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HUMAN RIGHTS COMMITTEE
Sixty-eighth session
13 - 31 March 2000

VIEWS

Communication Nº 780/1997

Submitted by:	Vladimir Petrovich Laptsevich
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 August 1997 (initial submission)
Documentation references:	- Special Rapporteur's rule 91 decision, transmitted to the State party on 25 November 1997 (not issued in document form)
Date of adoption of Views	20 March 2000

On 20 March 2000, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 780/1997. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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
- Sixty-eighth session -

concerning

Communication Nº 780/1997

Submitted by:	Vladimir Petrovich Laptsevich
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 August 1997 (initial submission)

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

Meeting on 20 March 2000

Having concluded its consideration of communication No. 780/1997 submitted to the Human Rights Committee by Mr. Vladimir P. Laptsevich, 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:

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*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, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1. The author of the communication is Vladimir Petrovich Laptsevich, a Belorussian citizen, residing in Mogilev, Belarus. He claims to be a victim of a violation by the Republic of Belarus of article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

The facts as submitted by the author

2. On 23 March 1997, in the centre of the city of Mogilev in Belarus, the author distributed leaflets devoted to the anniversary of the proclamation of independence of the People's Republic of Belarus. While distributing the leaflets, the author was approached by officers of the Mogilev Central District Internal Affairs Department who confiscated the 37 copies of the leaflet still in the author's possession and subsequently charged the author under article 172(3) of the Code of Administrative Offences for disseminating leaflets not bearing the required publication data. In accordance with the charge, the author was fined 390 000 roubles by the Administrative Commission. The author appealed the decision to the Central District Court, which on 13 June 1997 rejected his appeal. Further appeals to the Regional Court and the Supreme Court were dismissed respectively on 18 June 1997 and 22 July 1997. With this, it is submitted, all available domestic remedies have been exhausted.

Relevant domestic legislation

3.1 The author was sanctioned for not complying with the requirements set out in article 26 of the Act on the Press and Other Mass Media ("the Press Act"). This provision requires that

> "Every edition of a printed periodical publication shall contain the following details:
> 1) Name of publication; 2) Founder (co-founders); 3) Full name of the editor (editor-in-chief) or his deputy; 4) serial number of the edition and date of issue, and also, for newspapers, date when sent to press; price per issue (copy) or the indication "price not stipulated" or "free" ; 6) print run; 7) index number (for editions distributed by mail delivery services); 8) publisher's and printer's full addresses; 9) registration number."

3.2 Article 1 of the same Act sets out the scope of the requirements as it, inter alia, states that

> ""Printed periodical publications" means newspapers, journals, brochures, almanacs, bulletins and other publications with unvarying titles and serial numbers, appearing not less than once per year. ...
>
> The regulations established by this Act for printed periodical publications shall apply to the periodical distribution in print runs of 300 copies and over of texts drafted with the help of computers and the information collected in their data bank and bases, and to other mass information media whose output is distributed in the form of printed communications, posters, handbills and other material."

3.3 Under article 172(3) of the Administrative Offences Code, it is an administrative offence to disseminate printed material which either is not

produced in accordance with the established procedure, not indicates required publication data or contains matter detrimental to the State, public order or the rights and lawful interests of private individuals. Under the Code, such offences are sanctioned with fines and/or confiscation.

The complaint

4. The author claims to be a victim of a violation of his freedom of expression and opinion, as protected in article 19, paragraph 2. The author contends that the sanctions against him were unlawful as article 172(3) of the Administrative Offences Code is not applicable to his case. In this regard, he submits that the leaflet contained information on the print run and the name of the organisation which issued the leaflet. He states that the print run of 200 was indicated on the leaflet precisely in order to make it clear that the Press Act did not apply to his publication. Moreover, it is submitted that the leaflets are neither periodicals nor publications intended for sale and that they could not be given any kind of serial number, index or registration number. Reference is also made to articles 33 and 34 of the Constitution of the Republic of Belarus which guarantee the right to freedom of expression and opinion and the right to disseminate information.

The State party's submission and the author's comments thereon

5.1 In its submission of 16 July 1998, the State party offers its comments on the merits of the communication. By way of introduction, the State party notes that it is not disputed by the author that on 23 March 1997 he distributed printed leaflets not containing all the publication data required under the Press Act. By doing so, he committed an offence under article 172(3) of the Administrative Offences Code. The State party points out that the exceptions from the publication data requirements for print runs less than 300 do not apply to leaflets.

5.2 The State party also submits that "the leaflets distributed by the author include a misrepresentation of the historical formation of the State of Belarus, a description of alleged occupation by the Bolsheviks and of the armed struggle of the Belorussians against the "occupiers", together with a call to emulate "this struggle" for the independence of Belarus in the present day."

5.3 In conclusion, the State party asserts that the Belorussian legislation at issue and the enforcement of it is in full conformity with the State party's obligation under article 19 of the Covenant.

6.1 In his comments of 15 October 1998, the author contests that the leaflets "include a misrepresentation of the historical formation of the State of Belarus". He states that he has completed the highest historical education available in Belarus, and that all dates and facts mentioned in the leaflet were historically correct. The author accepts that he denoted the Bolsheviks "occupiers", but points out that the Republic of Belarus is a "non-ideologized" state and submits that any sanction based on this expression must run counter to article 19 of the Covenant.

6.2 The author disputes that the leaflet contained anything which can be interpreted as a call to emulate the struggle against the Bolsheviks to secure independence of Belarus in the present day. The author alleges that the

sanctions against him were preconceived and amounted to persecution based on political motives as he is the chairman of the Mogilev branch of an opposition party, namely the Belorussian Social Democratic Party, *Narodnaya Gramada*.

Issues and proceedings before the Committee.

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes that the author claims to have exhausted all domestic remedies and that the State party has not challenged this. The Committee is therefore not aware of any obstacle to the admissibility of the communication, and accordingly proceeds with the examination of the merits in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

8.1 The first issue before the Committee is whether or not the application of article 26 of the Press Act to the author's case, resulting in the confiscation of the leaflets and the subsequent fine, constituted a restriction within the meaning of article 19, paragraph 3, on the author's freedom of expression. The Committee notes that under the Act, publishers of periodicals as defined in article 1 are required to include certain publication data, including index and registration numbers which, according to the author, can only be obtained from the administrative authorities. In the view of the Committee, by imposing these requirements on a leaflet with a print run as low as 200, the State party has established such obstacles as to restrict the author's freedom to *impart* information, protected by article 19, paragraph 2.

8.2 The Committee observes that article 19 allows restrictions only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (ordre public), or of public health or morals. The right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification[1].

8.3 The Committee notes that the author has argued that article 172(3) of the Administrative Offences Code does not apply to him and that the sanctions thus were unlawful and constituted a violation of article 19 of the Covenant. The Committee is, however, not in a position to reevaluate the findings of the Belorussian courts with regard to the applicability of the said provision, which appears to leave room for interpretation (see paragraph 3.2 supra). Nonetheless, even if the sanctions imposed on the author were permitted under domestic law, the State party must show that they were necessary for one of the legitimate aims set out in article 19, paragraph 3.

8.4 In the very brief submission of the State party set out in paragraph 5.2 supra, it is implied that the sanctions were necessary to protect national security, as reference is made to the contents of the author's writings. There

[1]See, inter alia, Communication No. 574/1994, Kim vs. the Republic of Korea, Views dated 3 November 1998 and Communication No. 628/1995, Park vs. the Republic of Korea, Views dated 20 October 1998.

is, however, nothing in the material before the Committee which suggests that either the reactions of the police or the findings of the courts were based on anything other than the absence of necessary publication data. Therefore, the only issue before the Committee is whether or not the sanctions imposed on the author for not including the details required by the Press Act can be deemed necessary for the protection of public order (*ordre public*) or for respect of the rights or reputations of others.

8.5 In this regard, the Committee notes that the State party has argued that the requirements set out in article 26 of the Press Act are generally in full compliance with the Covenant. It has not, however, made any attempt to address the author's specific case and explain the reasons for the requirement that, prior to publishing and disseminating a leaflet with a print run of 200, he was to register his publication with the administrative authorities to obtain index and registration numbers. Furthermore, the State party has failed to explain why this requirement was necessary for one of the legitimate purposes set out in article 19, paragraph 3, and why the breach of the requirements necessitated not only pecuniary sanctions, but also the confiscation of the leaflets still in the author's possession. In the absence of any explanation justifying the registration requirements and the measures taken, it is the view of the Committee that these cannot be deemed necessary for the protection of public order (*ordre public*) or for respect of the rights or reputations of others. The Committee therefore finds that article 19, paragraph 2, has been violated in the present case.

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 article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

10. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Laptsevich 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. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a State 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 and 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 ninety 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.]