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One hundredth session

11 to 29 October 2010

Views

Communication No. 1383/2005

<u>Submitted by:</u>	Vladimir Katsora, Leonid Sudalenko and Igor Nemkovich (not represented by counsel)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	Belarus
<u>Date of communication:</u>	25 February 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 15 April 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	25 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Freedom of association
<i>Substantive issues:</i>	Degree of substantiation of claims
<i>Procedural issues:</i>	None
<i>Article of the Covenant:</i>	Articles 14, paragraph 1, 22 and 26
<i>Articles of the Optional Protocol:</i>	2

On 25 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. 1383/2005.

[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. 1383/2005**

Submitted by: Vladimir Katsora, Leonid Sudalenko and Igor Nemkovich (not represented by counsel)

Alleged victims: The authors

State party: Belarus

Date of communication: 25 February 2005 (initial submission)

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

Meeting on 25 October 2010,

Having concluded its consideration of communication No. 1383/2005, submitted to the Human Rights Committee on behalf of Mr. Vladimir Katsora, Mr. Leonid Sudalenko and Mr. Igor Nemkovich 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 authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Mr. Vladimir Katsora, born in 1957, Mr. Leonid Sudalenko and Mr. Igor Nemkovich, all Belarus nationals. They claim to be victims of violations by Belarus of articles 14, paragraph 1, 22 and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force in relation to Belarus on 30 December 1992. Mr. Katsora is submitting the communication on his own behalf and on behalf of Mr. Sudalenko and Mr. Nemkovich.

** 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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, 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.

Facts as submitted by the authors

2.1 Mr. Katsora is the leader of an unregistered regional public association called 'Civil Alternative'. Mr. Sudalenko and Mr. Nemkovich are holders of other offices in the association. On 1 December 2003, the authors submitted an application for registration of 'Civil Alternative' with the Ministry of Justice. The registration process is governed by a Presidential Decree of 26 January 1999 and an Ordinance of the Minister of Justice of 1 December 2000.

2.2 According to article 7 of the Presidential Decree after studying the application for registration, the registration body (i.e. the Ministry of Justice) must direct it to the Republican Commission on the Registration of Public Associations. The latter should issue a conclusion on feasibility of the registration and return the file to the Ministry within five days. The registration body must issue a decision within one month from the date of the application.

2.3 Since the authors did not receive a reply within the legislative deadline, on an unspecified date, they inquired with the Justice Department of the Gomel Regional Executive Committee as to the reasons for the delay. On 29 January 2004, the first author was informed that the application was directed to the Ministry of Justice for decision. Since the authors did not receive a decision for another month, on an unspecified date, the first author filed a complaint to the Minister of Justice and the General Prosecutor of the Republic. On 12 March 2004, the Prosecutor's Office informed him that his complaint was directed to the Ministry of Justice. On 19 March 2004, the Ministry of Justice informed him that they could not issue a decision because of the absence of a Conclusion by the Republican Commission on the Registration of Public Associations. He was also advised that the Commission reviewed the application on 11 March 2004 and that he will be informed of the final decision by the Gomel Regional Executive Committee.

2.4 On 29 March 2004, the authors were informed that their application for registration had been rejected. As motivation the authorities cited non-compliance with certain legal provisions: the fact that the organization's goals included entering into associations with other "local and international organizations" was incompatible with a section 3.4 in the relevant Presidential Decree, according to which organizations can only enter in association with other Belorussian organizations of the same type; the organization's stated purposes were described in one place as 'humanitarian' and later as 'humanist', which was seen to be contradictory; the application had failed to specify the particular room of the stated building which would be used as the organization's Head Office; and different dates of birth had been given for one particular member.

2.5 On 22 April 2004, the authors appealed the denial of registration to the Gomel Regional Court. They claimed that the organization's application had been wrongly and unfairly dealt with. In particular, they referred to the Statute of a registered, pro-government (and government financed) organization, the 'Belarusian Republican Youth Union', which contained the same goal of entering into associations with "local and international associations", as mentioned in the application of 'Civil Alternative', and which was registered by the authorities. The authors argued that in any event, none of the conditions for registration were justifiable under the State party's Constitution, or under article 22 of the Covenant, which, as a 'recognized principle of international law', has direct and peremptory effect in Belarus. The Regional Court rejected these arguments, and on 14 May 2004 dismissed the author's appeal.

2.6 The authors subsequently filed a cassation appeal to the Supreme Court, which was dismissed on 28 June 2004. The Supreme Court reiterated some of the motivation of the Regional Court namely: that the organization's stated purposes were described in one place as 'humanitarian' and later as 'humanist', which was seen to be contradictory; that the

Statute of the organization declared that in case of its liquidation, issues related to its funds and property shall be resolved by its Assembly and by a court decision, which was seen to be in contradiction with provisions of the Civil Code; that the address of the Head Office of the organization listed a wrong room number; that the birth date of one of the founder of the organization was different in the list of the founders and in the list of the members of the Central Council of the organization; that article 5.1 of the Statute of the organization stated that its highest organ with competency to take certain decisions was its General Assembly, but its article 5.5.8 gave competency for some of these decisions to the organization's Central Council, which was seen as contradictory.

2.7 On 12 July 2004, the authors filed a further application for supervisory review by the Supreme Court, which was rejected by its Deputy President on 17 August 2004.

The complaint

3.1 The authors contend that they have exhausted all available and effective domestic remedies.

3.2 The authors claim that the State party violated their rights under articles 14, paragraph 1, 22 and 26 of the Covenant.

3.3 The authors submit that one of the manifestations of the freedom of association in Belarus is the creation of public associations. Activities in the name of organizations that are not registered in the established manner are forbidden. The authors maintain that the denial to register their association by the State party's authorities led to violation of their right under article 22 of the Covenant.

3.4 The authors submit that in Belarus the freedom of association is applied selectively and is guaranteed only to supporters of the official power. In support they point out that the Statute of the pro-government 'Belarusian Republican Youth Union' was considered lawful by the registration body and the Statute of "Civil Alternative" was declared unlawful, even though they contained similar provisions.

3.5 The authors submit that the Republican Commission on the Registration of Public Associations, which according to the domestic procedure must issue a mandatory Conclusion on the feasibility of each registration, is part of the Administration of the President of the Republic. The Commission has no separate legal personality and no judicial or administrative appeal against its Conclusion is possible. The authors also refer to a letter of the Minister of Justice, addressed to the Head of the Commission, which according to them evidences that decision on the registration are taken at a very high level, by an official in the President's administration, upon personal recommendation by the Minister of Justice. The authors claim that decisions to allow registration are biased and that the freedom of association is guaranteed only to individuals loyal to the authorities.

3.6 The authors also claim that they were denied judicial protection of their freedom of association, since the courts did not issue decisions based on the Constitution of Belarus and on the international human rights treaties. The submit that they were denied a fair hearing by an independent and impartial tribunal, that they were treated unequally before the law and in that way they were denied their right to freedom of association.

State party's observations on admissibility and merits

4.1 The State party confirms that the authors appeal against the denial of registration of the "Civil Alternative" organization to the Gomes Regional Court was rejected on 11 May 2004. The State party submits that the authors filed a cassation appeal against the Regional Court decision and that on 28 July 2004, the Supreme Court amended it to exclude some of the motivation of the first instance court, but confirmed the rest. The State party also

confirms that the attempt of the authors to have the decision reviewed in the order of supervision was rejected on 17 August 2004 by the Deputy President of the Supreme Court.

4.2 The State party submits that in accordance with article 439 of the Civil Procedure Code expostulations for a supervisory review can be brought forward not only by the Deputy President of the Supreme Court, but by the President of the Supreme Court, as well as by the General Prosecutor and his deputies. Since the authors did not submit applications for initiation of a supervisory review to the Prosecutor's Office or to the President of the Supreme Court, the State party maintains that they have not exhausted the available domestic remedies.

4.3 The State party disagrees with the authors' claim that they have not been granted a fair hearing. The decision to refuse the registration was taken in accordance with article 11 of the Presidential Decree, which establishes as one of the grounds for refusal the inconsistency of the organization's Statute with the requirements of the law. The Court established that some of the provisions of the organization's Statute are contrary to the domestic law and therefore the refusal was lawful, well founded and delivered following full analysis of the evidence presented by the parties. The State party further submits that the Courts were under no legal obligation to give the authors a deadline within which the latter could correct the organizations Statute to bring it into compliance with the domestic legislation. The State party also submits that the authors are not precluded from bringing the Statute of "Civil Alternative" in line with the requirements of the law and reapplying for registration.

Authors' comments

5.1 The authors reiterate that they have exhausted all available and effective domestic legal remedies. They did not submit an application for supervisory review to the Supreme Court nor to the Prosecutor's Office, since they believe that they have exhausted the necessary domestic remedies, by appealing first to the Regional Court, than to the Supreme Court both in cassation and by requesting a supervisory review.

5.2 The authors also dispute the State party's submission that the Regional Court's decision in their case was taken on the basis of full and comprehensive analysis of the evidence presented in accordance with the domestic legislation. They submit that according to article 32 of the law "Regarding Public Associations", in case of discrepancy between a domestic law and an international treaty that Belarus is a party to, the international treaty provisions should be applied. They maintain that in their case the Court should have applied the Covenant. They also maintain that none of the alleged discrepancies between the Statute of "Civil alternative" and the domestic legislation falls under article 22, paragraph 2, of the Covenant.

State party's additional observations

6. On 8 February 2006, the State party reiterates its observations on the merits of the case, as submitted previously.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

7.3 The Committee takes note of the State party's challenge of the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, namely the authors' failure to petition the President of the Supreme Court and the General Prosecutor for supervisory review of the court decisions denying the registration of their organization. The Committee recalls its previous jurisprudence,¹ according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary mean of appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. It does, therefore, not meet the requirements of article 14, paragraph 5 of the Covenant. Consequently, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

7.4 The Committee takes note of the authors' claim that their right to fair hearing under article 14, paragraph 1 of the Covenant has been violated. They also claim that the refusal of the State party's authorities to register "Civil alternative" was discriminatory and violated their rights under article 26 of the Covenant. However, the Committee considers these claims to be insufficiently substantiated, for purposes of admissibility, and declares them inadmissible under article 2 of the Optional Protocol. Regarding the claim of violation of the freedom of association under article 22 of the Covenant, the Committee finds it sufficiently substantiated for the purposes of admissibility, declares it admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 The issue before the Committee is whether the refusal of the Belarus authorities to register "Civil Alternative" unreasonably restricted the authors' right to freedom of association. In this regard the Committee recalls that its task under the Optional Protocol is not to assess in the abstract laws enacted by State parties, but to ascertain whether the implementation of such laws in the case in question gives rise to a violation of the authors' rights.² In accordance with article 22, paragraph 2, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided for by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes.³ The reference to "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote

¹ See the Committee's General comment No. 32 (article 14), document CCPR/C/GC/32, paragraph 50: "A system of supervisory review that only applies to sentences whose execution has the commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor."; and, for example, Communication No. 836 of 1998, *Gelazauskas v. Lithuania*, Views adopted 17 March 2003.

² See *Faurisson v. France*, communication 550/1993, Views of 16 December 1996, para 9.3.

³ See *inter alia* *Zvozkov et al. v. Belarus*, communication 1039/2001, Views of 17 October 2006, para 7.2.

ideas not necessarily favorably viewed by the government or the majority of the population, is a cornerstone of any society.

8.3 In the present case, the State party has refused to permit the registration of "Civil Alternative" on the basis of a number of stated reasons. These reasons must be assessed in the light of the consequences which arise for the authors and their association. The Committee notes that even though such reasons were prescribed by the relevant law, the State party has not advanced any argument as to why they are *necessary*, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee also notes that the refusal of registration led directly to the unlawfulness of operation of the unregistered organization on the State party's territory and directly precluded the authors from enjoying their freedom of association. Accordingly, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2 in relation to the authors. The authors' rights under article 22, paragraph 1, of the Covenant have thus been violated.

9. 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 violation by the State party of articles 22, paragraph 1 of the Covenant.

10. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including the reconsideration of the application for registration of "Civil Alternative", based on criteria compliant with the requirements of article 22 of the Covenant, and adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. 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 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.]
