UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/88/D/1047/2002
16 January 2007

Original: ENGLISH

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

VIEWS

Communication No. 1047/2002

Submitted by:	Leonid Sinitsin (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	28 August 2001 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 11 January 2002 (not issued in document form)
Date of adoption of Views:	20 October 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Denial of possibility to run for Presidency of Belarus; inability to challenge the decisions of the Central Electoral Commission

Substantive issues: Right to be elected without unreasonable restrictions; unavailability of an independent and impartial remedy

Procedural issue: None

Articles of the Covenant: Article 25 (b), read in conjunction with article 2

Article of the Optional Protocol: None

On 20 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. 1047/2002.

[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 No. 1047/2002*

Submitted by:	Leonid Sinitsin (not represented by counsel)
Alleged victims:	The author
State party:	Belarus
Date of communication:	28 August 2001 (initial submission)

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

Meeting on 20 October 2006,

Having concluded its consideration of communication No. 1047/2002, submitted to the Human Rights Committee by Leonid Sinitsin 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:

* 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 Castillero Hoyos, 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, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text of an individual opinion co-signed by Committee members Mr. Rafael Rivas Posada, Mr. Edwin Johnson and Mr. Hipólito Solari-Yrigoyen and a separate opinion signed by Committee member Ms. Ruth Wedgwood are appended to the present document.

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

1. The author of the communication is Mr. Leonid Georgievich Sinitsin, a Belarusian citizen born in 1954, residing in Minsk, Belarus. He claims to be a victim of violations by Belarus[1] of article 14, paragraph 1, and article 25 (b), read in conjunction with article 2 of the International Covenant on Civil and Political Rights. He is not represented.

The facts as submitted by the author

2.1 The author, then Vice-President of the Public Association "Social Technologies", was nominated as a candidate for the 2001 presidential elections in Belarus. An initiative group created to this end collected some 130,000 signatures in support of the author's nomination and submitted more than 110,000 signatures to the Electoral Commissions, whereas article 61 of the Belarus Electoral Code only requires the submission of 100,000 for the official registration of a candidate. All the documents required for the official registration of the author as a candidate for the presidential elections were submitted within the time limits specified by law.

2.2 On 25 July 2001, the Central Electoral Commission on Elections and Conduct of Republican Referendums (CEC) has refused to accept 14,000 signatures that were collected before the cut-off date of 20 July 2001 but were not submitted to the Electoral Commissions. The reason of the CEC for its refusal at that time was the alleged lack of a mandate to receive lists of signatures in support of a candidate. Regional Electoral Commissions also subsequently refused to accept these lists, allegedly contrary to article 81 of the Belarus Constitution. On 7 August 2001, the author challenged the 'disappearance' in the Mogilev and Brest regions of approximately 24,000 signatures in his support. Subsequently, the lists of signatures submitted by the author's initiative group were not counted by the Electoral Commissions towards the total number of signatures submitted in his support throughout Belarus. The author also challenged the decision of the Volkovys District Electoral Commission of 27 July 2001 not to count 878 signatures in his support as invalid. He claimed that contrary to article 61, part 14, paragraph 8 of the Electoral Code, this District Commission withdrew entire lists of signatures instead of declaring invalid the individual signatures of electors not residing in the same municipality. As a result, the total number of signatures withdrawn was ten times higher than the real number of invalid signatures. On an unspecified date, the decision of the Volkovys District Electoral Commission was appealed to the Grodnen Regional Electoral Commission. The author complained to the CEC about a number of electoral irregularities related to the refusal to accept the lists of signatures from one person and to certify their receipt by the District Electoral Commissions upon request of two other individuals, as well as about the intimidation of two of the initiative group's members at their work place.

2.3 On 8 August 2001, the CEC adopted a ruling stating that the total number of signatures in support of the author's nomination was only 80,540. The CEC thus declared that the author's nomination was invalid. The author claims that the CEC's decision on the invalidity of his nomination exceeded its powers. The CEC's powers are governed by article 33 of the Electoral Code and article 4 of the Law of 30 April 1998 "On the Central Electoral Commission of the

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

Republic of Belarus on Elections and Conduct of Republican Referendums". According to article 33, paragraph 6, of the Electoral Code, the CEC has the right to register presidential candidates; under article 68, paragraph 11, of the Code, the CEC should adopt a decision on the registration of a candidate or a reasoned decision on the refusal to register a candidate.[2] Moreover, since the author challenged before the CEC, that a large number of signatures in his support had "disappeared" and that the Prosecutor's Office had not completed its investigation of this complaint by the time the CEC decision was adopted, this decision was both unlawful and unfounded.

2.4 On 10 August 2001, the author appealed to the Supreme Court the CEC ruling of 8 August 2001 on the invalidity of his nomination. Although the Electoral Code does not envisage any right to appeal a ruling on this matter to a court, the author refers to article 341, part 1, of the Civil Procedure Code of Belarus and article 60, part 1, of the Belarus Constitution. The former allows judicial review of the decisions of the Electoral Commission related to discrepancies in lists of signatures and other matters provided by law; the latter guarantees to everyone a protection of his rights and liberties by a competent, independent and impartial court of law within the time limits specified in law. The author asserts that these limitations set by the Civil Procedure Code, which only allows an appeal of those decisions of the Electoral Commissions that are provided by law, are contrary to the constitutional guarantee of article 60, part 1. Article 112 of the Constitution stipulates that "the courts shall administer justice on the basis of the Constitution, the laws, and other enforceable enactments adopted in accordance therewith. If, during the hearing of a specific case, a court concludes that an enforceable enactment is contrary to the Constitution or other law, it shall make a ruling in accordance with the Constitution and the law, and raise, under the established procedure, the issue of whether the enforceable enactment in question should be deemed unconstitutional." The author filed his appeal before the Supreme Court since the Electoral Code itself gives jurisdiction to review CEC decisions to the Supreme Court.

2.5 On 14 August 2001, the Supreme Court refused to institute proceedings, on the grounds that the applicant did not have the right to file such a suit in court. It referred to article 245, paragraph 1, of the Civil Procedure Code stipulating that a judge shall refuse to institute proceedings when the applicant is not entitled to file a suit in court. The Court added that neither the Electoral Code nor legislation as such envisaged any procedure of judicial review of the CEC ruling on the invalidity of a candidate's nomination. The Supreme Court's decision is final.

2.6 On 20 August 2001, the author filed a complaint with the Chairman of the Supreme Court, requesting him to bring a supervisory protest to the ruling of the Supreme Court of 14 August 2001. He received no reply. On an unspecified date, a similar complaint was filed with the General Prosecutor of Belarus; no reply was received.

2.7 Pursuant to a National Assembly House of Representatives resolution on the presidential elections, the CEC decision and article 68 of the Electoral Code, the period for the registration of presidential candidates ran from 4 to 14 August 2001. On 14 August 2001, the author learned from a CEC media statement that he was not a registered candidate. Contrary to the requirement

[2] Article 68, paragraphs 4, 6, 7 of the Electoral Code provides for an exhaustive list of the grounds on which the registration could be refused.

of article 68, part 11 of the Electoral Code, the CEC has not issued a reasoned decision on the refusal to register him as a candidate. On 16 August 2001, the author requested the CEC to provide him with a copy of its decision. On 17 August 2001, he received a reply, stating that there were no legal grounds for his registration as a presidential candidate. The author appealed the refusal to register him as a candidate to the Supreme Court, in accordance with the procedure established by article 68, part 14, of the Electoral Code. On 20 August 2001, the Supreme Court returned the author's complaint without consideration, on the ground that it had already decided on the refusal to institute proceedings related to the CEC ruling of 8 August 2001.

The complaint

3.1 The author claims that the State party violated his right under article 25(b) of the Covenant to be elected at genuine periodic elections, guaranteeing the free expression of the will of the electors without any of the distinctions mentioned in article 2 of the Covenant and without unreasonable restrictions by the CEC decision of 8 August 2001 on the invalidity of his nomination.

3.2 He maintains that, in breach or article 14, paragraph 1, read in conjunction with article 2 of the Covenant, the courts on two occasions and erroneously denied him the right to have his rights and obligations determined in a suit at law by a competent, independent and impartial tribunal established by law.

State party's observations on admissibility and merits

4. On 1 April 2002, the State party noted that on 10 August 2001, the author appealed the CEC ruling of 8 August 2001 on the invalidity of his nomination to the Supreme Court. On 14 August 2001, the Supreme Court refused to institute proceedings, on the grounds that the courts do not have jurisdiction to examine the subject matter. The State party refers to article 68 of the Electoral Code, which establishes that the CEC must decide on the registration of a presidential candidate after submission of a set of documents, including at least 100,000 signatures in support of that candidate's nomination. The CEC refusal to register a candidate can be appealed to the Supreme Court within three days. The State party asserts that according to the author's complaint, the CEC did not decide on the refusal to register him as a candidate. The CEC decision of 8 August 2001 merely stated that as only 80,540 signatures had been collected in his support, his nomination as a candidate was not valid. The State party further refers to article 341, part 1, of the Civil Procedure Code and article 6, part 2, of the Law "On the Central Electoral Commission of the Republic of Belarus on Elections and Conduct of Republican Referendums" which allows judicial review of CEC decisions provided by law by the Supreme Court. However, this law does not envisage any procedure for judicial review of the CEC ruling on the invalidity of a candidate's nomination. The State party concludes that there were no grounds for the Supreme Court to institute proceedings on the author's complaint.

Author's comments on the State party's observations

5. On 3 May 2003, the author reiterated his initial claims.

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 have been exhausted.

6.3 As to the author's claim under article 14, paragraph 1, the Committee has noted that it relates to issues similar to those falling under article 25 (b), read together with article 2 of the Covenant, namely, the right to an effective remedy involving an independent and impartial determination of the author's claim that his right to be elected without unreasonable restrictions was violated. Without prejudice to the question of whether the author's case constituted a "suit at law" within the meaning of article 14, paragraph 1, the Committee decides that the communication is admissible under article 25 (b) of the Covenant, read in conjunction with article 2.

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 In reaching its decision, the Committee has taken into account, first, the fact that the State party admitted that no effective remedies were available for the author in his case. Secondly, that it did not respond to the author's allegations concerning either the irregularities in counting the signatures of support by the Electoral Commissions, the exceeding of the CEC mandate by adopting a ruling on the invalidity of the author's nomination or the unconstitutionality of article 341 of the Civil Procedure Code limiting the Constitutional guarantee of article 60. That being so, the allegations made must be recognized as carrying full weight, since they were adequately supported and not properly challenged by the State Party.

7.3 The Committee takes note of the author's claim that despite numerous irregularities in as far as the handling of signatures in support of his candidacy by the Electoral Commissions on all levels is concerned, his initiative group submitted a sufficient number of signatures to the CEC for it to be able to make an informed decision on whether to register him as a candidate. The Committee also notes the author's claim, which is uncontested, that the adoption of the CEC ruling on the invalidity of his nomination exceeded the CEC's powers as set out in the Electoral Code and the Law "On the Central Electoral Commission of the Republic of Belarus on Elections and Conduct of Republican Referendums". In this regard, the Committee observes that the exercise of the right to vote and to be elected may not be suspended or excluded except on

grounds, established by law, which are objective and reasonable.[3] The Committee recalls that article 2, paragraph 3, of the Covenant guarantees an effective remedy to any person claiming a violation of the rights and freedoms spelled out in the Covenant. In the present case, no effective remedies were available to the author to challenge the CEC ruling declaring his nomination invalid, nor could he challenge the subsequent refusal by the CEC to register him as a presidential candidate before an independent and impartial body. The Committee considers that the absence of an independent and impartial remedy to challenge (1) the CEC ruling on the invalidity of the author's nomination and, in the present case, (2) the CEC refusal to register his candidacy, resulted in a violation of his rights under article 25 (b) of the Covenant, read in conjunction with article 2.

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 at its disposal discloses a violation by the State party of article 25 (b) of the Covenant, read in conjunction with article 2.

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, namely, compensation for damages incurred in the 2001 Presidential campaign. 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.]

[3] General Comment No. 25 [57]: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), CCPR/C/21/Rev.1/Add.7, para. 4.

APPENDIX

Partially dissenting opinion by Committee members, Mr. Rafael Rivas Posada, Mr. Edwin Johnson and Mr. Hipólito Solari Yrigoyen

We agree with the Committee's decision in paragraph 8 of the Views adopted on 20 October 2006 that the information provided in the above communication "discloses a violation by the State party of article 25 (b) of the Covenant, read in conjunction with article 2". We disagree on the following:

1. The author asserts in his complaint (para. 3.2 of the Views) that the alleged facts are in breach of article 14, paragraph 1, of the Covenant. The Committee needed to respond explicitly to the author's complaint, rather than merely stating, as it does in paragraph 6.3, that "without prejudice to the question of whether the author's case constituted a 'suit at law' within the meaning of article 14, paragraph 1, the Committee decides that the communication is admissible under article 25 (b) of the Covenant, read in conjunction with article 2". The translation into Spanish of the English expression "suit at law", which is used both in the Covenant and in the original version of the Views in English, is not correct, since a "suit at law" is not equivalent to having one's "rights and obligations determined in a suit at law". The Committee decided that the complaint with respect to article 14, paragraph 1, was inadmissible, although implicitly rather than explicitly, by declaring admissibility with respect to articles 25 and 2 of the Covenant, without deciding whether the complaint raised issues relating to article 14.

2. In our opinion, the issue raised by the communication, that the author has a right to be elected without restrictions and that this right should be recognized by a competent, independent and impartial authority, falls under article 14, paragraph 1. The Committee has recognized in its jurisprudence that this article protects administrative, labour, and civil rights in general, not only in the field of private law. The rights enshrined in article 25 of the Covenant cannot be left outside the scope of the procedural safeguards prescribed by article 14, since this would leave unprotected certain rights explicitly mentioned in the Covenant which are highly important in democratic systems. Thus the Committee needed to declare the communication admissible with respect to the possible violation of article 14, paragraph 1, in the light of the information in the file.

3. In view of the admissibility of the communication with respect to article 14, paragraph 1, we are of the view that the latter was violated. The violation of article 25 found by the Committee resulted specifically from the violation of article 14, paragraph 1. The author could not secure the protection of his right under article 25 by a competent, independent and impartial authority and had no remedy by which to secure such protection. Without the violation of article 14, paragraph 1, the violation of article 25 in the case at hand cannot be explained.

4. In the light of the above, we believe that paragraph 8 of the Views should also have included a violation of article 14, paragraph 1, in the Committee's decision, either directly or using the customary formula, viz. "the information at its disposal discloses a violation by the State party of article 25 (b) of the Covenant, read in conjunction with article 14, paragraph 1, and article 2".

(*Signed*): Mr. Rafael Rivas Posada

(*Signed*): Mr. Edwin Johnson
(*Signed*): Mr. Hipólito Solari Yrigoyen

[Done in English, French and Spanish, the Spanish 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.]

Concurring Opinion by Committee member Ms. Ruth Wedgwood

The author of this complaint sought to place his name on the election ballot in 2001 as a nominee for the presidency of Belarus. The state party's "Central Electoral Commission on Elections and the Conduct of Republican Referendums" rejected the nomination. Thereafter, the Supreme Court of Belarus concluded that it did not have power to review the substance of the Commission's decision.

The Committee on Human Rights holds that Article 25 of the International Covenant on Civil and Political Rights was violated because the author was deprived of any effective ability to challenge alleged irregularities in the election process, including the rejection by regional and district bodies of petitions with signatures from Belarus citizens supporting his nomination. It appears that the law of Belarus itself, properly observed, would require the provision of an effective remedy. Under the Electoral Code, any decision by the Central Electoral Commission denying the registration of a candidate must be "motivated", i.e., reasoned. See article 68(11) of the Belarus Electoral Code. There is no indication in the record of this case that the Belarus Central Electoral Commission provided any substantive review of the merits of the author's complaints.

That said, truly democratic states may vary in whether they provide a form of judicial review of the results of elections. Where there is an objective, impartial, and transparent form of administrative review, or a similar legislative procedure, in order to judge the validity or invalidity of alleged election violations, the Covenant has not been held to require judicial review of all electoral decisions.[4] It may be good practice, as an added guarantee of a democratic form of government. But election systems are varied and complicated, and their array of remedies is not presently before us.

(*Signed*): Ruth Wedgwood

[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.]

---

[4] Compare U.S. Constitution, Article 1, section 5, and *id.*, Article 2, section 1, paragraph 2.