



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. 2960/2017*, **

<i>Communication submitted by:</i>	N.U. (represented by Leonid Sudalenko)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	4 January 2017 (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 23 February 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2021
<i>Subject matter:</i>	Failure of mass media to publish the author's election programme; lack of access to court
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Access to court; freedom of expression; voting and elections; discrimination based on political or other opinion
<i>Articles of the Covenant:</i>	14 (1), 19, 25 and 26
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is N.U., a national of Belarus. He claims that the State party has violated his rights under articles 14 (1), 19, 25 and 26 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is represented by counsel.

Facts as submitted by the author

2.1 The author is a member of the opposition political party: the United Citizens' Party. During the 2016 parliamentary elections, United Citizens' Party members, including the author, ran as candidates for Parliament. The author, in his capacity as a candidate at the electoral district No. 59 in Smorgonsk, addressed the newspaper *Astravetskaya prauda* and the radio-television company *Grodno* with the request to publish and broadcast his election

* Adopted by the Committee at its 131st session (1–26 March 2021).

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programme and address to the electorate, in which he provided information regarding his party's campaign "For free elections!" and pointed out that the elections in Belarus were neither free nor transparent. *Grodno* is a regional subdivision of the State-owned Belarus national television. Both media companies refused to publish or broadcast the programme and the address of the author, without explanation. On 26 August 2016, the author sent an email to the management of *Grodno* inquiring about the failure to broadcast his address to the electorate, to no avail. The author maintains that the above-mentioned actions resulted in a violation of his right to express his opinion and to share it with the electorate.

2.2 Since the author's programme contained an open criticism of the current regime, he considered that the refusal to publish it was an act of discrimination on the basis of his opposing political views, and that he was subjected to political censorship. For the above reasons, on 7 September 2016, he filed a complaint before the Grodno Region Ostrovetsky District Court. On 8 September 2016, the Court refused to register a civil lawsuit for lack of jurisdiction. The Court referred to the Electoral Code, which provided for an extrajudicial mechanism of electoral complaints. According to article 74 (1) of the Electoral Code, all candidates in parliamentary elections have a right to equal access to mass media. Claims concerning violation of that right can be brought before the district, territorial and central electoral commissions. The author's appeal to the Grodno Regional Court was rejected on 28 September 2016 on the same grounds. His supervisory review requests were rejected by the Chairperson of the Grodno Regional Court on 1 November and by the Supreme Court on 21 December 2016.

Complaint

3. The author claims that the refusal of the State-owned mass media to publish his election programme and address as well as the inability to have his complaints examined by a competent, independent and impartial tribunal established by law violated his rights under articles 14 (1), 19, 25 and 26 of the Covenant.

State party's observations on admissibility

4.1 In a note verbale dated 20 April 2017, the State party submitted its observations on admissibility, claiming that the author had failed to exhaust available domestic remedies. The State party reports that in accordance with regulation No. 32, on use of mass media by parliamentary candidates, adopted by the central elections and referendum commission on 26 June 2016, the author, as a candidate in the elections to the National Assembly of Belarus, had access to free broadcasting and publication of his election programme in mass media.

4.2 On 19 August 2016, the author presented his election programme for publication in the newspaper *Astravetskaya prauda*. On 22 August 2016, he recorded his address to be broadcasted on television and radio. His programme and recordings contained information claiming that the other candidate at the same electoral district, Mr. K., had committed economic crimes. The author did not, however, present any evidence to support those claims. As a result, the administration of the mass media company in question asked the author to amend his election programme and address. However, the author failed to do so.

4.3 The State party submits that article 74 of the Electoral Code provides for an extrajudicial mechanism of consideration of claims related to violation of the right of parliamentary candidates to broadcast and publication. Absence in the Electoral Code of a possibility to challenge this type of violation in the courts is justified by the short duration of electoral campaigns and by the need for a speedy and simplified way to consider claims that do not directly affect the process and the outcome of the elections.

4.4 The author submitted two complaints to the district elections commission and two complaints to the central electoral commission concerning the failure of *Astravetskaya prauda* to publish his electoral programme. Neither commission found evidence that the newspaper's actions were unlawful. The author did not complain about the failure of the television company to broadcast his address.

4.5 The State party also provided details concerning the judicial proceedings, consistent with the author's account (para. 2.2). The State party submits that the author's claims that a request for supervisory review of court decisions to the Prosecutor's office is not an effective

remedy, is erroneous. In 2016, the Prosecutor's office brought 2,957 cassation protests. As at 1 January 2017, a total of 1,567 of those protests had been granted by courts. A total of 298 protests had been submitted under the supervisory review procedure, with 218 of them having been granted.

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

5.1 On 18 May and 21 June 2017, the author submitted his comments on the State party's observations, claiming that he did not receive any concrete explanations from the mass media administrations as to why the information he submitted was not broadcast and published. His email inquiry in that regard remained unanswered by the television company, while the response from the newspaper stated generally that the content of his election programme did not correspond to articles 47 and 75 of the Electoral Code. He first learned of the reasons for the refusal referred to by the State party from the State party's observations. Concerning the State party's statement that the criticism against the rival candidate was not supported by evidence, the author submits that the other candidate could protect his rights himself, including in court; however, the other candidate had not brought any claims against the author. The author submits that he supported his allegations by sending to the mass media in question a copy of a police decision concerning the other candidate. The author maintains that the main reason that his programme and address were not published was his criticism of the current regime.

5.2 The author submits that the data on prosecutorial protests brought to courts in 2016 do not specify how many of them concerned civil and political rights under articles 14, 19, 25 and 26 of the Covenant.

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 In accordance with article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes first the author's claim that the refusal of the domestic courts to consider his claims on the basis of lack of jurisdiction denied him access to a court, in violation of article 14 (1) 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 notes that the claims related 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. Accordingly, this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol to the Covenant.

6.4 The Committee further notes the State party's objection to the effect that the author has failed to appeal under the supervisory review proceedings to the Office of the Prosecutor. In that connection, the Committee recalls its jurisprudence, according to which a petition for a supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, aimed at the review of court decisions that have gained force of *res judicata*, does not constitute a remedy to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹ In addition, the Committee finds this argument irrelevant in this particular case,

¹ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3;

taking into account that the courts had no jurisdiction over the author's complaints, as only district, territorial and central electoral commissions did.

6.5 The Committee notes, in this regard, the State party's observation to the effect that article 74 of the Electoral Code establishes an extrajudicial mechanism for the consideration of claims related to the violation of the right of parliamentary candidates to broadcast and publication. The State party notes that in fact the author has appealed under this mechanism twice to a district electoral commission and twice to the central electoral commission, about the refusal of the newspaper *Astravetskaya prauda* to publish his electoral programme, and the assessment of the electoral commissions revealed nothing unlawful about the refusal. The assessment by the electoral commissions remained unrefuted by the author, as he just complains of not having known the exact reasons why his information was not broadcast or published (para. 5.1). In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.6 The Committee finally notes the author's claim that the refusal of the mass media to publish and to broadcast his electoral information violated his rights under articles 19, 25 and 26 of the Covenant. The Committee notes, in this regard, that the allegations of the author are very general in nature. The Committee also notes that the author does not contest the State party's observation that the electoral commissions revealed nothing unlawful in the actions of the newspaper, and he does not present any claim of bias or denial of justice in the work of the electoral commissions. In the light of these observations, and in the absence of any further information or explanations on file, 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. 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.

Koreshkov v. Belarus (CCPR/C/121/D/2168/2012), para. 7.3; and *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 9.3.