**HUMAN RIGHTS COMMITTEE**

**Dergachev v. Belarus**

**Communication No. 921/2000**

**2 April 2002**

**CCPR/C/74/921/2000**

**VIEWS**

*Submitted by:* *Mr. Alexandre Dergachev*

*State party:* *Belarus*

*Date of communication:* *28 September 1999 (initial submission)*

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

Meeting on 2 April 2002,

Having concluded its consideration of communication No. 921/2000, submitted to the Human Rights Committee by Mr. Alexandre Dergachev 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, dated 28 September 1999, is Alexandre Dergachev, a Belarussian national. He claims to be a victim of a violation by Belarus of articles 2, 14 and 19 of the Covenant. He is not represented by counsel.

**The facts as presented by the author**

2.1 On 21 March 1999, the author, a member of Belarus People's Front, a political party in

Belarus Republic, carried a poster during a picket he had organized. The poster carried an inscription to the effect that: "Followers of the present regime! You have led the people to poverty for five years. Stop listening to lies. Join the struggle led by the Belarus People's Front for you."

2.2 On 29 March 1999, the author was tried in the Smorgon district court. The court considered the inscription on the poster as amounting to a call for insubordination against the existing government and/or to the destruction of the constitutional order of the Byelorussian Republic. It ruled accordingly that the poster constituted an administrative offence under the Belarus Code of Administrative Offences (art. 167, para. 2). Accordingly, the author was convicted and fined five million Belarussian roubles. It also ordered confiscation of the poster. Militia officers who were present on duty during the picket were summoned to the court as witnesses.

2.3 The author pleaded not guilty during the court hearings and argued that the expression on his poster implied solely a legitimate political expression in the context of democratic elections. On 21 April 1999, the Grodnenski regional court rejected the author's appeal. The author then appealed to the Supreme Court of the Republic of Belarus. On 9 June 1999, the Supreme Court, while allowing the conviction to stand, reduced the sentence imposed by the court and imposed a warning upon the author. Therewith, domestic remedies are claimed to have been exhausted.

**The complaint**

3.1 The author argues that his rights under articles 19 and 2 have been violated by his conviction for expressing a political opinion and disseminating factual information. In terms of the latter, he contends increasing levels of poverty and the perpetration of untruths by State officials have been independently and objectively demonstrated to be correct. The author also considers that the application in his case of the Law on Elections of the Republic of Belarus, which prohibits the nomination as candidate for Parliament of persons who have suffered an administrative conviction in the year prior to an election, violates these rights. Although the author does not invoke it, these arguments also appear to raise an issue under article 25 of the Covenant.

3.2 The author contends that his right under article 14 to an independent tribunal has been violated, in that the same President who the author criticized by his poster appointed the judges considering his case.

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

4. By Note Verbale of 23 November 2000, the State party advised that on 31 August 2000, the Chairman of the Supreme Court of the Republic of Belarus cancelled all determinations earlier adopted regarding the author and closed his case. Accordingly, the State party submitted that there is no basis for further consideration of the communication.

**The author's comments on the State party's submissions**

5. By letter received in February 2001, the author responded to the State party's comments. The author objected to the State party's submission, on the basis that the State party had not stated

whether or not it conceded a violation of the Covenant.

**Issues and proceedings before the Committee**

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether the claim is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to the requirement of the exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the State party has not argued that domestic remedies had not been exhausted at the time the communication was submitted.

6.4 As to the author's claim under article 14, the Committee considers that the mere allegation by the author that the judge in his case was not independent as judges are appointed by the President of the State party does not substantiate, for the purposes of admissibility, the author's claim that article 14 was violated. Accordingly, the Committee finds this claim inadmissible under article 2 of the Optional Protocol.

6.5 As regards the Law on Elections which prohibits the nomination as candidate for Parliament of persons who have been convicted in the year prior to an election, the Committee is of the opinion that this law raises issues under article 25 of the Covenant. However, since the conviction of the author was cancelled and the author is no longer prevented from standing for election, and bearing in mind that the author has not claimed that he was prevented from nomination as a candidate under this law, the Committee finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers the remainder of the communication sufficiently substantiated for the purposes of admissibility, and proceeds to the merits of the communication.

**Examination of the merits**

7.1 The Committee has examined the communication in the light of all information received by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee is of the view that the particular expression of political opinion expressed by the author in carrying the poster in question falls within the scope of freedom of expression protected under article 19 of the Covenant. The State party has not advanced that any of the restrictions set out in article 19, paragraph 3, of the Covenant are applicable. The Committee therefore considers that the conviction of the author for expression of his views amounted to a violation of his rights under article 19 of the Covenant, and notes that his conviction had not been annulled when the communication was submitted to the Committee.

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 facts before it disclose violation of article 19 of the Covenant. However, with reference to article 4, paragraph 2, of the Optional Protocol, the Committee considers that the State party, by the annulment of the decisions against the author, subsequent to the submission of the communication, has rectified the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant. The State party is requested to publish the Committee's Views.

## INDIVIDUAL OPINION BY CHRISTINE CHANET

Communication No. 921/2000

In my opinion the Committee is not in a position in the present case to determine the nature and extent of the authority of the Belarus Supreme Court or the circumstances in which the case came before the judge (Views, para. 4).

Accordingly, the decision by the judge of 31 August 2000 ending the proceedings and finding for the party cannot a priori be considered as not forming part of a decision falling within the context of domestic remedies which the applicant must have exhausted before submitting a communication to the Committee.

Mr. Degachev submitted his communication on 28 September 1999.

Without information as to the nature of the authority exercised by the Chairman of the Supreme Court and his role in proceedings under domestic remedies in the State party it is difficult for me to find that the subsequent intervention of the judge does not constitute an effective remedy in the sense of article 5, paragraph 2 (b), of the Optional Protocol.