

Restrictions by Belarus on the holding of public meetings breached rights to peaceful assembly and political participation

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In March 2015, the Human Rights Committee was asked to consider whether Belarus had violated its obligations under the International Covenant on Civil and Political Rights in connection with restrictions placed on the holding of public meetings and the right to be elected to public office.

The communication was submitted by a Belarusian national under the Optional Protocol to the Covenant.



Sudalenko v. Belarus (1992/2010)

Summary

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Background

The author, Leonid Sudalenko, ran as a candidate for the opposition in the Gomel Region Council elections held on 14 January 2007.

The author requested that his representative be included as a member of the Elections Commission for the electoral district. The Elections Commission, however, refused. The author also alleged that the official tallies of voters were exaggerated.

On 28 December 2006, the author asked the two State-owned newspapers to publish his election-related articles and speeches. Both newspapers refused to do so.

During the election campaign the author requested permission to meet with potential voters in a specific location in his district. On 30 December 2006, the city authorities rejected his request and informed him that there was only one designated location for conducting public meetings, which was outside the city centre.

On 15 January 2007, the author and his representatives filed complaints with the Gomel Region Elections Commission, calling for the results of the 14 January 2007 election to be declared invalid.

On 17 January 2007, the Elections Commission informed the author that his complaints would be examined promptly. Despite that assurance, the Elections Commission published the results of the elections on 18 January.

On 22 January 2007, the Elections Commission rejected the author's complaints, stating that his grievances had no basis in the election laws of Belarus, and refused to invalidate the result of the elections.

On 25 January 2007, the author filed an appeal against the decision of the Elections Commission before the Gomel Regional Court, requesting that the elections in his district be declared invalid. He also argued that the city authorities had unreasonably restricted his right to meet with potential voters on 30 December 2006.

On 29 January 2007, the Gomel Regional court refused to hear the case and stated that it did not have jurisdiction over such complaints.

On 2 February 2007, the author appealed before the Supreme Court of Belarus, which rejected his complaint on 5 March 2007, upholding the decision of the Gomel Regional Court. The author also filed a request for

supervisory review with the Presidium of the Supreme Court, which was rejected on 26 March 2007.

On 17 April 2010, the author filed this communication with the Human Rights Committee under the Optional Protocol to the Covenant. The author claimed Belarus had violated his right to: (i) effective protection of his Covenant rights, (ii) a fair hearing, (iii) freedom of expression, (iv) peaceful assembly, and (v) participate in the conduct of public affairs, as well as violating voters' rights to the free expression of their will (in violation of articles 2, 14, 19, 21 and 25 of the Covenant respectively).

The Committee's decision

Regarding the admissibility of the author's complaint, the Committee declared that the parts of the author's complaint concerning article 2 were inadmissible as it had not been invoked in conjunction with another article of the Covenant. The Committee also declared that the parts of the claim concerning articles 14 and 19 were inadmissible for lack of substantiation. The Committee considered that the author had sufficiently substantiated his claims regarding articles 21 and 25 and declared this part of the author's complaint admissible.

On the merits, the Committee first recalled that article 21 states that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed: (i) in conformity with the law; (ii) proportionately; (iii) as a necessity in a democratic society, and (iv) in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights of others.

The Committee noted that whilst the Gomel City authorities had restricted the holding of public meetings to only one location outside of the city centre, the State had not explained why it had been necessary under domestic law and for any of the reasons set out in article 21. In addition, Belarus had not explained how the author's meeting at an open square in the centre of the city would have violated the rights and freedoms of others or posed a threat to public safety or public order.

Secondly, the Committee considered whether the author's rights under article 25 of the Covenant had been violated by Belarus' refusal to allow him to hold a public meeting with potential voters. The Committee considered the possibility of meeting with potential voters as integral to the rights guaranteed under article 25 of the Covenant, which included the right to be elected to public office. Although a State party may establish rules and regulations governing political campaigns, those rules and regulations must not disproportionately restrict the rights guaranteed under the Covenant. Belarus had not provided any justification for the restrictions in question.

The Committee also found Belarus to be in breach of article 1 of the Optional Protocol to the Covenant due to its lack of cooperation in the proceedings. In particular, the Committee referred to Belarus' failure to accept the Committee's competence and its declaration that it would not accept the Committee's findings.

In light of the above, the Committee concluded that Belarus was in violation of articles 21 and 25 (read in conjunction with article 21) of the Covenant, as well as article 1 of the Optional Protocol.

In accordance with article 2(3) of the Covenant, the Committee found that Belarus was under obligation to provide the author with an effective remedy, including financial compensation. The Committee also requested Belarus to review the application of its domestic legislation to ensure full compliance with article 21 of the Covenant.

Belarus must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the decision is published widely.

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