



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October – 3 November 2006

VIEWS

Communication 1274/2004

<u>Submitted by:</u>	Viktor Korneenko et al. (not represented by counsel)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	6 November 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 March 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	31 October 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Dissolution of human rights association by a court order of the State party's authorities.

Substantive issues: Equality before the law; prohibited discrimination; right to freedom of association; permissible restrictions; right to have one's rights and obligations in suit at law determined by a competent, independent and impartial tribunal.

Procedural issues: Inadmissibility *ratione personae*; non-exhaustion of domestic remedies

Articles of the Covenant: articles 14, paragraph 1; 22, paragraphs 1 and 2; 26

Articles of the Optional Protocol: articles 1; 2

On 31 October 2006, 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. 1274/2004.

[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

Eighty-eighth session

concerning

Communication 1274/2004*

<u>Submitted by:</u>	Viktor Korneenko et al. (not represented by counsel)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	6 November 2003 (initial submission)

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

Meeting on 31 October 2006,

Having concluded its consideration of communication No. 1274/2004, submitted to the Human Rights Committee by Viktor Korneenko in his own name and on behalf of 105 other individuals 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 author of the communication, and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

1. The author of the communication is Viktor Korneenko, a Belarusian citizen born in 1957, residing in Gomel, Belarus. The communication is presented in his own name and on behalf of 105 other individuals of Belarusian and other nationalities, all residing in Belarus. The author claims to have received the prior consent of the 105 other co-authors to act on their behalf, and lists in relation to each co-author the full name, nationality, occupation, date and place of birth, and current address. He does not submit, however, letters authorising him to act on their behalf. The author alleges that he and the co-authors are victims of violations by Belarus¹ of article 14, paragraph 1; article 22, paragraphs 1 and 2; and article 26 of the International Covenant on Civil and Political Rights. He is not represented.

Factual background

2.1 The author is the Chairperson of the Gomel regional association “Civil Initiatives”, registered by the Department of Justice of Gomel Regional Executive Committee (the Department of Justice) on 30 December 1996 and re-registered on 29 September 1999. On 13 May 2002, the Department of Justice gave a written warning to the “Civil Initiatives” Governing Board about a violation of domestic law. “Civil Initiatives” was accused of improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities, contrary to paragraph 4, part 3, of Presidential Decree No.8 “On Certain Measures for Improvement of Procedure for Receipt and Use of Foreign Grants” of 12 March 2001 (Presidential Decree No.8). The latter prohibits the use of such grants for the preparation of gatherings, meetings, street processions, demonstrations, pickets, strikes, the production and dissemination of propaganda materials, as well as the organization of seminars and other forms of propaganda activities. According to the author, the evidence on which this warning was based² was obtained illegally by the Department of State Security Committee of Gomel Oblast (DSSC). On an unspecified date, the author appealed this reprimand to the Gomel Regional Court. On 2 August 2002, the Court refused to initiate proceedings, on the ground that the applicant did not have a right to file such a suit in a court of general jurisdiction. On an unspecified date, this ruling was appealed to the Supreme Court and, on 26 August 2002, the Supreme Court quashed the ruling and returned the case to the Gomel Regional Court, directing it to initiate proceedings. Proceedings were initiated on 3 September 2002, and the case was referred for hearing. On 16 September 2002, the Gomel Regional Court suspended proceedings, on the ground that the Supreme Court was at that time simultaneously considering an appeal submitted by the author in relation to an administrative case. On an unspecified date, the author appealed this ruling to the Supreme Court, which again quashed it on 10 October 2002, returning the case to the Gomel Court. On 4 November 2002, the Gomel Court considered the author’s case on its merits and upheld the Department of Justice’s warning of 13 May 2002. The latter decision was upheld by the Supreme Court on 23 December 2002. The author’s appeal of 4 November 2002 to the Chairman of the Supreme Court for a supervisory review was rejected on

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

² The Department of Justice’s warning is based on the written submission of 25 April 2002 by the Inspector of the Ministry of Customs and Duties of the Zheleznodorozhny District of Gomel, on the results of her audit of tax payments by “Civil Initiatives”.

12 February 2003. As a result, the warning of the Department of Justice stayed on “Civil Initiatives” record.

2.2 From 1 to 30 April 2003, the Department of Justice undertook an inspection of “Civil Initiatives” statutory activities and, on 30 April 2003, filed a suit in the Gomel Regional Court, requesting the dissolution of “Civil Initiatives”. Article 29, paragraph 2, of the Law “On Public Associations” stipulates that an association can be dissolved by court order if it again undertakes, within a year, activities for which it had already received a written warning. Article 57, paragraph 2, sub-paragraph 2, of the Civil Procedure Code also envisages a procedure for the dissolution of a legal entity. This time, “Civil Initiatives” was accused of (1) improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities; (2) production of an information bulletin in quantities exceeding the association’s internal demand; (3) opening a number of district branches without obligatory state registration, contrary to paragraph 4.1 of the association’s statutes; (4) forgery of documents and incompatibility of the letterhead with legal requirements; and (5) creation of a number of independent organizational structures as “resource centres” for civil society support. The author asserts that after the suit for the dissolution of “Civil Initiatives” was filed in court, the court proceedings on the matter were adjourned upon the request of the Minister of Justice, due to the visit to Gomel on 26 May 2003 of the Head of the OSCE Parliamentary Assembly’s Working Group.

2.3 At the hearing on 17 June 2003, the author explained that the Department of Justice’s inspection in April 2003 was undertaken without any “Civil Initiatives” representatives present, and only on the basis of written materials presented by the association. He further challenged the allegation that the association’s use of equipment, received through foreign grants, was contrary to Presidential Decree No.8, and advanced arguments in support of his claim. He questioned the authenticity of the copies of the information bulletin before the Court and requested an expert examination. The author referred to paragraph 4.2 of the association’s statutes, according to which the state registration of district branches is not required where they are not intended to have a distinct legal capacity. He denied that the association’s letterhead failed to comply with legal requirements, and stated that the resource centres mentioned in the Department of Justice’s suit were, in fact, the association’s activities, rather than independent organizational structures. On the same day, the Gomel Regional Court ordered the dissolution of “Civil Initiatives” on grounds 1, 4 and 5 argued by the Department of Justice (paragraph 2.2. above).

2.4 This decision was upheld by the Supreme Court on 14 August 2003, and, subsequently, it became executory. The author’s appeal to the Prosecutor’s Office for a supervisory review of the dissolution decision was rejected on 3 October 2003, despite the fact that the prosecutor who participated in the Supreme Court hearing of 14 August 2003 stated that the ‘guilt’ of “Civil Initiatives” had not been proven. The author’s appeal of 6 November 2003 to the Chairman of the Supreme Court for a supervisory review of that decision was rejected on 21 November 2003.

2.5 The author filed a counter-claim on 16 May 2003, requesting the Court to initiate proceedings to protect the “Civil Initiatives” business image in the light of ‘patently false information’, appearing in the Department of Justice’s suit to the Gomel Regional Court. On 21 May 2003, the Court refused to initiate proceedings, on the ground that the applicant did not have a right to file such a suit in a court of general jurisdiction. This decision was upheld by the

Supreme Court on 30 June 2003. Domestic law outlaws the operation of unregistered associations in Belarus.

The complaint

3.1 The author submits that the decision of the Gomel Regional Court to dissolve “Civil Initiatives” amounts to a violation of his and the co-authors’ right under article 22, paragraph 1, of the Covenant. He contends that contrary to article 22, paragraph 2, the restrictions placed on the exercise of this right by the State party do not meet the criteria of necessity to protect the interests of national security or public safety, order, health, or morals, or the rights and freedoms of others.

3.2 The author claims that he and the co-authors were denied the right to equality before the courts and to the determination of their rights and obligations in a suit at law (article 14, paragraph 1, of the Covenant).

3.3 The author alleges that the State party’s authorities violated his and the co-authors’ right to equal protection of the law against discrimination (article 26 of the Covenant), on the grounds of their political opinion.

State party’s observations on admissibility and merits

4. On 29 September 2004, the State party recalls the chronology of the case as set out in paragraphs 2.1 – 2.4 above. It specifies that the inspection of “Civil Initiatives” activities for the period of November 2001 to March 2003, conducted by the Ministry of Justice, revealed that the association continued to use equipment, received through foreign grants, for the production of propaganda materials and the conduct of other forms of propaganda activities. It asserted that the “Civil Initiatives” appeal published in its information bulletin of 16 February 2003 and addressed to other public associations, the mass media, the OSCE Office in Belarus and embassies, is perceived to call for the dissemination of propaganda against the government in power and spells out the association’s role in this field. The State party submits that there were additional grounds for the dissolution of “Civil Initiatives”, namely other violations of domestic law, such as deficiencies in the association’s documentation. The Prosecutor’s Office conducted a supervisory review of the decisions of the Gomel Regional Court of 17 June 2003³ and of the Supreme Court’s decision of 14 August 2003, respectively. It did not find grounds that would have justified further action.

Author’s comments on the State party’s observations

5.1 On 17 January 2005, the author denies that the Department of Justice itself discovered any evidence of improper use of equipment by “Civil Initiatives” on which it based the first written warning of 13 May 2002. He submits a copy of the written submission of 25 April 2002, which prompted the above warning, sent by the inspector of the Ministry of Customs and Duties of the Zheleznodorozhniy District of Gomel (MTD) to the Department of Justice. From this, it appears

³ The State party refers to the decision of the Gomel Regional Court of 17 September 2003, although it transpires from the information available on file that no decision on the present case was taken on this date.

that MTD's inspection of "Civil Initiatives" activities was prompted by the DSSC's letter of 3 August 2001. The MTD was informed of the improper use of equipment by "Civil Initiatives" in a letter from the DSSC dated 17 August 2001. Thus, neither the Department of Justice nor the MTD revealed any evidence of improper use of the equipment. Their conclusions about the matter were derived exclusively from the information received from the DSSC.

5.2 The author challenges the State party's assertion that "Civil Initiatives" used its equipment, received through foreign grants, to produce propaganda materials and to conduct other forms of propaganda activities and that its appeal of 16 February 2003 called for the dissemination of propaganda against the government in power and underlines the association's role in this field. He submits a copy of a Department of Justice note on the results of the inspection dated 30 April 2003, which mentions for the first time that the appeal published in the information bulletin of 16 February 2003 runs counter to the prohibition of paragraph 4 of Presidential Decree No.8 (paragraph 4.1 above). Neither the Department of Justice nor the courts could prove that the bulletin in question was produced with the use of equipment received through foreign grants. He further argues that the State party did not specify which exact part of the appeal was perceived by it as "a call for the dissemination of propaganda against the government", nor how this appeal would be a legitimate restriction on his right to a freedom of association, in the light of article 22 of the Covenant.

5.3 The author denies the State party's claim that there were deficiencies in the association's documentation, contrary to article 50 of the Civil Procedure Code. He reiterates that the State party failed to advance any arguments as to why the "Civil Initiatives" resource centres mentioned in the Department of Justice's suit were considered to be independent organizational structures. He refers to the copy of the information bulletin of 16 February 2003, as an example of the association's compliance with the requirements of article 50 of the Civil Procedure Code.

5.4 As to the argument that the dissolution decision adopted against the association was subject to a supervisory review by the Prosecutor's Office, the author contends that the Prosecutor's Office was biased. He refers to the letter of the Prosecutor's Office dated 29 November 2002 received in reply to the author's complaint on the inadmissibility in court of evidence that was obtained illegally by the DSSC.⁴ It transpires from this letter that it was impossible for the DSSC officers to seal up the equipment seized from "Civil Initiatives" because of its size. He points out that domestic law does not make any exception to the obligation to seal up a seized object based on its size. The author concludes that the State party failed to advance explanations as to which of the "Civil Initiatives" unlawful activities prompted its dissolution by court order.

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.

⁴ Reference is made to article 27 of the Belarus Constitution.

6.2 The Committee has ascertained, as required under article 5, paragraph 2, 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 did not contest that domestic remedies have been exhausted.

6.3 On the question of standing, the Committee notes that the author has submitted the communication in his own name and on behalf of 105 other named individuals. At the same time, he has not presented to the Committee any proof whatsoever of their consent, by either requesting each of the other 105 individuals to sign up to the initial complaint or by having them issue a letter of authorisation. The Committee considers that the author has no standing before the Committee required by article 1 of the Optional Protocol with regard to these 105 individuals but considers that the communication is nevertheless admissible so far as the author himself is concerned.

6.4 As to the alleged violation of articles 14, paragraph 1, and 26 of the Covenant, in that the author was denied the right to equality before the courts, to the determination of his rights by a competent, independent and impartial tribunal, and to equal protection of the law against discrimination, the Committee considers that these claims are insufficiently substantiated, for purposes of admissibility, and are thus inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers the author's remaining claim under article 22 to be sufficiently substantiated and accordingly declares it admissible.

Consideration of the merits

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

7.2 The key issue before the Committee is whether the dissolution of "Civil Initiatives" amounts to a restriction of the author's right to freedom of association, and whether such restriction was justified. The Committee notes that according to the author's information, which is uncontested, "Civil Initiatives" was registered by the Department of Justice on 30 December 1996, re-registered on 29 September 1999 and dissolved by order of the Gomel Regional Court on 17 June 2003. It notes that domestic law outlaws the operation of unregistered associations on the territory of Belarus. In this regard, the Committee observes that the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association, and dissolution of an association must satisfy the requirements of paragraph 2 of that provision. In the light of the serious consequences which arise for the author and his association in the present case, the Committee considers that the dissolution of "Civil Initiatives" amounts to a restriction of the author's right to freedom of association.

7.3 The Committee observes that, in accordance with article 22, paragraph 2, in order for the interference with the right to freedom of association to be justified, any restriction on this right must cumulatively meet the following conditions: (a) it must be provided 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. The reference to the notion of "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 ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.

7.4 In the present case, the court order dissolving "Civil Initiatives" is based on two types of perceived violations of the State party's domestic law: (1) improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities; and (2) deficiencies in the association's documentation. These two groups of legal requirements constitute *de facto* restrictions and must be assessed in the light of the consequences which arise for the author and "Civil Initiatives".

7.5 On the first point, the Committee notes that the author and the State party disagree on whether "Civil Initiatives" indeed used its equipment for the stated purposes. It considers that even if "Civil Initiatives" used such equipment, the State party has not advanced any argument as to why it would be *necessary*, for purposes of article 22, paragraph 2, to prohibit its use 'for the preparation of gatherings, meetings, street processions, demonstrations, pickets, strikes, production and the dissemination of propaganda materials, as well as the organization of seminars and other forms of propaganda activities'.

7.6 On the second point, the Committee notes that the parties disagree over the interpretation of domestic law and the State party's failure to advance arguments as to which of the three deficiencies in the association's documentation triggers the application of the restrictions spelled out in article 22, paragraph 2, of the Covenant. Even if "Civil Initiatives" documentation did not fully comply with the requirements of domestic law, the reaction of the State party's authorities in dissolving the association was disproportionate.

7.7 Taking into account the severe consequences of the dissolution of "Civil Initiatives" for the exercise of the author's right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of "Civil Initiatives" does not meet the requirements of article 22, paragraph 2 and is disproportionate. The author's rights under article 22, paragraph 1, have thus been violated.

8. 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 information before it discloses a violation by the State party of article 22, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including reestablishment of "Civil Initiatives" and compensation. It is also under an obligation to take steps to prevent similar violations occurring in the future.

10. 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 when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 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.]
