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Human Rights Committee

Communication No. 1993/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Raisa Mikhailovskaya and Oleg Volchek (not represented by counsel)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communication:</i>	27 May 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 October 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2014
<i>Subject matter:</i>	Freedom of association
<i>Substantive issue:</i>	Right to register an association
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Article of the Covenant:</i>	22
<i>Articles of the Optional Protocol:</i>	2 and 5 (para. 2 (b))



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 (111th session)

concerning

Communication No. 1993/2010*

Submitted by: Raisa Mikhailovskaya and Oleg Volchek (not represented by counsel)

Alleged victim: The authors

State party: Belarus

Date of communication: 27 May 2008 (initial submission)

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

Meeting on 24 July 2014,

Having concluded its consideration of communication No. 1993/2010, submitted to the Human Rights Committee by Raisa Mikhailovskaya and Oleg Volchek 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:

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

1. The authors of the communication are Raisa Mikhailovskaya, born in 1960, and Oleg Volchek, born in 1967, both Belarusian nationals. They claim to be victims of violations by Belarus of their rights under article 22, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights.¹ The authors are not represented.

The facts as submitted by the authors

2.1 The authors are two of the founders of the non-governmental organization (NGO), Legal Aid to the Population. The NGO was registered on 10 September 1998 as a local association in Minsk, re-registered on 17 August 1999 in accordance with changes in domestic legislation, and was permitted to operate only in the city of Minsk. The founders

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

¹ The Optional Protocol entered into force for Belarus on 30 December 1992.

of the organization wanted to expand the scope of their operations to the whole country and attempted to register with the Ministry of Justice a new nationwide, Republican association for that purpose, under a new name, Legal Protection of Citizens. On 2 April 2001, the Ministry of Justice rejected the application for registration, stating that the public association for which registration was sought could not provide legal assistance to citizens.

2.2 The authors submit that they appealed against that decision before the Supreme Court.² The appellants argued that the application for registration complied with all the laws and regulations of Belarus, and that the new public association would help achieve the goal of building a country based on the rule of law. Further, the appellants argued that the alleged deficiencies in the application documents were minor, and that the Ministry of Justice should have given them more time to rectify any flaws in the application. On 4 June 2001, the Supreme Court rejected the appeal. In its decision, the Court accepted the position of the Ministry of Justice and stated that the new public association, Legal Protection of Citizens, could not represent persons outside Minsk, as the founders had intended. The Court also held that the deficiencies found in the application documents were sufficiently grave to warrant a denial of the registration.³

2.3 The authors contend that, according to the charter of the local NGO, Legal Aid to the Population, the main aim of the association was to contribute to the development of a culture based on the rule of law in Belarus. The NGO engaged in various activities, including providing legal aid to about 5,000 individuals, monitoring the work of the courts and publicizing the results, disseminating information about human rights violations, and issuing around 20 publications on human rights issues, which had turned it into one of the leading human rights organizations in Belarus. The authors claim that because of their activities, members of the NGO were subjected to constant harassment. For example, on 21 July 1999, Mr. Volchek was arrested, beaten by the police and charged with hooliganism. While the charges were eventually dropped, the allegations of beating were never investigated and the perpetrators were never brought to justice. Another member of the NGO was also severely beaten and, despite the fact that the perpetrators of that incident were detained, no criminal charges were ever filed in that case because the prosecution declared that there was not enough evidence to prosecute.

2.4 The authors claim that in September 2002, the Justice Department of Minsk Executive Committee, acting on instructions from the Ministry of Justice of Belarus, initiated a review of the activities of the existing NGO, Legal Aid to the Population. As a result of the inspection, the Justice Department issued a written warning, dated 18 September 2002, advising the association that it did not have the right to represent the interests of other citizens in courts. The authors appealed before Minsk City Court, but the Court upheld the lawfulness of the warning. On 17 April 2002, the Ministry of Justice had withdrawn the licence to provide legal services from one of the authors, Mr. Volchek, who at the time had been serving as president of the NGO. Mr. Volchek, however, was informed about the withdrawal only six months later.

2.5 On 2 August 2003, the authors received a letter from Minsk City Court, informing them that proceedings for the dissolution of Legal Aid to the Population had been initiated by way of a submission by the Justice Department of Minsk Executive Committee. The submission was based on article 57, paragraph 2 (2), of the Civil Code, concerning activities carried out in violation of the legislation in a flagrant or repeated manner, and

² According to domestic legislation, denial of registration of a public association can be appealed directly before the Supreme Court. Its decision is final and cannot be appealed.

³ One of the deficiencies that the Court listed was that the applicants failed to provide a correct graphic description of the organizational structure of the association, including the location of each structure.

article 29, paragraph 3, of the Law on Public Associations, and alleged violation of the rules governing the initial registration of the organization.

2.6 The authors claim that they submitted a detailed defence of their association to the Court, stressing, among other things, that the real reason behind the dissolution was to discriminate politically against an independent NGO that was defending human rights. The authors claim that there is a difference between the provision of legal assistance and the provision of legal services, which by law has to be licensed. The NGO did provide free legal assistance to indigent persons and persons on a low income, but it did not provide legal services, as was alleged by the Justice Department. Based on the review that was conducted by the Justice Department in September 2002, it was also alleged that the NGO sent its representatives to participate in court hearings. The authors submit that, after the review in September 2002, they abandoned that practice and the NGO stopped sending its representatives to court hearings. In addition, they claim that, according to article 62 of the Constitution of Belarus, the right to legal aid is guaranteed to every citizen, and that obstructing that right is forbidden. They also claim that the Constitutional Court of Belarus, in a decision of 5 October 2000, ruled that citizens have a right to legal assistance by other persons who are not lawyers and who do not have a licence to provide legal services. The authors also contend that several organizations sent the Court letters in support of their NGO.

2.7 The authors submit that the court hearing regarding the dissolution proceedings was originally scheduled for 5 September 2003. The judge wanted the hearing to take place in her office, which was too small and did not allow for members of the public to be present. The authors protested against the location of the hearing and insisted that it should be made accessible to the public. The hearing was rescheduled for 8 September 2003, but despite the availability of court rooms, the judge again insisted that the hearing take place in her office. Consequently, only representatives of the parties to the hearing and one observer from the Organization for Security and Cooperation in Europe were allowed to be present. Journalists, other NGO representatives and members of the public who wanted to attend the hearing were not allowed inside.

2.8 The authors also submit that they insisted on a public hearing and refused to participate in a closed hearing. The judge decided that their refusal constituted an unjustified delay to the proceedings and proceeded with the hearing in the absence of representatives of the NGO, including the authors. The judge issued a ruling on the same date, under which the NGO, Legal Aid to the Population, was dissolved on the basis of article 57, paragraph 2 (2), of the Civil Code and article 29, paragraph 2, of the Law on Public Associations, citing repeated violations of those provisions.

2.9 On an unspecified date, the authors filed a cassation appeal before the Supreme Court against the Minsk City Court ruling. In the appeal, they reiterated the arguments brought before Minsk City Court. They also complained about the judge's decision to hold a closed hearing on 8 September 2003, despite the fact that about 40 people had gone to the Court to attend the hearing, and the fact that the hearing had been held in the absence of representatives of the NGO. The authors further claimed that the violations to which the Court referred in its decision were based on review findings of the Department of Justice issued on 5 November 1999, which had since been corrected. Those violations should not have been taken into consideration because the statute of limitations, three years under the Civil Code, had passed. On 13 October 2003, the Supreme Court rejected the authors' appeal and confirmed the lower instance ruling. The authors therefore contend that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The authors submit that the refusal by the State party to register the new entity, Legal Protection of Citizens, as a nationwide, Republican association, as well as the subsequent dissolution of the NGO, Legal Aid to the Population, violated their right to freedom of association under article 22 of the Covenant.

3.2 The authors submit that since 2003, the State party's authorities have embarked on a systematic policy of closing down independent NGOs and quote statistics in support of their claim.⁴ They refer to the Committee's case law,⁵ in which the Committee found violations of freedom of association by the State party, and submit that no action was taken by the authorities to rectify the violations and to implement the Committee's recommendations. Accordingly, they maintain that the circumstances of their case constitute part of systematic violations of freedom of association by Belarus.

State party's observations on admissibility

4.1 By note verbale of 6 January 2011, the State party submitted, with regard to the present communication and several other communications before the Committee, that the authors had not exhausted all available domestic remedies in Belarus, including appeal before the Office of the Procurator-General for supervisory review of a judgment having force of *res judicata*. It also submits that, while being a party to the Optional Protocol, it has not given its consent for the extension of the Committee's mandate to communications from individuals who have not exhausted domestic remedies; that it considers the above communications to have been registered in violation of the provisions of the Optional Protocol; that there are no legal grounds for their consideration by the State party; and that "any references in this connection to the Committee's long-standing practice are unlawfully bound".

4.2 On 5 October 2011, the State party challenged the admissibility of the communication, reiterating that the authors have failed to exhaust all available domestic remedies as they have not requested the Office of the Procurator-General to initiate supervisory review proceedings.

4.3 On 25 January 2012, the State party submitted with regard to the present communication together with around sixty other communications that, when becoming a party to the Optional Protocol, it had recognized the competence of the Committee under article 1, but that recognition of competence was undertaken in conjunction with other provisions of the Optional Protocol, including those that established criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, States parties have no obligation regarding recognition of the Committee's rules of procedure and its interpretation of the provisions of the Optional Protocol, which "could only be efficient when done in accordance with the Vienna Convention of the Law on Treaties". It submits that, "in relation to the complaint procedure the States parties should be guided first and foremost by the provisions of the Optional Protocol," and that "references to the Committee's long-standing practice, methods of work, case law are not subject of the Optional Protocol". It also submits that "any communication registered in violation of the provisions of the Optional Protocol to the Covenant on Civil and Political Rights will be viewed by the State party as incompatible with the Protocol and will be rejected without comments on the

⁴ In 2003, 51 public associations were dissolved; 38 in 2004; 68 in 2005; the data for 2006 was not published, but the numbers were high; and 26 in 2007.

⁵ The authors refer to communications No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012; No. 1296/2004, *Belyatsky et al. v. Belarus*, Views adopted 24 July 2007.

admissibility or on the merits". The State party also maintains that decisions taken by the Committee on rejected communications will be considered by its authorities as "invalid".

Issues and proceedings before the Committee

State party's lack of cooperation

5.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the authors' communication, insofar as it is registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding recognition of the Committee's rules of procedure and regarding the Committee's interpretation of the provisions of the Optional Protocol; and that if a decision is taken by the Committee on the present communication, it will be considered "invalid" by the authorities of the State party.

5.2 The Committee recalls that under article 39, paragraph 2, of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (art. 5, paras. 1 and 4). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.⁶ It is for the Committee to determine whether a communication should be registered. By failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility or the merits of that communication, the State party violates its obligations under article 1 of the Optional Protocol to the Covenant.⁷

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 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.

6.3 The Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol on the ground that the authors have not requested the Office of the Procurator-General to have their case considered under supervisory review proceedings. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor's Office, allowing to review court decisions that have taken effect, does not constitute a remedy which has to be exhausted for the purposes of article 5,

⁶ See, inter alia, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

⁷ See, for example, *Korneenko v. Belarus* (note 6 above), para. 8.2; communication No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, para. 5.2.

paragraph 2 (b), of the Optional Protocol.⁸ Accordingly, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

6.4 The Committee notes that the State party did not contest any of the facts alleged by the authors and considers that the authors have sufficiently substantiated their claims under article 22 of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds to its examination on the merits.

Consideration of 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 required under article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the refusal of the authorities to register a new NGO by the name of Legal Protection of Citizens as an association authorized to operate on a nationwide basis and the subsequent dissolution of the existing NGO, Legal Aid to the Population, unreasonably restricted the authors' right to freedom of association. In that regard, the Committee observes that article 22 of the Covenant guarantees that everyone shall have the right to freedom of association with others, and the protection afforded by that article extends to all the activities of an association. Restrictions on the operation of an association, including its dissolution, must satisfy the requirements of paragraph 2 of that provision.⁹

7.3 The Committee observes that, in accordance with article 22, paragraph 2, a restriction on the right to freedom of association can be justified only if it cumulatively meets the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in article 22, paragraph 2; and (c) it must be "necessary in a democratic society" for achieving one of those purposes. The reference to the notion of "democratic society" indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.¹⁰ The mere existence of objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical threat to national security or democratic order, that less intrusive measures would be insufficient to achieve the same purpose,¹¹ and that the restriction is proportionate to the interest to be protected.¹²

7.4 In the present case, the decision of the Ministry of Justice to deny the registration of the new nationwide NGO, Legal Protection of Citizens, and the court decision dissolving the NGO, Legal Aid to the Population, was based on two perceived violations of the State party's domestic law: (a) that the NGO was providing legal assistance to citizens without the necessary legal licence, and (b) that there were violations of the applicable rules of

⁸ Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

⁹ See, for example, communication No. 1274/2004, *Korneenko v. Belarus*, Views adopted on 31 October 2006, para. 7.2.

¹⁰ *Ibid.*, para. 7.3.

¹¹ See, for example, communication No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, Views adopted on 20 July 2005, para.7.2; *Belyatsky et al. v. Belarus* (note 6 above), para. 7.3.

¹² See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 34.

registration of the NGO. On those two points, the Committee observes that the State party has advanced no arguments as to why it was necessary, for the purposes set out in article 22, paragraph 2, of the Covenant, to deny the registration of one NGO, or order the dissolution of the other. The Committee considers that, even if the allegations against Legal Aid to the Population were true, the denial of registration of Legal Protection of Citizens and the dissolution of Legal Aid to the Population constituted a disproportionate response by the State party to the allegations. That is especially so in the light of the authors' assurances that they have rectified all of the alleged deficiencies in the operation of the existing NGO, and the affirmation by the Constitutional Court in its decision of 5 October 2000 of the right of all citizens in Belarus to receive legal assistance, including by non-lawyers.

7.5 Taking into account the serious consequences of the denial of the registration and the dissolution of the NGOs in question for the exercise of the authors' right to freedom of association, the Committee concludes that those actions do not meet the requirements of article 22, paragraph 2. It concludes therefore that the authors' rights under article 22, paragraph 1 have been violated.

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 information before it discloses a violation by the State party of the authors' rights under article 22, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including reimbursement of any legal costs incurred by them, together with compensation, as well as reestablishment of the NGO, Legal Aid to the Population, and a renewed consideration of the registration of the nationwide NGO, Legal Protection of Citizens, in a manner consistent with article 22 of the Covenant. The State party is also under the obligation to take steps 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 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.
