further, Article 19(2) guarantees the right to freedom of expression, which incorporates the “expression and receipt of communications of every form of idea and opinion capable of transmission to others,” including journalism.<sup>94</sup> And Article 21 provides for the right to peaceful assembly.<sup>95</sup> In addition, Article 2 requires that states party to the ICCPR

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<sup>87</sup> Judgment at 3.

<sup>88</sup> *Id.* at 2, 9.

<sup>89</sup> *Id.* at 13.

<sup>90</sup> *Id.* at 15-16.

<sup>91</sup> See G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 9 (Dec. 10, 1948) [hereinafter UDHR] (“No one shall be subjected to arbitrary arrest, detention or exile.”); UDHR art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”); UDHR art. 19 (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”); UDHR art. 20 (“Everyone has the right to freedom of peaceful assembly and association.”). See also U.N. Human Rights Comm., General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶ 2, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) (“The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.”) [hereinafter General Comment No.32].

<sup>92</sup> International Covenant on Civil and Political Rights art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

<sup>93</sup> ICCPR art. 14(1) (“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”).

<sup>94</sup> See ICCPR art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include 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 choice.”); U.N. Human Rights Comm., General Comment No. 34: Freedoms of Opinion and Expression, ¶ 11, U.N. Doc. CCPR/C/GC/34 (Sep. 12, 2011) [hereinafter General Comment No. 34].

<sup>95</sup> ICCPR art. 21 (“The right of peaceful assembly shall be recognized. 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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”).

provide all individuals within their jurisdiction with “an effective remedy” for any violations of these rights.<sup>96</sup> Belarus is a party to the ICCPR and must fulfill its obligations under the treaty “in good faith.”<sup>97</sup>

29. Belarus has recognized the primacy of international law. Article 8 of the Constitution of Belarus states that Belarus “shall recognize the supremacy of the generally recognized principles of international law and shall ensure the compliance of laws therewith.”<sup>98</sup> The Constitution also states that Belarus may enter into international agreements.<sup>99</sup>

30. For the reasons set forth below, Ms. Bakhvalova’s charges and trial violated Belarus’ treaty obligations under the ICCPR. *First*, Belarus violated Ms. Bakhvalova’s right to be free from arbitrary detention under Article 9 of the ICCPR by failing to provide a sufficient rationale for keeping her in custody before and during her trial. *Second*, Belarus violated Ms. Bakhvalova’s right to a fair trial under Article 14 of the ICCPR by violating her right to the presumption of innocence and infringing on her right to examine a key witness. *Third*, Belarus violated Ms. Bakhvalova’s right to freedom of expression under Article 19 of the ICCPR because her prosecution, among other things, was neither necessary nor proportionate. *Fourth*, Belarus violated Ms. Bakhvalova’s right of peaceful assembly under Article 21 of the ICCPR by convicting her for allegedly participating in a peaceful protest.<sup>100</sup>

#### **A. Ms. Bakhvalova’s Pre-Trial and Continued Detention Was Arbitrary**

31. Article 9(1) of the ICCPR guarantees the right to be free from arbitrary arrest or detention.<sup>101</sup> Further, Article 9(3) of the ICCPR enshrines a presumption against pre-trial detention: “It shall not be the general rule that persons awaiting trial shall be detained in custody.”<sup>102</sup> Detention pending trial must be based on an individual determination of what is reasonable and necessary given the circumstances,<sup>103</sup> and is only appropriate for a limited number of purposes, such as to prevent flight, interference with evidence,

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<sup>96</sup> ICCPR art. 2(3) (“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity[.]”).

<sup>97</sup> *UN Treaty Body Database*, U. N. HUM. RTS. TREATY BODIES, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=89&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=89&Lang=EN) (confirming that Belarus ratified the ICCPR on November 12, 1973) (last visited Apr. 9, 2021). *See also*

Vienna Convention on the Law of Treaties Art. 26, May 23, 1969, 1155 U.N.T.S. 331 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”).

<sup>98</sup> КАНСТЫТУЦЫЯ ЭСПУБЛІКІ БЕЛАРУСЬ [Constitution], 1994, art. 8 [hereinafter Belarus Constitution].

<sup>99</sup> Belarus Constitution, art. 8. (noting that the “[c]onclusion” of treaties contrary to the Constitution of Belarus are not permitted). Notably, deviating from the fundamental principles of fair trial is prohibited at all times, even during states of emergency. *See* General Comment No. 32, ¶ 6 (“Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.”); U.N. Human Rights Comm., General Comment No. 29: Article 4: Derogations During a State of Emergency, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001). Moreover, Belarus has not formally derogated from the ICCPR due to the COVID-19 pandemic.

<sup>100</sup> Ms. Bakhvalova contests the claim that she participated in the protest, stating that she was only “down [on] ... the street to record interviews with the protestors,” and that “[d]ue to the specifics of [her] ... profession as a reporter, [she] ... often ha[s] to be in the same place as the heroes of [her] report.” *See* T.M. Notes, Feb. 9, 2021, at 43.

<sup>101</sup> ICCPR art. 9(1).

<sup>102</sup> ICCPR art. 9(3).

<sup>103</sup> *See* U.N. Human Rights Comm., General Comment No. 35: Article 9 (Liberty and Security of Person), ¶ 38, UN Doc CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter General Comment No. 35].

and the recurrence of crime.<sup>104</sup> Justification must also be provided,<sup>105</sup> and the gravity of the charge—standing alone—is not a sufficient basis.<sup>106</sup> For instance, in *Sannikov v. Belarus*, the United Nations Human Rights Committee (“UN Human Rights Committee” or “Committee”) found a violation of Article 9 because the trial court did not provide *any* evidence of reasonable or necessary reasons for pre-trial and continued detention.<sup>107</sup>

32. In this case, Belarus kept Ms. Bakhvalova in pre-trial detention for approximately twelve weeks, without “set[ting] out the reasons which [necessitated] ... the need for custody.”<sup>108</sup> Ms. Bakhvalova challenged the order of pre-trial detention, but her request was denied on December 24, 2020 because “during the preliminary investigation sufficient evidence was collected indicating that [she] ... had committed crimes under Part 1, Article 342 of the Criminal Code.”<sup>109</sup> At no point did the Belarusian authorities provide a specific, reasonable rationale for her pre-trial detention, beyond the charge itself.<sup>110</sup> As such, her pre-trial detention was arbitrary, in violation of Article 9 of the ICCPR.

33. Further, as discussed above, defense counsel on the first day of trial petitioned to cancel the “preventative measure in the form of detention.” The trial court relied on the gravity of the charge in denying the petition,<sup>111</sup> without providing any other justification. This too violated Article 9 of the ICCPR.

## **B. The Trial Court Violated Ms. Bakhvalova’s Right to a Fair Trial**

34. Article 14 of the ICCPR provides that defendants have the right to “be presumed innocent until proven guilty according to law,”<sup>112</sup> and “examine, or have examined, the witnesses against [them].”<sup>113</sup> In this case, Belarus violated Ms. Bakhvalova’s right to a fair trial by (a) displaying her in a cage throughout the proceedings and convicting her by means of an inadequately reasoned verdict, in violation of her right to be presumed innocent, and (b) curtailing her right to examine witness Pranovich, in violation of her right to examine the witnesses against her. Specifically, the trial court convicted Ms. Bakhvalova by means of an arbitrary, deficiently reasoned verdict that (i) failed to consider key expert evidence, and (ii) failed to establish factual elements of the charges against her, clearly “amount[ing] to a denial of justice.”<sup>114</sup>

### *i. The Trial Court Violated Ms. Bakhvalova’s Right to be Presumed Innocent*

35. As explained below, Belarus denied Ms. Bakhvalova the presumption of innocence during the trial, as guaranteed by Article 14(2) of the ICCPR, by (a) sequestering her in a cage in the courtroom; and (b) convicting her by means of an arbitrary verdict.

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<sup>104</sup> See *Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, U.N. Hum. Rts. Comm., ¶ 10.4 (Aug. 19, 2010).

<sup>105</sup> See *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, U.N. Hum. Rts. Comm., ¶ 7.10 (Dec. 4, 2012); *Van Alphen v. the Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, U.N. Hum. Rts. Comm., ¶ 5.8 (Jul. 23, 1990).

<sup>106</sup> General Comment No. 35, ¶ 38.

<sup>107</sup> *Sannikov v. Belarus*, U.N. Doc. CCPR/C/122/D/2212/2012, U.N. Hum. Rts. Comm., ¶ 6.5 (May 14, 2018). See also *Kozulin v. Belarus*, U.N. Doc. CCPR/C/112/D/1773/2008, U.N. Hum. Rts. Comm., ¶ 9.8 (Jan. 14, 2015).

<sup>108</sup> T.M. Notes, Feb. 9, 2021, at 10.

<sup>109</sup> See Resolution on Refusal to Satisfy the Declared Application, Dec. 24, 2020, at 1.

<sup>110</sup> See *id.*; T.M. Notes, Feb. 9, 2021, at 9.

<sup>111</sup> T.M. Notes, Feb. 9, 2021, at 11.

<sup>112</sup> ICCPR art. 14(2).

<sup>113</sup> ICCPR art. 14(3)(e).

<sup>114</sup> See *Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, U.N. Hum. Rts. Comm., ¶ 8.11 (May 12, 2014).

a. The Trial Court Sequestered Ms. Bakhvalova in a Cage in the Courtroom

36. The presumption of innocence can be breached through conduct suggesting the accused is guilty. For example, the UN Human Rights Committee has held that “defendants should not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”<sup>115</sup> In *Formonov v. Uzbekistan*, the Committee held that keeping the author in a metal cage during his court hearing violated his right to be presumed innocent under Article 14(2) of the ICCPR.<sup>116</sup> Under the Committee holding in *Selyun v. Belarus*, if the defendant is caged, the state must present adequate justification for the confinement.<sup>117</sup>

37. In this case, Ms. Bakhvalova was sequestered in a “cage” in the courtroom throughout the proceedings with her co-defendant Ms. Chultsova (see **Figure 1**).<sup>118</sup> The trial court did not provide justification for her confinement, thus contravening her right to the presumption of innocence in violation of Article 14(2) of the ICCPR.



**Figure 1:** Photograph of Ekaterina Bakhvalova (on the right) and Daria Chultsova at trial on February 9, 2021 (TUT.BY).

<sup>115</sup> *Formonov v. Uzbekistan*, U.N. Doc. CCPR/C/122/D/2577/2015, U.N. Hum. Rts. Comm., ¶ 9.4 (June 4, 2018). See also General Comment No. 32, ¶ 30; *Sannikov v. Belarus*, U.N. Doc. CCPR/C/122/D/2212/2012, U.N. Hum. Rts. Comm., ¶ 6.8 (May 14, 2018).

<sup>116</sup> *Formonov v. Uzbekistan*, U.N. Doc. CCPR/C/122/D/2577/2015, U.N. Hum. Rts. Comm., ¶ 9.4 (June 4, 2018).

<sup>117</sup> See *Selyun v. Belarus*, U.N. Doc. CCPR/C/115/D/2289/2013, U.N. Hum. Rts. Comm., ¶ 7.5 (Dec. 9, 2015). See also *Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, U.N. Hum. Rts. Comm., ¶ 9.3 (May 12, 2014); *Burdyko v. Belarus*, U.N. Doc. CCPR/C/114/D/2017/2010, U.N. Hum. Rts. Comm., ¶ 8.4 (Sept. 25, 2015).

<sup>118</sup> See T.M. Notes, Feb. 9, 2021, at 25 (“The accused are in a ‘cage’, sitting on wooden benches - Bakhvalova is closer to the audience on the first bench, Chultsova is on the second bench by the wall closer to the judge.”); T.M. Notes, Feb. 17, 2021, at 37.

b. The Trial Court Convicted Ms. Bakhvalova by Means of an  
Inadequately Reasoned Verdict

38. The presumption of innocence “guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.”<sup>119</sup> Further, the court must give the accused the benefit of the doubt.<sup>120</sup> The UN Human Rights Committee has held that “it is generally for the relevant domestic courts to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.”<sup>121</sup> The European Court of Human Rights has further explained that a judgment that is insufficiently reasoned—in particular with respect to the obligation to give the defendant the benefit of the doubt—can violate the presumption of innocence.<sup>122</sup>

39. For instance, in *Arutyuniantz v. Uzbekistan* the UN Human Rights Committee found a violation of Article 14(2) of the ICCPR where the charges and evidence against the accused “left room for considerable doubt”—doubts that were not taken into account by the trial court.<sup>123</sup> And in *Larranaga v. Philippines* the Committee found a violation of Article 14(2) of the ICCPR where the court failed to appropriately address key evidence and issues in the proceedings.<sup>124</sup>

40. In Ms. Bakhvalova’s case, the trial court’s judgment reflects such serious deficiencies in reasoning that their evaluation clearly “amounted to a denial of justice.”<sup>125</sup> This includes (i) refusing to take into account key expert evidence without justification, and (ii) failing to establish beyond reasonable doubt fundamental factual elements of the charge against Ms. Bakhvalova.

41. **Refusal to consider key expert evidence.** The judgment did not take into account the findings of experts Lukashanets A.A., Koltunova E.A., and Davydova S.V. “regarding the absence in the statements of the accused ... of the signs of organizing any group actions.”<sup>126</sup> They provided a psychological-linguistic analysis of Ms. Bakhvalova’s broadcast and found no evidence of her refusing to obey government officials, or organizing, preparing, or financing group activities.<sup>127</sup> In its judgment, the trial court simply concluded that these findings were “refuted.”<sup>128</sup> This barebones refusal to account for significant defense evidence and argument runs afoul of the standards set forth in *Larranaga v. Philippines*.

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<sup>119</sup> General Comment No. 32, ¶ 30.

<sup>120</sup> *Id.*

<sup>121</sup> *Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, U.N. Hum. Rts. Comm., ¶ 8.11 (May 12, 2014). *See also* *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, U.N. Hum. Rts. Comm., ¶ 6.7 (Apr. 2, 2007); *Arutyuniantz v. Uzbekistan*, U.N. Doc. CCPR/C/83/D/971/2001, U.N. Hum. Rts. Comm., ¶¶ 6.4-6.5 (Mar. 30, 2005); *Koreba v. Belarus*, U.N. Doc. CCPR/C/100/D/1390/2005, U.N. Hum. Rts. Comm., ¶¶ 7.2-7.5 (Oct. 25, 2010); *Larranaga v. Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, U.N. Hum. Rts. Comm., ¶ 7.4 (July 24, 2006).

<sup>122</sup> *Melich and Beck v. Czech Republic*, Eur. Ct. H.R., App. No. 35450/05, ¶¶ 49-55 (July 24, 2008), <http://hudoc.echr.coe.int/eng?i=001-87829>.

<sup>123</sup> *Arutyuniantz v. Uzbekistan*, U.N. Doc. CCPR/C/83/D/971/2001, U.N. Hum. Rts. Comm., ¶¶ 6.4-6.5 (Mar. 30, 2005).

<sup>124</sup> *Larranaga v. Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, U.N. Hum. Rts. Comm., ¶ 7.4 (July 24, 2006). *See also* *Melich and Beck v. Czech Republic*, Eur. Ct. H.R., App. No. 35450/05, ¶¶ 49-55 (2008), <http://hudoc.echr.coe.int/eng?i=001-87829>; *Ajdarić v. Croatia*, Eur. Ct. H.R., App. No. 20883/09, ¶¶ 48-52 (Dec. 13, 2011), <http://hudoc.echr.coe.int/fre?i=001-107989> (holding that where a domestic court “made no comments about the contradictory witness statements ... the decisions of the national courts did not observe the basic requirement of criminal justice that the prosecution has to prove its case beyond reasonable doubt and were not in accordance with one of the fundamental principles of criminal law, namely, *in dubio pro reo*.”).

<sup>125</sup> *See Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, U.N. Hum. Rts. Comm., ¶ 8.11 (May 12, 2014).

<sup>126</sup> Judgment at 12.

<sup>127</sup> Elizaveta Arkadyvena Koltunova, Sergey Vladimirovich Davydov, Comprehensive Psychological-Linguistic Expert Conclusion No. 4 of Feb. 4, 2021, at 18 (admitted by the trial court).

<sup>128</sup> Judgment at 12.

42. **Failure to establish that Ms. Bakhvalova organized group actions that “grossly violate[d]” public order.** In order to find a violation of Part 1, Article 342 of the Criminal Code, the trial court needed to establish that Ms. Bakhvalova had either (1) organized group actions that grossly violated public order and were associated with disobedience of the demands of authorities, (2) organized group actions that grossly violated public order and entailed the disruption of transport, or (3) actively participated in group actions that grossly violated public order and were associated with clear disobedience of the demands of authorities or entailed the disruption of transport.<sup>129</sup> In its judgment, the trial court found that Ms. Bakhvalova was guilty of all three elements, holding that she had “organized group actions that grossly violate[d] public order” associated with *both* the disobedience of the demands of authorities, and with the disruption of transport.<sup>130</sup> And, it reasoned that Ms. Bakhvalova had actively participated in such actions, in that she “disobey[ed] police officers” and “violate[d] the work of the transport” because “the organizers of group actions that violate public order are prosecuted as perpetrators of this crime, regardless of whether they personally disobeyed legal requirements.”<sup>131</sup>

43. However, the trial court did not lay out facts to support its finding that Ms. Bakhvalova had organized such actions, save for its perfunctory analysis of her statements while covering the protest.<sup>132</sup> Meanwhile, the prosecutor simply argued that “the very fact that the accused carried out a live broadcast already confirms the fact that they organized illegal actions.”<sup>133</sup> And the trial court ignored defense experts’ conclusions that there was no evidence of “organizing any group actions” in Ms. Bakhvalova’s language while on air.<sup>134</sup> That is, the trial court’s conclusion that she was responsible for organizing the violating of police orders and the blocking of transport was not established beyond a reasonable doubt because it was built on the inadequate foundation that her statements evidenced ‘organization.’ Further, the court’s reliance on Ms. Bakhvalova’s lack of “accreditation of a media journalist” as a basis for her conviction suggests that the trial court was motivated to convict her for her reporting on the protest.<sup>135</sup>

44. **Failure to establish place, time and cause of traffic disruption.** The judgment found that the November 15, 2020 protest had disrupted transport, “stopping the movement of urban passenger transport of the State Enterprise ‘Minsktrans’ ... (bus routes No. 18, 19, 26, 26a, 29, 38, 68, 59, 76e, 89e, 105, 131, 133; trolleybus routes No. 22, 40, 92; tram routes No. 3, 4, 5).”<sup>136</sup> However, during the proceedings not one of the witnesses “could reliably state when exactly the traffic stopped and what caused it.”<sup>137</sup> Indeed, witness Pranovich—head of the transport organization department of Minsktrans—responded “no” when asked “do you know what exactly blocked traffic?”<sup>138</sup> He also testified that he was unable to explain what time, or where exactly buses stopped: when asked where or when the first bus of

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<sup>129</sup> See UGOLOVNIY KODEKS RESPUBLIKI BELARUS [CRIMINAL CODE] pt. 1, art. 342 (“Organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of authorities or entail disruption of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime – are punishable by a fine, or arrest for up to six months, or restraint of liberty for up to three years, or imprisonment for the same period.”); T.M. Notes, Feb. 17, 2021, at 22.

<sup>130</sup> Judgment at 2.

<sup>131</sup> *Id.* at 15.

<sup>132</sup> In the trial court’s Judgment, it simply quotes the language Ms. Bakhvalova used in her broadcast. See Judgment at 11-12.

<sup>133</sup> T.M. Notes, Feb. 17, 2021, at 9.

<sup>134</sup> See Alexander Alexandrovich Lukashanets, Specialist’s Report Conducted Upon Defense Counsel’s Request No. 5 from 20.01.2021 (admitted by the trial court); Elizaveta Arkadyvena Koltunova, Sergey Vladimirovich Davydov, Comprehensive Psychological-Linguistic Expert Conclusion No. 4 of Feb. 4, 2021 (admitted by the trial court).

<sup>135</sup> Judgment at 2.

<sup>136</sup> *Id.* at 3.

<sup>137</sup> T.M. Notes, Feb. 17, 2021, at 23.

<sup>138</sup> T.M. Notes, Feb. 9, 2021, at 33.



route No. 18 halted, Pranovich answered “I cannot explain.”<sup>139</sup> Tellingly, the trial court “removed” defense counsel’s follow-up question of “when and which [transport] route stopped,” alleging that Mr. Pranovich had already answered it, which he had not.<sup>140</sup> And yet in its judgment, the trial court concluded that specific bus and trolleybus routes had been stopped, and mischaracterized Mr. Pranovich’s testimony as having attributed the traffic disruption to “unauthorized mass events.”<sup>141</sup> This was not established beyond a reasonable doubt.

45. Taken together, the trial court’s evaluation of the evidence and conduct during trial makes clear that Ms. Bakhvalova’s right to the presumption of innocence was contravened, in violation of Article 14(2) of the ICCPR.

*ii. The Trial Court Infringed on Ms. Bakhvalova’s Ability to Examine A Key Witness*

46. Under Article 14(3)(e) of the ICCPR, all persons accused of a crime are entitled “[t]o examine, or have examined, the witnesses against [them] and to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].”<sup>142</sup> In the words of the UN Human Rights Committee, this right is “important for ensuring an effective defense by the accused and their counsel.”<sup>143</sup>

47. Violations of Article 14(3)(e) can occur where a court excessively curtails defense questioning. For instance, in *Larranaga v. The Philippines*, the Committee ruled that the court violated Article 14(3)(e) not only by refusing to call proposed defense witnesses without adequate justification, but by cutting short the defense’s cross-examination of a key prosecution witness.<sup>144</sup>

48. In Ms. Bakhvalova’s case, the trial court cut short defense questioning of witness Pranovich.<sup>145</sup> In particular, the court’s refusal to permit the defense to pursue the key line of inquiry regarding “when and which [transport] route stopped”<sup>146</sup> made it impossible for them to challenge the alleged direct causal link between the actions of the protesters and the disruption of transport.<sup>147</sup> And, though defense counsel sought to access information from an “electronic database,” with which they could have “established which particular bus stopped at which particular place, and why it stopped there ... either because the protesters had stepped out onto the roadway, or because the traffic police blocked the traffic,” they did not receive it.<sup>148</sup> This violated Ms. Bakhvalova’s rights under Article 14(3)(e) of the ICCPR.

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<sup>139</sup> T.M. Notes, Feb. 9, 2021, at 34-35.

<sup>140</sup> *Id.* at 34.

<sup>141</sup> Judgment at 7.

<sup>142</sup> ICCPR art. 14(3)(e).

<sup>143</sup> General Comment No. 32, ¶ 39. While Article 14(3)(e) does not establish an absolute right, it protects the right to call witnesses who are relevant and proposed in a timely manner in compliance with procedural requirements. See Saidov v. Tajikistan, U.N. Doc. CCPR/C/122/D/2680/2015, U.N. Hum. Rts. Comm., ¶ 9.6 (Sep. 20, 2018); Johnson v. Spain, U.N. Doc. CCPR/C/86/D/1102/2002, U.N. Hum. Rts. Comm., ¶ 6.5 (Mar. 27, 2006).

<sup>144</sup> *Larranaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, U.N. Hum. Rts. Comm., ¶ 7.7 (Jul. 24, 2006).

<sup>145</sup> See T.M. Notes, Feb. 9, 2021, at 30, 34, 35.

<sup>146</sup> T.M. Notes, Feb. 9, 2021, at 34.

<sup>147</sup> T.M. Notes, Feb. 17, 2021, at 25.

<sup>148</sup> See T.M. Notes, Feb. 17, 2021, at 25; T.M. Notes, Feb. 9, 2021, at 37.

### C. Belarus Violated Ms. Bakhvalova's Right to Freedom of Expression

49. Article 19(2) of the ICCPR guarantees the right to freedom of opinion and expression.<sup>149</sup> The UN Human Rights Committee has emphasized that the scope of this right includes sharing information and ideas of all kinds, including audio-visual expression, internet-based expression, and journalism.<sup>150</sup>

50. Under Article 19(3), the right to freedom of expression may be subject to restrictions.<sup>151</sup> However, the UN Human Rights Committee has explained that any restrictions must (i) be prescribed by law (the principle of legality), (ii) serve a legitimate objective, and (iii) be necessary to achieve and proportionate to that objective.<sup>152</sup> Public order is a potentially legitimate objective.<sup>153</sup> But the authorities must substantiate the invocation of such a justification. For instance, in *Pranevich v. Belarus*, the Committee found that subjecting a journalist to an administrative penalty for taking part in an unauthorized public event—without sufficient explanation for the restriction on her right to freedom of expression—violated Article 19.<sup>154</sup> Further, to comply with the principle of legality, known as the maxim “*nullum crimen nulla poena sine lege*,” a restriction must be precise enough to “enable an individual to regulate his or her conduct accordingly...[.]”<sup>155</sup> And a restriction “violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression,”<sup>156</sup> and violates the proportionality standard if it is overbroad or overly harsh.<sup>157</sup> Indeed, according to the UN Special Rapporteur on Freedom of Expression, criminal penalties for speech are only warranted for grave crimes.<sup>158</sup>

51. Further, the UN Human Rights Committee has emphasized that in “circumstances of public debate concerning . . . public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.”<sup>159</sup> In this regard, the Committee has stressed that freedom of expression is “integral to the enjoyment of the rights to freedom of assembly and association,” and that journalists should be protected while attending mass events.<sup>160</sup> The Committee has also expressed concern at journalist licensing or accreditation systems, confirming that they are permissible “only when necessary” and should not be discriminatory – in general, they are incompatible with Article 19(3).<sup>161</sup> Further, the UN Special Rapporteur on the Situation of Human Rights in Belarus has reported on harassment of journalists under the Belarusian accreditation system, warning that the “requirement for accreditation [of journalists] will be used to restrict journalists’ access to information.”<sup>162</sup>

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<sup>149</sup> ICCPR art. 19(2).

<sup>150</sup> General Comment No. 34, ¶ 11, 12.

<sup>151</sup> ICCPR art. 19(3).

<sup>152</sup> See *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, U.N. Hum. Rts. Comm., ¶ 12.2 (Jan. 4, 1999); General Comment No. 34, ¶¶ 22, 34.

<sup>153</sup> See ICCPR art. 19(3).

<sup>154</sup> *Pranevich v. Belarus*, U.N. Doc. CCPR/C/124/D/2251/2013, U.N. Hum. Rts. Comm., ¶ 6.5 (Dec. 10, 2018).

<sup>155</sup> General Comment No. 34, ¶ 25.

<sup>156</sup> *Id.* at ¶ 33.

<sup>157</sup> *Id.* at ¶ 34.

<sup>158</sup> Rep. of the S.R. on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/66/290, ¶ 40 (Aug. 10, 2011) (explaining that criminal penalties for speech are warranted in only the most serious and exceptional cases, such as child pornography, incitement to terrorism, public incitement to genocide, and advocacy for national, racial, or religious hatred).

<sup>159</sup> General Comment No. 34, ¶ 38.

<sup>160</sup> See *id.* at ¶ 4; U.N. Human Rights Comm., General Comment No. 37: On the Right to Peaceful Assembly, ¶ 74, U.N. Doc. CCPR/C/GC/37 (Sep. 17, 2020) [hereinafter General Comment No. 37].

<sup>161</sup> General Comment No. 34, ¶ 44.

<sup>162</sup> See Rep. of the S.R. on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/29/43, ¶¶ 26, 82, 84 (2015) (explaining further that Belsat has made requests for official accreditation of their journalists “for many years.”).

52. In this case, Ms. Bakhvalova’s conviction for violating Part 1, Article 342 of the Criminal Code of the Republic of Belarus is a direct assault on her right to freedom of expression.

53. *First*, her broadcast—as a Belsat TV journalist—was protected speech under Article 19 of the ICCPR as it concerned reporting on a matter of public interest: the mass protest occurring on the Square of Change on November 15, 2020. Ms. Bakhvalova’s coverage of the events included describing the movement of protestors,<sup>163</sup> the composition of the crowd,<sup>164</sup> and the movement of traffic.<sup>165</sup> As described above, at no point during the proceedings did the prosecution provide evidence of Ms. Bakhvalova organizing the protests, merely that she was reporting on them. Indeed, one of the experts (called by Ms. Bakhvalova’s defense counsel) found that while on air, Ms. Bakhvalova’s was a “direct observer” of the protest, clearly addressing listeners at home.<sup>166</sup>

54. *Second*, though the trial court concluded in its judgment that Ms. Bakhvalova participated in the protest “without accreditation [as] a media journalist,” in violation of Article 10 of the Law of the Republic of Belarus N. 114-3,<sup>167</sup> her speech would have been protected regardless of her ‘official’ status as a journalist. According to the UN Human Rights Committee, journalism “is a function shared by a wide range of actors, including ... bloggers ... and others who engage in forms of self-publication.”<sup>168</sup> And, Belarus’ accreditation system *itself* is an impermissible restriction of her right to freedom of expression under Article 19. Ms. Bakhvalova had sought accreditation from the Belarusian Ministry of Foreign Affairs to work in Belarus, but her request—as a ‘foreign’ journalist—was declined.<sup>169</sup> As noted by the UN Human Rights Committee, accreditation systems should not be discriminatory and should only be used when necessary – in general, they are incompatible with Article 19(3).<sup>170</sup> This blanket refusal to provide Ms. Bakhvalova with a license to work as a journalist, and her conviction for participating in the protest “without accreditation” is a violation of her right to freedom of expression.

55. *Third*, Belarus’ restriction on her freedom of expression is impermissible under Article 19 because Part 1, Article 342 of the Criminal Code is not precisely drafted or narrowly tailored, which fails the legality prong of the UN Human Rights Committee’s three-part test. Article 342 criminalizes the “[o]rganization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of authorities or entail disruption of transport, enterprises, institutions or organizations.”<sup>171</sup> In terms of the criminalized act, the provision covers a wide range of outcomes: all kinds of organizing, of any action that “grossly violate[s] public order” and is associated with failing to comply with legal requests of authorities, or disrupting any form of transport, or enterprise, institution or organization. Neither ‘organizing,’ nor “group actions that grossly violate public order” or ‘disrupting’ are defined. The sweeping language of the law makes it difficult for persons to “regulate [their] conduct accordingly,” and thus violates the principle of legality.<sup>172</sup>

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<sup>163</sup> T.M. Notes, Feb. 17, 2021, at 26.

<sup>164</sup> *Id.* at 27-28.

<sup>165</sup> *Id.* at 27.

<sup>166</sup> Alexander Alexandrovich Lukashanets, Specialist’s Report Conducted Upon Defense Counsel’s Request No. 5 from 20.01.2021 at 2, 3 (admitted by the trial court) (“[W]ho joined our broadcast recently ...; For our new viewers I will remind ...; For our viewers ...; For new viewers ... recall where we are ...; Soon we will return live from the Square of Change; Thank you so much for watching my broadcast; And we continue to work in Minsk; who joined ... to watch our broadcast; Here look, dear spectators; Watch with us ...”).

<sup>167</sup> *See* Judgment at 2, 13.

<sup>168</sup> General Comment No. 34, ¶ 44.

<sup>169</sup> *See* Judgment at 3; T.M. Notes, Feb. 9, 2021, at 43.

<sup>170</sup> General Comment No. 34, ¶ 44.

<sup>171</sup> UGOLOVNIY KODEKS RESPUBLIKI BELARUS [CRIMINAL CODE] pt. 1, art. 342.

<sup>172</sup> *See* General Comment No. 34, ¶ 25.

56. *Fourth*, this prosecution in particular does not comply with the third prong of the test: necessity and proportionality. Criminal penalties should only be used for grave speech-related crimes. Ms. Bakhvalova’s coverage of the protests in the Square of Change—in other words, a journalist covering a peaceful mass event—should not be criminalized under international standards.

57. Therefore, Ms. Bakhvalova’s conviction for violating Part 1, Article 342 of the Criminal Code of the Republic of Belarus violates Article 19 of the ICCPR.

#### **D. Belarus Violated Ms. Bakhvalova’s Right of Peaceful Assembly**

58. Article 21 of the ICCPR guarantees the right of peaceful assembly.<sup>173</sup> According to the UN Human Rights Committee, peaceful assemblies—whereby persons gather for purposes of expression, conveying a position on an issue or ideas—are a valuable tool that “enable[] individuals to ... participate in shaping their societies” and are critical to democratic governance.<sup>174</sup> The scope of the right includes peaceful assemblies that “pursue contentious ideas or goals,” are organized in response to current events, or “cause disruption, for example of vehicular or pedestrian movement.”<sup>175</sup> In the UN Human Rights Committee’s own words, “[p]eaceful assemblies can be inherently or deliberately disruptive and require a significant degree of toleration.”<sup>176</sup>

59. The right of peaceful assembly is not absolute, however. Under Article 21, restrictions are permitted if (i) in conformity with the law (legality) and (ii) necessary in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Under the first prong of this test, the UN Human Rights Committee has stressed that states should “not rely on a vague definition of ‘public order’ to justify overbroad restrictions on the right of peaceful assembly.”<sup>177</sup> For instance, in *Sannikov v. Belarus*, the author was prosecuted for organizing a peaceful public gathering, and the Committee held that the law used by Belarus to imprison him—Article 293 of the Criminal Code—was “too vague and too broad to be able to foresee the consequences of one’s actions.”<sup>178</sup> In particular, the Committee expressed concern that “there is no definition of what constitutes ‘mass disorder’ in domestic law.”<sup>179</sup>

60. Moreover, the Committee has specifically explained that any criminal or administrative response must be “proportionate” to any potential justification for restricting the right to peaceful assembly.<sup>180</sup> While authorization regimes are not in principle unlawful, “[w]here authorization regimes persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise.”<sup>181</sup> In *Malei v. Belarus*, for instance, the Committee held that refusing to authorize a “picket” to be held, without “any justification

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<sup>173</sup> ICCPR art. 21.

<sup>174</sup> General Comment No. 37, ¶ 1, 12. *See also* *Sekerko v. Belarus*, U.N. Doc. CCPR/C/109/D/1851/2008, U.N. Hum. Rts. Comm., ¶ 9.3 (Dec. 2, 2013).

<sup>175</sup> General Comment No. 37, ¶ 7, 14.

<sup>176</sup> *Id.* at ¶ 44.

<sup>177</sup> *Id.*

<sup>178</sup> *Sannikov v. Belarus*, U.N. Doc. CCPR/C/122/D/2212/2012, U.N. Hum. Rts. Comm., ¶¶ 2.7, 6.12 (May 14, 2018) (noting that Article 293, Part 1 of the Criminal Code addresses the “organization of mass disorder, accompanied by violence against persons, pogroms, arson, destruction of property or armed resistance against the authorities,” and Part 2 addresses “involvement in riots, including the committing of acts specified in the first part of article 293”).

<sup>179</sup> *Id.* at ¶¶ 6.12 (Apr. 6, 2018).

<sup>180</sup> General Comment No. 37, ¶ 67.

<sup>181</sup> General Comment No. 37, ¶ 73.

or explanation,” violated Article 21 of the ICCPR.<sup>182</sup> And in *Insenova v. Kazakhstan*, the Committee found that imposing a sanction on someone for “participation in a[n] [unauthorized] peaceful spontaneous assembly” without showing that it was “necessary in a democratic society” or “proportionate to the interests of ... public order,” or providing any other justification also violated Article 21.<sup>183</sup>

61. In this case, *even if* Ms. Bakhvalova was found to have organized the November 15, 2020 protest in the Square of Change, her prosecution for persuading protestors to “grossly violate public order,” and “active[ly] participat[ing] in such group actions,” is a clear violation of her right of peaceful assembly.<sup>184</sup>

62. *First*, the Square of Change protest itself was a “peaceful assembly” under Article 21 of the ICCPR. According to reports, people took to the streets to demand action in response to the death of Mr. Bondarenko—a group, political response to a current event.<sup>185</sup> Further, during Ms. Bakhvalova’s coverage of the protest, she stressed that the crowd was “peaceful” and in a “peaceful mood.”<sup>186</sup> Witness Dyadyul Elena Viktorovna, a woman who was in the apartment with Ms. Bakhvalova while she was broadcasting, also testified during the trial that “[t]here were many people, they were peaceful.”<sup>187</sup> Though persons reportedly “blocked” traffic on the street near the Square of Change,<sup>188</sup> this does not—as stressed by the UN Human Rights Committee—change the peaceful character of protest.<sup>189</sup>

63. *Second*, as noted above, Belarus’ restriction on Ms. Bakhvalova’s right of peaceful assembly is impermissible under Article 21 because—similar to the section of the Criminal Code at issue in *Sannikov v. Belarus*—Part 1, Article 342 of the Criminal Code is not precisely drafted or narrowly tailored. It therefore fails the legality prong of the UN Human Rights Committee’s two-part test.

64. *Third*, Belarus did not provide a justification sufficient to justify the magnitude of the response to Ms. Bakhvalova’s exercise of her right of peaceful assembly on November 15, 2020: namely, criminal prosecution and imprisonment for two years. The trial court’s invocation of “public order”—and the traffic stoppage—are themselves insufficient. Indeed, like in *Insenova v. Kazakhstan*, the trial court failed to demonstrate why these restrictions were specifically necessary to maintain “public order” during this protest.<sup>190</sup>

65. Therefore, Ms. Bakhvalova’s conviction for violating Part 1, Article 342 of the Criminal Code of the Republic of Belarus violates Article 21 of the ICCPR.

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<sup>182</sup> Malei v. Belarus, U.N. Doc. CCPR/C/129/D/2404/2014, U.N. Hum. Rts. Comm., ¶¶ 9.5-9.7. (Mar. 4, 2021). *See also* Timoshenko et al. v. Belarus, U.N. Doc. CCPR/C/129/D/2461/2014, ¶¶ 7.5-7.6 (Sept. 30, 2020).

<sup>183</sup> *Insenova v. Kazakhstan*, U.N. Doc. CCPR/C/126/D/2542/2015, ¶¶ 9.9-9.10 (Aug. 26, 2019). *See also* Severinets v. Belarus, U.N. Doc. CCPR/C/123/D/2230/2012, ¶¶ 8.6-8.9 (Aug. 14, 2018) (“The Committee notes that the State party has failed to demonstrate that the conviction and fine imposed on the author following a spontaneous and peaceful street procession were necessary in a democratic society and were proportionate to 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 as required by article 21 of the Covenant.”)

<sup>184</sup> Judgment at 2.

<sup>185</sup> T.M. Notes, Feb. 17, 2021, at 20 (describing a speech given by defense counsel Sergey Zikratsky during the proceedings).

<sup>186</sup> *Id.* at 27 (“I am simply incredibly impressed by the courage of [these] people, the courage and their peaceful mood.”).

<sup>187</sup> T.M. Notes, Feb. 9, 2021, at 16.

<sup>188</sup> *Id.* at 16.

<sup>189</sup> *See* General Comment No. 37, ¶ 7, 14.

<sup>190</sup> *Insenova v. Kazakhstan*, U.N. Doc. CCPR/C/126/D/2542/2015, ¶¶ 9.9-9.10 (Aug. 26, 2019). *See also* Zhagiparov v. Kazakhstan, U.N. Doc. CCPR/C/124/D/2441/2014, ¶ 13.5 (Nov. 29, 2018).

#### IV. CONCLUSION

66. For the foregoing reasons, we urge the Minsk City Court to remedy the arbitrary detention, fair trial, freedom of expression, and right of peaceful assembly violations to which Ms. Bakhvalova was subjected. Specifically, we urge the Minsk City Court to overturn the trial court's judgment and acquit Ms. Bakhvalova. We similarly urge the Minsk City Court to overturn the trial court's verdict in the case of Ms. Chultsova, and acquit her.

Respectfully submitted,



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