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One hundredth session

11 to 29 October 2010

Views

Communication No. 1354/2005

<u>Submitted by:</u>	Leonid Sudalenko (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	10 November 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 February 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	19 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Denial of possible candidacy for the lower chamber of Belarus Parliament.
<i>Substantive issues:</i>	Right to equality before the courts; right to a fair hearing by an independent and impartial tribunal; right to take part in the conduct of public affairs; right to be elected without unreasonable restrictions and without distinction; right to the equal protection of the law without any discrimination.
<i>Procedural issues:</i>	None
<i>Articles of the Covenant:</i>	2, 14, paragraph 1; 25, paragraphs (a) and (b); 26
<i>Articles of the Optional Protocol:</i>	None

On 19 October 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. 1354/2005.

[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 (one hundredth session)

concerning

Communication No. 1354/2005**

Submitted by: Leonid Sudalenko (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communications: 10 November 2004 (initial submission)

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

Meeting on 19 October 2010,

Having concluded its consideration of communication No. 1354/2005, submitted to the Human Rights Committee by Mr. Leonid Sudalenko 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. Leonid Sudalenko, a Belarusian national born in 1966, residing in Gomel, Belarus. He claims to be a victim of violations by Belarus of article 2; article 14, paragraph 1; article 25, paragraphs (a) and (b); and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

Factual background

2.1 The author describes himself as an opponent of the current regime in Belarus. Since 2001, he has been a member of the United Civil Party; since 2002, the Chairperson of the Gomel City Section of the public association “Civil Initiatives” (Civil Initiatives) and a

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

member of the “Belarusian Association of Journalists”. Since 2000, he has been working as a legal adviser in the public corporation “Lokon” (Lokon) based in Gomel.

2.2 On 9 August 2004, the District Electoral Commission of the Khoyniki electoral constituency No. 49 (the District Electoral Commission) registered an initiative group consisting of 57 people who had agreed to collect signatures of voters in support of the author’s nomination as a candidate for the 2004 elections to the House of Representatives of the National Assembly (Parliament). The author claims that the District Electoral Commission was biased toward him from the very early stage of the election process when his initiative group was collecting signatures of voters in support of his nomination as a candidate. The author explains that members of his initiative group were discriminated against by State officials and the District Electoral Commission failed in its duty to act in a timely manner to ensure compliance with election legislation.

2.3 The author refers to the following incidents in support of his claim:

(a) On 14 August 2004, the author was informed in writing by a member of his initiative group, Ms. N.K., that she and the other members of the author’s initiative group, in particular, Ms. N.T. and Ms. M.S., were pressured by officials of the Bragin District Executive Committee to refuse to collect signatures of voters in support of the author’s nomination as well as threatened with dismissal and other “problems”. On 16 August 2004, the author complained about the pressure exerted on the members of his initiative group to *inter alia* the District Electoral Commission, the Central Electoral Commission on Elections and Conduct of Republican Referendums (the Central Electoral Commission) and the Bragin District Executive Committee. On 18 August 2004, the author was informed by the Central Electoral Commission that his complaint was transmitted to the Prosecutor’s Office. On 13 September 2004, the Prosecutor’s Office of the Gomel Region transmitted the author’s complaint to the Prosecutor of the Bragin District. On 23 September 2004, the Prosecutor of the Bragin District transmitted the author’s complaint to the acting Head of the Department of Internal Affairs of the Bragin District. No reply from the Department of Internal Affairs of the Bragin District was received. On 2 September 2004, the author was informed by the District Electoral Commission that two of its members met with officials of the Bragin District Executive Committee who stated that the allegation of members of the author’s initiative group did not “correspond to reality”. The District Electoral Commission acknowledged that it could not meet with Ms. N.T. or Ms. N.K. but nonetheless came to the conclusion that their allegations did not “correspond to reality”.

(b) On 31 August 2004, a member of the author’s initiative group, Ms. A.L. sought from the Khoyniki District Executive Committee a stamp and certification of the lists of signatures of voters collected in support of the author’s nomination. The Deputy Chairperson of the Khoyniki District Executive Committee, who was at the same time the Chairperson of the District Electoral Commission, stamped the lists of signatures but refused to return them to Ms. A.L. On the same day, Ms. A.L. complained to the District Electoral Commission about this refusal to return the list of signatures as did the author to the Prosecutor of the Khoyniki District. In particular, the author claimed that the election of the Deputy Chairperson of the Khoyniki District Executive Committee as the Chairperson of the District Electoral Commission was contrary to article 11, part 2,¹ of the Electoral

¹ Article 11 of the Electoral Code: Ensuring of Holding of Elections of the President of the Republic of Belarus, Deputies of the House of Representatives, Deputies of Local Councils of Deputies, Referendum, Recall of Deputies by Commissions (part 2)

During preparation and holding of elections, referendum, recall of Deputies within the limits of the authorities established by the legislation of the Republic of Belarus, the [electoral] commissions shall be independent from state bodies and bodies of local self-government.

Code. On 3 September 2004, the Prosecutor of the Khoyniki District transmitted the author's complaint to the Chairperson of the District Electoral Commission. On an unspecified date, the author complained to the Central Electoral Commission about the refusal to return the list of signatures. On 7 September 2004, the author was informed by the Central Electoral Commission that the lists of signatures had already been returned to Ms. A.L. prior to the submission of the author's complaint to the Central Electoral Commission and that the election of the Deputy Chairperson of the Khoyniki District Executive Committee as the Chairperson of the District Electoral Commission was not contrary to any provisions of the Electoral Code. The author refers to article 11, part 1,² of the Electoral Code and submits that in practice the executive branch exercises control over the Electoral Commissions.

2.4 On an unspecified date, the author's initiative group collected a sufficient number of signatures of voters in support of him and he was nominated as a candidate for the 2004 elections to the House of Representatives as a representative of the Khoyniki electoral constituency No. 49.

2.5 On 16 September 2004, the District Electoral Commission refused to register the author as a candidate. It referred to article 45, part 7;³ article 48, parts 9 and 10;⁴ and article 68, part 6,⁵ of the Electoral Code, and found that the author provided personal data that "did not correspond to reality". The second ground cited for refusing registration was the circulation of leaflets with information about the activities of the electoral block known as

² Article 11 of the Electoral Code: Ensuring of Holding of Elections of the President of the Republic of Belarus, Deputies of the House of Representatives, Deputies of Local Councils of Deputies, Referendum, Recall of Deputies by Commissions (part 1)

Holding of elections of the President of the Republic of Belarus, Deputies of the House of Representatives, Deputies of local Councils of Deputies, referendum, recall of Deputies is ensured by commissions consisting of representatives of political parties, other public associations, labour collectives, as well as representatives of citizens nominated for inclusion into the commission by submission of an application. Commissions exercise control manner over compliance with the election legislation.

³ Article 45 of the Electoral Code: Pre-election Agitation, Agitation on Referendum, Recall of Deputy, Member of the Council of the Republic (part 7)

Local executive and administrative bodies together with the relevant commissions are obliged to create conditions for holding meetings of the candidates for President of the Republic of Belarus and for deputies with the voters. Commanders of military units (establishments) shall create conditions for the meetings of personal staff with the candidates at out-of-service time. The state bodies and organization give premises for those purposes free of charge.

⁴ Article 48 of the Electoral Code: Expenses on Preparation and Holding of Elections, Referendum, Recall of Deputy, Member of the Council of the Republic (parts 9 and 10)

Political parties, other public associations, organisation, citizens of the Republic of Belarus have no right to render other material aid for preparation and holding of elections, referendum, except for depositing monetary assets into the extra-budgetary fund, envisaged by clause one of the present Article.

Direct or indirect participation of foreign states, enterprises, organisations, foreign citizens, international organisations, enterprises of the Republic of Belarus with foreign investments in financing and other material aid for preparation and holding of elections, referendum, recall of a Deputy, Member of the Council of the Republic, is forbidden.

⁵ Article 68 of the Electoral Code: Registration of Candidates for President of the Republic of Belarus, for Deputies (part 6)

At submission in documents on nomination of a candidate for President of the Republic of Belarus, for Deputies of data that is not corresponding to reality, including biographic data and information on income and property, accordingly, the Central Commission, the district, territorial electoral commission has the right to refuse a registration of the candidate for President, for Deputies or to cancel the decision about its registration.

“V-Plus” (Five Plus), which was supposed to be a platform for activities of a prospective candidate for a Deputy of the House of Representatives. The leaflets contained the author’s photograph and information about him.

2.6 On an unspecified date, the author appealed the refusal of registration to the Central Electoral Commission. On 23 September 2004, the Central Electoral Commission dismissed the appeal by upholding the finding of the District Electoral Commission that the author had provided false information about his place of work. The Central Electoral Commission noted that the author had indicated in the questionnaire that he was working as a legal adviser for Lokon and concluded that this was only his secondary job, since the author’s main place of work was the Civil Initiatives where he was heading the Gomel City Section. The Central Electoral Commission, however, dismissed the second ground for registration refusal, the dissemination of campaign materials, as unfounded.

2.7 The author submits that the Central Electoral Commission erred in its finding that, since he was hired by Lokon for a secondary job, there should necessarily be another main place of work. He adds that the Civil Initiatives could not be considered a place of work, because he did not conclude any labour contract with this association, there was no schedule of work and he received no remuneration for this work.

2.8 On an unspecified date, the author appealed the ruling of the Central Electoral Commission to the Supreme Court. He specifically argued that, on 30 January 2003, the Partisan District Electoral Commission refused to register another member of the United Civil Party, Ms. L.S., as a candidate for the 2003 elections to the Local Council of Deputies, because she indicated in the questionnaire that she was the Chairperson of the public association “Women’s Alliance”, without providing information about her income for this work. The Partisan District Electoral Commission referred to the written explanation of the Ministry of Labour and Social Protection of 27 January 2003. It reasoned that, if an individual was not remunerated for his or her work, such work could not be considered contractual or “a place of work”. For this reason and on the basis of article 68, part 6, of the Electoral Code, the Partisan District Electoral Commission decided that Ms. L.S. provided personal data that “did not correspond to reality”. This decision was upheld by the Minsk City Court on 10 February 2003 and became executory.

2.9 On 30 September 2004, the author’s appeal was dismissed by the Supreme Court; this decision is final and could not be appealed on cassation. The Supreme Court referred to article 68, part 6, of the Electoral Code,⁶ and upheld the finding of the District and Central Electoral Commissions that the author had provided biographic data that did not “correspond to reality”. In particular, the Supreme Court established that the author had not indicated in the questionnaire that his job at Lokon was a secondary one and had failed to indicate his main place of work. It based its decision on the following evidence: (a) the author’s application for a secondary job addressed to Lokon; (b) the order to hire the author for a secondary job as a legal adviser as of 11 June 2002; (c) the letter from the Deputy Chairperson of the Gomel City Section of the Civil Initiatives dated 5 June 2002, attesting to the fact that the organisation did not object to the author’s gainful employment with Lokon as a secondary job; and (d) the author’s schedule of work as a legal adviser hired for a secondary job, approved by the Chief Executive Officer of Lokon on 21 June 2004.

2.10 On an unspecified date, the author appealed the decision of the Supreme Court to the Chairperson of the Supreme Court through the supervisory review procedure. This appeal was dismissed by the Deputy Chairperson of the Supreme Court on 15 October 2004. The Deputy Chairperson set aside the author’s argument that his employment by Lokon should

⁶ See, *supra* n. 5.

be considered his main place of work because it was duly reflected in his service record. The Deputy Chairperson explained that a secondary job could also be reflected in the service record upon the employee's request and on the basis of the order to hire him or her for a secondary job, as in the author's case. He referred to article 343 of the Labour Code, according to which a secondary job is gainful employment on a contractual basis with the same or a different employer during the time not taken by one's main place of work.

The complaint

3.1 The author is of the view that there has been a breach of article 68, part 11, of the Electoral Code,⁷ since the District Electoral Commission's refusal to register him as a candidate was not based on a reasoned decision explaining what personal data did not "correspond to reality". He submits that this lack of explanation was deliberate and intended to prevent him from submitting counter evidence on appeal to the Central Electoral Commission. The author claims, therefore, that this refusal to register him as a candidate, which was upheld by the Central Electoral Commission, violated his rights, guaranteed under article 25, paragraphs (a) and (b), of the Covenant to take part in the conduct of public affairs and to run for the office of Deputy of the House of Representatives without any of the distinctions mentioned in article 2.

3.2 The author claims that the District Electoral Commission's biased attitude towards him as a candidate from the opposition violated the legal prohibition against discrimination on the ground of one's political opinions under article 26 of the Covenant. He adds that Mr. V.K., who was already a Deputy of the House of Representatives at the time in question and was nominated as a candidate "from the authorities" for the 2004 elections to the House of Representatives as a representative of the same electoral constituency as the author, was using administrative resources for his election campaign in violation of article 47, parts 2 and 3,⁸ of the Electoral Code. When the author complained to the Central Electoral Commission about Mr. V.K.'s use of administrative resources for his election campaign, he was informed by its Chairperson that Mr. V.K.'s actions were part of "his work with the electorate as a Deputy of the House of Representatives elected in 2000", rather than his election campaign for the 2004 elections to the House of Representatives.

⁷ Article 68 of the Electoral Code: Registration of Candidates for President of the Republic of Belarus, for Deputies (part 11)

The Central Commission, the respective district, territorial electoral commission shall verify the conformity of the nomination procedure for President of the Republic of Belarus, for Deputies to the requirements of the present Code and take a decision on registration of candidates for President, for Deputies, or a reasoned decision to deny registration. Decision of the commission to deny registration of the candidate is issued not later than on the following day after decision taken.

⁸ Article 47 of the Electoral Code: Inadmissibility of Abuse of the Right for Making Election Agitation and Agitation for Referendum (parts 2 and 3)

Candidates for the position of the President of the Republic of Belarus and candidates for deputies, their proxies, organisations and persons agitating for election of candidates, for or against questions offered for the referendum shall have no right to distribute among citizens monetary funds, gifts or other material values, make discount sales of commodities or render free-of-charge any services and commodities except for agitation printed materials specially made for the election campaign or for the holding of the referendum with the observance of the requirements of this Code. In carrying election agitation or agitation for a referendum it shall be prohibited to influence citizens by promises of transfer to them of monetary funds or material values.

In case of violation of the requirements of this article the respective commissions shall take measures for stopping abuse of the right for election agitation and agitation for the referendum and the commission on elections of the President of the Republic of Belarus and electoral commissions shall also have the right to cancel the decision on registration of the candidate.

3.3 The author maintains that, in violation of article 14, paragraph 1, and article 26 of the Covenant, he was denied by the Supreme Court the right to equality before the courts and the right to a fair hearing by an independent and impartial tribunal.

State party's failure to cooperate

4. By Notes Verbales of 1 February 2005, 1 December 2006, 16 January 2008 and 21 January 2009, the Committee requested the State party to submit to it information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that, under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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.

5.3 As to the author's claim under article 14, paragraph 1, that he was denied by the Supreme Court the right to equality before the courts and the right to a fair hearing by an independent and impartial tribunal, the Committee notes that it relates primarily to issues directly linked to those falling under article 25, paragraphs (a) and (b), of the Covenant, that is, the author's rights to take part in the conduct of public affairs and to run for the office of Deputy of the House of Representatives. It also notes that there are no obstacles to the admissibility of the communication under article 25, paragraphs (a) and (b), of the Covenant, and declares it 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, of the Covenant.

5.4 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his claims under article 2 and article 26 of the Covenant that he was deprived of his right to take part in the conduct of public affairs and to run for the office of Deputy of the House of Representatives because of his political opinions, and declares the communication admissible.

Consideration of the merits

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

6.2 The issue before the Committee is whether the author's rights under article 25, paragraphs (a) and (b), of the Covenant, including the right to take part in the conduct of

public affairs, to vote and to be elected to public office, were violated by the refusal to register him as a candidate for the 2004 elections to the House of Representatives.

6.3 The Committee recalls that, in the present case, the registration of the author was refused by the District Electoral Commission on the ground that he provided personal data that “did not correspond to reality” but without indicating what specific data was impugned by this finding. It further recalls that, according to the ruling of the Central Electoral Commission, the author has incorrectly indicated working as a legal adviser for Lokon rather than heading the Gomel City Section of the Civil Initiatives as his “main place of work” in the questionnaire. Furthermore, the Supreme Court found that the author did not indicate in the questionnaire that his job at Lokon was a secondary one and that he failed to indicate his main place of work.

6.4 In this regard, the Committee recalls its General Comment on article 25, according to which the exercise of the rights protected by article 25 may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.⁹ The Committee notes that article 68, part 6, of the Electoral Code, gives a right to electoral commissions to refuse registering a candidate when he or she submits data that does not “correspond to reality”, including biographic data and information on income and property.

6.5 The Committee notes that the author’s gainful employment on a contractual basis by Lokon was corroborated by evidence examined by both the Central Electoral Commission and the Supreme Court and is, therefore, uncontested, irrespective of whether it was effectively his main or secondary place of work. As to the status of the author’s legal relationship with the Civil Initiatives, the Committee notes his argument that, according to the decision of the Partisan District Electoral Commission of 30 January 2003 on the refusal to register Ms. L.S. as a candidate for the 2003 elections to the Local Council of Deputies and the written explanations of the Ministry of Labour and Social Protection of 27 January 2003 (see paragraph 2.8 above), the Civil Initiatives could not be considered his “place of work” because it was unpaid. In other words, even if the author had indicated that Civil Initiatives was his main place of work in the questionnaire of the District Electoral Commission, it could have still refused to register him as a candidate on the basis of the same article 68, part 6, of the Electoral Code, but this time with reference to the written explanations of the Ministry of Labour and Social Protection of 27 January 2003. The Committee regrets the lack of response by the State party authorities to this specific argument raised by the author both before the Supreme Court and in his communication to the Committee. The fact that the reasons given for refusing to register the author’s candidacy for the House of Representatives contrasted to those given in the case of Ms. L.S. (see paragraph 2.8 above) indicates that the provisions of the relevant domestic law can be exploited to unreasonably restrict the rights protected by article 25, paragraphs (a) and (b), of the Covenant.

6.6 The Committee notes the author’s uncontested claim that the District Electoral Commission was biased towards him because he was a candidate from the opposition (see paragraphs 2.2 and 2.3 above). The Committee also notes the author’s claim of bias arising from the Central Electoral Commission’s alleged failure to discipline a competing candidate “from the authorities” for violating election legislation (see paragraph 3.2 above). In this regard, the Committee notes that article 25 of the Covenant secures to every citizen the right and the opportunity to be elected at genuine periodic elections without any of the distinctions mentioned in article 2, paragraph 1, including political opinion.

⁹ 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, paragraph 4.

6.7 In light of the information before the Committee, and in the absence of any explanations from the State party, it concludes that the refusal to register the author as a candidate for the 2004 elections to the House of Representatives was not based on objective and reasonable criteria and is, therefore, incompatible with the State party's obligations under article 25, paragraphs (a) and (b), read in conjunction with article 2, paragraph 1, and article 26 of the Covenant.

7. 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 the State party of article 25, paragraphs (a) and (b), read in conjunction with article 2, paragraph 1, and article 26 of the Covenant.

8. 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 compensation, as well as to consider any future application for nomination of the author as a candidate for the elections in full compliance with the Covenant. The State party is also under an obligation to prevent similar violations in the future.

9. 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 180 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.]
