



**International Covenant on
Civil and Political Rights**

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Ninety-ninth session

12 to 30 July 2010

Views

Communication No. 1377/2005

<u>Submitted by:</u>	Vladimir Katsora (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	7 February 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's Rule 97 decision, transmitted to the State party on 7 April 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	19 July 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Seizure and destruction of leaflets belonging to an electoral block
<i>Substantive issues:</i>	Equality before the law; prohibited discrimination; right to impart information; permissible restrictions; right to a fair hearing by a competent, independent and impartial tribunal
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Articles of the Covenant:</i>	14, paragraph 1; 19, paragraphs 1 and 2; 26
<i>Article of the Optional Protocol:</i>	2

On 19 July 2010, 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. 1377/2005.

[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 (ninety-ninth session)

concerning

Communication No. 1377/2005**

Submitted by: Vladimir Katsora (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communications: 7 February 2005 (initial submission)

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

Meeting on 19 July 2010,

Having concluded its consideration of communication No. 1337/2005, submitted to the Human Rights Committee by Mr. Vladimir Katsora 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 Mr. Vladimir Katsora, a Belarusian national born in 1957, residing in Gomel, Belarus. He claims to be a victim of a violation by Belarus of his rights under article 14, paragraph 1; article 19, paragraphs 1 and 2; and article 26 of the International Covenant on Civil and Political Rights. The author is unrepresented. The Optional Protocol entered into force for the State party on 30 December 1992.

The facts as presented by the author

2.1 The author is a member of the National Committee of a political party, the United Civil Party, registered by the Ministry of Justice on 28 November 1995 and re-registered on 30 July 1999. The party carries out its activities in accordance with the national law of Belarus and its own statutes, also registered by the Ministry of Justice on the same dates as the party itself. One of the statutory objectives of the party is to take part in the elections,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada and Mr. Fabian Omar Salvioli.

according to procedures established by national law. The elections of deputies to the House of Representatives of the National Assembly (Parliament) were scheduled for 17 October 2004, together with a republican referendum, initiated by the President of Belarus, on amending the Constitution. On the eve of the elections to the National Assembly and the referendum, the "United Civil Party", together with the other political parties, formed an electoral block known as "V-Plus" (Five Plus) to challenge the government proposals for amending the Constitution.

2.2 The author submits that the formation of electoral blocks with the other parties as a method of work of political parties is not prohibited in Belarus and is governed by articles 7 and 23 of the Law "On Political Parties" of 5 October 1994 (as amended on 26 June 2003).¹ He further submits that the Electoral Code of 11 February 2000 (as amended on 4 January 2003)² which governs legal status of the participants of electoral process, does not establish a mandatory procedure for the state registration of electoral blocks of political parties and that, therefore, activities of such electoral blocks cannot be considered as illegal. Under article 45, part 1, of the Electoral Code, political parties that carry out campaigns for the election of candidates, shall have a right of free and comprehensive discussion of electoral programs of candidates, their political, professional and personal qualities, as well as of campaigning for or against a candidate at meetings, rallies, in mass media and during meetings with voters. Under part 4 of the same article, political parties shall have a right of free campaigning for the proposal to hold a referendum, for the adoption of a decision put to referendum, as well as against the proposal to hold a referendum or against the decision put to referendum.

2.3 As part of their campaign for the election of deputies to the House of Representatives and for the referendum, political parties that formed the electoral block in question published several leaflets under the "V-Plus" logo. These leaflets described a consolidated program of action of these parties in addressing the key issues in Belarus. Moreover, the leaflets explicitly indicated that this program of action would serve as a platform for further activities, should the candidates from the parties forming the block win the election.

2.4 On 12 August 2004, acting on behalf of the electoral block "V-Plus" the author was transporting from Minsk to Gomel in his private vehicle some fourteen thousand copies of leaflets with a logo of "V-Plus" entitled "Five Steps to a Better Life",³ and an unspecified number of copies of the newspapers "Time" and "New Newspaper". In the Zhlobin District of the Gomel Region his vehicle was stopped by traffic police and escorted to the traffic police station where the vehicle was thoroughly searched by officers of the Ministry of Internal Affairs. Then the author was taken to the Zhlobin District Department of Internal Affairs, at which point the leaflets and newspapers were seized from him.

¹ The Law on Political Parties of Belarus:

(Source: www.legislationline.org/documents/action/popup/id/6428)

Article 7 (Methods of Work of Political Parties) - The political parties are to implement their objectives and goals through: [...] the nomination of candidates for elections, participation in electoral campaigns, including by means of formation of electoral blocks with the other parties, as well as the control over the conduct and results of elections [...]

Article 23 (Rights of Political Parties) - From the moment of registration the political parties are entitled to: [...] take part in the preparation for and conduct of elections, nominate candidates and carry out election campaign; form electoral blocks to take part in the election campaign and elections [...]

² The Electoral Code of Belarus (Source: website of the Central Electoral Commission of the Republic of Belarus: www.rec.gov.by/english/Electoral_Code.html).

³ A copy of the leaflet is available on file with the Secretariat.

2.5 On an unspecified date, officers of the Zhlobin District Department of Internal Affairs drew up an administrative report, stating that the author had committed an administrative offence under article 167-10, part 1 (engaging in activities on behalf of unregistered or non re-registered political parties, trade unions or the other public associations), of the 1984 Belarus Code on Administrative Offences.⁴ On 31 August 2004, the Zhlobin District Court of the Gomel Region found the author guilty of having committed an administrative offence under article 167-10, part 1, of the Code on Administrative Offences for engaging in activities of an unregistered public association and ordered him to pay 570,000 roubles (30 base amounts) as fine. The court also ordered the destruction of the fourteen thousand leaflets "Five Steps to a Better Life". The court concluded that, by transporting leaflets with a logo of a public association "V-Plus" which was not duly registered in the Integrated State Register of the Ministry of Justice, the author had engaged in activities on behalf of an unregistered public association. This decision is final and executory.⁵

2.6 Subsequently, the author requested the Chair of the Gomel Regional Court to have the Zhlobin District Court's decision reviewed under the supervisory procedure. The author claimed, *inter alia*, that the seizure of leaflets ordered by the Zhlobin District Court as a secondary administrative penalty, could not be applied under article 167-10, part 1, of the Code on Administrative Offences.⁶ On 18 October 2004, the Chair of the Gomel Regional Court rejected the author's request by affirming that the prior decision was lawful and well-founded. He specifically addressed the author's claims in relation to the seizure of leaflets and concluded that the decision of the Zhlobin District Court had no reference to the seizure of leaflets. The Chair of the Gomel Regional Court stated that the Zhlobin District Court took note of the author's statement to the effect that he was not the leaflets' owner and since nobody else claimed an ownership over them in the course of the proceedings, the court decided to order the destruction of leaflets.

2.7 On an unspecified date, the author applied, also under a supervisory procedure, to the Chair of the Supreme Court. On 31 December 2004, the Deputy Chair of the Supreme Court confirmed the lawfulness of the previous decision and rejected the author's request.

2.8 On 1 October 2004, the author sent an open letter to the Chair of the Constitutional Court, General Prosecutor, Chair of the State Security Committee, Minister of Internal Affairs, Head of State Traffic Police, Chair of the Customs Committee and Head of the Main Department of Frontier Troops, complaining that his unlawful detention on 12 August 2004 and subsequent seizure of leaflets, which had been filmed by unknown individuals in civilian clothes, was broadcasted by two state-owned television channels, "BT" and "STV", on 25 September 2004 and 26 September 2004, respectively.

2.9 On 17 October 2004, the Prosecutor of the Gomel Region replied to the author that the officers of the Ministry of Internal Affairs had not breached any law in detaining him and that his actions had been correctly defined by court as falling under article 167-10 of the Code on Administrative Offences. On 20 October 2004, the Head of the Traffic Police Department of the Gomel Executive Committee sent a written reply to the author's open letter, stating that his vehicle was stopped for exceeding a speed limit. On 5 November

⁴ The 1984 Belarus Code on Administrative Offences was replaced by the new Code on Administrative Offences as of 1 March 2007.

⁵ Under article 266 of the Code on Administrative Offences, the court's decision in administrative case is final and it cannot be appealed through administrative proceedings. This decision, however, can be revoked by the chair of a court of superior jurisdiction through the supervisory procedure.

⁶ The sanction envisaged under article 167-10, part 1, of the Code on Administrative Offences is a warning or a fine of between 10 and 50 minimal (monthly) salaries.

2004, the General Prosecutor's Office informed the author that he could appeal the actions of officers of the Ministry of Internal Affairs and those of the television channels through the procedure established by law. On 7 November 2004, the Head of the Gomel Regional Department of the State Security Committee replied to the author that the object of his complaint fell outside the competence of the State Security Committee.

The complaint

3.1 The author claims that the State party's courts ignored his argument that he was not engaging in activities on behalf of an unregistered public association, but on behalf of a properly registered party which was a member of the so-called "V-Plus" electoral block. He further claims that there is no requirement under national law for an electoral block of political parties to be registered. He states that the courts made no effort to establish whether the "V-Plus" was a public association within the meaning of article 1 of the Law "On Public Associations" and dealt with the proceedings in a summary and incompetent manner. The courts also ignored the author's arguments that his right to impart information was guaranteed under article 34, part 1, of the Constitution and article 19 of the Covenant, and failed to explain why the restriction of his freedom to impart information was justified under article 19, paragraph 3, of the Covenant. The author submits, therefore, that he was not afforded the benefit of a fair hearing by a competent, independent and impartial tribunal, as required by article 14, paragraph 1, of the Covenant.

3.2 The author also claims that, in breach of article 26 of the Covenant, the State party's authorities failed to guarantee his right to equal protection of the law against discrimination, on the ground of his political opinions.

3.3 The author further claims a violation of his right to hold opinions under article 19, paragraphs 1 and 2, because of the arbitrary seizure and destruction of fourteen thousand leaflets "Five Steps to a Better Life", in particular in violation of his right to impart information and ideas of all kinds. He states that the State party failed to justify the necessity of restricting his right under article 19, paragraph 3, of the Covenant.

State party's observations on admissibility and merits

4. On 9 June 2005, the State party submitted information provided by the Supreme Court, according to which, on 31 August 2004, the Zhlobin District Court of the Gomel Region found the author guilty of having committed an administrative offence under article 167-10, part 1, of the Code on Administrative Offences and ordered him to pay 57,000 roubles (30 base amounts) as a fine. The State party added that it equalled approximately to 25 US dollar. The State party claimed that this decision was based on national law in force at that time. It referred to the case materials, according to which the author was transporting, on 12 August 2004, fourteen thousand leaflets "Five Steps to a Better Life" that belonged to the unregistered association "V-Plus". These facts, as corroborated by a witness statement, had not been contested by the author. The leaflets seized from the author had a logo of the coalition "V-Plus" that, according to the information received from the Ministry of Justice, had not been duly registered as a public association in the Integrated State Register.

Author's comments on State party's observations

5.1 On 17 July 2005, the author commented on the State party's observations. He submitted that, contrary to what was claimed by the State party, he was ordered to pay 570,000 roubles and not 57,000 roubles, as a fine. He added that it equalled to 265 US dollar. Moreover, as transpires from the decision of the Zhlobin District Court of the Gomel Region, the court ordered the seizure and destruction of fourteen thousand leaflets "Five Steps to a Better Life" as a secondary penalty.

5.2 The author challenged the State party's argument that the decision of the Zhlobin District Court of the Gomel Region was based on national law in force at that time. He conceded that fourteen thousand leaflets "Five Steps to a Better Life" indeed had the "V-Plus" logo but argued that the Supreme Court's claim to the effect that this logo belonged to an unregistered public association was unsubstantiated and not based on any evidence. He reiterates his claim that the Electoral Code did not establish a mandatory procedure for the state registration of electoral blocks of political parties and that, therefore, such activities on the eve of the electoral campaign could not be considered as illegal in Belarus. The author concludes that the Supreme Court and the State party have failed to explain why the restriction of his right to impart information was justified under article 19, paragraph 3, of the Covenant.

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(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

6.3 The author claims that his right to equal protection of the law under article 26 of the Covenant was violated, as he was discriminated against on the ground of his political opinions. The Committee notes, however, that the author has failed to provide any details or any supporting evidence in substantiation of this claim. In addition, it remains unclear whether these allegations were ever raised in the domestic courts. In these circumstances, the Committee considers that this part of the communications is unsubstantiated, for purposes of admissibility, and must therefore be held to be inadmissible under article 2 of the Optional Protocol.

6.4 As to the author's claim under article 14, paragraph 1, the Committee notes that it relates primarily to issues directly linked to those falling under article 19, of the Covenant, that is, the author's right to impart information. It also notes that there are no obstacles to the admissibility of the claims under article 19, paragraph 2, of the Covenant, and declares them admissible. Having come to this conclusion, the Committee decides that it is not necessary to separately consider the claims arising under article 14, paragraph 1; and article 19, paragraph 1, of the Covenant.

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 for under article 5, paragraph 1, of the Optional Protocol.

7.2 The first issue before the Committee is whether or not the application of article 167-10, part 1, of the Code on Administrative Offences to the author's case, resulting in the confiscation of the 14,000 "Five steps to a better life" leaflets with the logo of the V-Plus electoral block and the subsequent fine, constituted a restriction within the meaning of article 19, paragraph 3, on the author's right to impart information. The Committee notes that article 167-10, part 1, of the Code on Administrative Offences establishes administrative liability for engaging in activities on behalf of unregistered or non-re-

registered political parties, trade unions or the other public associations. It also notes that if the State party were to impose a requirement of a state registration of political parties (including electoral blocks of registered political parties), trade unions and the other public associations, it would effectively establish obstacles regarding the exercise of the freedom to impart information, guaranteed by article 19, paragraph 2, of the Covenant.⁷

7.3 The second issue is, therefore, whether in the present case such obstacles are justified under article 19, paragraph 3, of the Covenant, which allows certain restrictions but only as provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The right to freedom of expression is of paramount importance, and any restrictions to the exercise of this right must meet a strict test of justification.⁸

7.4 The Committee notes that the author has argued that article 167-10, part 1, of the Code on Administrative Offences does not apply to him, as he was not engaging in activities of any unregistered public association, and that the sanctions thus were unlawful and constituted a violation of article 19 of the Covenant. In this regard, the Committee notes, firstly, that the author and the State party disagree on whether or not the V-Plus electoral block was a public association that required a separate registration by the Ministry of Justice. Secondly, it notes that there is nothing in the material before the Committee which suggests that the findings of the State party's courts were based on anything other than the absence of registration of the V-Plus electoral block by the Ministry of Justice. The Committee is, however, not in a position to re-evaluate the findings of the State party's courts with regard to the legal status of the electoral block in question in Belarus.

7.5 Nonetheless, even if the sanctions imposed on the author were permitted under national law, the State party has not advanced any argument as to why they were necessary for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant, and why the breach of the requirement to register the V-Plus electoral block in the Ministry of Justice involved not only pecuniary sanctions, but also the seizure and destruction of the leaflets. The Committee concludes that in the absence of any pertinent explanations from the State party, the restrictions to the exercise of the author's right to impart information, cannot be deemed necessary for the protection of national security or of public order (*ordre public*) or for respect of the rights or reputations of others. The Committee therefore finds that the author's rights under article 19, paragraph 2, of the Covenant have been violated in the present case.

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 facts before it disclose a violation by Belarus 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 the author with an effective remedy, including full reparation and appropriate compensation. The State party is also under an obligation 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

⁷ Communication No.780/1997, *Laptsevich v. Belarus*, Views adopted on 20 March 2000, para. 8.1.

⁸ See, *inter alia*, communication No. 628/1995, *Park v. Republic of Korea*, Views adopted on 20 October 1998, para. 10.3.

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 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.]
