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Eighty-first session
5 - 30 July 2004

VIEWS

Communication No. 927/2000

Submitted by:	Mr. Leonid Svetik (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	5 November 1999 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 9 May 2000 (not issued in document form)
Date of adoption of Views:	8 July 2004

On 8 July 2004 the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 927/2000. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Eighty-first session

concerning

Communication No. 927/2000[**]

Submitted by: Mr. Leonid Svetik

Alleged victim: The author

State party: Belarus

Date of communication: 5 November 1999 (initial submission)

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

Meeting on 8 July 2004,

Having concluded its consideration of communication No. 927/2000, submitted to the Human Rights Committee by Mr. Leonid Svetik 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

1.1 The author of the communication is Mr. Leonid Svetik, a Belarusian national born in 1965. He claims to be a victim of violations by Belarus of his rights under articles 14, paragraph 3 (g), and 19, of the Covenant. The author is not represented by counsel.

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text on an individual opinion signed by Committee member Sir Nigel Rodley is appended to the present document.

1.2 The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as submitted by the author

2.1 The author - a teacher in a high school - is a representative of the NGO - Belarusian Helsinki Committee (BHC) in the city of Krichev (Belarus). On 24 March 1999, the national newspaper "Narodnaya Volya" (People's Will) published a declaration, criticizing the policy of the authorities in power. The declaration was written and signed by representatives of hundreds of Belarusian regional political and non-governmental organizations (NGO), including the author. The latter observes that the declaration contained an appeal not to take part in the forthcoming local elections as a protest against the electoral law which the signatories believed was incompatible with "the Belarusian Constitution and the international norms".

2.2 On 12 April 1999, the author was called to the Krichev Prosecution Office to explain his signature on the above-mentioned open letter. He states that only two of the four NGOs in Krichev who also signed the appeal were called to the Prosecutor's Office, since they were considered as belonging to the political opposition.

2.3 On 26 April 1999, the author was summoned to appear before the Krichev District Court. The judge informed him that his signature on the open letter amounted to an offence under article 167, part 3[1], of the Belarusian Code on Administrative Offences (*CAO)* and ordered him to pay a fine of 1 million Belarusian rubles, the equivalent of two minimum salaries[2]. According to the author, the judge was not impartial and threatened to sentence him to the maximum penalty – 10 minimum monthly salaries, as well as to report him to his employer if he did not confess his guilt.

2.4 The author appealed the decision to the Mogilev Regional Court, arguing that it was illegal and unfair, as the finding of his guilt was based on his confession, which was obtained under duress. On 2 June 1999, the President of the Regional Court dismissed his appeal, stating that his offence was confirmed and had not been contested by him in court. He added that guilt was also proven by his explanations and by his signature on the article in the Narodnaya Volya newspaper. The author's argument relating to the use of pressure by the District Court judge was found groundless, as it was not corroborated by any other element in the file. The Krichev District Court's ruling was therefore affirmed.

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[1] Article 167-3, *CAO*. (Violation of electoral legislation) *Article 167-3 was introduced by the Law of 5 December 1989 -Collection of Laws BSSR, 1989, no. 35, art. 386; edition of the Law of 30 March 1994 - of the Supreme Court of Belarus, 1994, no. 14, p. 190*.

[2] A copy of the decision has been provided by the author. The Court concluded that on 24 March 1999, "representatives of regional political and non-governmental organizations published a statement in the "Narodnaya Volya" newspaper, which contained public appeals to boycott the forthcoming local elections for Counsels of deputies. The representative of the Krichev Section of the Belarusian Helsinki Committee, L.V. Svetik, agreed with the text of the appeal and put his signature on it".

2.5 The author complained to the Supreme Court. On 24 December 1999, the First Deputy President of the Supreme Court dismissed the appeal. He held that the claim was unsubstantiated, that the offence was proven, and that the author's action was correctly qualified as constituting an offence within the meaning of article 167-3 of the CAO.

The claim

3. The author claims to be a victim of violations of his rights under articles 14, paragraph 3 (g), and 19, of the Covenant.

The State party's observations on admissibility and merits

4.1 By Note verbale of 9 November 2000, the State party explains that at the time of the author's sentence, the then applicable legislation provided an administrative sanction for public appeals calling for the boycott of elections (article 167-3, *CAO*). The impugned newspaper article of 24 March 1999 contained such an appeal; this was not contested by the author in court. According to the State party, the legislation was fully in conformity with article 19, paragraph 3, of the Covenant, which stipulates that the exercise of the rights protected by article 19, paragraph 2, of the Covenant is subject to limitations, which must be provided by law.

4.2 According to the State party, the author's allegations about psychological pressure exercised by the District Court judge was not confirmed after inquiries undertaken by the competent State authorities.

4.3 The State party adds that, contrary to the previously applicable electoral legislation, article 49 of the Belarusian Electoral Code[3] of April 2000 does not contain a direct clause governing the responsibility of individuals who call for the boycott of elections and appropriate modifications were introduced to the *CAO*. The State party further notes that article 38 of the *CAO* provides that if an individual, who was subject to an administrative penalty, had not committed any new administrative offence within one year after purging the previous penalty, he is considered as not having been subjected to the administrative penalty. For the State party, there is no ground to annul the Court decision of 26 April 1999 with regard to Mr. Svetik, as he is considered a person who had not been subjected to administrative penalty. Accordingly, the administrative penalty imposed on Mr. Svetik in 1999 had no negative consequences for him.

The author's comments on the State party's observations

5.1 By letter of 3 January 2001, the author concedes that the then applicable Belarusian law prescribed administrative punishment for public appeals to boycott elections. However, according to him, the appeal of 24 March 1999 in the Narodnaya Volya newspaper was a call not to participate in undemocratic local elections, not a call to boycott the elections in general. For this reason and pursuant to articles 19, paragraph 2, of the Covenant and 33 of the Belarusian

[3] Article 49, Belarusian Electoral Code: *Responsibility for Violation of Requirements of the Present Code*.

Constitution[4], the author signed the appeal. According to him, all the signatories of the letter considered that every elector had the right not to take part in a vote if he/she considered that the elections were held in violation of democratic procedures.

5.2 As to the State party's inquiry about his claim of psychological duress exerted by the District Court judge, the author states that he was unaware of such an inquiry. He submits a signed statement by a co-accused in the trial, Mr. Andreï Kuzmin; the latter confirms that the author was subjected to pressure by the judge[5].

5.3 Finally, on the State party's observation on the lack of direct consequences of the sentence, the author argues that the payment of the fine has negative impact on his material situation, that the use of psychological duress by the District Court judge humiliated his human dignity and caused him moral suffering. The author points out that as a complementary punishment, the court's decision was sent to his employer, which could have resulted in his dismissal.

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under any other international procedure and that available domestic remedies have been exhausted. The conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are therefore satisfied.

6.3 The Committee has noted the author's claim under article 14, paragraph 3 (g), of the Covenant, relating to the alleged psychological pressure by the District Court judge to have him confess. The Committee notes the State party's explanation that its competent authorities proceeded to a verification which concluded that the judge exercised no pressure. The author contends that he was unaware of this verification, and provides a written statement of a co-accused affirming that the author was threatened by the District Court judge to confess guilt. However, the Committee notes from the submissions before it that, when examining the author's appeal arguments, the regional court concluded that the author's guilt was proven not only on the basis of his confession in court, but also on the basis of his deposition made to the prosecution, and since his name and title appeared in the newspaper's article.

[4] Article 33 of the Constitution stipulates: "Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted".

[5] By letter of 25 December 2000, Mr. Kuzmin confirms that on 26 April 1999, the judge had exerted psychological pressure on Mr. Svetik during the trial.

Consequently, the Committee notes that the author's allegation relates primarily to an evaluation of facts and evidence in the case. It recalls that it is generally for the courts of States parties to the Covenant to review facts and evidence in a particular case, unless it can be shown that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality. The information before the Committee does not provide substantiation for a conclusion that decisions of the district and regional courts suffered from such defects. Accordingly, this part of the communication is inadmissible pursuant to article 2 of the Optional Protocol.

6.4 As far the author's allegation under article 19, paragraph 2 of the Covenant is concerned, the Committee takes note of the State party's argument that appropriate changes to the electoral law have been made and that the administrative penalty imposed upon the author entail to no consequences. However, the State party has not refuted the author's contention that he had to pay the fine in question. Accordingly, neither subsequent modifications to the law nor absence of any legal continuing consequences of the sanction imposed on him deprive him of the status of "victim" in the present case. The Committee considers that this part of the communication has been sufficiently substantiated for purposes of admissibility and decides to proceed to its examination on the merits.

Consideration on the merits

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

7.2 The author claims that his right under article 19 has been violated, as he was subjected to an administrative penalty for the sole expression of his political opinion. The State party only objects that the author was sentenced in compliance with the applicable law, and that, pursuant to paragraph 3 of article 19, the rights protected by paragraph 2 are subject to limitations. The Committee recalls that article 19 allows restrictions only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (ordre public), or of public health or morals[6].The Committee thus has to decide whether or not punishing a call to boycott a particular election is a permissible limitation of the freedom of expression.

7.3 The Committee recalls that according to Article 25(b), every citizen has the right to vote. In order to protect this right, States parties to the Covenant should prohibit intimidation or coercion of voters by penal laws and those laws should be strictly enforced[7]. The application of such laws constitutes, in principle, a lawful limitation of the freedom of expression, necessary for respect of the rights of others. However, intimidation and coercion must be distinguished from encouraging voters to boycott an election. The Committee notes that voting was not compulsory

[6]See, inter alia, Communication No. 574/1994, Kim v. Republic of Korea, Views dated 3 November 1998; Communication No. 628/1995, Park v. Republic of Korea, Views dated 20 October 1998; Communication No. 780/1997, Laptsevich v. Belarus, Views dated 13 April 2000.
[7] General Comment Nr. 25(1996), paragraph. 11.

in the State party concerned and that the declaration signed by the author did not affect the possibility of voters to freely decide whether or nor to participate in the particular election. The Committee concludes that in the circumstances of the present case the limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3, of the Covenant and that the author's rights under article 19, paragraph 2, of the Covenant have been violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

9. 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, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author[8]. The State party is also under an obligation to prevent similar violations 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 and enforceable remedy in case a violation has been established, 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. The State party is also requested to publish the Committee's Views.

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

[8] For the proposed remedy, see Communication No. 780/1997, Laptsevich v. Belarus, Views dated 13 April 2000.

APPENDIX

Individual opinion by Committee member, Sir Nigel Rodley (concurring)

In its consideration of the merits, the Committee "notes that voting was not compulsory in the State party concerned" (paragraph 7.3). The Committee does not spell out the relevance of this observation. It is to be hoped that it is not wittingly or unwittingly indicating that a system of compulsory voting would of itself justify the enforcement of a law that would make advocacy of electoral boycott an offence. Much will depend on the context within which a particular system is established. In a jurisdiction in which there may be forces seeking, not to persuade, but to intimidate voters not to vote, legal compulsion to vote may be an appropriate means to protect voters who wish to vote but are afraid of being seen to disobey the pressures not to vote.

Conversely, history is replete with honourable reasons for opposing regular participation in an electoral process that is believed to be illegitimate. The most blatant example is a vote collection and counting system that is or is expected to be fraudulently manipulated (vote rigging). Another example would be when the voter is offered no choice. A more equivocal example would be when there may be a choice but it is argued that it is not a real choice.

There is no comfortable way in which a body such as the Committee could or should begin credibly to make judgments on matters like these. It will never be in a position itself to pronounce on the legitimacy of advocating this, that or the other form of non-cooperation with a particular electoral exercise in a given jurisdiction. It follows that in any system it must <u>always</u> be possible for a person to advocate non-cooperation with an electoral exercise whose legitimacy that person may wish to challenge. There may be room for flexibility in the means of non-cooperation that may be advocated, be it electoral boycott, the spoiling of ballots, the writing in of alternatives and so on. But, it would be inconsistent with article 19 to prevent the advocacy of any means of non-cooperation as a challenge to the process itself. Indeed, it may similarly be incompatible with the right contained in article 25 to deny to the individual voter, on pain of legally prescribed disadvantage, any possibility whatsoever of manifesting his or her non-cooperation with the process.

[*Signed*] Sir Nigel Rodley

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