



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10 – 28 July 2006

VIEWS

Communication No. 1009/2001

<u>Submitted by:</u>	Vladimir Viktorovich Shchetko and his son, Vladimir Vladimirovich Shchetko (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Belarus
<u>Date of communication:</u>	14 August 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 September 2001 (not issued in document form)
<u>Date of adoption of Views:</u>	11 July 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Administrative sanction for call for boycott of elections

Procedural issues: none

Substantive issues: Permissible restrictions on right to freedom of expression

Articles of the Covenant: 19, paragraphs 2 and 3; 25

Article of the Optional Protocol: 5, paragraphs 2 (a) and (b)

On 11 July 2006, 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. 1009/2001. The text of the Views is appended to the present document.

[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**

Eighty-seventh session

concerning

Communication No. 1009/2001*

Submitted by: Vladimir Viktorovich Shchetko and his son
Vladimir Vladimirovich Shchetko (not
represented by counsel.)

Alleged victim: The authors

State party: Belarus

Date of communication: 14 August 2001 (initial submission)

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

Meeting on 11 July 2006

Having concluded its consideration of communication No. 1009/2001, submitted to the Human Rights Committee by Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Alfredo Castellero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

1. The authors are Vladimir Viktorovich Shchetko and his son, Vladimir Vladimirovich Shchetko, Belarusian nationals born in 1952 and 1979, respectively. Although they do not invoke specific provisions of the Covenant, their communication appears to raise issues under article 19 thereof¹. The authors are unrepresented.

Factual background

2.1 By decision of 27 October 2000 of the Pervomay District Court in Bobruisk, the authors were fined 10000 Belarusian roubles each. This administrative sanction was imposed on them since, on 12 October 2000, they had distributed leaflets calling for the boycott of the Parliamentary elections planned for 15 October 2000. The court based its decision on the provisions of article 167-3 of the Administrative Offences Code (hereafter *AOC*).

2.2 The authors note that article 167-3 *AOC* prohibits public calls for the boycott of elections (in its 1994 version under which they were fined). According to them, this provision cannot be read separately from paragraph 45, part 13, of the Electoral Code (*EC*, version of 1 February 2000) which prohibits campaigning (including calls for boycott of elections, referenda) during election day only. The authors' further note that on 9 October 2000, article 167-3 of the *AOC* was amended by law, to bring it into line with the requirements of paragraph 45, *EC*.

2.3 On an unspecified date, the authors appealed the decision of the Court of 27 October 2000 to the Mogilievsk Regional Court. On 29 December 2000, they received a reply signed by the Court's President, which confirmed the District Court's decision. On an unspecified later date, they filed a request for a protest motion (*nadzornaya zhaloba*), under a supervisory procedure, to the Supreme Court. (Under this procedure, individuals may appeal to the President of the Supreme Court or his/her deputies, or to the Prosecutor General or his/her deputies, requesting them to introduce a protest motion to the Court to re-examine the case. If granted, the re-examination would only be on issues of law). On 16 March 2001, the Deputy President of the Supreme Court rejected their claim, thereby upholding the lower courts' decisions.

The complaint

3. Although the authors do not invoke specific provisions of the Covenant, their communication appears to raise issues under article 19 of the Covenant.

State party's observations and author's comments

4. The State party presented its comments on 18 December 2001. It recalls that on 12 October 2000, the authors distributed leaflets that included a call to boycott the Parliamentary elections. Article 167-3 of the *AOC* in its version of 1994 then in force prohibited calls for the boycott of elections at any time. The amendment of 9 October 2000 referred to by the authors only entered into force one month after its official publication (18 October 2000) in the Official Gazette. The State party thus concludes that the authors' fine was entirely lawful and justified.

¹ The Optional Protocol entered into force for the State party on 30 December 1992.

5. The authors have presented their comments on 16 June 2006². They reiterate that they were fined for distributing “literature” which called for the boycott of the forthcoming elections. They contend that in fact they distributed an issue of the paper « Worker », which was registered as an official periodical. Notwithstanding, they were fined and copies of other issues of the paper in their possession were confiscated. These copies were returned to them after the elections.

Issues and proceedings before the Committee

Admissibility considerations

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 communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under another international procedure of investigation or settlement, and that domestic remedies have been exhausted. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol, have therefore been met.

6.3 The Committee considers that the present communication may raise issues under article 19 of the Covenant, and that the authors’ claim is sufficiently substantiated, for purposes of admissibility. Accordingly, it proceeds to its consideration of the case on the merits.

Consideration of 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 authors claim that the State party violated their rights by fining them, solely for having distributed leaflets that contained a call for boycott of a general election. The State party has objected that the fine imposed on the authors was lawful and pronounced in accordance with article 167-3 of the Administrative Offences Code.

7.3 The Committee recalls, first, that right to freedom of expression is not absolute and that its enjoyment may be subject to limitations.³ However, pursuant to article 19, paragraph 3, only such limitations are permissible as are provided for by law and that are necessary (a) for respect of the rights or reputations of others; (b) for the protection of national security or of

² The authors were requested to present their comments in January 2002, 2 December 2003, 17 June 2005, and 10 May 2006. They have provided comments only on 16 June 2006. It transpired that they have left Belarus and have obtained political asylum in a European Union country, what explains the difficulties in the communication with the authors.

³ See also, Communication No. 574/1994, Kim vs. the Republic of Korea, Views of 3 November 1998 and Communication No. 628/1995, Park vs. the Republic of Korea, Views of 20 October 1998, Communication No. 780/1997, Vladimir Laptsevich v. Belarus, Views adopted on 20 March 2000, paragraph 8.2; Leonid Svetik v. Belarus, Communication No. 927/2000, Views adopted on 8 July 2004, paragraph 7.2; Vladimir Velichkin v. Belarus, Communication No. 1022/2001, Views adopted on 20 October 2005, paragraph 7.3.

public order (*ordre public*), or of public health or morals. The Committee reiterates in this context that the right to freedom of expression is of paramount importance in any democratic society, and that any restrictions on its exercise must meet strict tests of justification.

7.4 The Committee recalls that under article 25(b), every citizen has the right to vote, and that in order to protect this right, States parties to the Covenant should prohibit any intimidation or coercion of voters by criminal laws and that such laws should be strictly enforced⁴. The application of such laws constitutes, in principle, a lawful limitation of the right to freedom of expression, necessary for the respect of the rights of others. Any situation in which voters are subject to intimidation and coercion must, however, be distinguished from a situation in which voters are encouraged to boycott an election without any form of intimidation.

7.5 In the present case, the State party has merely argued that the restrictions of the authors' rights were provided for under law, without presenting any justification whatsoever for these restrictions. The law in question was amended shortly after the court handed down its judgment in the authors' case, which tends to underline the lack of reasonable justification for the restrictions set out in the above law. The materials before the Committee do not reveal that the authors' acts in any way affected the possibility of voters freely to decide whether or not to participate in the general election in question. In the absence of any other pertinent information, the Committee considers that in the circumstances of the case, the fine imposed on the authors was not justified under any of the criteria set out in article 19, paragraph 3. It therefore concludes that the authors' rights under article 19, paragraph 2, of the Covenant, have been violated⁵.

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

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Messrs Shchetko with an effective remedy, including compensation amounting to a sum not less than the actual value of the fine and any legal costs paid by the authors. The State party is under an obligation to take measures 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 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.

[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.]

⁴ General Comment Nr. 25(1996), paragraph. 11.

⁵ See also *Svetik v. Belarus*, Communication No. 907/2000, Views adopted on 8 July 2004, paragraph 7.3.