



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2057/2011\*, \*\*

<i>Communication submitted by:</i>	V.P.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	17 May 2010 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 2 May 2011 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Impossibility to appeal decision of a first-instance court in elections dispute; lack of fair trial; and absence of effective remedies
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims; admissibility <i>ratione personae</i>
<i>Substantive issues:</i>	Right to fair trial; effective remedy
<i>Articles of the Covenant:</i>	2 (2) and (3) and 14 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is V.P., a citizen of Belarus born in 1969. He claims to be a victim of violations by Belarus of his rights under article 14 (1), read in conjunction with article 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

#### The facts as submitted by the author

2.1 The author is a member of the United Civic Party and president of its regional division in Gomel. In 2010, the Gomel regional division of the Party elected a representative to put forward as a nominee for the District Electoral Commission, which was being formed for the 2010 elections of the local council. The author submits that of the 13 members of the Commission, 5 should be representatives of political parties. Only 4 nominees were suggested by political parties, of which 1, the author, was nominated by the

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



United Civic Party. On 28 January 2010, the presidium of the Gomel District Council of Deputies and the Gomel Executive Committee took a decision on the composition of the Commission, which did not include the representative of the United Civic Party.

2.2 On 30 January 2010, in his capacity as president of the Gomel regional division of the Party, the author filed a complaint, before the Gomel District Court, on behalf of the United Civic Party against the decision taken by the Council of Deputies and the Executive Committee. He claimed that the Party's rights had been violated because its representative was not included on the District Electoral Commission. He claimed that the lack of a democratic party representative on the Commission would undermine the future electoral process. His complaint was rejected on 4 February 2010. The District Court found that the Council of Deputies and the Executive Committee's decision had been made in accordance with the law.

2.3 On 5 February 2010, the author filed a cassation appeal before the civil panel of the Supreme Court. On 10 February 2010, he was informed, by a letter from the Gomel Regional Court, that the decision of the District Court was not subject to cassation appeal, in accordance with article 343 of the Civil Procedure Code and article 34 of the Electoral Code, under which decisions of the first instance court against the decision of an organ that forms electoral commissions enter into force immediately and are not subject to appeal.

2.4 On 1 March 2010, the author submitted an appeal under the supervisory review procedure to the President of the Supreme Court. His appeal was rejected on 19 March 2010. Having considered the claims raised in the complaint, the Deputy Chair of the Supreme Court did not find grounds for bringing a protest motion against the decision of the District Court under the supervisory review procedure. On 23 March 2010, the author submitted a complaint to the Constitutional Court. His complaint was rejected on 5 April 2010, because the Constitutional Court does not consider complaints submitted by individuals.

### **The complaint**

3. The author claims that the refusal of the domestic courts to review his cassation appeal against the first instance court decision violates his right to have a fair and public hearing of his civil claim by a competent, independent and impartial cassation tribunal under article 14 (1), read in conjunction with article 2 (2) and (3), of the Covenant.

### **State party's observations on admissibility and merits**

4.1 By note verbale of 28 December 2018, the State party submitted its observations. It states that the author has failed to exhaust domestic remedies by failing to submit a supervisory review request to the prosecutor's office, and that his claims are inadmissible under articles 2 and 3 of the Optional Protocol. The State party submits that although under the legislation effective at the material time the decision of the Council of Deputies and the Executive Committee dated 28 January 2010 was not subject to cassation appeal, it could be appealed under the supervisory review procedure. According to the State party, in the first nine months of 2018, the prosecutor's office submitted 180 protest motions under the supervisory review procedure, 173 of which had been considered by the courts. The courts granted 129 requests for supervisory review (74.5 per cent).

4.2 The author, as a representative of the United Civic Party, submitted a supervisory review appeal to the Supreme Court. The Court rejected the author's request for supervisory review on 19 March 2010, having verified that the first instance court decision was lawful and justified. The State party concludes that the author did have access to a fair hearing and that his allegations under article 14 (1), read in conjunction with article 2 (2) and (3), of the Covenant are unsubstantiated.

### **Author's comments on the State party's observations**

5. On 15 April 2019, the author submitted his comments on the State party's observations on admissibility and merits. Regarding the State party's observation that he had failed to submit a supervisory review appeal to the office of the prosecutor, the author states that, according to the Committee's jurisprudence, such procedure is discretionary by nature and is not considered an effective remedy. The author notes that he did submit a supervisory review appeal to the President of the Supreme Court. He also notes that the

statistical data provided by the State party does not indicate how many protest motions have been submitted by the prosecutor's office or by the President of the Supreme Court under the supervisory review procedure in civil cases concerning the protection of civil and political rights. The author states that he is not familiar with any such cases.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author has claimed to be a victim of a violation of his right under article 14 (1), read in conjunction with article 2 (2) and (3), of the Covenant because he did not have access to the appeal (cassation) court. The Committee notes, however, that in the domestic proceedings the author had submitted civil claims to the courts on behalf of the United Civic Party, which has its own legal capacity, claiming violation of the rights of the Party. The author does not explain how his own rights under the Covenant have been violated, nor what precise shortcomings in the proceedings before the Gomel District Court would amount to a violation of article 14 (1). The Committee therefore considers the present submission insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author.
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