



# 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. 2525/2015\*, \*\*

<i>Communication submitted by:</i>	N.N. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	3 September 2014 (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 9 January 2015
<i>Date of adoption of decision:</i>	19 July 2023
<i>Subject matter:</i>	Refusal by a printing house to produce election campaign leaflets; lack of access to court
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i> ; substantiation of claims
<i>Substantive issues:</i>	Access to court; freedom of expression; voting and elections; discrimination based on political or other opinion; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (2) and (3), 14 (1), 19, 25 and 26
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The author of the communication is N.N., a national of Belarus born on 24 June 1963. He claims that the State party has violated his rights under articles 14 (1), 19, 25 and 26, 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 by counsel.

1.2 The present communication was submitted for consideration before 8 February 2023, when the State party's denunciation of the Optional Protocol took effect. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State party continues to be subject to the application of the Optional Protocol as regards the present communication.<sup>1</sup>

\* Adopted by the Committee at its 138th session (26 June–26 July 2023).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

<sup>1</sup> For example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10, and *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11.



**Facts as submitted by the author**

2.1 The author is a member of the United Civic Party (Obyedinennaya Grazhdanskaya Partiya), an opposition political party in Belarus. In 2014, he stood as a candidate for election to the Gomel Regional Council of Deputies. In his capacity as a candidate, he requested the open joint-stock company Polispечат, a printing house in Gomel, which is under the administration of the Gomel Regional Executive Committee, to produce campaign leaflets. The author provided the printing house with a layout of the leaflet, which contained information on his party's political strategy "For Fair Elections!" and criticism of the State party's authorities. The printing house refused to accept the order on the grounds that the content of the leaflet contained calls to disrupt and cancel the elections and, therefore, contradicted the relevant provisions of the Electoral Code.

2.2 The author complained to the Gomel Regional Executive Committee. On 19 March 2014, the Executive Committee responded, indicating that, the leaflet contained calls urging the disruption and cancellation of the elections, contrary to the relevant provisions of the Electoral Code. The Executive Committee also indicated that their response could be challenged in accordance with the applicable law.

2.3 The author challenged the refusal by the printing house to produce the leaflets before the Zheleznodorozhny District Court in Gomel. He contended that the refusal was unfounded, amounted to censorship and disproportionately restricted his right as a candidate in the election to conduct an election campaign and his right to freedom of expression.

2.4 On 3 April 2014, the court dismissed the complaint for lack of jurisdiction. It held that the relevant provisions of the procedural legislation invoked by the author in his complaint, namely article 353 of the Civil Procedure Code, provided for the right to complain to a court about a violation of one's rights by unlawful acts (inaction), except where another, non-judicial complaint procedure had been established by law. The court held that the author's complaint related to an alleged violation of the electoral legislation within the electoral process and the author's rights in his capacity as a candidate for the Gomel Regional Council of Deputies. Given the nature of the legal issues, the court found that article 49-1 (1) of the Electoral Code was applicable, as a separate complaints procedure for alleged violations of electoral legislation was envisaged under that article, with complaints to be submitted to non-judicial authorities designated under that article to examine such complaints. The court also found, in relation to the civil law aspect of the legal issues under consideration, that the author could initiate a civil lawsuit in order to lodge a claim in view of the refusal by the printing house to effectuate a contract for the production of printed materials.

2.5 The author appealed the ruling of the court of first instance to the Gomel Regional Court. He argued that the dismissal of his complaint for lack of jurisdiction amounted to a denial of justice, was contrary to the Constitution of Belarus, which guaranteed to everyone the right to judicial protection, and violated his rights under article 14, read in conjunction with article 2, of the Covenant.

2.6 On 27 May 2014, the Gomel Regional Court upheld the ruling of the court of first instance. It found that the dismissal of the complaint for lack of jurisdiction was lawful, as the special complaints procedure established under article 49-1 (1) of the Electoral Code was applicable to the author's situation.

2.7 The author complained before the Chair of the Gomel Regional Court and the Chair of the Supreme Court in the framework of the supervisory review procedure. His supervisory review complaints were rejected on 9 July 2014 and 18 August 2014 respectively. The Supreme Court held, in particular, that the domestic legislation had established an exhaustive list of grounds for the judicial review of alleged violations of election law and that the list was not subject to expansive interpretation. The Electoral Code did not provide for the possibility of judicial review of decisions relating to the production of election campaign materials.

2.8 According to the author, he did not lodge further supervisory review complaints with the prosecutor's office, as that domestic remedy was not considered to be effective.<sup>2</sup> He also

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<sup>2</sup> The author refers to *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

submits that the current procedural legislation does not provide for a right to lodge a direct constitutional appeal to the Constitutional Court. Thus, domestic judicial remedies have been exhausted in his case.

### **Complaint**

3.1 The author argues that he did not have any effective domestic remedies at his disposal that would allow him to challenge before an independent and impartial court the refusal by the printing house to produce electoral leaflets in the framework of his election campaign. The State party thus failed in its obligation to provide him with access to a competent court, which constituted a violation of his rights under article 14 (1) of the Covenant.

3.2 The author further argues that he could not secure protection of his rights under articles 19 and 25 of the Covenant by a competent, independent and impartial court and did not have at his disposal any remedy by which such protection could be ensured.<sup>3</sup> He refers to the provisions of the Constitution guaranteeing to everyone the protection of their rights and freedoms by a competent, independent and impartial court and submits that the complete disregard of the constitutional norms on the part of the domestic courts in his case resulted not only in the denial of justice but also in the refusal on the part of the State party to take all the measures necessary to ensure the full enjoyment of his rights and freedoms.

3.3 The author asks the Committee to find a violation of his rights under articles 14 (1), 19 (2), 25 and 26, read in conjunction with article 2 (2) and (3), of the Covenant. He also asks the Committee to recommend that the State party bring the provisions of its national legislation, namely the Civil Procedure Code and the Electoral Code and the practice of their application, into line with its international obligations.

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

4.1 In a note verbale dated 23 March 2015, the State party submitted its observations on the admissibility of the communication. It referred to the firmly established principle in international law according to which one must exhaust all legal remedies in one's own country prior to recourse to international mechanisms. The State party notes that this principle is enshrined not only in article 2 of the Optional Protocol but also in the Constitution of the State party. The State party further submits that the author of the present communication affirmed that he had not exhausted all available domestic remedies, in violation of article 2 of the Optional Protocol and the Constitution. The consideration by the Committee of the present communication, submitted in violation of article 2 of the Optional Protocol, constitutes a violation of article 5 of the Optional Protocol and encourages the author to violate the Constitution of his country.

4.2 The State party notes with regret that the Committee's interpretation of articles 2 and 5 of the Optional Protocol is arbitrary, incompatible with the provisions of the Covenant and the Optional Protocol thereto and contrary to the principles set out in the Vienna Convention on the Law of Treaties.

4.3 On the basis of the above, the State party indicates that it "rejects" the present communication for failure by the author and the Committee to comply with the procedural requirements set out in the Covenant and the Optional Protocol thereto and discontinues any further correspondence on the matter.

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

5.1 On 8 September 2022, the author submitted his comments. Concerning the argument of the State party as to the non-exhaustion of domestic remedies, the author indicates that his case has gone through all stages of judicial review provided for in domestic law, including recourse to the Supreme Court.

5.2 The author also submits that a supervisory review complaint to the prosecutor's office does not constitute an effective domestic remedy, since the decision on the outcome of the

<sup>3</sup> No arguments are provided by the author as to whether he considers the complaints procedure under article 49-1 (1) of the Electoral Code to be ineffective, and, if so, on what grounds.

complaint depends on the sole discretion of a prosecutor and does not entail a review of the case on the merits, including a review of the facts and evidence presented in the case. Furthermore, according to the author, no information is available regarding supervisory review appeals lodged by prosecutors with a view to protecting the rights and freedoms guaranteed by articles 14 (1), 19 (2), 25 and 26 of the Covenant.

5.3 The author concludes by stating that the State party has violated his rights under articles 14 (1), 19 (2), 25 and 26 of the Covenant.<sup>4</sup>

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

#### *Lack of cooperation by the State party*

6.1 The Committee notes the State party's assertions that the author's communication was registered in violation of article 2 of the Optional Protocol, that it rejects the communication owing to the failure by the author and the Committee to comply with the procedural requirements set out in the Covenant and the Optional Protocol thereto and that it discontinues any further correspondence in that regard.

6.2 The Committee recalls that, under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination, to forward its Views to the State party and to the individual (art. 5 (1) and (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication and in the expression of its Views.<sup>5</sup> It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.

#### *Consideration of admissibility*

7.1 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.

7.2 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.

7.3 The Committee notes the author's statement that the refusal by the domestic courts to consider his claim owing to lack of jurisdiction denied him access to a court and constituted a violation of his rights under article 14 (1), read alone and in conjunction with article 2 (2) and (3), of the Covenant. The Committee refers to paragraphs 16 and 17 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it defines the notion of "suit at law" covered by article 14 (1) of the Covenant. According to this definition, "suit at law" covers judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, as well as equivalent notions in the area of administrative law. The Committee

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<sup>4</sup> The author's comments do not specify the alleged violations of his rights under those articles as read in conjunction with article 2 (2) and (3) of the Covenant. No additional information or clarification is provided.

<sup>5</sup> For example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 8.2, and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

notes that the claims in the present communication relate to an electoral process, which does not entail any private or administrative rights or obligations for the author. It cannot be considered as constituting a “suit at law”, and thus does not fall under the ambit of article 14 (1) of the Covenant.<sup>6</sup> Accordingly, this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol to the Covenant.

7.4 The Committee also notes the author’s claim under articles 19, 25 and 26, read in conjunction with article 2 (2) and (3), of the Covenant, namely that he could not obtain protection of his rights by a competent, independent and impartial court and did not have at his disposal any remedy by which such protection could be ensured. The Committee observes in this respect that, in the author’s case, the domestic courts, while dismissing his complaint on procedural grounds, clearly pointed to the specialized complaints procedure under article 49-1 (1) of the Electoral Code applicable to a defined category of cases, including that of the author’s. The Committee notes that the material before it does not contain information as to whether the author had recourse to the specialized procedure established by article 49-1 (1) of the Electoral Code. Furthermore, the Committee notes that the author did not provide any argument that would indicate that the complaints procedure established by the Electoral Code was ineffective. The allegations of the author as to the absence of effective domestic remedy to ensure the protection of his rights under articles 19, 25 and 26 of the Covenant and the failure by the State party to take the measures necessary to give effect to those rights are very general in nature. In the light of these observations, and in the absence of any further information or explanations from the author, the Committee considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 Lastly, the Committee notes the author’s claim, as formulated in his comments of 8 September 2022 (see para. 5.3 above), namely regarding a violation of his rights under articles 19, 25 and 26 of the Covenant, taken separately. In the light of its finding in paragraph 7.4 above, and taking into account the absence of additional explanations from the author, the Committee considers that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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<sup>6</sup> *N.U. v. Belarus* (CCPR/C/131/D/2960/2017), para. 6.3.