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Human Rights Committee

Communication No. 2011/2010

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	Vladimir Romanovsky (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	20 March 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	29 October 2015
<i>Subject matter:</i>	Right to freedom of association with others
<i>Procedural issues:</i>	State party's lack of cooperation, exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to freedom of association with others
<i>Articles of the Covenant:</i>	2 (3) (a), 5 (1) and 22 (1)-(2);
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2011/2010*

Submitted by: Vladimir Romanovsky (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 20 March 2009 (initial submission)

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

Meeting on 29 October 2015,

Having concluded its consideration of communication No. 2011/2010, submitted to it by Vladimir Romanovsky under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author of the communication is Vladimir Romanovsky, a Belarusian national born in 1941. He claims to be a victim of a violation by Belarus of his rights under article 22 (1) and (2), read in conjunction with articles 2 (3) (a) and 5 (1), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as presented by the author

2.1. On 14 June 2006, the author participated in an assembly of Belarusian retirees, held in Minsk, in which 29 people, including the author, represented 270 retirees from various regions of Belarus. During the assembly, the decision to establish a public association

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

called “Elderlies” was taken. On 13 July 2006, the documents of the association were submitted for formal registration to the Ministry of Justice.

2.2 In letters dated 30 and 31 October 2006, the Ministry of Justice informed the author about its refusal to register the association, stating that the assembly lacked “legitimacy” and consequently, all the decisions adopted during the assembly, including the decision to establish the association, were legally void. It also stated that one of the signed records of the assembly was not presented in the form of a final document, but as a draft.

2.3 On 28 November 2006, the Ministry of Justice provided additional explanations. It stated that the assembly was illegitimate because there was no record establishing the rules of representation at the assembly and that during regional meetings some individuals were appointed as representatives, although they were not present at the meetings in question. The author states that the absence of some of the representatives may have been due to sickness, which should not constitute an obstacle to their appointment as representatives at the founding assembly. In that regard, he notes that those individuals had given their prior consent to be representatives and were designated as representatives in their absence. As such, they later participated in the assembly. The author also maintains that the reasons given by the Ministry for its refusal to register the association were not provided for in the legislation and thus were arbitrary.

2.4 On 27 December 2006, the author and two other members of the association challenged the decisions of the Ministry of Justice of 30 and 31 October 2006 before the Supreme Court. They noted that, pursuant to article 15 of the Law on Public Associations, in case of shortcomings of a preventable nature, such as missing documents, the registration may be postponed but not denied. Therefore, the Ministry of Justice should have postponed the registration of the association and requested that the missing documents, namely the final record of the assembly, be submitted. They gave examples of situations in which associations were refused registration pursuant to article 15 of the Law, such as when the shortcomings relating to the documents submitted could not be rectified, and noted that the association’s case did not fall within any of the situations. In their complaint to the Supreme Court, they relied on, inter alia, their right to freedom of association as protected by article 22 of the Covenant.

2.5 On 5 February 2007, the Supreme Court acknowledged that the absence of the assembly’s final record on representation could not be considered as a ground for refusing to register the association. However, during the court hearing, the Ministry of Justice invoked new arguments in addition to those indicated in its refusal letters, such as the participation of one Mr. Zavyalov, who, according to the Ministry, did not have the right to participate. The author claims that it is the assembly itself and not the Ministry that should define whether Mr. Zavyalov has a right to participate or not. Nevertheless, the Supreme Court dismissed the authors’ appeal.

The complaint

3.1 The author claims that the refusal to register the association Elderlies arbitrarily restricts his right to freedom of association with others, in violation of article 22 (1) and (2) of the Covenant, because the reasons given by the Ministry of Justice for its refusal to register the association were not provided for in the legislation, thus making the refusal arbitrary. He states that the Ministry’s arguments regarding the restrictions are disproportionate and not necessary for reasons of security, public order, protection of health, morals or the rights and freedoms of others.

3.2 The author also claims a violation of article 22, read in conjunction with article 5 (1), of the Covenant, as the arguments advanced by the Ministry of Justice were beyond the permitted restrictions set out in article 22 (2) of the Covenant. The author further claims

that national legislation does not require that only individuals who participate in a meeting can be designated as representatives and that all such appointed representatives should participate in the founding assembly. The national authorities did not indicate the purposes that they were pursuing by establishing the above-mentioned requirements.

3.3 The author further claims a violation of article 22, read in conjunction with article 2 (3) (a), of the Covenant, as he was not provided with an effective legal remedy. In that regard, the author refers to, *inter alia*, the 2001 report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2001/65/Add.1) in which it is stated that judges in Belarus are not independent. He also refers to the Committee's Views in a number of cases against Belarus which were never implemented, and claims that domestic remedies are ineffective.

3.4 The author adds that, according to national legislation, a person may be held criminally liable for operating an unregistered organization, which he considers as constituting an impediment on the enjoyment of his right to freedom of association with others.

State party's observations on admissibility

4.1 In a note verbale dated 6 January 2011, the State party conveyed its concern about, *inter alia*, the unjustified registration of communications submitted by individuals under its jurisdiction who, it considered, had not exhausted all available domestic remedies, including appealing to the Prosecutor's Office for supervisory review of a judgement having the force of *res judicata*, in violation of article 2 of the Optional Protocol. It submitted that the present communication and several other communications were registered by the Committee in violation of the provisions of the Optional Protocol; that there were no legal grounds for the State party to consider those communications; and that any decision taken by the Committee on such communications would be considered invalid. It further stated that any references to the Committee's long-standing practice regarding the registration of communications were not legally binding on it.

4.2 In a letter dated 19 April 2011, the Chair of the Committee informed the State party that, further to article 4 (2) of the Optional Protocol to the Covenant, it was implicit that the State party must provide the Committee with all the information at its disposal. The State party was requested to submit additional observations regarding the admissibility and the merits of the communication. The State party was also informed that, in the absence of observations, the Committee would proceed with the examination of the communication based on the information available to it.

4.3 In a note verbale dated 25 January 2012, the State party submitted that, upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claimed to be victims of a violation by the State party of any rights protected by the Covenant. It noted, however, that that recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintained that, under the Optional Protocol, States parties had no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in accordance with the Vienna Convention on the Law of Treaties. It submitted that, in relation to the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law were not subjects of the Optional Protocol. It also submitted that any communication registered in violation of the provisions of the Optional Protocol would be viewed by it as being incompatible with the Optional

Protocol and would be rejected without comments on the admissibility or the merits, and that any decision taken by the Committee on such rejected communications would be considered by its authorities as “invalid”. The State party considers that the present communication as well as several other communications before the Committee have been registered in violation of the Optional Protocol.

Issues and proceedings before the Committee

The State party’s lack of cooperation

5.1 The Committee notes the State party’s assertion that there are no legal grounds for consideration of the author’s communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligation to recognize the Committee’s rules of procedure nor the Committee’s interpretation of the provisions of the Optional Protocol; and that any decision taken by the Committee on the present communication will be considered “invalid” by its authorities.

5.2 The Committee recalls that under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State’s adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination thereof, to forward its Views to the State party and the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.¹ It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee’s determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol.²

Consideration of admissibility

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

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

6.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the State party has challenged the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, stating that the author did not request the prosecutor’s office to consider his case under the supervisory review procedure. The Committee recalls its jurisprudence, according to which petition to a prosecutor’s office to initiate the supervisory review of a judgement having the force of res

¹ See, inter alia, communication No. 869/1999, *Piandiong et al. v. Philippines*, Views adopted on 19 October 2000, para. 5.1.

² See communications No. 1949/2010, *Kozlov et al v. Belarus*, Views adopted on 25 March 2015, paras. 5.1-5.2; No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1-8.2; and No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1-5.2.

judicata does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.³ Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the author's claim that the State party has violated his rights under article 22 (2), read in conjunction with article 2 (3) (a), of the Covenant. The Committee considers, however, that based on the material before it, the author has not shown sufficient grounds to support his claim regarding a violation of article 22 (2), read in conjunction with article 2 (3) (a), of the Covenant. The Committee therefore considers that the author has not sufficiently substantiated that claim for the purposes of admissibility and concludes that it is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also takes note of the author's claim under article 22, read in conjunction with article 5 (1), of the Covenant. The Committee recalls that article 5 (1) does not give rise to any separate individual rights.⁴ Thus, that claim is incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.

6.6 The Committee considers that the author has sufficiently substantiated his remaining claim that raises issues under article 22 (1) of the Covenant, for the purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

7.2. The issue before the Committee is whether the refusal by the State party's authorities to register the public association Elderlies constitutes an unjustified restriction of the author's right to freedom of association with others. In that connection, the Committee recalls that its task under the Optional Protocol is not to assess, in the abstract, laws enacted by States parties, but to ascertain whether the implementation of those laws in the case in question gives rise to a violation of the rights of the author.⁵ The Committee recalls that, in accordance with article 22 (2) of the Covenant, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be prescribed by law; (b) it may only be imposed for one of the purposes set out in article 22 (2); and (c) it must be "necessary in a democratic society" in the interest of one of those purposes and proportionate in nature.⁶ Reference to "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas that are not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone of any democratic society.⁷ In that connection, the Committee recalls that it is for the State party to demonstrate that the restrictions imposed were justified in the case in question.

³ See, inter alia, communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; and No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para. 7.3

⁴ Communication No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.8.

⁵ See communication No. 550/1993, *Faurisson v. France*, Views adopted on 8 November 1996, para. 9.3.

⁶ See, for example, communications No. 1039/2001, *Zvozkov et al. v. Belarus*, Views adopted on 17 October 2006, para. 7.2; and No. 1383/2005, *Katsora et al. v. Belarus*, Views adopted on 25 October 2010, para. 8.2.

⁷ See *Katsora et al. v. Belarus*, para. 8.2.

7.3 The Committee notes the author's submission that registration of the association was refused on the basis of a number of reasons given by the State party, which must be assessed in the light of the consequences arising for the author and his association. The Committee also notes that, even though the reasons stated are prescribed by the relevant law, as it follows from the material before it, the State party has not attempted to advance any arguments as to why they are necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, nor why the refusal to register the association was a proportionate response in the circumstances. The Committee further notes that, in the decisions of the domestic authorities that were made available, no explanation was given by the authorities, particularly the Supreme Court, as to why it was necessary to restrict the author's right to freedom of association, further to article 22 (2) of the Covenant.⁸

7.4 The Committee notes that the refusal to register the association led directly to the operation of the association in the territory of the State party being unlawful and directly precluded the author from enjoying his right to freedom of association. Accordingly, the Committee concludes that the refusal to register the association does not meet the requirements of article 22 (2) of the Covenant insofar as the author is concerned and deems that the author's rights under article 22 (1) of the Covenant have been violated.⁹

7.5 In the light of the foregoing, the Committee concludes that the author's right to freedom of association with others did not benefit from adequate or effective protection. Accordingly, the Committee finds that the facts, as submitted, reveal a violation by the State party of the author's rights under article 22 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 22 (1) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. That obligation requires the State party to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obliged to, inter alia, reconsider the application to register the public association Elderlies based on criteria that complies with the requirements of article 22 of the Covenant. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.

⁸ See, for example, communication No. 2153/2012, *Kalyakin et al. v. Belarus*, Views adopted on 10 October 2014, para. 9.3.

⁹ *Ibid.*, para. 9.4.