



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2315/2013*, **

<i>Communication submitted by:</i>	Anatoly Bukas (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	24 May 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 11 December 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	5 July 2019
<i>Subject matter:</i>	Refusal of courts to consider the author's complaint
<i>Procedural issue:</i>	Failure of the State party to cooperate
<i>Substantive issues:</i>	Fair trial; right to be elected
<i>Article of the Covenant:</i>	14 (1)
<i>Article of the Optional Protocol:</i>	None

1. The author of the communication is Anatoly Bukas, a national of Belarus born in 1956. He claims that the State party has violated his rights under article 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

Factual background¹

2.1 On 23 August 2012, the District Election Commission of the sixty-second electoral district of the city of Borisov issued a decision registering the author as a candidate for the Chamber of Representatives of the National Assembly of Belarus for the upcoming

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, H  l  ne Tigroudja, Andreas Zimmermann and Gentian Zyberi.

¹ The background information supplied here comprises detailed information provided by the author. The State party did not provide a response.



parliamentary elections. On 27 August 2012, the Commission overturned its own decision on the basis of article 68 (7), of the Election Code of Belarus, which states that the Commission has the right to cancel the registration of candidates who, in a declaration made prior to registration, supply false information regarding their income and property holdings, and when the degree of the misrepresentation is felt to be significant.

2.2 The District Election Commission indicated in its decision that, in 2011, the author sold a vehicle belonging to him and failed to declare both the sale and the income he received from it. To support the claim, the Commission presented a certificate² issued by a private company, which indicated that the vehicle had been sold in 2011 for 10 million Belarusian roubles. The total amount of annual income declared by the author was 23,373,859 Belarusian roubles.

2.3 The author appealed the cancellation of his registration before the Central Election Commission of Belarus, in accordance with article 68 (16) of the Election Code. In his appeal, he indicated that the vehicle in question had indeed been sold by him in 2011, but for 3.5 million roubles. The author claimed that he had sold the car for spare parts, since on an unspecified date, the car had been involved in a serious accident. Since the income from the sale was less than 20 per cent of the amount indicated in his annual income statement, the deviation could not be considered to be significant in nature, and therefore could not be used as basis for his disqualification. Moreover, in its initial decision, dated 23 August 2012, the District Election Commission had already examined submissions by the author and had found them to be in line with the requirements of the application process to be a candidate.

2.4 On 30 August 2012, the Central Election Commission rejected the author's appeal. The author appealed the decision of the District Election Commission and the ruling of the Central Election Commission to the Supreme Court. The Supreme Court refused to initiate a case following the author's appeal, stating that the Election Code provided a procedure for appealing a refusal for registration, but did not contain a procedure for appealing the cancellation of a registration. The author, therefore, had no right to appeal.

The complaint

3.1 The author maintains that the refusal of the Supreme Court to allow his appeal violates his rights under article 14 (1) of the Covenant. The author claims that articles 335 and 341–343 of the Civil Procedure Code and article 68 (16) of the Election Code give power to the Supreme Court to review decisions of the Central Election Commission. He states, however, that the appeals procedure contained in the current Election Code covers the refusal to register a candidate, but not the cancellation of a registration. This procedural loophole allows the authorities to exclude the opposition candidates from the election process.

3.2 The author states that he is the chief editor of an independent newspaper (*Borisovskie Novosti*) that often criticizes the authorities of Belarus, and believes that the decision to cancel his registration was taken in order to prevent him from running for election and becoming a member of the National Assembly. The election laws of Belarus have previously been criticized by international organizations, including the Organization for Security and Cooperation in Europe. During the last decade, not a single opposition candidate has been elected as a member of the National Assembly. The author asks the Committee to find that Belarus violated article 14 (1) of the Covenant.

Lack of cooperation by the State party

4. The Committee notes that the State party failed to submit its observations on admissibility and the merits of the present communication.³ The Committee regrets the State party's failure to provide any information with regard to the admissibility or the merits of the author's claims. The Committee recalls that it is implicit in article 4 (2) of the

² The author claims that he was not shown this certificate, which he considered to be of dubious nature, since he never signed any car sale agreement.

³ *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4.

Optional Protocol that States parties have a duty to examine in good faith all allegations brought against them and to make available to the Committee all the information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.⁴

Issues and proceedings before the Committee

Consideration of admissibility

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

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

5.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. Despite the absence of written submissions by the State party, the Committee considers that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee considers that the author has sufficiently substantiated the claims under article 14 (1) of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes the author's claim that by refusing to consider his complaint, which challenged the decision of the Central Election Commission, the Supreme Court violated his rights of access to courts under article 14 (1) of the Covenant. The Committee recalls that the right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed, in accordance with the second sentence of article 14 (1), in cases regarding the determination of criminal charges against individuals, or, as applicable here, of their rights and obligations in a suit at law. The Committee also recalls that whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the scope of the second sentence of article 14 (1). The failure of the State party to allow access to such a tribunal in specific cases would amount to a violation of article 14, if such limitations were not based on domestic legislation and/or were not necessary to pursue a legitimate aim such as the proper administration of justice.

6.3 In the present case, the State party failed to provide written comments to clarify whether its failure to allow access to a tribunal within the scope of the second sentence of article 14 (1) – even if that course of action was based on the domestic legislation – was necessary to pursue a legitimate aim. In the circumstances described by the author, and in the absence of written submissions from the State party, the Committee considers that the State party violated the author's rights under article 14 (1) of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 14 (1) of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate

⁴ *Samathanan v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

compensation for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
