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Human Rights Committee
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Agenda item 9
Consideration of communications under the Optional Protocol to the Covenant

Communication No. 1749/2008

Decision adopted by the Committee on 31 October 2011, 103rd session

Submitted by:	V. S. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 May 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 January 2008 (not issued in document form)
Date of adoption of decision:	31 October 2011
Subject matter:	Denial of access to court to a religious organization
Substantive issues:	Access to court; suit at law; competent, independent and impartial judicial authority; right to freedom of religion; right to manifest one's religion in worship, observance and practice
Procedural issues:	Lack of standing (*ratione personae*); lack of substantiation of claims
Articles of the Covenant:	14, paragraph 1; 18, paragraph 1
Articles of the Optional Protocol:	1; 2

[Annex]

* Made public by decision of the Human Rights Committee.

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (103rd session)

concerning

Communication No. 1749/2008**

Submitted by:	V.S. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 May 2007 (initial submission)

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

Meeting on 31 October 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is V.S., a Belarusian national born in 1965 and residing in Vitebsk, Belarus, at the time of submission of the communication. He claims to be a victim of violations by Belarus of his rights under article 14, paragraph 1, and article 18, paragraph 1, 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 is a Secretary of the Consistory of the Religious Union Evangelical-Lutheran Church (the Religious Union) in Belarus, which was registered on 8 January 2001 by the Committee on the issues of religion and nationalities under the Council of Ministers of Belarus and re-registered by the same State body on 16 February 2004. The Religious Union has nation-wide status and covers activities of all religious communities that form part of it.

2.2 On 24 November 2006, the Authorized person on the issues of religion and nationalities under the Council of Ministers of Belarus (the Authorized person) issued a written warning to the Religious Union about a violation of the law "On the freedom of

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

conscience and religious organizations." The Religious Union was required to inform the registering body within two months about the measures taken by it to address the violations of the law. The last paragraph of the written warning of 24 November 2006 states that it could be appealed to the Supreme Court within a month.

2.3 According to article 37, part 2, of the law "On the freedom of conscience and religious organizations," if the violations indicated in the written warning are not addressed within six months or are repeated within a year, the registering body can initiate a judicial procedure for the dissolution of the religious organisation. The registering body has a right to suspend the organization's activities pending the adoption of a court decision.

2.4 On 10 December 2006, the author, acting on behalf of the Religious Union, appealed the written warning of 24 November 2006 to the Supreme Court. On 22 December 2006, the Supreme Court rejected the author's appeal on the following grounds: (a) according to article 358 of the Civil Procedure Code, juridical persons who consider that unlawful actions (or the omission to act) of public authorities [...] infringe upon their rights, have a right to submit a complaint to court pursuant to the procedure established by the present article and in cases directly provided for by the law. The law "On the freedom of conscience and religious organizations," however, does not envisage a procedure for appealing a written warning issued to a religious organization; and (b) according to article 245, clause 1, of the Civil Procedure Code, the court shall refuse to initiate proceedings if the applicant does not have a right to file such a suit in court, due to lack of jurisdiction. The Supreme Court therefore refused to initiate proceedings for lack of jurisdiction to examine the author's complaint.

2.5 On 18 January 2007, the author, acting on behalf of the Religious Union, appealed the written warning of 24 November 2006 to the High Economic Court. On 23 January 2007, the High Economic Court rejected the author's complaint due to lack of jurisdiction. It further stated that article 37 of the law "On the freedom of conscience and religious organizations," on the basis of which the written warning was issued, did not provide for the right of religious organizations to appeal such warnings.

2.6 On 15 February 2007, the author, acting on behalf of the Religious Union, requested the President of Belarus, the Council of Ministers and the Commission on Legislation, Judicial and Legal Issues of the House of Representatives of the National Assembly (Parliament) to use their right of legislative leadership and to bring the law "On the freedom of conscience and religious organizations" and other relevant laws in compliance with the Constitution, in order to ensure the constitutional right of religious organizations to appeal written warnings issued to them by public authorities in court.

2.7 On 15 February 2007, the author, acting on behalf of the Religious Union, applied to the Constitutional Court for an interpretation of article 60 of the Belarus Constitution, which stipulates that "everyone shall be guaranteed protection of one's rights and liberties by a competent, independent and impartial court of law within time periods specified in law."

2.8 On 27 February 2007, the author was informed by the Chairperson of the Commission on Legislation, Judicial and Legal Issues that the Permanent Commissions of the House of Representatives did not have the right of legislative leadership.

2.9 On 16 March 2007, the author was informed by the Deputy Minister of Justice that the Ministry did not have the right to interpret the laws as far as their applicability to concrete cases was concerned, nor to assess the actions of the public authorities. He was reminded that the law "On the freedom of conscience and religious organizations" did not provide for the possibility of appealing a written warning issued to a religious organization; the procedure for the development of draft laws in Belarus was explained.

2.10 On 27 March 2007, the author was informed by the Chairperson of the Commission on Human Rights, National Relations and Mass Media that the issues raised in his letter of 15 February 2007 were discussed with the Authorized person who was of the opinion that the amendments to the "On the freedom of conscience and religious organizations" were impractical at that point in time.

2.11 On 5 April 2007, the Constitutional Court confirmed that article 60 of the Belarus Constitution guaranteeing the right to judicial protection, should be applied directly, despite the absence of a positive provision in the law "On the freedom of conscience and religious organizations" providing for an appeal in court of a written warning issued to a religious organization. It also referred to the procedure stipulated in chapter 29 of the Civil Procedure Code for appealing the actions of public officials that infringe the rights of juridical persons.

2.12 On 20 April 2007, the Deputy Authorised person replied to the author's letter of 15 February 2007, that was addressed to the President of Belarus and Council of Ministers, and informed the Religious Union that, further to the decision of 5 April 2007 of the Constitutional Court, "the right of everyone, including religious organizations, to judicial protection [was] guaranteed by the direct application of article 60 of the Constitution." Therefore, there was no need to amend the law "On the freedom of conscience and religious organizations."

2.13 On 17 October 2007, the author, acting on behalf of the Religious Union, again appealed the written warning of 24 November 2006 to the Supreme Court, on the basis of the Constitutional Court's decision of 5 April 2007. On 29 October 2007, the Supreme Court again rejected the author's complaint on the following grounds: (a) on 22 December 2006, the Supreme Court refused, under article 245, paragraph 1, of the Civil Procedure Code, to initiate proceedings on the basis of the complaint submitted by the Secretary of the Religious Union and this decision became executory; and (b) according to the ruling of the Plenum of the Belarus Supreme Court No.7 of 28 June 2001, and article 247, paragraph 2, of the Civil Procedure Code, if the court's refusal, under article 245, paragraph 1, of the same Code, to initiate proceedings has already become executory, a repeat recourse to court on the same grounds is not allowed.

2.14 Under the written warning of 24 November 2006, the Religious Union was required, inter alia, to bring its stamp and letterhead in compliance with Instruction No. 157 of the Ministry of Internal Affairs of 25 September 2000. In this regard, the author notes that the existing stamp was approved on 17 June 2002 by the Chairperson of the Committee on Issues of Religion and Nationalities under the Council of Ministers. On 28 June 2007, the author, on behalf of the Religious Union, sent a letter to the Authorized person, attaching a sample design of a new stamp and requesting its approval. In contravention of the law "On citizens' petitions," which establishes a one-month deadline for giving a reply to a citizen's written petition, no reply to the author's petition of 28 June 2007 was received. The author submits that, on the one hand, the Religious Union organization is required by the Authorized person to bring its stamp and letterhead in compliance with the law, while on the other, the very same Authorized person does not reply to the Religious Union's written request to approve the new design. Therefore, according to him, a violation of the law indicated in the written warning of 24 November 2006 cannot be addressed and the Religious Union can at anytime be subjected to the procedure for the dissolution and suspension of activities described in paragraph 2.3 above.

2.15 On 21 October 2007, the author, acting on behalf of the Religious Union, sent another letter to the Authorized person, this time requesting approval to invite nine members of the "City of His Grace Mission Inc." to Belarus from 8 to 18 December 2007 in order to participate in the Religious Union's activities. On 23 November 2007, the author was informed in a letter from the Deputy Authorized person that his request for approval of

the invitation cannot be considered for as long as the Religious Union's stamp does not comply with Instruction No. 157 of the Ministry of Internal Affairs of 25 September 2000.

The complaint

3.1 The author claims that the State party's authorities unreasonably restrict the right to profess Lutheran beliefs in Belarus in violation of article 18, paragraph 1, of the Covenant. He submits that the Religious Union does not pose any threat to public safety, order, health, morals or the fundamental rights and freedoms of others. At least, none of the above was imputed to the Religious Union in the written warning of 24 November 2006 from the Authorized person.

3.2 The author further submits that, although article 60 of the Constitution guarantees the right to judicial protection, it is impossible to avail oneself of this right due to the absence in article 37 of the law "On the freedom of conscience and religious organizations" of a provision providing for an appeal in court of written warnings issued to religious organizations. Therefore, he claims that, by denying him access to court, the State party's authorities have violated his right under article 14, paragraph 1, of the Covenant, to a fair and public hearing by a competent, independent and impartial tribunal. The author adds that, should the Religious Union be dissolved,[1] the Lutherans would be deprived of their right to collective and public worship, observance and practice.

State party's observations on admissibility and merits

4. On 2 May 2008, the State party reiterates the facts summarized in paragraph 2.4 above and adds that the author did not appeal the ruling of the Supreme Court of 22 December 2006 under the supervisory review procedure.

Author's comments on the State party's observations

5.1 On 14 June 2008, the author submits his comments on the State party's observations. He reiterates his initial claims in relation to article 14, paragraph 1, of the Covenant and notes that the State party has failed to submit any observations with regard to his claims under article 18 of the Covenant.

5.2 The author submits that, although he disagreed with a number of assertions put forward in the written warning of the Authorized person dated 24 November 2006, he was unable to challenge the contentious issues in court, due to the absence in the law "On the freedom of conscience and religious organizations" of a provision indicating what court would be competent to deal with written warning issued to religious organizations. He adds that despite his numerous requests to the public authorities with the right of legislative leadership to amend the law "On the freedom of conscience and religious organizations," the 'conflict of laws' remains unsolved and it is impossible for religious organizations to avail themselves of the constitutional right to judicial protection.

5.3 The author states that, whereas the State party's courts have rejected his complaints about the written warning of 24 November 2006 on the basis of article 358 of the Civil Procedure Code, they should have equally taken into account the Constitution and relevant international treaties ratified by Belarus.

5.4 The author submits that, judging by the practice, the supervisory review procedure in Belarus is ineffective and, for this reason, he referred to the Constitutional Court with the

[1] As of 15 August 2011, the Religious Union is an officially registered and functioning religious organization with nation-wide status in Belarus.

request to provide for interpretation of article 60 of the Constitution. Despite the Constitutional Court's affirmation on 5 April 2007 that article 60 of the Constitution should be applied directly, the author's repeat complaint of 17 October 2007 was again rejected by the Supreme Court due to lack of jurisdiction.

Further submissions from the State party

6.1 On 31 July 2008, the State party reiterates the facts summarized in paragraph 2.4 above and submits that pursuant to article 433, part 4, of the Civil Procedure Code, a ruling of the Supreme Court cannot be appealed in the Court of Cassation. At the same time, the civil procedure law does not proscribe the appeal of such rulings through the supervisory review procedure. According to article 436 of the Civil Procedure Code, the only rulings that cannot be appealed through the supervisory review procedure are the rulings of the Presidium of the Supreme Court.

6.2 The Religious Union did not avail itself of the right to appeal the ruling of the Supreme Court under the supervisory review procedure and, therefore, the author's assertion that the supervisory review procedure in Belarus is ineffective is not based on either facts or practice.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes that the author has claimed to be a victim of violation of his right under article 14, paragraph 1, to have access to court, because the Supreme Court refused on two occasions to consider the author's appeal, which was submitted by him on behalf of the Religious Union, of the written warning issued by the Authorized person. The Committee considers that the author is essentially claiming violations of rights of the Religious Union. Notwithstanding that he is the Secretary of the Religious Union, the religious organization has its own legal personality. All domestic remedies referred to in the present case were in fact proposed in the name of the Religious Union, and not the author.[2] Given the fact that under article 1 of the Optional Protocol only individuals may submit a communication to the Committee, it considers that the author, by claiming violations of the rights of the Religious Union, which are not protected by the Covenant, has no standing under article 1 of the Optional Protocol.

7.4 With regard to the author's claim that his rights under article 18, paragraph 1, of the Covenant were violated, the Committee notes that the present communication was submitted by the author in his own name, whereas the written warning of the Authorized person was addressed to the Consistory of the Religious Union and not to the author as an individual follower of Lutheran beliefs. The Committee also notes that, in the author's opinion, the refusal of the Deputy Authorized person to consider the request to invite nine

[2] See, for example, communications No. 502/1992, *S.M. v. Barbados*, decision of inadmissibility adopted on 31 March 1994, paras. 6.2 and 6.3; No. 737/1997, *Lamagna v. Australia*, decision of inadmissibility adopted on 7 April 1999, para. 6.2.

members of the "City of His Grace Mission Inc." to Belarus for as long as the Religious Union's stamp does not comply with the specific instruction of the Ministry of Internal Affairs, unreasonably restricts the right to profess Lutheran beliefs in Belarus.

7.5 In this respect, the Committee recalls that a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected.[3] It is a matter of degree how concretely this requirement should be taken. It is true that, in some circumstances, restrictions imposed on the religious organizations as juridical persons may produce adverse effects which directly violate the rights of individual believers under the Covenant. In the present case, however, the author of the communication has failed, for example, to explain what concrete consequences for his own freedom to manifest his religion or belief in practice were entailed by the inability of nine members of the "City of His Grace Mission Inc." to visit Belarus. Accordingly, the Committee concludes that the author has not substantiated, for purposes of admissibility, that he has a claim under article 18, paragraph 1, of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 1 and 2 of the Optional Protocol;

(b) that this decision shall be communicated to the State party and to the author.

[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] Communication No. 35/1978, *Shirin Aumeeruddy-Cziffra et al.* v. *Mauritius*, Views adopted on 9 April 1981, paragraph 9.2.