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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 – 27 July 2007

VIEWS

Communication No. 1296/2004

Submitted by:	Aleksander Belyatsky et al. (not represented by counsel)
Alleged victims:	The authors
State party:	Belarus
Date of communication:	8 April 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 July 2004 (not issued in document form)
Date of adoption of Views:	24 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Dissolution of human rights association by a court order of the State party's authorities.

Substantive issues: Equality before the law; prohibited discrimination; right to freedom of association; permissible restrictions; right to have one's rights and obligations in suit at law determined by a competent, independent and impartial tribunal.

Procedural issue: Lack of substantiation of claims.

Articles of the Covenant: articles 14, paragraph 1; 22, paragraphs 1 and 2; 26

Article of the Optional Protocol: article 2

On 24 July 2004, th e Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1296/2004.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Ninetieth session

concerning

Communication 1296/2004[**]

Submitted by:	Aleksander Belyatsky et al. (not represented by counsel)
Alleged victims:	The authors
State party:	Belarus
Date of communication:	8 April 2004 (initial submission)

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

Meeting on 24 July 2007,

Having concluded its consideration of communicat ion No. 1296/2004, submitted to the Human Rights Committee by Aleksander Belyatsky in his own name and on behalf of 10 other individuals 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 authors of the communication, and the State party,

Adopts the following:

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

1. The author of the communication is Aleksander Belyatsky, a Belarusian citizen born in 1962, residing in Minsk, Belarus. The communication is presented i n his own name and on behalf of 10 other Belarusian citizens, all members of the non -governmental public association "Human Rights Centre "Viasna"" (hereinafter, "Viasna"), residing in Belarus. He submits the signed authorization of all 10 co -authors. He author alleges that all are victims of violations by

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfatta h Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez -Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

Belarus[1] of article 14, paragraph 1; article 22, paragraphs 1 and 2; and article 26 of the International Covenant on Civil and Political Rights. He is not represented.

Factual background

2.1 The author is Chairperson of "Viasna"'s Council, a non-governmental association registered by the Ministry of Justice on 15 June 1999. By October 2003, it had more than 150 members in Belarus, 4 regional and 2 city registered branches. Its activities included monitoring the human rights situation in Belarus, and preparing alternative human rights reports on Belarus, which have been used and referred to by UN treaty bodies. "Viasna" monitored the Presidential elections of 2001, arranging for some 2000 people to observe the voting process, as well as the 2003 municipal council elections. It also organized protests and pickets in relation to various human rights issues. "Viasna" was frequently subjected to the persecution by the authorities, including administrative detention of its members and thorough scheduled and spontaneous inspections of its premises and activities by the Ministry of Justice and tax authorities.

2.2 In 2003, the Ministry of Justice undertook an inspection of the statutory activities of "Viasna"'s branches and, on 2 September 2003, filed a suit in the Supreme Court of Belarus, requesting the dissolution of "Viasna", because of several alleged offences committed by it. The suit was based on article 29, of the Law "On Public Associations" and article 57, paragraph 2, sub-paragraph 2, of the Civil Procedure Code.[2] "Viasna" was accused of the following: having submitted documents with forged founding member signatures in support of its application for registration in 1999; the Mogilev branch of "Viasna" having only 8, rather than the required 10 founding members at the time of registration; non-payment of membership fees envisaged by "Viasna"'s statutes and non-establishment of a Minsk branch; acting in the capacity of a public defender of the rights and freedoms of citizens who are not members of "Viasna" in the Supreme Court, contrary to article 72 of the Civil Procedure Code,[3] article 22 of the Law "On Public

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

[2] Article 29 of the Law "On Public Associations" stipulates that an association can be dissolved by court order when: (1) it undertakes activities enumerated in article 3 [activities aimed at overthrowing or forceful change of the constitutional order; violation of the state's integrity or security; propaganda of war, violence; incitation of national, religious and racial hatred, as well as activities that can negatively affect the citizens' health and morals]: (2) it again undertakes, within a year, activities for which it had already received a written warning; and (3) the founding members committed offences of the present and other laws while at during the registration of the public association. Public association can be dissolved by court order for a single violation of the law on public actions in cases explicitly defined by the Belarus law. Article 57, paragraph 2, of the Civil Procedure Code envisages a procedure for dissolution of legal entity by court order when this entity is engaged in unlicensed activities or the activities prohibited by law or when it has repeatedly committed gross breaches of the law.

[3] Article 72 of the Civil Procedure Code reads:

'A legally capable person that has duly legalized authority to conduct a case in court, except for those persons listed in article 73 of the same Code, can be a representative in court.

The following [persons] can be representatives in court:

1) attorneys at law;

Association"[4] and its own statutes; and offences against electoral laws allegedly carried out during its monitoring of the 2001 Presidential elections.[5]

2.3 On 10 September 2003, the Supreme Court opened a civil case against "Viasna" on the basis of the Ministry of Justice's suit. On 28 October 2003, in a public hearing, a Supreme Court judge upheld the charges of breaching electoral laws but dismissed the other charges and ordered the dissolution of "Viasna". With regard to the breaches of electoral law, the Supreme Court established that 'Viasna' did not comply with the established procedure of sending its observers to the meetings of the electoral commission and to the polling stations. The relevant paragraphs of the Supreme Court decision of 28 October 2003 read:

> 'Namely, the association was sending empty forms of excerpts from the minutes of Rada's meetings of 18 June, 1 and 22 July, 5 August 2001, to the Mogilev and Brest regions. Subsequently, these forms were arbitrarily filled-in with the names of citizens with regard to whom no decisions on sending them as observers had been taken; and who were not the members of this association.
>
> In Postav district, one of the association's members offered pay to the citizens, who were neither "Viasna"'s nor the other public associations' members, to be observers at the polling stations, and have been filling-in in their presence the excerpts from the minutes of Rada's meetings.
>
> Similar breaches of the law in sending the public association's observers occurred at the polling stations Nos. 30 and 46 of the Novogrudok district.'

The court found that the breach of the electoral laws was 'gross' enough to trigger the application of article 57, paragraph 2, of the Civil Procedure Code.[6] The court's conclusion was corroborated by the written warning issued to "Viasna"'s governing body by the Ministry of Justice on 28 August 2001 and on the ruling of the Central Electoral Commission on Elections and Conduct of Republican Referendums (hereinafter, CEC) of 8 September 2001. The latter

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2) staff members of legal entities – in cases involving these entities;
3) authorized representatives of public associations (organizations) who are entitled by law to represent and defend in court the rights and legitimate interests of the members of these public associations (organizations) and of other persons;
4) authorized representatives of organizations who are entitled by law to represent and defend in court the rights and legitimate interests of the members of other persons;
5) legal representatives;
6) close relatives, spouses;
7) representatives appointed by court;
8) one of the procedural co-participants mandated by the latter.'

[4] Article 22, paragraph 2, of the Law "On Public Associations" reads: 'Public associations shall have a right to represent and defend the rights and legitimate interests of its members (participants) in the government, commercial and public bodies and agencies.'

[5] Reference is made to the ruling of the Central Electoral Commission on Elections and Conduct of Republican Referendums of 8 September 2001.

[6] Supra n.2.

ruling was based on the inspections conducted by the Ministry of Justice and the Belarus Prosecutor's Office.

2.4 The Supreme Court's decision became executory immediately after its adoption. Under Belarus law, the Supreme Court's decision is final and cannot be appealed on cassation. The Supreme Court decision can be appealed only through a supervisory review procedure and can be repealed by the Chairperson of the Supreme Court or the General Prosecutor of Belarus. The appeal of "Viasna"'s representatives to the Chairperson of the Supreme Court for a supervisory review of the Supreme Court's decision of 28 October 2003 was rejected on 24 December 2003. There are no other available domestic remedies to challenge the decision to dissolve "Viasna"; domestic law outlaws the operation of unregistered associations in Belarus.

The complaint

3.1 The author submits that the decision to dissolve "Viasna" amounts to a violation of his and the co-authors' right under article 22, paragraph 1, of the Covenant. He contends that contrary to article 22, paragraph 2, the restrictions placed on the exercise of this right by the State party do not meet the criteria of necessity to protect the interests of national security or public safety, order, health, or morals, nor the rights and freedoms of others.

3.2 The author claims that he and the other co-authors were denied the right to equality before the courts and to the determination of their rights and obligations in a suit at law (article 14, paragraph 1, of the Covenant).

3.3 The author alleges that the State party's authorities violated his and his co-authors' right to equal protection of the law against discrimination (article 26), on the ground of their political opinion.

3.4 The author further challenges the applicability of article 57, paragraph 2, of the Civil Procedure Code (paragraph 2.3 above) to the dissolution of "Viasna". Under article 117, paragraph 3, of the Civil Procedure Code, the legal regime applicable to public associations in their capacity as participants in civil relations, is subject to a *lex specialis*. Therefore, the scope of the 'repeated commission of gross breaches of the law' for which an association can be dissolved by court order under article 57 of the Civil Procedure Code, should be defined on the basis of this *lex specialis*. Under the Law "On Public Associations", an association can be dissolved by court order if it undertakes again, within a year, activities for which it had already received a written warning. Under this Law and other relevant *lex specialis,* the list of the 'repeated commission of gross breaches of the law' is defined as follows: (1) activities aimed at overthrowing or forceful change of the constitutional order; violation of the state's integrity or security; propaganda of war, violence; incitation of national, religious and racial hatred, as well as activities that can negatively affect the citizens' health and morals; (2) a single violation of the law on public actions in cases explicitly defined by the Belarus law; (3) violation of the requirements of paragraph 4, parts 1-3, of Presidential Decree "On the Receipt and Use of Free Aid" of 28 November 2003. For the author, "Viasna"'s activities do not fall under any of the above categories. Moreover, by relying on the written warning of 28 August 2001 and on the CEC ruling of 8 September 2001 in its decision of 28 October 2003 to dissolve "Viasna", the Supreme Court effectively penalized it twice for identical actions: the first time by the Ministry

of Justice's warning and the second time by the Supreme Court's decision on the dissolution The author concludes that the decision to dissolve "Viasna" was illegal and politically motivated.

State party's observations on admissibility and merits

4.1 On 5 January 2005, the State party recalls the chronology of the case. It specifies that the decision to dissolve "Viasna" is based on article 57, paragraph 2, of the Civil Procedure Code. It further challenges the author's claim that "Viasna" was penalized twice for identical actions and submits that the Ministry of Justice's written warning of 28 August 2001 was issued in response to "Viasna"'s violation of record keeping and not because of the violation of electoral laws. For the State party, the forgery of member signatures and the violation of "Viasna"'s statutes were discovered during the association's re-registration.

4.2 The State party further adds that the author's claim under article 14, paragraph 1, of the Covenant is unsupported by the casefile of "Viasna"'s civil case. The case was examined in public hearing, at the request of "Viasna"'s representative it was conducted in the Belarusian language and the hearing was audio and video recorded. The hearing complied with the 'equality of arms' principle guaranteed by article 19 of the Civil Procedure Code, which is illustrated by the fact that the Supreme Court did not uphold all charges identified in the Ministry of Justice's suit. For the State party, the decision to dissolve "Viasna" was adopted on the basis of a thorough and full analysis of the evidence presented by both parties, and the decision complied with the legal procedure of Belarus then in place.

Author's comments on the State party's observations

5.1 On 19 January 2005, the author submits that the Supreme Court and the State party's reference to article 57, paragraph 2, of the Civil Procedure Code is contrary to the provisions of article 117, paragraph 3, of the same Code (see paragraph 3.4 above). In the absence of what is referred to by the 'repeated commission of gross breaches of the law' in article 57 of the Civil Procedure Code, the court has wide discretion to determine this matter in the circumstances of each case. In "Viasna"'s case, the Supreme Court decided that the violation of the electoral laws allegedly carried out during its monitoring of the 2001 Presidential elections, was sufficiently 'gross' to warrant "Viasna"'s dissolution two years later. The author reiterates that this decision was politically motivated and is directly linked to "Viasna"'s public and human rights related activities. [7]

5.2 The author rejects the State party's argument that the Ministry of Justice's written warning of 28 August 2001 was issued purely in response to "Viasna"'s violation of record keeping and not because of the violation of electoral laws. He refers to the CEC ruling of 8 September 2001, which explicitly stated that the officers of the Ministry of Justice and of the Prosecutor's Office of Belarus inspected "Viasna"'s compliance with the law on sending the observers. The Ministry of Justice's written warning of 28 August 2001 was subsequently used as a basis for the CEC ruling of 8 September 2001. In turn, the Supreme Court's decision of 28 October 2003 to

[7] The author refers to the report of the FIDH/OMCT International Judicial Observation Mission "Belarus: The «liquidation» of the independent civil society", April 2004, pp. 12-16, in support of his claims.

dissolve "Viasna" was based on the same facts as the Ministry of Justice's written warning of 28 August 2001.

5.3 The author refutes the State party's claim that the forgery of member signatures was discovered during the association's re-registration. As a public association registered on 15 June 1999, "Viasna" did not have to undergo a re-registration procedure. In its decision of 28 October 2003, the Supreme Court explicitly stated that it did not receive any evidence in support of the Ministry of Justice's claims that there had been any forged member signatures in "Viasna"'s 1999 application for registration. The author adds that the Supreme Court did not uphold any of the other charges presented in the Ministry of Justice's suit, except for those related to the violation of article 57, paragraph 2, of the Civil Procedure Code.

5.4 On 5 October 2006, the author adds that since "Viasna"'s dissolution, the State party has introduced new legal provisions detrimental to the exercise of the rights to freedom of expression, peaceful assembly and association and representing a very serious risk for the existence of an independent civil society in Belarus. Among them are amendments to the Criminal Code of Belarus signed by the President on 13 December 2005 and in force since 20 December 2005, which introduced criminal sanctions for activities carried out by a suspended or dissolved association or foundation. The new article 193-1 of the Criminal Code stipulates that anyone who organizes activities in the framework of a suspended, dissolved or unregistered association may face a fine, arrest for up to six months or be subjected to a sentence "restricting his freedom" of up to two years. In 2006, four members of the non-governmental association "Partnership" were sentenced to different terms of imprisonment under article 193-1. He requests the Committee to examine his claim under article 22, paragraph 1, of the Covenant in the light of this new legislation which criminalises the operation of unregistered associations in Belarus.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party did not contest that domestic remedies in the present communication have been exhausted.

6.3 In relation to the alleged violation of article 14, paragraph 1, and article 26 of the Covenant, in that the author was denied the right to equality before the courts, to the determination of his rights by a competent, independent and impartial tribunal, and to equal protection of the law against discrimination, the Committee considers that these claims have been insufficiently substantiated, for purposes of admissibility. They are thus inadmissible under article 2 of the Optional Protocol.

6.4 The Committee considers the author's remaining claim under article 22 to be sufficiently substantiated and accordingly declares it admissible.

Consideration of the merits

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

7.2 The issue before the Committee is whether the dissolution of "Viasna" amounts to a violation of the author and his co-authors' right to freedom of association. The Committee notes that according to the author's uncontested information, " Viasna" was registered by the Ministry of Justice on 15 June 1999 and dissolved by order of the Supreme Court of Belarus on 28 October 2003. It recalls that domestic law outlaws the operation of unregistered associations in Belarus and criminalizes the activity of individual members of such associations. In this regard, the Committee observes that the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association, and dissolution of an association must satisfy the requirements of paragraph 2 of that provision.[8] Given the serious consequences which arise for the author, the co-authors and their association in the present case, the Committee concludes that the dissolution of "Viasna" amounts to an interference with the author's and his co-authors' freedom of association.

7.3 The Committee observes that, in accordance with article 22, paragraph 2, in order for the interference with freedom of association to be justified, any restriction on this right must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes. The reference to the notion of "democratic society" indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably received by the government or the majority of the population, is a cornerstone of a democratic society.[9] The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.[10]

7.4 In the present case, the court order which dissolved "Viasna" is based on perceived violations of the State party's electoral laws carried out during the association's monitoring of the 2001 Presidential elections. This *de facto* restriction on the freedom of association must be assessed in the light of the consequences which arise for the author, the co-authors and the association.

[8] Korneenko et al v. Belarus, Communication No. 1274/2004, Views adopted on 31 October 2006, para.7.2.
[9] Ibid, para.7.3.
[10] Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, Views adopted on 20 July 2005, para.7.2.

7.5 The Committee notes that the author and the State party disagree over the interpretation of article 57, paragraph 2, of the Civil Procedure Code, and its compatibility with the *lex specialis* governing the legal regime applicable to public associations in Belarus. It considers that even if "Viasna"'s perceived violations of electoral laws were to fall in the category of the 'repeated commission of gross breaches of the law', the State party has not advanced a plausible argument as to whether the grounds on which "Viasna" was dissolved were compatible with any of the criteria listed in article 22, paragraph 2, of the Covenant. As stated by the Supreme Court, the violations of electoral laws consisted of "Viasna"'s non-compliance with the established procedure of sending its observers to the meetings of the electoral commission and to the polling stations; and offering to pay third persons, not being members of "Viasna", for their services as observers (see, paragraph 2.3 above). Taking into account the severe consequences of the dissolution of "Viasna" for the exercise of the author's and his co-authors' right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of the association is disproportionate and does not meet the requirements of article 22, paragraph 2. The authors' rights under article 22, paragraph 1, have thus been violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of article 22, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author and the co-authors are entitled to an appropriate remedy, including the re-registration "Viasna" and compensation. It is also under an obligation to take steps to prevent similar violations occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, 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 remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.

[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.]
