



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/88/D/1039/2001
10 November 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October – 3 November 2006

VIEWS

Communication 1039/2001

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| <u>Submitted by:</u> | Boris Zvozkov et al. (not represented by counsel) |
| <u>Alleged victims:</u> | The author |
| <u>State party:</u> | Belarus |
| <u>Date of communication:</u> | 12 November 2001 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 14 December 2001 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 17 October 2006 |

* Made public by decision of the Human Rights Committee.

Subject matter: Denial of registration of human rights association by State party's authorities.

Substantive issues: Equality before the law; prohibited discrimination; right to freedom of association; permitted restrictions.

Procedural issues: Inadmissibility *ratione personae*; lack of substantiation.

Articles of the Covenant: articles 2; 22, paragraphs 1 and 2; 26

Articles of the Optional Protocol: articles 1; 2

On 17 October 2006, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1039/2001.

[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-eighth session

concerning

Communication 1039/2001*

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| <u>Submitted by:</u> | Boris Zvozkov et al. (not represented by counsel) |
| <u>Alleged victims:</u> | The author |
| <u>State party:</u> | Belarus |
| <u>Date of communication:</u> | 12 November 2001 (initial submission) |

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

Meeting on 17 October 2006,

Having concluded its consideration of communication No. 1039/2001, submitted to the Human Rights Committee by Boris Zvozkov in his own name and on behalf of 33 other individuals 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 is Boris Igorevich Zvozkov, born in 1949, an ethnic Russian residing in Minsk, Belarus. The communication is presented in his own name and on behalf of 33 other individuals of Belarusian, Polish, Russian, Latvian and Lithuanian nationalities, all residing in Belarus. He submits letters of authority from 23 out of 33 co-authors.

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

The author alleges that all of them are victims of violations by Belarus¹ of article 2, paragraph 1; article 22, paragraphs 1 and 2; and article 26 of the International Covenant on Civil and Political Rights. He is not represented.

Factual background

2.1 On 12 November 2000, 114 individuals, including the author, held the constituent assembly of the non-governmental human rights public association “Helsinki XXI”, established to help with the implementation of the U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration) in Belarus. On 11 December 2000, they applied to the Ministry of Justice for registration of the association. On 11 January 2001, the Ministry of Justice suspended the registration, as there were discrepancies between the number of members present at the constituent assembly, the number who participated in the voting and the list of founders submitted to the Ministry. The leadership of the association was invited to amend the application and to resubmit it for registration within a month.

2.2 On 9 February 2001, an amended application for registration was submitted to the Ministry of Justice. On 11 July 2001, the Ministry rejected the application, referring to paragraph 11 of the Regulations “On State Registration (Re-registration) of the Political Parties, Trade Unions and Other Public Associations” (the Regulations), approved by the Presidential Decree of 26 January 1999 (Presidential Decree), because: (1) one of the “Helsinki XXI” statutory activities was to represent and to defend the rights of third persons, which, according to the Ministry, was contrary to the Declaration, the Belarus Constitution and other laws;² (2) doubts existed as to the validity of the association’s creation, the adoption of its statutes and other decisions at the constituent assembly, as there were 114 individuals listed in the minutes of the constituent assembly, whereas the number of those who voted varied between 98 and 109. On the first point, the Ministry specifically referred to paragraphs 2.2.1 (to promote and protect human rights and freedoms at national and international levels), 2.2.2 (to render free assistance and consultations on the issues of human rights protection), 2.3.3 (to provide free legal assistance to “Helsinki XXI” members, other citizens and associations that ask for help, by protecting their rights and interests in courts, before the state bodies and other organisations) and 2.4.5 (to represent and defend the rights and interests of its members and other citizens who asked for help in state, commercial and public institutions and organizations free of charge) of the “Helsinki XXI” statutes.

2.3 On 18 July 2001, the author and two other founders appealed the Ministry’s decision of 11 July 2001 to the Supreme Court. They challenged the lawfulness of the decision on the grounds that: (1) contrary to the Ministry’s assertion, the law of Belarus does not prohibit representing

¹ The Covenant and the Optional Protocol thereto entered into force for Belarus on 23 March 1976 and 30 December 1992 respectively.

² Reference is made to article 62 of the Constitution; article 72, part 2, paragraph 3, of the Civil Procedure Code; articles 44, 46 and 56 of the Criminal Procedure Code; article 22 of the Law “On Public Associations”.

and defending the rights of third persons;³ (2) the Regulations do not provide for refusal of registration because of ‘remarks on the submitted list of founders and other documents’. On 20 August 2001, the Supreme Court disagreed with the Ministry’s findings on the invalidity of the association’s creation and on the discrepancies in the list of founders. However it upheld the decision of the Ministry that the “Helsinki XXI” statutory activities on the representation and defence of the rights of third persons was not in conformity with article 22, paragraph 2, of the Law “On Public Associations” and article 72, part 2, paragraph 3, and article 86 of the Civil Procedure Code. The Court referred to paragraph 11 of the Regulations governing the refusal of registration of an association where its statutes⁴ are not in conformity with legal requirements. The Court also quoted the opinion on the refusal to register “Helsinki XXI”, issued on 7 June 2001 by the Commission on the Registration (Re-registration) of Public Associations, established by the Presidential Decree, and the Ministry of Justice decision on the same matter of 7 June 2001. The Supreme Court’s refusal to register “Helsinki XXI” as a public association cannot be appealed.

The complaint

3.1 The author submits that the refusal to register “Helsinki XXI” that he formed jointly with other 33 co-authors, and the failure of Belarus courts to grant their appeal, amount to a violation of their rights under article 22, paragraph 1, of the Covenant.

3.2 The author contends that the requirements for registration of a public association established under the State party’s laws are impermissible restrictions of his and the other 33 co-authors’ right to freedom of association which do not meet the criteria of necessity to protect the interests of national security or public safety, order, health, or morals, or the rights and freedoms of others (article 22, paragraph 2).

3.3 The author claims that several other non-human rights public associations were registered between 1991 and 1998 (and re-registered in 1999) by the State party’s authorities, although their statutes included activities on the protection of rights, basic freedoms and lawful interests of third persons. At the same time, four other human rights associations were refused registration on the same grounds. The refusal of registration and its confirmation by the Supreme Court constitutes, according to the author, discrimination by the State party towards him and the other 33 co-authors, contrary to article 2 and article 26 of the Covenant.

³ Reference is made to article 73, part 1, of the Civil Procedure Code; article 62 of the Constitution; Decision of the Constitutional Court of 5 October 2000; Resolution of the Plenum of the Supreme Court of 25 March 1999; article 3 of the Law “On Public Associations”. The latter provides for an exhaustive list of restrictions on the establishment of a public association: “it is prohibited to establish public associations aimed at overthrowing or forcefully changing the Constitutional order, violating the State’s integrity and security, propaganda of war, national, religious and racial hatred, as well as to establish public associations that can negatively affect public health and psyche”.

⁴ Namely, the association’s purposes, goals, method of work and its territorial application.

State party's observations on admissibility and merits

4. On 6 March 2002 the State party recalled that, on 20 August 2001, the Supreme Court considered the appeal against the Ministry of Justice's decision to refuse to register the association "Helsinki XXI", submitted by the author and two other individuals. It submits that the Supreme Court did not find any grounds to quash the Ministry's decision, since the "Helsinki XXI" statutory activities on representation and defence of the rights of third persons were not in conformity with article 22, paragraph 2, of the Law "On Public Associations" and article 72, part 2, paragraph 3, and article 86 of the Civil Procedure Code. The State party invokes article 62 of the Belarus Constitution, guaranteeing everyone "the right to legal assistance to exercise and defend his rights and liberties, including the right to make use, at any time, of the assistance of lawyers and one's other representatives in court, other state bodies, bodies of local government, enterprises, establishments, organizations and public associations, and also in relation with officials and citizens". Articles 44, 46 and 56 of the Criminal Procedure Code enumerate the persons who can defend a person in criminal proceedings and stipulate that public associations are not included on this list. The State party quotes from the opinion on the refusal to register "Helsinki XXI", issued on 7 June 2001 by the Commission on the Registration (Re-registration) of Public Associations and the Ministry of Justice decision on the same matter of 7 June 2001. The State party concludes that the Supreme Court did not prohibit the establishment of "Helsinki XXI", but merely pointed to the violations of domestic law in the registration process.

Author's comments on the State party's observations

5.1 On 3 May 2003 the author denied that the Supreme Court did not prohibit the establishment of "Helsinki XXI", but merely pointed to the violations of domestic law in the registration process. He referred to paragraph 3, part 6, of the Presidential Decree that outlaws the operation of unregistered public associations on the territory of Belarus.

5.2 The author contests the State party's assertion that domestic law was violated in the registration process. He refers to article 22, paragraph 2, of the Covenant, article 5, paragraph 3, of the Belarus Constitution and article 3 of the Law "On Public Associations" that list permitted restrictions on the establishment of public associations. He submits that none of these restrictions applies to the statutory activities of "Helsinki XXI". According to the author, the "Helsinki XXI" statutory activities on the provision of legal assistance to citizens who ask for help, as well as protection of their rights and freedoms (paragraph 2.2 above) do not contradict the legal requirements of the State party. As a result, the grounds to refuse registration of "Helsinki XXI" are not prescribed by law and the refusal itself is contrary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

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 the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party did not contest that domestic remedies in the present communication have been exhausted.

6.3 On the question of standing, the Committee notes that the author has submitted the communication in his own name and on behalf of 33 other individuals but provided letters from only 23 out of 33 co-authors, authorizing him to act on their behalf before the Committee. In this regard, the Committee also notes that there is nothing in the material before the Committee concerning the claims brought on behalf of ten remaining individuals to show that they have authorized Mr. Zvozkov to represent them. The Committee considers that the author has no standing before the Committee required by article 1 of the Optional Protocol with regard to these ten individuals but considers that the communication is nevertheless admissible so far as the author himself and the other 23 members of "Helsinki XXI" are concerned.

6.4 As to the alleged violation of article 2 and 26 of the Covenant, in that the refusal of the State party's authorities to register "Helsinki XXI" was discriminatory, the Committee considers that these claims are insufficiently substantiated, for purposes of admissibility, and are thus inadmissible under article 2 of the Optional Protocol.

6.5 The author's remaining claim under article 22 is sufficiently substantiated, and the Committee thus declares it admissible.

Consideration of the merits

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

7.2 The key issue before the Committee is whether the refusal of the Belarus authorities to register "Helsinki XXI" unreasonably restricted the author and the other 23 co-authors' right to a freedom of association. The Committee observes that, in accordance with article 22, paragraph 2, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes. The reference to "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society.

7.3 In the present case, the restrictions placed on the authors' right to freedom of association consist of several conditions related to the registration of a public association. According to the Supreme Court's judgment of 20 August 2001, the only criterion which the "Helsinki XXI" statutes and, respectively, the authors' application for registration did not meet was a compliance with domestic law, under which public organizations do not have a right to represent and defend the rights of third persons. This restriction must be assessed in the light of the consequences which arise for the authors and their association.

7.4 The Committee firstly notes that the author and the State party disagree on whether domestic law indeed prohibits the defence of the rights and freedoms of citizens who are not members of a particular association (paragraphs 2.2, 2.3, 4, 5.2 above). Secondly, it considers that even if such restrictions were indeed prescribed by law, the State party has not advanced any argument as to why it would be *necessary*, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members. Taking into account the consequences of the refusal of registration, i.e. the unlawfulness of operation of unregistered associations on the State party's territory, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2. The authors' rights under article 22, paragraph 1, have thus 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 article 22, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including compensation and reconsideration of the authors' application for registration of their association in the light of article 22. It is also under an obligation to take steps to prevent similar violations occurring 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 when it has been determined that a violation has occurred, 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. In addition, it requests the State party to publish 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.]
