

# Annotation Summary

4 annotations on 2 pages by Avery Davis-Roberts



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to freedom of expression is justified under article 19, paragraph 3, of the Covenant, i.e. provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. The Committee recalls in this respect its general comment No. 34 (2011) on freedoms of opinion and expression on article 19 of the Covenant,<sup>6</sup> in which it stated, inter alia, that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society and that they constitute the foundation stone for every free and democratic society.<sup>7</sup> Any restrictions to their exercise must conform to the strict tests of necessity and proportionality and “must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated”.<sup>8</sup>

9.4 The Committee notes that the authors have argued that neither article 9.10 of the Administrative Offences Code nor articles 130–137 of the Electoral Code apply to them, since the State party’s courts have interpreted the collective appeal containing the

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of the right to freedom of expression be “provided by law”, the Committee further recalls that laws restricting the rights enumerated in article 19, paragraph 2, must themselves be compatible with the provisions, aims and objectives of the Covenant<sup>12</sup> and that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression,<sup>13</sup> as well as to provide details of the law and of actions that fall within the scope of the law.<sup>14</sup> The Committee regrets the lack of detail in the response of the State party on the scope of the law. While the Committee recognizes the need for a pre-established procedure for the actual recall of a parliamentary deputy, there is no compelling reason to limit the public dialogue on removal from office, including the right of citizens to voice their support for such a procedure, before the actual initiation thereof. The Committee notes

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Code, the State party has not advanced any argument as to why the administrative sanction imposed on them was necessary for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant, and what dangers would have been created by the authors’ gathering opinions of their fellow citizens and expressing their own opinions in relation to the abolition of social benefits by the parliament, as well as the deputies who had voted for the said changes in law. The Committee recalls in this connection that, under article 19, paragraph 3, of the Covenant, the burden of proof rests on the State.<sup>15</sup> The Committee concludes that in the absence of any pertinent explanations from the State party, the restriction on the exercise of the authors’ right to freedom of expression cannot be deemed as provided by law and necessary for the protection of national security or of public order

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**Human Rights Committee**

**Communications Nos. 1835/2008 and 1837/2008**

**Views adopted by the Committee at its 107th session  
(11–28 March 2013)**

<i>Submitted by:</i>	Anton Yasinovich (1835/2008) and Valery Shevchenko (1837/2008) (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Belarus
<i>Date of communications:</i>	7 May 2008 (Yasinovich) and 1 June 2008 (Shevchenko) (initial submissions)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 9 December 2008 (Yasinovich) and 10 December 2008 (Shevchenko) (not issued in document form)
<i>Date of adoption of Views:</i>	20 March 2013
<i>Subject matter:</i>	Imposition of a fine for the alleged violation of the procedure for recall of a deputy of the House of Representatives
<i>Substantive issues:</i>	Right to freedom of expression, including freedom to seek, receive and impart information and ideas; permissible restrictions; discrimination on the ground of political opinion
<i>Procedural issue:</i>	Level of substantiation of a claim; exhaustion of domestic remedies
<i>Article of the Covenant:</i>	19
<i>Articles of the Optional Protocol:</i>	2; 5, para. 2 (b)

## 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 (107th session)**

concerning

#### **Communications Nos. 1835/2008 and 1837/2008\***

*Submitted by:* Anton Yasinovich (1835/2008) and Valery Shevchenko (1837/2008) (not represented by counsel)

*Alleged victims:* The authors

*State party:* Belarus

*Date of communications:* 7 May 2008 (Yasinovich) and 1 June 2008 (Shevchenko) (initial submissions)

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

*Meeting on 20 March 2013,*

*Having concluded* its consideration of communications Nos. 1835/2008 and 1837/2008, submitted to the Human Rights Committee by Anton Yasinovich and Valery Shevchenko 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 communications and the State party,

*Adopts the following:*

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

1.1 The authors of the communications are Anton Yasinovich, born in 1964, and Valery Shevchenko, born in 1943. Both are the nationals of Belarus and currently reside in Novopolotsk, Belarus. They claim to be victims of a violation by Belarus of their rights under article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The authors are not represented.

1.2 On 19 February 2009, the State party requested the Committee to examine the admissibility of the two communications separately from their merits, in accordance with rule 97, paragraph 3, of the Committee's rules of procedure. On 16 November 2009, the

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Special Rapporteur for new communications and interim measures decided, on behalf of the Committee, to examine the admissibility of the communications together with their merits.

1.3 On 20 March 2013, pursuant to rule 94, paragraph 2, of the Committee's rules of procedure, the Committee decided to join consideration of the two communications as they are based on the same facts and the authors advance similar claims.

#### **The facts as presented by the authors**

2.1 From 27 June to 27 July 2007, the authors, together with a group of residents of Novopolotsk city, were carrying out street actions (pickets) in protest of the abolition of social benefits to persons in need. They had been given prior approval for the pickets by the Novopolotsk City Executive Committee. In the course of the pickets, they were collecting signatures to an appeal, which, *inter alia*, contained the following text: "We are protesting against the abolition of the benefits and we are supporting the recall of those deputies elected to represent Novopolotsk, who had voted for this anti-popular law". The authors state that the collection of signatures under this text was done on the understanding that deputies are public political figures, whose actions and omissions to act could and should be freely subjected to reprimand or criticism by their voters. All collected signatures were transmitted to the Presidential Administration for follow-up action, and the results of the signature collection were shared with the journalists.

#### *Case of Anton Yasinovich*

2.2 At around 8 p.m. on 21 September 2007, Mr. Yasinovich was detained by police officers at the entrance to his workplace and taken to the Novopolotsk City Executive Committee. A staff member of the Novopolotsk City Executive Committee drew up an incident report, stating that Mr. Yasinovich had committed an administrative offence under article 9.10 of the Administrative Offences Code (violation of the legislation on elections, referendum, recall of a deputy and exercise of the citizens' right of legislative leadership). He was accused, in particular, of having violated articles 130–137 of the Electoral Code, establishing the procedure for recall of a deputy of the House of Representatives and a deputy of a local Council of Deputies.

2.3 Mr. Yasinovich notes that, despite his numerous motions, he was denied the right to have a lawyer from the very beginning of administrative proceedings, contrary to the requirements of article 4.1, paragraph 5, of the Procedural Executive Code on Administrative Offences. Furthermore, he states that there were no legal grounds for taking him to the Novopolotsk City Executive Committee, because as a rule that measure is applied only after one is summoned to appear in court or to come to the police and fails to do so. On the contrary, he was not served any summons.

2.4 On 25 September 2007, the Novopolotsk City Court found Mr. Yasinovich guilty of having committed an administrative offence under article 9.10 of the Administrative Offences Code and a fine of 775,000 Belarusian roubles was imposed.<sup>1</sup> The court based its decision on the following grounds:

(a) As transpired from the application of 12 June 2007 for permission to organize pickets in order to draw public attention to the social problems, Mr. Yasinovich was one of the organizers of the pickets in question;

<sup>1</sup> According to online exchange converters, on 25 September 2007 (date of the fine), this amount was equivalent to US\$360.60 or €255.50. On 20 March 2013, due to an unprecedented devaluation of the Belarusian rouble, the amount is worth US\$90.10 or €69.60.

(b) On 21 June 2007, the Novopolotsk City Executive Committee approved the conduct of daily pickets from 27 June to 27 July 2007 between 5 p.m. and 6 p.m. only. However, in the course of pickets, Mr. Yasinovich was also engaged in collecting signatures urging the recall of those deputies who had voted for abolition of social benefits, which were subsequently transmitted to the Presidential Administration;

(c) By his actions, Mr. Yasinovich violated articles 130–137 of the Electoral Code, according to which the procedure for recall of a deputy of the House of Representatives may be initiated at the meeting of voters of the electoral constituency from which this deputy was elected and has to comply with a number of requirements established by law. In particular, the deputy in question has the right to be present at the meeting of voters and to take the floor; an initiative group established in order to collect signatures should be properly registered; subscription lists should include information about the deputy's name, date of birth, position, place of work, place of residence and year of election; as well as voters' personal data and passport details. These requirements had not been complied with by the organizers of pickets, including Mr. Yasinovich.

2.5 On 1 October 2007, Mr. Yasinovich filed a cassation appeal against the decision of the Novopolotsk City Court to the Vitebsk Regional Court, which was rejected on 10 October 2007. In the appeal Mr. Yasinovich argued, *inter alia*, that:

(a) The incident report was drawn up outside of the working hours on the premises of the Novopolotsk City Executive Committee, where he was escorted by police officers after being detained at the entrance to his workplace. Mr. Yasinovich was denied the right to be represented by a lawyer at the time when the said incident report was drawn up (see paras. 2.2 and 2.3 above);

(b) Article 135 of the Electoral Code allows an unregistered initiative group to collect signatures with the reservation that they do not bring about any legal consequences;

(c) He exercised the right of a collective appeal provided for in article 40 of the Belarus Constitution,<sup>2</sup> by sending the collective appeal of citizens to a State body. His actions, however, were wrongly interpreted by the Novopolotsk City Court as an essential element of a violation of articles 130–137 of the Electoral Code;

(d) Under article 7.6, part 1, paragraph 1, of the Administrative Offences Code, the statute of limitations for holding Mr. Yasinovich liable for allegedly unlawful collection of signatures, supporting the recall of those deputies who had voted for the abolition of social benefits, took effect on 27 September 2007. Therefore, the administrative proceedings in relation to the actions in question should be terminated since, on that date, the decision of the Novopolotsk City Court of 25 September 2007 had not yet come into force.

2.6 On 11 February 2008, the Deputy Chairperson of the Supreme Court dismissed the appeal submitted by Mr. Yasinovich to the Chairperson of the Supreme Court on 12 December 2007 under the supervisory review procedure against the decision of the Novopolotsk City Court of 25 September 2007 and the ruling of the Vitebsk Regional Court of 10 October 2007. The Deputy Chairperson of the Supreme Court rejected the argument of Mr. Yasinovich that his actions did not constitute an administrative offence, and concluded that the lower courts had correctly qualified his actions under article 9.10 of the Administrative Offences Code.

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<sup>2</sup> Article 40 of the Belarus Constitution reads as follows (unofficial translation): "Everyone shall have the right to address personal or collective appeals to State bodies. State bodies as well as the officials thereof shall consider any appeal and furnish a reply thereto within the period determined by law. Any refusal to consider an appeal that has been submitted shall be justified in writing."

*Case of Valery Shevchenko*

2.7 On 24 September 2007, a staff member of the Novopolotsk City Executive Committee drew up an incident report in Mr. Shevchenko's presence, stating that the latter had committed an administrative offence under article 9.10 of the Administrative Offences Code (violation of the legislation on elections, referendum, recall of a deputy and exercise of the citizens' right of legislative leadership). He was accused, in particular, of having violated articles 130–137 of the Electoral Code, establishing the procedure for recall of a deputy of the House of Representatives and a deputy of a local Council of Deputies.

2.8 On 25 September 2007, the Novopolotsk City Court found Shevchenko guilty of having committed an administrative offence under article 9.10 of the Administrative Offences Code and a fine of 1,085,000 Belarusian roubles was imposed.<sup>3</sup> In addition to the grounds summarized in paragraph 2.4 above, the court based its decision on the following:

(a) Mr. Shevchenko acknowledged in court that he had transmitted to the Presidential Administration the subscription lists entitled, "We are against the abolition of social benefits" with a cover letter containing the following text: "We are supporting the recall of those deputies elected to represent Novopolotsk, who had voted for this anti-popular law";

(b) The court rejected the argument of Mr. Shevchenko that the pickets and collection of signatures were carried out with the aim of protesting against the abolition of the social benefits and to study public opinion on the recall of those deputies of the House of Representatives who had voted for this law, rather than to recall the said deputies. It established that Mr. Shevchenko "took concrete actions [aimed at recall of a deputy]", by having collected signatures under the text "we support the recall of deputies". Furthermore, his letter addressed to the Presidential Administration also contained the text "we support the recall of deputies".

2.9 On 4 October 2007 and 17 October 2007 (supplementary submission), Mr. Shevchenko filed a cassation appeal against the decision of the Novopolotsk City Court to the Vitebsk Regional Court, which was rejected on 17 October 2007. In the appeal, Mr. Shevchenko has argued, *inter alia*, that:

(a) The Novopolotsk City Court had wrongly interpreted the appeal containing the following text: "We are protesting against the abolition of the benefits and we are supporting the recall of those deputies elected to represent Novopolotsk, who had voted for this anti-popular law", as a subscription list aimed at the recall of a deputy. With reference to article 1 of the Law on Appeals from Citizens in the Republic of Belarus, he argues that the said text together with the citizens' signatures is to be understood as the collective appeal of citizens to a State body. The Presidential Administration, as the State body to which the collective appeal was addressed, was supposed to furnish a detailed reply to all of the demands put forward in the appeal, including an explanation that the recall of a deputy did not fall within the competence of the Presidential Administration. Even if the same collective appeal had been subsequently submitted to the Central Electoral Commission with the request to initiate the recall of a deputy, it would have been rejected for failure to comply with the procedure for recall of a deputy. Mr. Shevchenko has not violated the said procedure, since the organizers who initiated the collection of signatures have acted in strict compliance with the Law on Appeals from Citizens in the Republic of Belarus. Furthermore, only the Central Electoral Commission could be guided by the Electoral Code

<sup>3</sup> According to online exchange converters, on 25 September 2007 (date of the fine), this amount was equivalent to US\$504.90 or €357.70. On 20 March 2013, due to an unprecedented devaluation of the Belarusian rouble, the amount is worth US\$126.20 or €97.50.

and could have explained the rights and obligations of citizens in relation to the procedure for recall of a deputy;

(b) Articles 191 and 192 of the Criminal Code establish criminal responsibility for a serious violation of the legislation on elections, whereas article 9.10 of the Administrative Offences Code establishes administrative liability for actions, which interfere with the normal functioning of electoral commissions and normal development of the election process. Therefore, erroneous actions of citizens in relation to the initiation of the election process (for example, incorrect execution of documents, filing of appeals to wrong state bodies, etc.) should only result in the refusal to consider their incorrectly formulated appeals and/or demands;

(c) Article 33 of the Belarus Constitution guarantees freedom of thought and beliefs and their free expression and article 19 of the Covenant, to which Belarus is a State party, also provides for the right to freedom of expression, including freedom to seek, receive and impart information;

(d) What he transmitted to the Presidential Administration was not the subscription lists aimed at the recall of a deputy but the collective appeal in which citizens expressed their opinion in relation to the abolition of social benefits by the parliament and the need to question the attitude towards deputies who had voted for this anti-popular law.

2.10 On 11 January 2008, the Deputy Chairperson of the Supreme Court dismissed the appeal submitted by Mr. Shevchenko to the Chairperson of the Supreme Court on 19 November 2007 under the supervisory review procedure against the decision of the Novopolotsk City Court of 25 September 2007 and the ruling of the Vitebsk Regional Court of 17 October 2007. The Deputy Chairperson of the Supreme Court rejected the argument of Shevchenko that his actions did not constitute an administrative offence and concluded that the lower courts had correctly qualified his actions under article 9.10 of the Administrative Offences Code.

### **The complaint**

3.1 The authors contend that they have exhausted all available and effective domestic remedies.

3.2 The authors claim a violation of their rights under article 19, paragraph 2, of the Covenant, because by imposing an administrative fine, the State party's authorities have effectively deprived them of the right to freedom of expression, including freedom to seek, receive and impart information. They argue that the pickets and collection of signatures were carried out with the aim of protesting against the abolition of the social benefits and studying public opinion on the recall of those deputies of the House of Representatives who had voted for that law, rather than to recall the said deputies. The lists of signatures did not contain any information that would limit or infringe the rights of these deputies and/or assess their professionalism. Moreover, none of the deputies had initiated a civil action against any of the picket's organizers, including Messrs. Yasinovich and Shevchenko, to restore their good name, honour and reputation.

3.3 The authors add that their and the other co-organizers' actions did not threaten the interests of national security or of public order, or of public health or morals. Collected information did not belong to the category of classified information and did not involve State secrets.

3.4 Mr. Yasinovich additionally submits that the State party's courts have examined his case only within the framework of the Administrative Offences Code, without taking into account his right to freedom of expression, including freedom to seek, receive and impart information provided for in article 19 of the Covenant. He challenges the allegation of a violation of articles 130–137 of the Electoral Code, for the following reasons:

(a) The State party's authorities have failed to establish what was his *actus reus* and what were the negative consequences of his allegedly illegal actions. Mr. Yasinovich submits that the collection of signatures was carried out in the course of pickets for which prior formal approval had been obtained. Furthermore, the transmittal of information on the negative public opinion about the law that had abolished social benefits to the Presidential Administration did not cause any negative consequences for Belarus;

(b) He refers to article 34 of the Belarus Constitution, which guarantees the right to receive, store, and disseminate complete, reliable and timely information on the activities of State bodies and public associations, on political, economic and international life, and on the state of the environment. The fact that the State party's authorities authorized the pickets implies that the aims of the pickets also received the authorities' approval. Furthermore, at the time when the pickets took place, the law enforcement authorities did not proffer any reproof about the conduct of the pickets, as they were taking place in an authorized place, at an authorized time and without any disturbance of the public order.

#### **State party's observations on admissibility**

4.1 On 19 February 2009, the State party recalls the chronology of the communications submitted by Mr. Yasinovich (see paras. 2.4–2.6 above) and Mr. Shevchenko (see paras. 2.8–2.10 above) and challenges their admissibility, arguing that the authors have failed to exhaust domestic remedies. It submits that, under domestic administrative law, they had the possibility to appeal the decision of the Novopolotsk City Court to the Chairperson of the Supreme Court, as well as to file a motion to the Prosecutor General, requesting him to lodge an objection with the Chairperson of the Supreme Court. The decision of the Chairperson of the Supreme Court is final and not subject to further appeal.

4.2 The State party further submits that, pursuant to article 12.11, parts 3 and 4, of the Procedural Executive Code on Administrative Offences, an objection to a decision on an administrative offence that has entered into force may be lodged within six months from the date of its entry into force. An objection filed after the time limit cannot be considered. Since the authors did not submit any complaints to the Prosecutor's Office, they have not exhausted all available domestic remedies. Furthermore, there are no reasons to believe that the application of those remedies would have been unavailable or ineffective.

#### **Authors' comments on the State party's observations**

##### *Case of Anton Yasinovich*

5.1 In his comments of 18 September 2009, Mr. Yasinovich argues that the State party has effectively acknowledged in its observations that the events described in his communication took place and that he was fined for his participation in the pickets and collection of signatures. The latter leads him to infer that the State party has also conceded that he was subjected to administrative liability for his endeavours to disseminate critical information about the activities of State authorities and for public expression of his opinion.

5.2 Mr. Yasinovich recalls that he had already availed himself of the right to file a cassation appeal before the Vitebsk Regional Court and an application for supervisory review to the Chairperson of the Supreme Court. Although he invested substantial time and financial resources into the litigation before the State party's courts, his efforts have not yielded any results and none of his arguments have been duly examined. He submits, therefore, that the supervisory review procedure that requires lodging of objection by the chairpersons of the courts and by the prosecutorial review bodies is ineffective, time-consuming and expensive due to the requirement to pay court fees.

5.3 Mr. Yasinovich adds that he is a member of a registered political party, the Belarusian Social Democratic Party (Hramada), which is currently in opposition and, consequently, has critical views on the political and social processes in the country. The



criticism of these processes is not prohibited by law and constitutes one of the party activities. Mr. Yasinovich maintains that the pickets were authorized by the authorities, thus giving an opportunity to carry out legitimate political activities. He concludes that, by subjecting him to administrative liability for legitimate political and social activities, the State party's authorities have violated article 19, paragraph 2, of the Covenant.

*Case of Valery Shevchenko*

5.4 In his comments of 30 September 2009, Mr. Shevchenko recalls that he requested a supervisory review of the decision of the Novopolotsk City Court before the Chairperson of the Supreme Court and that his request was rejected by the Deputy Chairperson of the Supreme Court on 11 January 2008. Therefore, the State party's argument that he should have appealed the decision of the Novopolotsk City Court to the Chairperson of the Supreme Court is illogical. He further submits that the supervisory review procedure in Belarus is generally ineffective and accessory, but in cases involving a violation of civil and political rights of citizens it turns into an additional "punishment mechanism" when the person concerned has to spend his or her time and financial resources (to pay court fees), knowing perfectly well in advance that the appeal does not have any prospect of success. Moreover, the outcome of such cases is predetermined by the fact that judiciary in Belarus is dependent on the executive power.<sup>4</sup>

5.5 Mr. Shevchenko argues that the requirement to exhaust the supervisory review procedure should not be a mandatory prerequisite for making recourse to the international mechanisms of human rights protection, since the decision to put forward a request for supervisory review does not depend on the will of the person concerned but is purely within the discretion of a limited number of high-level judicial officers, such as the Chairperson of the Supreme Court. Even when such review is granted, it does not conform to the requirements of a fair and public hearing that upholds the principle of equality of arms.

5.6 Mr. Shevchenko further submits that it is very unlikely that the Chairperson of the Supreme Court would be able to take a decision in favor of a person, alleging a violation of the rights guaranteed under the Covenant, when the State party continuously refuses to implement the Committee's Views, claiming that its conclusions are not of a mandatory nature. He adds that, for the above-mentioned reasons, the supervisory review procedure involving the Prosecutor's Office is equally ineffective.

**State party's further observations on admissibility and merits**

6. On 8 September 2010, the State party submits, with regard to both communications, that it reiterates its observations submitted on 19 February 2009.

**Authors' comments on the State party's further observations**

7.1 On 4 November 2010, Mr. Yasinovich submits his comments on the State party's further observations. He maintains that the State party has violated his right to freedom of expression, freedom to seek and impart information provided for in article 19, paragraph 2, of the Covenant. Furthermore, by subjecting him to administrative liability for his participation in the authorized pickets, the State party's authorities have discriminated against him on the ground of his membership in the opposition political movement, the Belarusian Social Democratic Party (Hramada). He claims, therefore, that his rights under article 2 of the Covenant have also been violated. With reference to article 34 of the Belarus

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<sup>4</sup> Reference is made to the Report on the mission to Belarus of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Kumaraswamy (E/CN.4/2001/65/Add.1), 8 February 2001.

Constitution, Mr. Yasinovich reiterates his initial arguments that the information collected was not of confidential or private character, it did not infringe upon the deputies' right to private life and did not endanger State security.

7.2 No further comments on the State party's further observations on admissibility and merits of 8 September 2010 were received from Mr. Shevchenko.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 Before considering any claim contained in the communications, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communications are admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's argument that the authors had the possibility to appeal the decision of the Novopolotsk City Court to the Chairperson of the Supreme Court, as well as to file a motion to the Prosecutor General, requesting him to lodge an objection with the Chairperson of the Supreme Court. The Committee further notes the authors' explanation that their respective appeals submitted under the supervisory review procedure were rejected by the Chairperson of the Supreme Court and that they did not file a motion to the Prosecutor's Office, since such a procedure does not constitute an effective domestic remedy.

8.4 In this regard, the Committee recalls its jurisprudence, according to which the supervisory review procedure against court decisions which have entered into force constitutes an extraordinary means of appeal which is dependent on the discretionary power of a judge or prosecutor and is limited to issues of law only.<sup>5</sup> In such circumstances and noting that the authors have appealed to the Chairperson of the Supreme Court with the request to initiate a supervisory review of the decisions of the Novopolotsk City Court and the rulings of the Vitebsk Regional Court, and that these appeals were rejected, the Committee considers that it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (b), of the Optional Protocol, from examining the communications.

8.5 In relation to the allegation that the State party's authorities have discriminated against Mr. Yasinovich on the ground of his membership in the opposition political movement (see, para. 7.1 above), the Committee considers that this claim has been insufficiently substantiated, for purposes of admissibility. It further remains unclear whether this allegation was raised at any time before the State party's authorities and courts. In these circumstances, the Committee considers that this part of the communication submitted by Mr. Yasinovich is inadmissible under article 2 of the Optional Protocol.

8.6 The Committee considers that the authors have sufficiently substantiated, for purposes of admissibility, their claims under article 19 of the Covenant. Accordingly, it declares these claims admissible and proceeds to their examination on the merits.

<sup>5</sup> See, for example, communication No. 1537/2006, *Gerashchenko v. Belarus*, decision of inadmissibility adopted on 23 October 2009, para. 6.3; communication No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2; communication No. 1838/2008, *Tulzhenkova v. Belarus*, Views adopted on 26 October 2011, para. 8.3.

*Consideration of the merits*

9.1 The Human Rights Committee has considered the communications 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.

9.2 The Committee notes the authors' claims that the administrative fines imposed on them in the course of the authorized pickets for having collected signatures to a collective appeal, containing the following text: "We are protesting against the abolition of the benefits and we are supporting the recall of those deputies elected to represent Novopolotsk, who had voted for this anti-popular law", and subsequent transmittal of this collective appeal to the Presidential Administration, constitute an unjustified restriction on their right to freedom of expression, including freedom to seek, receive and impart information, as protected by article 19, paragraph 2, of the Covenant. It further notes that, according to the decisions of the Novopolotsk City Court of 25 September 2007, the authors were found guilty of having committed an administrative offence under article 9.10 of the Administrative Offences Code for a violation of articles 130–137 of the Electoral Code, establishing, inter alia, the procedure for the recall of a deputy of the House of Representatives. The Committee considers that, irrespective of the qualification of the authors' actions by the State party's courts, an imposition of the administrative fines on them amounts to a de facto restriction on their right to freedom of expression guaranteed by article 19, paragraph 2, of the Covenant.

9.3 The Committee has to consider whether the restriction imposed on the authors' right to freedom of expression is justified under article 19, paragraph 3, of the Covenant, i.e. provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. The Committee recalls in this respect its general comment No. 34 (2011) on freedoms of opinion and expression on article 19 of the Covenant,<sup>6</sup> in which it stated, inter alia, that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society and that they constitute the foundation stone for every free and democratic society.<sup>7</sup> Any restrictions to their exercise must conform to the strict tests of necessity and proportionality and "must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated".<sup>8</sup>


9.4 The Committee notes that the authors have argued that neither article 9.10 of the Administrative Offences Code nor articles 130–137 of the Electoral Code apply to them, since the State party's courts have interpreted the collective appeal, containing the following text: "We are protesting against the abolition of the benefits and we are supporting the recall of those deputies elected to represent Novopolotsk, who had voted for this anti-popular law" and subsequently transmitted to the Presidential Administration, as a subscription list aimed at the recall of a deputy rather than the collective appeal of citizens to a State body, within the meaning of article 40 of the Belarus Constitution and article 1 of the Law on Appeals from Citizens in the Republic of Belarus. The Committee further notes that, according to the decisions of the Novopolotsk City Court of 25 September 2007, the authors have not complied with the requirements of the procedure for the recall of a deputy of the House of Representatives, and have thus violated articles 130–137 of the Electoral Code. In this regard, the Committee notes that the authors and the State party disagree on whether the document transmitted to the Presidential Administration was the "collective

<sup>6</sup> See general comment No. 34 (2011) on freedoms of opinion and expression, *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 40*, vol. I (A/66/40 (Vol. I)), annex V.


<sup>7</sup> Ibid., para. 2.

<sup>8</sup> Ibid., para. 22.

appeal of citizens to a State body” or the “subscription list aimed at the recall of a deputy”, as well as on what legislation is applicable to the collection of signatures in the present context.



9.5 In this regard, the Committee recalls that article 19, paragraph 2, of the Covenant protects all forms of expression and the means of their dissemination,<sup>9</sup> including political discourse and commentary on public affairs.<sup>10</sup> Furthermore, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.<sup>11</sup> As to the requirement that restrictions on the exercise of the right to freedom of expression be “provided by law”, the Committee further recalls that laws restricting the rights enumerated in article 19, paragraph 2, must themselves be compatible with the provisions, aims and objectives of the Covenant<sup>12</sup> and that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression,<sup>13</sup> as well as to provide details of the law and of actions that fall within the scope of the law.<sup>14</sup> The Committee regrets the lack of detail in the response of the State party on the scope of the law. While the Committee recognizes the need for a pre-established procedure for the actual recall of a parliamentary deputy, there is no compelling reason to limit the public dialogue on removal from office, including the right of citizens to voice their support for such a procedure, before the actual initiation thereof. The Committee notes that, in the light of articles 130–137 of the Electoral Code, the collection of signatures by the authors to support the recall of deputies is so distinctly different from the procedure for recall of a deputy of the House of Representatives and a deputy of a local Council of Deputies that it can only be considered as an expression of the opinion that these deputies should be recalled, rather than initiating the recall procedure in an unlawful way.



9.6 Furthermore, the Committee considers that, even if the collection of signatures by the authors was subject to the procedure established by articles 130–137 of the Electoral Code, the State party has not advanced any argument as to why the administrative sanction imposed on them was necessary for one of the legitimate purposes set out in article 19, paragraph 3, of the Covenant, and what dangers would have been created by the authors’ gathering opinions of their fellow citizens and expressing their own opinions in relation to the abolition of social benefits by the parliament, as well as the deputies who had voted for the said changes in law. The Committee recalls in this connection that, under article 19, paragraph 3, of the Covenant, the burden of proof rests on the State.<sup>15</sup> The Committee concludes that in the absence of any pertinent explanations from the State party, the restriction on the exercise of the authors’ right to freedom of expression cannot be deemed as provided by law and necessary for the protection of national security or of public order (*ordre public*) or for respect for the rights or reputations of others. It therefore finds that the authors’ rights under article 19, paragraph 2, of the Covenant have been violated.

<sup>9</sup> Ibid., para. 12.

<sup>10</sup> Ibid., paras. 11 and 38. See also general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40*, vol. I (A/51/40 (Vol. I)), annex V, paras. 8 and 25.

<sup>11</sup> See general comment No. 34 (2011), para. 20.

<sup>12</sup> Ibid., para. 26. See also communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994.

<sup>13</sup> See communication No. 1553/2007, *Korneenko and Milinkevich v. Belarus*, Views adopted on 20 March 2009.

<sup>14</sup> See communication No. 132/1982, *Jaona v. Madagascar*, Views adopted on 1 April 1985.

<sup>15</sup> See, for example, communication No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3

10. 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 State party has violated the authors' rights under article 19, paragraph 2, of the Covenant.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including reimbursement of the present value of the fines and any legal costs incurred by them, as well as compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation, in particular the Administrative Offences Code, to ensure its conformity with the requirements of article 19, paragraph 3, of the Covenant.

12. 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 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

[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.]