



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-seventh session  
12 to 30 October 2009

**VIEWS**

**Communication No. 1392/2005**

<u>Submitted by:</u>	Mr. Valery Lukyanchik (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	7 April 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 11 May 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	21 October 2009

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Denial of possibility of candidacy for lower chamber of Belarus Parliament.

*Substantive issues:* Right to be elected without unreasonable restrictions and without distinction; access to court; right to have one's rights and obligations in a suit at law determined by a competent, independent and impartial tribunal established by law.

*Procedural issue:* Non-substantiation of claims; non-exhaustion of domestic remedies.

*Articles of the Covenant:* 2, 14, paragraph 1; 25 (b)

*Article of the Optional Protocol:* None

On 21 October 2009 the 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. 1392/2005.

[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

Ninety-seventh session

concerning

**Communication No. 1392/2005\*\***

<u>Submitted by:</u>	Mr. Valery Lukyanchik (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communications:</u>	7 April 2005 (initial submission)

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

Meeting on 21 October 2009,

Having concluded its consideration of communication No. 1392/2005, submitted to the Human Rights Committee by Mr. Valery Lukyanchik under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Mr. Valery Lukyanchik, a Belarusian national born in 1960, residing in Kokhanovo urban settlement, Belarus. He claims to be a victim of violations by Belarus of article 14, paragraph 1, and article 25 (b) of the International Covenant on Civil and

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present Views.

Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

### **The facts as submitted by the author**

2.1 The author is an opponent of the current regime in Belarus. After the incumbent President, Mr. Lukashenko, came to power in 1994, the author resigned from his duties with the Public Prosecutor's Office on his own accord. After the resignation, the author has actively participated in the electoral process as a candidate for the 1995 elections to the Supreme Council of the Republic of Belarus, an election monitor, and a member of an initiative group created in support of a candidate challenging the incumbent President during the 2001 presidential elections in Belarus. As a human rights defender, he participated in trial monitoring and in the activities of several public associations.

2.2 On 11 August 2004, the author filed an application in the District Electoral Commission of the Tolochin electoral constituency No. 31 for the registration of an initiative group, consisting of 64 people, who had agreed to collect signatures of voters in support of his candidature as a Deputy of the House of Representatives. The application was submitted in conformity with the requirements of article 65, part 1, of the Electoral Code, according to which the registration of such an initiative group is a precondition for collecting signatures required for the nomination of a candidate to the House of Representatives.<sup>1</sup>

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<sup>1</sup> Article 65 of the Electoral Code: Procedure for Nomination as Candidates for Deputies through Collection of Voters' Signatures (Source: website of the Central Electoral Commission of the Republic of Belarus: [http://www.rec.gov.by/english/Electoral\\_Code.html](http://www.rec.gov.by/english/Electoral_Code.html))

Nomination of a candidate for Deputy of the House of Representatives through collection of signatures of voters is executed by a group of voters (initiative group) in the number of at least 10 persons, and candidates for Deputies of local Councils of Deputies — by an initiative group in the number from 3 up to 10 persons. The list of members of the initiative group with indication of its head together with the application for registration of the group is submitted to the respective constituency, territorial electoral commission not later than 65 days before elections by the person having intention to be nominated as a candidate for Deputy. The list shall indicate the surname, first and patronymic names, date of birth, occupation, place of work and residence, party membership of the person proposed for nomination as a candidate for Deputy, as well as the surname, first and patronymic names, date of birth, place of residence of each member of the group and of its head.

The constituency, territorial electoral commission shall consider, within five days, the application, register the initiative group and give the members of initiative group respective certificates and subscription lists for collecting signatures of voters in support of the person proposed for nomination as a candidate for Deputy. Registration of the initiative group may be denied in case of violation of the requirements of the present Code. Denial to register the initiative group may be appealed against, within three days, to the higher commission by the initiative group (petition shall be signed by the majority of its members), and the decision of the higher commission may be appealed against, within the same period, accordingly, to the Supreme Court of the Republic of Belarus, Regional, Minsk City, District and City courts. The

2.3 At 12.30 a.m. on 13 August 2004, the Chairperson of the District Electoral Commission handed the author a report dated 12 August 2004, stating that his application for the registration of the initiative group had been denied. The reason cited in the report was the author's alleged non-compliance with article 65 of the Belarus Constitution<sup>2</sup> and article 5 of the Electoral Code.<sup>3</sup> Specifically, it was alleged that two out of 64 people indicated in the initiative group's list had been included in it without their consent, and had filed written notifications about this with the District Electoral Commission. The author asked the Chairperson to have access to these notifications, but his request was refused.

2.4 The author submits that the two individuals in question did give their consent to be included in the initiative group. He contends that, in any event, the provisions cited by the District Electoral Commission have nothing to do with the procedure for nominating candidates; rather they guarantee that everyone is free to choose whether, and for whom, to vote in parliamentary and presidential elections. However, the fact that a person has become a member of an initiative group has no effect on the person's right to choose who to vote for; further, a person is free to cease being a member of the initiative group at any time. The author states that the controversy over whether the two individuals had consented for their names to be on the relevant list was not a reason to deny registration of his initiative group as such, and that there was no legal justification for this. The author also notes that the Electoral Code only requires an initiative group to consist of 10 members, while his had over 60.

2.5 On 16 August 2004, 43 members from the list of the author's initiative group sent by post an appeal against the denial of registration to the Central Electoral Commission on Elections and Conduct of Republican Referendums. On 20 August 2004, the Central Electoral Commission

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court shall consider the petition within three days from the day of the acceptance of the decision on refusal.

The person proposed for nomination as a candidate for Deputy of the House of Representatives in a constituency by a group of voters shall be supported by at least 1000 voters, living in the territory of the given constituency, and the person proposed for nomination as a candidate for Deputy of local Council of Deputies — by the voters living in the territory of the constituency, in number of: for Oblast and Minsk City Council of Deputies — at least 150 persons; for district, city (cities of regional subordination) Council of Deputies — at least 75 persons; for city (cities of regional subordination), settlement and rural Council of Deputies — at least 20 persons.

Collection of signatures of voters for nomination as a candidate for Deputy, certification of signature of a member of the initiative group on subscription lists are made according to the procedure established by parts four, five, six, seven, eight and nine of Article 61 of the present Code.

<sup>2</sup> Article 65 of the Belarus Constitution: Elections shall be free. A voter shall decide personally whether to take part in elections and for whom to vote. The preparation and conduct of elections shall be open and public.

<sup>3</sup> Article 5 of the Electoral Code: Free Elections and Participation in Referendum

Elections of the President of the Republic of Belarus, Deputies of the House of Representatives, Deputies of Local Councils of Deputies, participation in referendum are free: a voter, participant of the referendum takes his/her personal decision whether to participate in elections, referendum, for whom to vote at elections, for what to vote at the referendum.

declined to review the appeal on the grounds that the three day deadline for doing so, established by article 65, part 2, of the Electoral Code,<sup>4</sup> was missed. The ruling states that the report was handed to the author in person on 13 August 2004 and the appeal to the Central Electoral Commission was sent on 16 August 2004, that is, after the expiry of the deadline. The author, in turn, refers to article 192 of the Civil Code, according to which, for the purposes of deadlines established by law, the count starts on the day following the calendar date on which the initiating event took place. He submits that in the present case the count started on Saturday, 14 August 2004, with the deadline expiring at midnight (12 p.m.) on 16 August 2004. According to article 195 of the Civil Code, the deadline expires at midnight on the last day of the deadline; written documents handed in at the post office before midnight on the last day of the deadline are considered to be submitted in time. The author contends, therefore, that the appeal signed by the majority of members of his initiative group was submitted within the three day deadline.

2.6 The author further notes that, even if the Central Electoral Commission contrary to article 192 of Civil Code starts its count from 13 August 2004, the three day deadline was not missed, because its expiry then fell on a non-working day, Sunday, 15 August 2004. In this situation, according to article 194 of the Civil Code, if the last day of the deadline falls on a non-working day, the deadline expires on the first working day following it. Since the post office in Tolochin is closed on Sundays, the appeal to the Central Electoral Commission was sent by post on Monday, 16 August 2004.

2.7 On 20 August 2004, the author appealed the ruling of the Central Electoral Commission to the Supreme Court. On 24 August 2004, the appeal was dismissed; this decision is final and could not be appealed on cassation. The Court referred to article 65, part 2, of the Electoral Code, according to which the decision of the higher electoral commission may be appealed within three days of its issuance to the Supreme Court of the Republic of Belarus. In the author's case, however, the Central Electoral Commission had not taken a decision, but had declined to review the appeal of the members of the author's initiative group for procedural reasons. The Court added that it lacked jurisdiction to examine the author's appeal, as the law did not envisage any procedure of challenging in the Supreme Court rulings of such a nature by the Central Electoral Commission. The Court also noted that the appeal of 20 August 2004 was signed by the author himself, rather than by the members of his initiative group.

2.8 The author submits that the arguments advanced by the Supreme Court are unfounded and unlawful. He refers to the same article 65, part 2, of the Electoral Code that had been cited by the Supreme Court, but contends that it does not require the appeal to the Supreme Court to be submitted by members of the initiative group. He refers to article 6 of the Civil Procedure Code and article 60, part 1, of the Belarus Constitution. The first provision guarantees judicial protection of one's violated or challenged rights and interests; the second guarantees to everyone the protection of his rights and liberties by a competent, independent and impartial court of law within the time limits specified in law. The author asserts that his constitutional right to be elected to the House of Representatives was violated and, therefore, the Supreme Court's argument about the lack of jurisdiction to examine his appeal is unlawful. The author believes that he, like many other members of the opposition in Belarus, was deprived of the opportunity of putting his views before the voters and of the judicial protection of his rights and interests.

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<sup>4</sup> See supra n.1.

2.9 The author submits that it would have been pointless for him to appeal the decision of the Supreme Court through the supervisory review procedure, since the registration of the initiative groups for the elections to the House of Representatives would have been over by then in any case.

### **The complaint**

3.1 The author claims that the District Electoral Commission's decision not to register the initiative group that sought to nominate him as a candidate for office violated his right, guaranteed under article 25 (b) of the Covenant, to run for the office of Deputy of the House of Representatives.

3.2 He maintains that, in breach of article 14, paragraph 1, the State party's courts have denied him judicial protection of the right to run for office.

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

4.1 On 4 September 2007, the State party recalls the chronology of the case and submits that both claims by the author - the violation of his right to take part in the conduct of public affairs and his right to an independent and impartial court hearing - are unfounded.

4.2 The State party submits that the denial of registration of the author's initiative group by the District Electoral Commission was based on article 5 of the Electoral Code, according to which every citizen is free to decide whether to participate in the elections. Accordingly, every citizen is free to decide not only whether to participate in voting, but also whether to become a member of an initiative group to collect signatures of voters in support of a candidate's nomination. In violation of this requirement, the author included the persons Mashkovich and Kuntsevich in the initiative group without their consent. The State party provides a copy of their written notifications on the matter addressed to the District Electoral Commission.

4.3 According to article 65, part 2, of the Electoral Code, registration of the initiative group may be denied in case of violation of the requirements of the present Code. Since the requirements of article 5 of the Electoral Code were violated by the author in the process of formation of his initiative group, the District Electoral Commission had the authority to deny the registration of such a group. The author's argument that the provisions of article 5 of the Electoral Code and article 65 of the Belarus Constitution, establishing the principle of free participation in elections apply only to the voting procedure, rather than throughout the entire elections process, is unfounded.

4.4 The State party further submits that the report of the District Electoral Commission was handed to the author in person on 13 August 2004 and, therefore, an appeal to the Central Electoral Commission should have been submitted on 15 August 2004 at the latest. It argues that the author's reference to the provisions of the Civil Code on the counting of deadlines is erroneous.<sup>5</sup> The deadline in the author's case should be counted from the day of the receipt of the decision of the District Electoral Commission on the denial of registration. According to clause 30 of the Regulations of the Central Electoral Commission, appeals by citizens are dealt with

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<sup>5</sup> Reference is made to article 1 of the Belarus Civil Code.

under the Law “On Appeals of Citizens”. According to articles 8 and 10 of this Law, the counting of a deadline for appealing an alleged violation, as well as for the consideration of an appeal, starts on the day when the alleged violation took place or when the appeal against the decision that allegedly violates one’s rights was registered. The State party notes that, unlike the Civil Code, the Electoral Code does not envisage a procedure for the extension of a deadline for appealing the decisions of the electoral commissions. It concludes that the Central Electoral Commission strictly complied with the provisions of electoral law in considering the author’s case, and that the author’s communication to the Committee, which is primarily about the interpretation of domestic legislation, should be declared inadmissible.

4.5 The State party submits that, under article 436 of the Civil Procedure Code, court rulings that already became executory, except for the rulings of the Presidium of the Supreme Court, could be reviewed through the supervisory review procedure on the basis of an objection lodged by the public officials listed in article 439 of the same Code.<sup>6</sup> The State party notes that the author did not appeal the decision of the Supreme Court of 24 August 2004 through the supervisory review procedure either to the Supreme Court or to the Public Prosecutor’s Office, and that, therefore, all available domestic remedies have not been exhausted.

4.6 The State party submits that, under article 341 of the Civil Procedure Code, a person wishing to challenge the decision of the electoral commission related to discrepancies in the lists of signatures and other matters provided by law, can file a complaint in court situated in the same locality as the relevant electoral commission not later than seven days before the elections (referendum). The electoral law does not envisage any procedure for challenging in the Supreme Court rulings of the Central Electoral Commission not to consider an appeal against the denial of registration of an initiative group. Moreover, under article 65 of the Electoral Code, the appeal of a denial of registration of an initiative group should be signed by the majority of its members. The State party recalls that the appeal submitted to the Supreme Court was signed by the author himself, who was not a member of the initiative group and, therefore, did not have a right to submit such an appeal.

#### **Author’s comments on State party’s observations**

5.1 On 2 January 2008, the author reiterates his initial claims and adds that, in its observations of the admissibility and merits, the State party has arbitrarily interpreted the provisions governing electoral rights of citizens in nominating candidates for the House of Representatives.

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<sup>6</sup> Under article 439 of the Civil Procedure Code, the following officials can refer a case to the court for the supervisory review procedure:

1) Chairman of the Supreme Court (or his deputies), the General Public Prosecutor (or his deputies) can refer for the supervisory review a ruling of any of the Belarus courts, except for the rulings of the Presidium of the Supreme Court;

2) Chairmen of the Regional and Minsk City courts, Regional Prosecutors and Minsk City Prosecutor can refer for the supervisory review the decisions and rulings of the regional (city) courts, as well as the rulings on cassation made by the Judicial Chamber for Civil Cases of the Regional and Minsk City Courts.



5.2 The author submits that the Chairperson of the District Electoral Commission, who was at the same time the Deputy Chairperson of the Tolochin Executive Committee in charge of commerce and education in the Tolochin District, was well aware that the author was an opponent of the current regime in Belarus and a human rights defender. The author claims that the Chairperson of the District Electoral Commission pressured Mashkovich and Kuntsevich, who were professionally dependent on him, into submitting written notifications to the District Electoral Commission, claiming that they had been included in the author's initiative group without their consent. The author asserts that the Chairperson of the District Electoral Commission personally visited Mashkovich at his home and Kuntsevich at his workplace in order to obtain the written notifications in question.

5.3 The author reaffirms his position that every member of the initiative group is free not to participate in the collection of signatures but it should not be a ground for denying the registration of the initiative group as a whole. He also reiterates that the counting of deadlines is governed exclusively by Chapter 11 of the Civil Code, and that the State party's arguments on this matter are legally wrong. Under article 10 of the Law "On Legal Normative Acts", the Civil Code is of a higher legal standing than any other code and laws containing the provisions of civil law. The author adds that the other acts do not contain provision on the counting of deadlines but if they do and the counting is regulated differently, then they contradict the Civil Code and are therefore invalid.

5.4 The author challenges the State party's interpretation of article 65 of the Electoral Code with regard to the requirement that the appeal of the denial of registration submitted to the Supreme Court should be signed by the majority of members of the initiative group in question. He asserts that this requirement applies only to an appeal submitted to the higher electoral commission.

5.5 As to the State party's argument that all available domestic remedies have not been exhausted, the author reiterates his initial argument that an appeal to the Supreme Court through the supervisory review procedure would have been pointless. A consideration of such an appeal takes one month and even a decision in the author's favour would not be an effective remedy, since he would not be able to take part in the ongoing electoral campaign. The author also recalls that the decision of the Supreme Court of 24 August 2004 became executory on the same day it was taken and that, in these circumstances, all available domestic remedies have been exhausted.

#### **Supplementary submissions by the State party**

6. On 2 May 2008, the State party reiterates its arguments that the author did not appeal the decision of the Supreme Court of 24 August 2004 through the supervisory review procedure and that the appeal submitted to the Supreme Court was signed by the author himself, who was not a member of the initiative group and, therefore, did not have a right to submit such an appeal.

## Issues and proceedings before the Committee

### Consideration of admissibility

7.1 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.

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

7.3 The State party has argued that the author did not appeal the decision of the Supreme Court of 24 August 2004 through the supervisory review procedure, which renders the communication inadmissible under 5, paragraph 2(b), of the Optional Protocol, for failure to exhaust all available domestic remedies. The author, in turn, argued that the decision of the Supreme Court of 24 August 2004 became executory on the same day it was taken and an appeal through the supervisory procedure would have been pointless, because even a decision in the author's favour would not be an effective remedy, since he would not be able to take part in the ongoing electoral campaign.

7.4 The Committee recalls<sup>7</sup> that, for the purpose of article 5, paragraph 2(b), of the Optional Protocol, the author must make use of all judicial or administrative avenues that offer him a reasonable prospect of redress. If certain legal remedies are not available to him or are, in the author's opinion, ineffective or futile or would be unreasonably long, then he must offer *prima facie* evidence for this. In this respect, the Committee observes that the author's claim on the ineffectiveness of the supervisory review procedure in his case is primarily based on the time-bound nature of the electoral process. It further notes that the State party had merely stated in abstracto that, contrary to the requirements of article 5, paragraph 2(b), of the Optional Protocol, the author did not appeal the decision of the Supreme Court of 24 August 2004 through the supervisory review procedure, without addressing the author's claim on the time-bound nature of the electoral process and without showing how this remedy might provide effective redress in his case.<sup>8</sup> In these circumstances and in the absence of further information from the State party, the Committee accepts the author's argument that, for him, the supervisory review procedure is ineffective and considers that it is not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication.

7.5 As to the author's claim under article 14, paragraph 1, the Committee has noted that it relates to issues similar to those falling under article 25 (b), read together with article 2 of the Covenant, namely, the right to an effective remedy involving an independent and impartial determination of the author's claim that his right to run for office was violated. The Committee decides that the communication is admissible under article 25 (b) of the Covenant, read in

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<sup>7</sup> Communication No. 437/1990, *Pereira v. Panama*, Inadmissibility decision adopted on 21 October 1994, paragraph 5.2.

<sup>8</sup> Communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, paragraph 5.1.

conjunction with article 2, and that, therefore, it is not necessary to separately consider the claims arising under article 14, paragraph 1.

### **Consideration of the merits**

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

8.2 In reaching its decision, the Committee has taken into account the State party's own admission that the right of citizens to become a member of an initiative group to collect signatures of voters in support of a candidate's nomination is a right that is protected by article 5 of the Electoral Code and article 65 of the Belarus Constitution. It follows, therefore, that if this part of the electoral process is encompassed within the right to free participation in elections, then it is equally protected by the guarantees of article 25 of the Covenant, which recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. The Committee refers to its General Comment on article 25, according to which the exercise of the rights protected by article 25 may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable,<sup>9</sup> and if a candidate is required to have a minimum number of supporters for nomination, this requirement should be reasonable and not act as a barrier to candidacy.<sup>10</sup>

8.3 The Committee recalls that, in the present case, the registration of the author's initiative group as a whole was denied on the grounds that two out of 64 people indicated in the initiative group's list had been included in it without their consent. It also notes the State party's argument that the non-consent of these two individuals meant that the District Electoral Commission possessed the discretion to deny registration of the initiative group and the State party's conclusion that this discretion gave the District Electoral Commission 'the authority to deny the registration of such a group'. In this regard, the Committee reiterates its position that, within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another,<sup>11</sup> and notes that the State party did not explain how the decision of the District Electoral Commission to deny the registration of the author's initiative group complied with the requirements of equal suffrage, objectivity and reasonableness.

8.4 The Committee takes note of the author's counter claim that the controversy over whether the two individuals had consented that their names be on the initiative group's list could not be used as a ground to deny registration of his initiative group as a whole for two reasons. First, every member of the initiative group is free to cease being a member at any time, and, second, the Electoral Code only requires an initiative group to consist of 10 members, while his had over 60. In this regard, the Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the

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<sup>9</sup> General Comment No. 25 [57]: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), CCPR/C/21/Rev.1/Add.7, paragraph 4.

<sup>10</sup> Ibid, paragraph 17.

<sup>11</sup> Ibid, paragraph 21.

interpretation of domestic legislation, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.<sup>12</sup>

8.5 In light of the information before the Committee, however, it concludes that, in the present case, the State party has failed to explain how the decision on the denial of registration of the author's initiative group complied with the requirements of article 25 of the Covenant, given that well over the requisite number of members (ten) was submitted in order to register the group and that the rights of the two non-consenting individuals were restored once they were removed from the list. No suggestion was made that the author behaved in a fraudulent manner. As well, no assessment of proportionality or reasonableness was provided to justify the denial of the author's right to run for the office of Deputy of the House of Representatives by exclusive reliance on the lack of consent of two individuals, as opposed to the consent of 62 people for their names to be included in the list of the author's initiative group. In these circumstances, the Committee concludes that the author's rights under article 25 (b) of the Covenant, read in conjunction with article 2, have been violated.

9. 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 at its disposal discloses a violation by the State party of article 25 (b) of the Covenant, read in conjunction with article 2.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. It is also under an obligation to take steps to prevent similar violations occurring in the future.

11. 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 and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 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.]

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<sup>12</sup> See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

## APPENDIX

### **Individual opinion of Committee member Ms. Ruth Wedgwood (concurring)**

The Human Rights Committee finds that Belarus has violated articles 25(b) and 2 of the International Covenant on Civil and Political Rights – by refusing to register an electoral “initiative group” supporting the political candidacy of former public prosecutor Valery Lukyanchik for the House of Representatives in Belarus.

I concur in the Committee’s conclusion that article 25(b) of the Covenant was violated, though I would reach this result on somewhat different grounds.

The case concerns the right of citizens to nominate a candidate for office, and to take part in government. As a long-time critic of the current Belarus president, Mr. Lukyanchik tried to register an “initiative group” as a first step to qualify as a parliamentary candidate. The registration of an initiative group must then be followed by gathering signatures from yet other voters in order to stand as a nominee for election to the House of Representatives.

Nonetheless, the local electoral commission denied the registration of the initiative group. The State party says that two of the 64 people named in the application sent written disavowals of support to the district electoral commission, and this sufficed to disqualify the whole group, even though only ten supporters were needed to meet the statutory minimum.

The author replies that the chairperson of the district electoral commission – who also served as a local government executive in charge of commerce and education – exerted direct pressure on these two supporters to make the disavowals. The State Party has not countered the specifics of this aspect of his claim. These facts would seem sufficient to establish a *prima facie* violation of the requirements of article 25(b), since an election official should maintain neutrality between candidates.

The Committee thus does not need to reach the more complicated question of whether it is ever permissible to void or disqualify an election petition, in the event that one or more signatures on it are found to be questionable, even where the signatures are unnecessary to meet a statutory minimum. Before reaching such a broad result, it would seem wise to survey the election laws of the many operating democracies, to see whether this type of rule has been found necessary as a matter of prudence and as an incentive to assure the integrity of petition drives in open democracies.

The facts of this case, as pleaded, seem to show a rather more blatant attempt by a local election official to interfere with the workings of the democratic process.

[signed] Ruth Wedgwood

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

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