



**International Covenant on
Civil and Political Rights**

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102nd session

11-29 July 2011

Decision

Communication No. 1814/2008

<u>Submitted by:</u>	P. L. (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	12 May 2008 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 October 2008 (not issued in document form)
<u>Date of adoption of decision:</u>	26 July 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Freedom of expression; fair trial, discrimination, equality before the law, effective remedy
<i>Substantive issues:</i>	Unjustified restrictions on freedom to receive information from independent media; access to independent court; discrimination on political grounds.
<i>Procedural issues:</i>	Level of substantiation of claims.
<i>Articles of the Covenant:</i>	article 2, article 5, article 14, paragraph 1, article 19, article 26.
<i>Article of the Optional Protocol:</i>	2 [Annex]

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (102nd session)

concerning

Communication No. 1814/2008**

Submitted by: P. L. (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 12 May 2008 (initial submission)

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

Meeting on 26 July 2011,

Adopts the following:

Decision on admissibility

1. The author is Mr. P. L., a Belarusian national born in 1961. He claims to be victim of violations, by Belarus, of his rights under article 2; article 5; article 14, paragraph 1; article 19, paragraphs 1 and 2; and article 26, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented by counsel.

The facts as submitted by the author

2.1 The author was a regular reader of the newspaper “Vitebsky Courier M” which was duly registered by the Ministry of Information of Belarus. For a number of years, the author’s subscription and delivery of the newspaper was operated through the State owned company “Belpochta”. At the beginning of 2006, the author tried to renew his subscription in a postal office in Vitebsk, but was informed that the newspaper was no longer included in the catalogue of periodicals available for subscription with “Belpochta”, and therefore he could not have a subscription there. As a consequence, the author has to buy his newspaper directly at the newspaper’s office.

2.2 According to the author, “Belpochta” has excluded from its catalogue only private newspapers, presenting opinions differing from the positions of the pro-government press.

** 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. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

He believes that this was done on political grounds, and amounts to a discrimination against his right to receive information as part of the freedom of expression.

2.3 In October 2006, the author requested “Belpochta” in a letter to include the “Vitebsky Courier M” in the catalogue for subscription for the following year. On 3 November 2006, “Belpochta” informed the author that the newspaper in question was not included in the catalogue for 2007, that “Belpochta” was free to select the periodicals to be included in the catalogue, and that no obligation to include a particular periodical in the catalogue existed under the law. On 6 December 2006, the author complained about this refusal to the Leninsky District Court of Vitebsk. His complaint was dismissed on 10 January 2007. The author was informed that he should have complained to the Ministry of Informatisation and Communications first.

2.4 On 8 March 2007, the author appealed the decision of the Leninsky District Court to the Minsk City Court. On 30 June 2007, the Minsk City Court cancelled the decision of the district court, as it considered that the (district) court had had no jurisdiction in the matter and dismissed the author’s claim. On 11 February 2008, the author complained to the President of the Minsk City Court against the decisions of the district court and the Minsk City Court, under the supervisory proceedings. His request was rejected on 10 March 2008. On 14 March 2008, the author submitted a request for a protest motion, with the Supreme Court, to have the case examined under the supervisory proceedings, contesting both the district court and the Minsk City Court decisions. On 25 April 2008, the Supreme Court rejected his request. The author claims that courts in Belarus are not independent¹.

2.5 In the meantime, on 8 March 2007, the author complained to the Ministry of Communications and Informatisation, asking to have the newspaper included in the subscription catalogue. On 27 March 2007, the Ministry rejected his complaint, arguing that decisions to include periodicals in the subscription catalogue are within the competence of “Belpochta”.

The complaint

3. The author claims that the above mentioned facts demonstrate a violation of his rights under article 2; article 5, paragraph 1; article 14, paragraph 1; article 19, paragraphs 1 and 2; and article 26, of the Covenant, as, according to him, the State party has violated his right to freedom of expression, in particular his right to receive information from private media, amounting to a discrimination, and has subsequently denied him access to an independent tribunal, has violated the principle of equality before the law, and has failed to provide him with an effective remedy.

State party’s observations on admissibility and merits

4.1 By Note Verbale of 4 December 2008, the State party notes that under the supervisory proceedings, the author could have also appealed to the President of the Supreme Court and to the Prosecutor General, but he failed to do so. Therefore, according to the State party, the author has failed to exhaust all available domestic remedies.

4.2 The State party further notes that in substance, in his complaint to “Belpochta” in October 2006, the author has challenged the decision of “Belpochta” not to include a particular newspaper in its subscription list. As it was noted by the representatives of the firm in their reply to the author, “Belpochta” had no legal obligation to include any particular newspaper in its catalogue, and the choice which periodicals to include was

¹ The author refers to the report E/CN.4/2001/Add.1, 8 February 2001, by the Special Rapporteur on independence of Judges and Lawyers, concerning Belarus.

within its prerogatives. The author complained against this decision, claiming that it had violated his right to receive information. On 10 January 2007, the Leninsky District Court rejected his claim. The author appealed against this decision, claiming that it was unlawful, to the Minsk City Court. The Minsk City Court noted that in fact, the author's claim challenged the decision of "Belpochta" not to include the newspaper "Vitebsk Courier M" in its subscription catalogue. The Minsk City Court annulled the district court decision and dismissed the case, as it was outside of its jurisdiction.

4.3 On 14 May 2009, the State party reiterated its previous observations added that pursuant to the Law on printed and other means of mass information, distribution of mass media products is left to the discretion of the media themselves, and may be direct or through State, cooperative, or collective entities, or through private individuals. Thus, the issue of the conclusion of distribution contract between the redaction of "Vitebsky Courier M" and "Belpochta" was outside of courts' jurisdiction. The State party adds that the author has been informed by the courts of his right to submit an extra-judicial complaint to the Ministry of Communications and Informatisation, but he did not avail himself of this possibility.

4.4 On 21 September 2009, the State party contested the author's allegations on the independence of Belarusian judiciary. It explains that according to the Constitution and the laws, judges are independent in administering justice, and no interference in their work is permitted. In addition, judges of the Supreme Court and the Supreme Economic Court are appointed by the President of Belarus following the agreement of the Council of the Republic of the National Assembly, at the proposal of the Chairman of the Supreme Court and the Supreme Economic Court, respectively.

Author's comments on the State party's observations

5.1 The author presented his comments on the State party's observations on 24 April 2009. He notes, first, that the appeals under the supervisory proceedings both to the Supreme Court and the Prosecutor-General do not constitute remedies to be exhausted for purposes of article 5, paragraph 2 (b) of the Optional Protocol, as they are discretionary and concern court decisions which are final and enforceable. In addition, there is no obligation to submit supervisory complaints under national law.

5.2 The author adds that he has complained to the Ministry of Communications and Informatisation on 8 March 2007, asking whether "Belpochta" was subordinated to the Ministry in question. From the Ministry's reply of 27 March 2007, it transpired that "Belpochta" was an autonomous economic entity, and the decision to include or not a given newspaper in its subscription catalogue was strictly within the firm's competence.

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 it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has noted the author's explanation that he had exhausted all available domestic remedies, up to the Supreme Court of Belarus. As to the State party's contention that the author could have further appealed to the Prosecutor-General with a request to have a protest motion filed under the supervisory proceedings, the Committee recalls its jurisprudence that such remedies do not constitute a remedy, which has to be

exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol². The Committee has also noted that the same matter is not being examined under another procedure of international investigation or settlement. Accordingly, the Committee considers that the requirements of article 5, paragraphs 2 (a) and (b) have been met in the present case.

6.3 The Committee notes that in substance, the author claims that the discretionary decision of “Belpochta” not to retain the newspaper “Vitebsky Courier M” in its list of periodicals available for subscription amounted to an unjustified limitation of his right to freedom of expression, in particular of his right to receive information, as protected by article 19, paragraph 2, of the Covenant. The Committee notes, first, that according to the State party “Belpochta”, is an autonomous entity and is entitled to decide which periodicals to include in its subscription catalogue. It notes further that neither the provisions of the national law nor the Covenant’s provisions impose any obligation on States parties to ensure obligatory distribution of printed media material. Although the Committee considers that, even if in some circumstances denial of access to State-owned or State-controlled distribution services may amount to an interference with rights protected by article 19, in the present case, the author has not provided sufficient information that would permit the Committee to evaluate the extent of the interference or to determine whether the denial of such access is discriminatory. The Committee further notes that in any event, even if the newspaper in question was not included in the “Belpochta” subscription list and was not delivered to his home address by mail, the author was able to obtain it by other means. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claim, for purposes of admissibility, and that therefore this part of the communication is inadmissible under article 2, of the Optional Protocol.

6.4 In light of this conclusion, the Committee will not examine separately the remaining part of the author’s claims under articles 2; 5; 14; and 26, of the Covenant, as they are linked to the author’s principal claim under article 19, of the Covenant.

7. The Human Rights Committee therefore decides:

- a) That the communication is inadmissible under article 2 of the Optional Protocol;
- b) That this decision shall be communicated to the State party and to the author.

[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.]

² See, for example, *Yekaterina Gerashchenko v. Belarus*, communication No. 1537/2006, Inadmissibility decision adopted on 23 October 2009, paragraph 6.3.