



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1553/2007

<u>Submitted by:</u>	Mr. Viktor Korneenko (not represented by counsel)
<u>Alleged victim:</u>	Messrs Viktor Korneenko and Aleksandar Milinkevich
<u>State party:</u>	Belarus
<u>Date of communication:</u>	21 August 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 April 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	20 March 2009

*Made public by decision of the Human Rights Committee.

Subject matter: Confiscation of electoral campaign material shortly before elections day; right to disseminate information without unjustified restrictions; fair trial; right to be elected; discrimination on political grounds.

Substantive issue: Freedom of expression; fair trial; independent tribunal; discrimination; right to be elected and to take part in conduct of public affairs.

Procedural issues: Level of substantiation of claim.

Articles of the Covenant: 14, paragraph 1; 19; 25; 26

Article of the Optional Protocol: 2

On 20 March 2009, 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.1553/2007.

[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

Ninety-fifth session

concerning

Communication No. 1553/2007**

Submitted by: Mr. Viktor Korneenko (not represented by
counsel)

Alleged victim: Messrs Viktor Korneenko and Aleksandar
Milinkevich

State party: Belarus

Date of communication: 21 August 2006 (initial submission)

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

Meeting on 20 March 2009,

Having concluded its consideration of communication No. 1553/2007, submitted to the
Human Rights Committee on behalf of Messrs Viktor Korneenko and Aleksandar Milinkevich
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. Viktor Korneenko, a Belarusian national born in
1957, and Mr. Aleksandar Milinkevich, also a Belarusian, born in 1947¹. Mr. Korneenko claims
to be a victim of a violation, by Belarus, of his rights under article 19; article 14, paragraph 1;
and article 26 of the International Covenant on Civil and Political rights. Mr. Milinkevich claims

** 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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid,
Ms. Zonke Zanele Majodina, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada,
Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

¹ Mr. Korneenko provides an authorisation to act on Mr. Milinkevich's behalf.

a violation of his rights under article 19; article 25; and article 26, of the Covenant. The authors are not represented by counsel.

The facts as submitted by the authors

2.1 Mr. Korneenko was a member of the electoral headquarters of Mr. Milinkevich during the presidential campaign in the spring of 2006²; Mr. Milinkevich was a Presidential candidate. On 6 March 2006, two weeks before the elections, Mr. Milinkevich asked him to transport twenty eight thousand electoral leaflets by car from Minsk to Gomel. Thirteen thousand of the leaflets consisted of a one page photograph of Milinkevich with the inscription “Milinkevich – the new President”, while the remaining fifteen thousand leaflets consisted of a two page printout of the candidate’s electoral program. Mr. Korneenko states that he had hard copies of all the required documents for the production and transportation of the electoral materials in question. His car was stopped and searched by the traffic police and the booklets were seized. According to him, the police record relating to the search did not give any reason for the seizure, but only indicated that the car contained electoral material.

2.2 Mr. Korneenko complained to several institutions (exact dates not provided), such as the Central Electoral Commission, the Gomel Regional Electoral Commission, the General Prosecutor’s Office and the Gomel Prosecutor’s Office, requesting to have the leaflets returned. On 11 March 2006, the Central Electoral Commission informed him that it was not competent to comment on police acts and that it had transmitted his case to the General Prosecutor’s Office. On 14 March 2006, he received a similar reply by the Gomel Regional Electoral Commission. Also on 14 March 2006, he was informed by the Gomel Regional Prosecutor’s Office that his complaint was transmitted to the Zhlobinsk District Prosecutor’s Office. On 16 March 2006, the General Prosecutor’s Office informed him that it had transmitted his case to the Grodno Regional Prosecutor’s Office. On the same day, the Zhlobinsk District Prosecutor’s Office informed him that the seizure of the leaflets in question was permitted by law, and was necessary to verify the lawfulness of the printout and the number of copies produced, given that he had failed to present the originals of the documents required to confirm their conformity with the law. Mr. Korneenko claims that he had presented to the police photocopies of the documents in question. According to him, if the police had doubts about the lawfulness of the leaflets, it should only have confiscated a copy of each document for verification but not the entire amount. He adds that the leaflets seized represented one quarter of all of Mr. Milinkevich’s printed electoral material.

2.3 On 21 March 2006, in his absence, the Zhlobinsk District Court of the Gomel Region concluded that, by transporting leaflets containing information suggesting that Mr. Milinkevich was the new President, Mr. Korneenko had violated article 167-3 of the Administrative Offences Code³. According to the court, Mr. Korneenko’s guilt was established by the seized material,

² Mr. Korneenko acted as one of the official representatives of Mr. Milinkevich.

³ The judgment states that on 6 March 2006, Mr. Korneenko conducted his car and transported 28 000 printed leaflets which contained an information suggesting that Aleksandar Milinkevich is the new President, what violates the electoral legislation, i.e. he has committed an administrative offence, proscribed by article 167-3 of the Administrative Offences Code. Article 167-3 of the Administrative Offences Code relates to electoral legislation violations. It reads as

testimonies of several witnesses, the record of the examination of his car, the police report, and other evidence. Mr. Korneenko was fined to one hundred and fifty five thousand Belarusian roubles. The Court also ordered the leaflets' destruction.

2.4 On 28 April 2006, the Zhlobinsk District Court of the Gomel Region re-examined the case, confirmed the initial decision⁴, and found that the sanction imposed was proportionate to the offence committed. Subsequently, Mr. Korneenko requested the President of the Gomel Regional Court to have the Zhlobinsk District Court of the Gomel Region's decision reviewed under the supervisory procedure. On 29 May 2006, the President of the Gomel Regional Court rejected his request by affirming that the prior decision was lawful. Mr. Korneenko then applied, also under a supervisory procedure, to the Chairman of the Supreme Court. On 24 July 2006, the Supreme Court confirmed the lawfulness of the previous decision and rejected his request. Mr. Korneenko argues that the courts failed to provide any explanation on the legal basis for the seizure and destruction of the fifteen thousand leaflets, which did not contain the slogan "Milinkevich - the new President" but that only listed the candidate's electoral program.

2.5 Subsequently, Mr. Korneenko requested the Central Electoral Commission to explain what electoral campaign material should not include⁵. On 14 April 2006, the Commission replied that the Presidential electoral campaign material should not contain calls for war, for forced change of the constitutional order, for a breach of the State territorial integrity, for calls of nationalistic, racial, religious, or social hostility, and should not contain insults or slander in relation to public officials and Presidential candidates.

2.6 According to Mr. Korneenko, article 167-3 of the Administrative Offences Code must be read jointly with article 49, of the Electoral Code, which provides that if a candidate abuses of his rights during an electoral campaign, the Electoral Commission can revoke his registration as a candidate. In Mr. Korneenko's view, no other sanction is provided in the Electoral Code for such abuses, and the courts thus had no right to fine him. He claims that the seizure and the destruction of the official leaflets during an electoral campaign constituted an attempt by State officials, supporting the regime in place, to obstruct the Mr. Milinkevich's campaign.

The complaint

3.1 Mr. Korneenko claims that by fining him because of the content of Mr. Milinkevich's campaign leaflets, the State party has breached his and Mr. Milinkevich's rights under article 14, paragraph 1, of the Covenant. In his opinion, the courts did not act impartially also because he was fined for having carried leaflets whose content allegedly contradicted the electoral legislation, notwithstanding that only thirteen thousand copies out of twenty eight thousand leaflets contained the slogan in question.

follows: " Campaigning during the election day, ..., and also other violations of the electoral legislation ... for which no criminal liability is provided, lead to an imposition of a fine equivalent to up to 10 minimal (monthly) salaries...

⁴ According to Mr. Korneenko, his case was re-examined as he was not present at the trial, on 21 March 2006, and his name was misspelt in the initial decision. He affirms that his lawyer was representing him when the case was examined on 28 April 2006.

⁵ No exact date is provided.

3.2 In this context, Mr. Korneenko also claims that the State party has placed him and Mr. Milinkevich in an unequal position before the law, because of their political opinions, and failed to guarantee their right to equality before the law, in breach of article 26, of the Covenant.

3.3 He further claims a violation of his and Mr. Milinkevich's rights under article 19, paragraph 2, because of the arbitrary seizure of one quarter of Mr. Milinkevich's campaign material, in particular in violation of their right to impart information, and the State party has failed to justify the necessity of the restriction of their rights.

3.4 The author claims that Mr. Milinkevich is a victim of a violation of article 25, because the seizure and destruction of the leaflets by the State party's authorities, who he claims are under the control of the State Party's President, were aimed at impeding the electoral campaign of the opposition candidate and at denying him his right to be elected and to take part in the conduct of public affairs.

The State party's observations on admissibility and merits

4.1 By Note verbale of 7 June 2007, the State party made its observations on admissibility and merits. It confirms that Mr. Korneenko was registered by the Central Electoral Commission as an official representative of the Presidential candidate Mr. Milinkevich, in the context of the 2006 Presidential elections. On 10 March 2006, Mr. Korneenko appealed to the Central Electoral Commission against the acts of the Zhlobinsk District Department of Internal Affairs which had seized the campaign materials from his car. Another representative of Mr. Milinkevich, Mr. Labkovich, had also complained to the Commission in this regard. In their complaints, Mr. Korneenko and Mr. Labkovich had asked the Electoral Commission to require the Zhlobinsk District Department of Internal Affairs to return the leaflets and to inform the General Prosecutor's Office of the necessity to initiate criminal proceedings against the policeman involved.

4.2 According to the State party, both Messrs Korneenko and Labkovich were informed by the Central Electoral Commission that it was not empowered to assess the lawfulness of the acts of the police. Pursuant to law, their claims were transmitted to the General Prosecutor's Office.

4.3 On 28 April 2006, the Zhlobinsk District Court of the Gomel Region fined Mr. Korneenko under article 167-3 of the Code of Administrative Offences, for having breached the electoral legislation. He was found guilty of having transported, for the purpose of their dissemination, twenty eight thousand leaflets which did not comply with the requirements of article 45 of the Electoral Code. He appealed against this decision, and in July 2006, the Supreme Court of Belarus reviewed the case and confirmed the judgment.

4.4 According to the State party, the first instance court decision to have the seized leaflets destroyed as constituting the object of the offence was grounded⁶. There was no information that would indicate any violation of Mr. Korneenko's rights, and there was nothing to indicate that he had been discriminated against or that he was found guilty on political grounds. In substantiation, the State party explains that pursuant to article 45, part 8, of the Electoral Code,

⁶ It appears that the court sanctioned Mr. Korneenko by a fine; the seizure was the consequence of the fact that the leaflets constituted the object of the administrative offence committed.

each Presidential candidate received a payment of 66 700 000 BLR from the State Budget for the preparation of electoral campaign materials. The Central Electoral Commission had thus transferred this sum to the individual in charge of the production of Mr. Milinkevich materials.

4.5 The Belarusian Constitution guarantees the independence of the judges when administering justice, their irrevocability and immunity, and prohibits any interference in the administration of justice. The law of 13 January 1995, “On the courts and the status of judges”, as well as the “Judicial System and Status of Judges Code” of 2006, both provide legal guarantees for the administration of independent justice. Pursuant to article 110 of the Constitution, judges are independent and are only subject to the law; any interference in the administration of justice is impermissible and is liable to punishment.⁷

4.6 According to the State party, the presidential elections of 2006 complied with the criteria for the conduct of democratic elections. The elections took place within the determined deadlines, i.e. their periodicity was respected, and they were universal. The right to electoral equality was respected. The ballot was secret; the ballot papers were counted by members of the electoral commissions. All individuals who have presented the required number of supporting signatures were registered as candidates. All candidates received equal access to public mass media, and were permitted to have their campaign materials printed for free in the seven major national newspapers.

Authors’ comments on the State party’s submissions

5.1 On 20 November 2007, Mr. Korneenko presented its comments on the State party’s observations. He notes that the State party justifies the restriction of his right to freedom of expression by invoking the provisions of article 45 of the Electoral Code. According to him, the State party’s conclusion is groundless. Under article 33 of the Belarusian Constitution, everyone is guaranteed freedom of thought, belief, and expression. The limitation of these rights is only permissible in instances specified by law, in the interest of national security, public order, the protection of morals and health of the population, or the rights and liberties of others (article 23 of the Constitution). Similarly, the rights guaranteed by article 19 of the Covenant might only be limited if the restrictions in question are provided by law and are necessary for the respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals.

5.2 Mr. Korneenko contends that the State party has affirmed that the twenty eight thousand copies of Mr. Milinkevich’s electoral campaign did not comply with the requirements of article 45 of the Electoral Code. It did not, however, clarify what specific offence he had committed. He concludes that the State party has breached articles 23 and 33 of the Belarus Constitution, as well as article 19, paragraph 3, of the Covenant. Even if it is admitted that the campaign leaflets did not correspond to the legal requirements, the State party should have presented its arguments on why the seizure and the subsequent destruction of the materials in question were necessary for the restriction of the authors’ right to freedom of expression.

⁷ The State party further lists a number of specific guarantees on the independence of the judiciary contained in the Judicial System and Status of Judges Code.

5.3 Mr. Korneenko contests the State party's arguments that there is nothing to show that he was discriminated against on political grounds. He affirms that the destruction of one quarter of the electoral campaign materials, shortly before the Election Day, demonstrates that the authorities have discriminated him and Mr. Milinkevich, as it was not based on reasonable and objective criteria.

5.4 He contends that the impartiality of the courts presumes that judges do not prejudge a case or act in the interests of one of the parties. According to him, the Zhlobinsk District Court of the Gomel Region concluded that his guilt was confirmed by the sentence contained in the campaign leaflets, namely "Milinkevich – the new President". The court however did not provide any explanation as to the rest of the leaflets which did not contain the sentence in question. This, according to Mr. Korneenko, shows that the court addressed his case in a biased manner, as it permitted the destruction of fifteen thousand copies of campaign material that was prepared in accordance with the law, and thus acted in the interest of the representatives of the regime in place.

State party's further observations

6. On 2 May 2008, the State party added that on 5 April 2006, the Supreme Court of Belarus rejected Mr. Milinkevich's request to open a case in relation to the refusal of the Central Electoral Commission to declare the 2006 Presidential election invalid. Mr. Milinkevich appealed against the Supreme Court's decision, under the supervisory procedure⁸. On an unspecified date, his appeal was rejected by a Deputy Chairman of the Supreme Court. The State party notes that pursuant to article 6 of the law "On the Central Electoral Commission", the Commission's decisions might be appealed to the Supreme Court of Belarus when this is provided by law. Article 79, part 6, of the Electoral Code provides only an appeal, by a Presidential Candidate, against the decision of the Central Electoral Commission declaring the elections invalid. Therefore, according to the State party, the Supreme Court has lawfully rejected Mr. Milinkevich's request to open a case, given that the court was incompetent to act.

Issues and proceedings before the Committee

Consideration of the admissibility

7.1 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 communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

⁸ The supervisory proceedings permit to challenge the legality of court decisions that have entered into force, and may, in some circumstances, lead to the re-examination of a case (mainly on procedural issues).

7.3 The Committee notes, first, Mr. Korneneko's claim under article 14 of the Covenant, according to which the courts have acted in a biased manner in his case given that they ordered the destruction of the totality of the seized leaflets. In the absence of any other pertinent information in this respect, the Committee considers however that Mr. Korneenko has failed to sufficiently substantiate his claim for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee considers that the remaining part of the authors' claims, raising issues under article 19, and article 25 read together with article 26 of the Covenant have been sufficiently substantiated and declares them admissible.

Consideration on the merits

8.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the authors' claim that by seizing and destroying without justification, shortly before Election Day, one quarter of the campaign materials of Mr. Milinkevich, the State party has violated both Mr. Korneenko and Mr. Milinkevich's right of freedom of expression pursuant to article 19 of the Covenant. The Committee notes that in reply, the State party has referred to the decisions of its domestic courts which concluded that the seizure was made in accordance with law, and that Mr. Korneenko was fined because he transported, with the intention to disseminate, leaflets whose content was contrary to the requirements of its Electoral Code.

8.3 The Committee recalls, first, that the right to freedom of expression is not absolute and that its enjoyment may be subject to limitations⁹. Pursuant to article 19, paragraph 3, however, only such limitations are permissible as are provided for by law and that are necessary (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee reiterates in this context that the right to freedom of expression is of paramount importance in any democratic society, and that any restrictions on its exercise must meet strict tests of justification¹⁰. The State party has presented no explanation as to why the restriction of the Mr. Korneenko's and Mr. Milinkevich's right to disseminate information was justified under article 19, paragraph 3, of the Covenant, except its affirmation that the seizure and the destruction of the leaflets was lawful. In the circumstances and in the absence of any further information in this regard, the Committee concludes that both Mr. Korneenko and Mr. Milinkevich's rights under article 19, paragraph 2, of the Covenant, have been violated.

8.4 In addition, Mr. Korneenko has claimed that as a consequence of the destruction of the leaflets, Mr. Milinkevich's rights under article 25 have also been violated. The State party has

⁹ See , inter alia, Communication No. 574/1994, Kim vs. the Republic of Korea, Views of 3 November 1998; Leonid Svetik v. Belarus, Communication No. 927/2000, Views adopted on 8 July 2004, para 7.2; Vladimir Velichkin v. Belarus, Communication No. 1022/2001, Views adopted on 20 October 2005, paragraph 7.3.

¹⁰ Idem.

not refuted this allegation. The Committee recalls that in its General Comment on article 25, it has observed that in order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens is essential; it requires the full enjoyment and respect for the rights guaranteed inter alia by article 19 of the Covenant, including the freedom to publish political material, to campaign for election and to advertise political ideas¹¹. In the absence of any further pertinent information from the State party in this context, the Committee concludes that in the present case, the violation of Mr. Milinkevich's rights under article 19 has resulted also in a violation of his rights under article 25, read together with article 26, of the Covenant.

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 a violation of Mr. Korneenko's rights under article 19, paragraph 2, of the Covenant, and a violation of Mr. Milinkevich's rights under article 19, paragraph 2, and article 25 read together with article 26, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide both Mr. Korneenko and Milinkevich with an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author in Mr. Korneenko's case¹². The State party is also under an obligation 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 and enforceable remedy in case a violation has been established, 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 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.]

¹¹ See General Comment on article 25, paragraph 25, A/51/40, Vol. 1 (1996), CCPR/C/21/Rev.1/Add.7.

¹² For the remedy proposed see Vladimir Laptsevich v. Belarus, Communication No. 780/1997, Views adopted on 20 March 2000, paragraph 10.