



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March – 4 April 2008

DECISION

Communication No. 1358/2005

<u>Submitted by:</u>	Viktor Korneenko (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>	1 April 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Denial of possibility of candidacy for lower chamber of Belarus Parliament.

Substantive issues: Right to be elected without unreasonable restrictions and without distinction; access to court; right to have one's rights and obligations in a suit at law determined by a competent, independent and impartial tribunal established by law.

Procedural issue: Non-substantiation of claims.

Articles of the Covenant: 14, paragraph 1; 25; 26

Article of the Optional Protocol: 2

[ANNEX]

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-second session

concerning

Communication No. 1358/2005*

Submitted by: Viktor Korneenko (not represented by counsel)
Alleged victims: The author
State party: Belarus
Date of communication: 10 November 2004 (initial submission)

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

Meeting on 1 April 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Viktor Korneenko, a Belarusian citizen born in 1957, residing in Gomel, Belarus. He claims to be a victim of violations by Belarus¹ of article 14, paragraph 1; article 25; and article 26 of the International Covenant on Civil and Political Rights. He is not represented.

The facts as presented by the author

2.1 From 1996 to 2002, the author was Chairperson of the Gomel regional association "Civil Initiatives". Since 2001, he has been an activist of the United Civil Party, and since 2003,

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ The Covenant and the Optional Protocol thereto entered into force for Belarus on 23 March 1976 and 30 December 1992 respectively.

Chairperson of the Foundation for Assistance to Local Development. On an unspecified date, he was nominated as a candidate for the 2004 elections to the House of Representatives (lower chamber) of the Belarus National Assembly (Parliament), as representative of the Gomel-Industrial electoral constituency No. 37. On 6 September 2004, he submitted to the District Electoral Commission (DEC) 142 lists of signatures in support of his candidature, containing 1080 signatures. These had been collected by an initiative group created to this end.

2.2 On 16 September 2004, the DEC refused to register the author as a candidate, on the grounds that 57 (representing 16.2 %) of the total number of signatures submitted in his support were invalid.² It was further noted in extract No. 5 of the DEC's decision of 16 September 2004, that two voters, Kontsevov and Kontsevaya, requested the DEC to have their signatures withdrawn from the lists submitted in the author's support. The author submits that under article 67, part 5, of the Belarus Electoral Code, Procedural Recommendations entitled "Organisational and Legal Aspects of the Activities of District Electoral Commissions on the Elections of Deputies to the House of Representatives of the National Assembly of the Republic of Belarus", approved by decision No. 5 of the Central Electoral Commission (CEC) on 20 May 2004, the DEC had to prepare a statement on the results of the signature verification, giving reasons for finding signatures invalid. This, however, was not done. The author claims that, in fact, the decision not to register him as a candidate was adopted by the DEC solely on the basis of uncorroborated report of the DEC Secretary.

2.3 On 17 September 2004, the author, in the presence of an election observer from the Office for Democratic Institutions and Human Rights, Organisation for Security and Co-operation in Europe (OSCE), requested the DEC Secretary to be allowed to see the written record of the results of the signature verification. His request was refused by the DEC Secretary, since, according to her, the entire list of signatures together with the record requested by the author, had already been transmitted to the Chief Election Commissioner (CEC). The author submits that under article 66, part 6, of the Belarus Electoral Code, lists of signatures had to be kept by the DEC until the termination of its functions.

2.4 The author submits that the DEC Secretary, who was at the same time the Administrator of the Executive Committee of the Soviet District of Gomel, was biased against the author from the very moment that his group approached her with a request to certify the list of signatures collected in support of a candidate with the seal of approval of the Executive Committee. At that time, the DEC Secretary spoke publicly about the author, using false information that allegedly discredited his honour, dignity and professional reputation.

2.5 The author explains that on 7 September 2004, he complained about the DEC Secretary's actions to the Prosecutor of the Soviet District of Gomel. He did not receive a reply to his complaint within three days, as provided by article 49, part 7, of the Belarus Electoral Code. On 21 September 2004, he complained about the inaction of the Prosecutor of the Soviet District of Gomel to the Prosecutor's Office of the Gomel Region. On 29 September 2004, the Prosecutor of the Gomel Region replied that, under article 8 of the Law "On Citizens' Petitions", the author's complaint of 7 September 2004 had to be considered within one month; and that there

² Article 68, part 8, of the Belarus Electoral Code establishes that, in order to qualify for registration, no more than 15% of signatures in support of a candidate may be found to be invalid.

was no evidence of either an administrative or a criminal offence in the DEC Secretary's actions. A similar reply from the Prosecutor of the Soviet District of Gomel to the author's complaint was dated 27 September 2004. On 6 October 2004, the author appealed against the decision of the Prosecutor of the Gomel Region to the Belarus Prosecutor's Office. On 20 October 2004, that office confirmed the decision of the Prosecutor of the Gomel Region in relation to the DEC Secretary; but noted that the author's complaint should have been considered within the deadline envisaged by the Belarus Electoral Code.

2.6 On an unspecified date, the author requested the DEC's Secretary to refer to the written petitions from the two voters, who allegedly requested that their signatures be withdrawn from the lists submitted in his support (see paragraph 2.2 above), but this request was rejected. The author submits that, according to the copies of the lists of signatures submitted in his support, the voter Kontsevaya in fact had never supported his candidacy and there was accordingly no question of her withdrawing her signature.

2.7 On an unspecified date, the author appealed the DEC's decision of 16 September 2004 to the CEC. He claimed in the appeal that he was deprived of the possibility to present evidence of the validity of signatures submitted in his support since he had been denied access both to the written petitions (see paragraph 2.6 above) and to the DEC's written statement on the results of the verification of signatures (see paragraph 2.3 above). On 23 September 2004, the CEC dismissed the author's appeal, without giving him an opportunity of hearing. Shortly after the appeal was dismissed, the author was allowed to consult the case file, including the written statement on the results of the signature verification, documenting allegedly invalid signatures. He notes that the petitions from the two voters who allegedly requested that their signatures be withdrawn from the lists submitted in his support were not in the case file.

2.8 The author provides the names of 11 voters whose signatures were considered by the DEC to be invalid. The DEC concluded that these voters had not signed the lists in the author's support, and that they refused to provide written explanations on the issue when asked to do so by DEC officials. The author contacted all 11 voters and was reassured by them that they had never denied signing the lists in question, and that no one from the DEC had approached them to verify their signatures. They sent written statements to this effect to the DEC, most of which were certified by a notary public.³

2.9 On an unspecified date, the author appealed the CEC ruling of 23 September 2004 to the Supreme Court. On 30 September 2004, his appeal was dismissed, The Supreme Court's decision became final on its announcement and it could not be appealed on cassation. The Supreme Court held, *inter alia*, that there was no basis to overturn the CEC's ruling to refuse registration, and that the written statements from the voters submitted by the author (paragraph 2.8 above) were untrustworthy, as they had been obtained contrary to article 181 of the Civil Procedure Code.⁴ The Supreme Court based its decision on the invalidity of signatures submitted in the author's support on the basis of examination of handwritings dated 29 September 2004

³ Copies of 16 written statements addressed to the DEC, including 11 from the voters listed by the author, are available on file.

⁴ Article 181 of the Civil Procedure Code 'Admissibility of evidence' reads: "Facts that by law should be corroborated by specific evidence cannot be corroborated by any other evidence."

that was made by the Bureau of Criminal Expertise of the Department of Internal Affairs of the Soviet District of Gomel. The author notes that the voters' signatures in his support were declared invalid on 16 September 2004, i.e., two weeks before the author submits that he should have been registered as the candidate and that if he had been so registered, he would have been able to compete for a seat in the House of Representatives with the Deputy Minister of Internal Affairs. Moreover, on the exact date when the examination of the list of signatures in question was allegedly made, the lists were in fact with the CEC. The author objects to the passage in the Supreme Court's decision, in which it is stated that he did not deny in court that there were invalid signatures in the lists he submitted to the DEC. He refers to the written statements of the 11 voters attached to the case file in corroboration of his claim. He submits that for these reasons, he was refused access to the transcript of court hearing.

2.10 On an unspecified date, the author appealed the Supreme Court's decision of 30 September 2004 to the Chairperson of the Supreme Court. This appeal was dismissed by the Deputy Chairperson of the Supreme Court on 13 October 2004.

The complaint

3.1 The author claims that he was denied the right to equality before the courts and to the determination of his rights and obligations in a suit at law (article 14, paragraph 1, of the Covenant).

3.2 The author claims that he was denied the right, guaranteed under article 25 of the Covenant, to be elected a deputy of the House of Representatives of the Belarus National Assembly during genuine elections conducted by universal and equal suffrage, and that the guarantee of free expression of the will of the electors was violated.

3.3 Finally, the author alleges that the State party's authorities violated his right to equal protection of the law under article 26 of the Covenant, as he was discriminated against on the ground of his political opinion.

State party's observations on admissibility and merits

4.1 On 25 September 2006, the State party recalls the chronology of the case. It specifies that the CEC examined the list of signatures submitted in the author's support, the voters' testimonies, the DEC's written statements and the expert opinion, and concluded that the DEC had properly excluded 57 signatures as invalid (paragraph 2.7 above). Among them, 27 signatures were invalid as the voters either have not signed the lists themselves or had not dated their signature; 17 signatures were invalid because the lists of voters contained false information; 12 – because of the absence of required data in the lists of signatures; and 1 because the voter in question did not reside in the author's electoral constituency.

4.2 When it examined the author's complaint about the DEC's ruling of 16 September 2004 and the CEC's ruling of 23 September 2004 on the refusal to register him as a candidate, the Supreme Court affirmed the invalidity of signatures in question (paragraph 2.9 above) on the basis of the DEC's protocol and the written statements that had been drawn up by DEC members in conformity with the powers given to them by the electoral law. In court, the author did not contend that there were no invalid signatures in the lists by claiming that they were less than

15% of the overall number of signatures verified. He submitted certified written statements from the voters whose signatures were considered to be invalid in support of his position. This evidence was rejected by the court since it was obtained in violation of the principle set out in article 181 of the Civil Procedure Code.

Author's comments on State party's observations

5. On 3 April 2007, the author refutes the State party's argument that he did not contend in court that there were no invalid signatures in the lists submitted in his support. He recalls his initial complaint in which he specifically contested this passage in the Supreme Court's decision of 30 September 2004. He reiterates that he provided the court with 11 written statements certified by a notary from those voters whose signatures were considered to be invalid. This number of statements was sufficient to register him as a candidate. The author submits that the Supreme Court rejected these statements only because it was not independent from the executive branch. In support of his claim, he refers to the conclusion of the Special Rapporteur on the independence of judges and lawyers, contained in his report on the mission to Belarus in 2001, to the effect that the President has an absolute discretion to appoint and remove judges.⁵

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party has not contested that domestic remedies have been exhausted.

6.3 The author claims that his right, under article 25, to be elected a deputy of the House of Representatives of the Belarus National Assembly, was violated, because he was denied registration as a candidate. The Committee notes that the author also challenges the manner in which the State party's courts examined his complaint relating to the refusal to register him as a candidate, as well as the refusal by the courts to give due weight to the notary certified statements of the voters whose signatures were considered to be invalid by both the DEC and the CEC. Without prejudice to the question of whether the author's case constituted a "suit at law" within the meaning of article 14, paragraph 1, the Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.⁶ The

⁵ E/CN.4/2001/65/Add.1, Report on the mission to Belarus of the Special Rapporteur on the independence of judges and lawyers, submitted in accordance with Commission resolution 2000/42, 8 February 2001.

⁶ See, *inter alia*, Communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

Committee considers that the facts as presented by the author do not permit it to conclude that the court proceedings in his case have in fact suffered from such defects. The author has failed to refute the State party's argument that the Supreme Court properly applied article 181 of the Civil Procedure Code as regards the invocation of the statements of certain signatories supporting his candidacy concerning the validity of their signatures. Accordingly, the Committee considers that the author's allegations under article 14, paragraph 1 of the Covenant are insufficiently substantiated for purposes of article 2 of the Optional Protocol and are therefore inadmissible. It follows that the author also cannot claim to have been unfairly denied the opportunity to run for a seat in the House of Representatives of the Belarus National Assembly, in violation of article 25. Accordingly, the Committee concludes that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.4 The author claims that his right to equal protection of the law under article 26 of the Covenant was violated, as he was discriminated against on the ground of his political opinion. The Committee notes, however, that the author has failed to provide any details or any supporting evidence in substantiation of this claim. In addition, it remains unclear whether these allegations were ever raised in the domestic courts. In these circumstances, the Committee considers that this part of the communications is unsubstantiated, for purposes of admissibility, and must therefore be held to be inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under 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.]
