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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1634/2007

Decision adopted by the Committee at its 104th session, 12–30 March 2012

Submitted by:	Viktor Korneenko (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	18 April 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 December 2007 (not issued in document form)
Date of adoption of decision:	26 March 2012
Subject matter:	Lack of implementation of the Committee's Views in communication No. 1274/2004
Procedural issues:	Level of substantiation of claims
Substantive issues:	Unfair trial; effective remedy; freedom of association
Articles of the Covenant:	2; 14; 22
Articles of the Optional Protocol:	2

Annex

Decisions of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (104th session)

concerning

Communication No. 1634/2007*

Submitted by:	Viktor Korneenko (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	18 April 2007 (initial submission)

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

Meeting on 26 March 2012,

Adopts the following:

Decision on admissibility

1. The author of the communication is Viktor Korneenko, a Belarus national born in 1957. He claims to be a victim of violations by Belarus[1] of his rights under article 2 and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The author is unrepresented.

Factual background

2.1 On 31 October 2006, the Human Rights Committee examined another communication submitted by the author, communication No. 1274/2004, and found that he was a victim of violation, by the State party, under article 22, paragraph 1, of the Covenant. The reason was that, by dissolving the association Civil Initiatives, for which the author was the Chairperson, the State party had imposed unjustified restrictions of his right to freedom of association. The Committee also took note of the unlawfulness of the operation of unregistered associations in Belarus. The Committee considered that the author was entitled to an appropriate remedy, including reestablishment of Civil Initiatives and

* The following members of the Committee participated in the examination of the present communication: Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

[1] The Covenant and the Optional Protocol thereto entered into force for Belarus on 23 March 1976 and 30 December 1992, respectively.

compensation, and that the State party should avoid similar violations in future. The Committee also requested the State party to publish the Committee's Views.

2.2 On 29 November 2006, the author applied to the Prosecutor-General's Office, the Supreme Court, and the Department of Justice of the Gomel Region Executive Committee (Department of Justice), requesting them to comply with the Committee's Views. On 15 December 2006, the Prosecutor's Office replied that he could request a supervisory review of the decision of the Gomel Regional Court on the dissolution of Civil Initiatives. This request, however, should comply with the Belarusian domestic law. On 18 December 2006, the Supreme Court replied that the author's case had been previously reviewed by domestic courts, including under the supervisory review proceedings and clarified that under article 17 of the Constitution, Russian and Belarusian were the only official languages, and that, therefore, all the documents submitted to the Court in other languages, should have been translated into one of these languages.

2.3 On 19 December 2006, the Department of Justice replied that the decision of the Gomel Regional Court to have Civil Initiatives dissolved was enforced. The author could seek supervisory review of the decision on dissolution within three years after its enforcement. Documents produced on the territory of a third State should have been legalized following the procedure established by law and translated into one of the official languages and translations must be duly certified. The Department of Justice stressed that the Committee's Views were of recommendatory, i.e. non-obligatory nature.

2.4 On a later unspecified date, the author requested the Supreme Court to initiate a supervisory review of the decision on the dissolution of Civil Initiatives. On 13 March 2007, the Supreme Court rejected his request on the grounds of expiry of the three-year statutory term established (see paragraph 2.3 above).

2.5 The author recalls that activities of unregistered associations or of associations dissolved by court are prohibited in Belarus. Therefore, if Civil Initiatives resumes its activities in the light of the Committee's Views, he could be criminally prosecuted.

The complaint

3.1 The author claims that under the domestic and international law, every treaty in force for Belarus is binding upon it and must be implemented in good faith. Under articles 26 and 27 of the Vienna Convention on the Law of Treaties, States cannot invoke national law as justification for non-implementing a treaty. The refusal of the Supreme Court of Belarus to comply with the Committee's Views testifies that Belarus is refusing without any explanation to respect the author's rights enshrined in the Covenant and to provide him with a remedy. This, in the author's view, results in violation by the State party of article 2 of the Covenant.

3.2 He claims that the refusal of the Supreme Court to consider the Committee's Views violated his right to equality before the courts, contrary to article 14, paragraph 1, of the Covenant. Leaving the Committee's Views without consideration cannot be considered as a fair trial by an independent and impartial court. The author further claims that the judiciary as such is not independent and impartial in Belarus.[2]

[2] In this connection, the author refers to the report of the Special Rapporteur on the independence of judges and lawyers, submitted in 2001 to the Commission on Human Rights pursuant to resolution 2000/42 (E/CN.4/2001/65/Add.1, 8 February 2001).

State party's observations on admissibility and merits

4.1 On 2 May 2008, the State party recalls that the association Civil Initiatives was dissolved by a decision of the Gomel Regional Court of 17 June 2003, and this was confirmed on 14 August 2003, on appeal, by the Supreme Court. On 21 November 2003, the Supreme Court rejected the author's request for a supervisory review. In a subsequent "verification" of the lawfulness of the court decisions, the Deputy Prosecutor-General found no grounds to challenge these decisions. The State party explains that according to article 439 of the Civil Procedure Code, the author could have applied again for a supervisory review with the Prosecutor's Office, and given that he failed doing it, available domestic remedies have not been exhausted. According to article 437 of the Code, an application for a supervisory review can be submitted within three years of the entry into force of the appealed court decision and at the time of the State party's submission to the Committee the above deadline had expired.

4.2 The State party further submits that the author had repeatedly abused his right of submission to the Human Rights Committee, including by not exhausting domestic legal remedies. It stresses that the Committee must adopt admissibility decisions in strict accordance with the Optional Protocol.

4.3 The State party declares that the Gomel District Court's decision of 17 June 2003 was lawful and maintains that in the instant case there are no indications that the State party had violated the author's rights under articles 2 and 14, paragraph 1, of the Covenant.

4.4 The State party explains that the principle of separation of powers applies in Belarus. Judicial power, in accordance with the Constitution, is vested in the courts. Organization of the justice system is determined by law; judges are independent and obey only the law when implementing justice. The Code on the Organization of the Judiciary and the Status of the Judges (hereafter the Code) further strengthens the independence of the judiciary. Judicial power is implemented only by judges as established by law. The unity of the judicial system is ensured inter alia through the compliance of all courts with the rules for the application of the judicial proceedings and the financing of the courts from the national budget.

Authors' comments on the State party's observations

5.1 On 2 February 2010, the author submits that the State party must provide him with an effective remedy, pursuant to article 2 of the Covenant, in order to implement the Committee's Views.[3] He points out that domestic legislation contains no provision regulating implementation of the Committee's Views.

5.2 The author explains that, on 23 April 2009, he was informed by the Ministry of Foreign Affairs that the Committee's Views are of a recommendation nature.

5.3 The author reiterates that the operation of associations dissolved by court constitutes an offence in Belarus. On 23 December 2009, in response to the request of one of the author's collaborators to the Legal Department of the Gomel District Executive Committee to re-establish Civil Initiatives, the latter issued a warning that all activity on behalf of the association could be punishable by up to two years' imprisonment under the Criminal Code.

[3] The author notes that to date the Belarus failed to implement the Committee's Views not only with regard to his petition, but also in a number of other cases, where the Committee had found violations of article 22, for example communication No 1039/2001, *Zvozskov et al.* v. *Belarus*, communication No 1296/2004, Views adopted on 17 October 2006 and communication No. 1296/2004, *Belyatsky et al.* v. *Belarus*, Views adopted on 24 July 2007.

5.4 The author further submits that he had petitioned the Prosecutor-General's office to implement the Committee's Views in communication No. 1274/2004 and that on 15 December 2006 the latter informed him that he has the right to submit an application for a supervisory review only in accordance with the domestic legislation. Under articles 437 and 438 of the Civil Procedure Code, an application for a supervisory review can only be submitted within three years from the entry into force of the appealed court decision. On 5 March 2007, the author filed an application for a supervisory review with the President of the Supreme Court, which was rejected with the same missed deadline argument on 13 March 2007. The absence in the domestic legislation of a legal norm regulating the implementation of the Committee's Views and the refusal of the State bodies to implement these on their own initiative, testifies that Belarus refuses to ensure to citizens the rights recognized in the Covenant and provide them with an effective remedy.

5.5 The author reiterates that the refusal of the courts, including the Supreme Court, to implement the international obligations of the State party gives him the grounds to allege that he was placed in a discriminatory position before the courts. The refusal by the courts to initiate proceedings and to review his application on its merits cannot be considered a fair hearing by an independent and impartial tribunal. He maintains that he was refused a fair hearing because of the dependency and the partiality of the national courts and that the above facts violate his rights under article 14, paragraph 1, of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the author in the present communication, in substance, only submits a complaint about the failure of the State party to give effect to the Committee's Views in communication No. 1274/2004.

6.3 The Committee notes that the issue concerning the measures taken by the State party to give effect to the Committee's Views is a matter for the existing follow-up procedure, as set up by the Committee. It further notes that the author's claim is not based on any new factual developments related to his rights under the Covenant, beyond his unsuccessful attempt to obtain a remedy in respect to a violation already established by the Committee, even if he now invokes articles 2 and 14, paragraph 1, of the Covenant. Under these circumstances, the Committee considers that the author has no separate claim under the Covenant that would go beyond what the Committee has already decided in the author's earlier communication.[4] In the light of these considerations, the Committee concludes that the communication before it is inadmissible under articles 1 and 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 2, of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

[4] See *Kavanagh* v. *Ireland*, communication No. 1114/2002, inadmissibility decision of 25 October 2002.

[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.]