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# Katsora et al vs. Belarus

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Communication No. 1383/2005

25 Feb. 2005 (initial submission)

25 Oct. 2010 (adoption of views)

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## Facts

Mr. Katsora submits the communication on his own behalf and on behalf of Mr. Sudalenko and Mr. Nemkovich.

On 1 December 2003, the authors submitted an application for registration of 'Civil Alternative' with the Ministry of Justice. The registration body then has one month (from the date of the application) to issue a decision. Since the authors did not receive a reply within the set deadline, they inquired with the Justice Department.

On 29 March 2004, the author's application was rejected; registration was denied on several grounds. There was inconsistency with the organization's purpose as it claimed to be 'humanitarian' in one place and later 'humanist.' The organization failed to provide the exact address of their Head Office. There was some confusion with the different dates of birth given for one member; also some aspects of the organization's Statute were contrary to the domestic law.

On 22 April 2004, the authors appealed the denial of registration to the Regional Court, on the grounds that they had been wrongly and unfairly dealt with. They referred to the Statute of a registered, pro- government (and government financed) organization, the 'Belarusian Republican Youth Union', which contained the same goal of entering into associations with "local and international associations", as mentioned in the application of 'Civil Alternative.' The Regional Court rejected these arguments, and dismissed the author's appeal. Subsequently, the authors filed a cassation appeal to the Supreme Court, which later reiterated the views of the Regional Court and dismissed the case. The authors then filed a further application for supervisory review by the Supreme Court, which was rejected on 17 August 2004.

The State submitted a reply to the Human Rights Committee, refuting the author's allegations. The State argues that the authors did not exhaust their remedies because they did not submit applications for initiation of a supervisory review to the Prosecutor's Office or to the President of the Supreme Court. The State disagrees with the authors' claim that they have not been granted a fair hearing and stands by the decision to refuse the registration. The State further adds that the Courts were under no legal obligation to give the authors a deadline within which the authors could correct the organizations Statute to bring it into compliance with the domestic legislation. The State also disputes that the authors are not precluded from bringing the Statute of "Civil Alternative" in line with the requirements of the law and reapplying for registration.

The authors claim that the State violated their rights under article 14, paragraph 1, 22 and 26 of the Covenant. The authors also contend that they have exhausted all available and effective domestic remedies.

## Key words

- Biased
- Denial to Register Association
- Anti-government
- Freedom of Association
- Exhaustion of Remedies

## Relevant Provisions

- Article 14 § 1
- Article 22 § 2
- Article 26

## Violated Provisions

- Article 22 § 2

## Consideration of admissibility

**Articles 5 and 14:** The Committee takes note of the State party's challenge of the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, namely the authors' failure to petition the President of the Supreme Court and the General Prosecutor for supervisory review of the court decisions denying the registration of their organization. The Committee recalls its previous jurisprudence, ([No. 836 of 1998, Gelazauskas v Lithuania, 2003](#)) according to which supervisory review procedures against court decisions, which have entered into force, constitute an extraordinary mean of appeal, which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. It does, therefore, not meet the requirements of article 14, paragraph 5 of the Covenant. Consequently, the Committee finds that article 5; paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

## Consideration of merits

**Article 22:** Committee notes that the refusal of registration led directly to the unlawfulness of operation of the unregistered organization on the State party's territory and directly precluded the authors from enjoying their freedom of association. Accordingly, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2 in relation to the authors. The authors' rights under article 22, paragraph 1, of the Covenant have thus been violated. Furthermore, any restriction on the right to freedom of association must cumulatively meet the following conditions: it must be provided for by law; may only be imposed for one of the purposes set out in paragraph 2; and must be "necessary in a democratic society" for achieving one of these purposes ([No. 1039/2001, Zvozkov et al. v. Belarus, 2006](#)).

## Conclusions

The Committee finds a violation of article 22, paragraph 1 of the Covenant. The Committee states that the State party is under an obligation to take steps to ensure the reconsideration of the application for registration of "Civil Alternative", based on criteria compliant with the requirements of article 22 of the Covenant, and provide the authors with appropriate compensation. The State party is also under an obligation to prevent similar violations in the future and to submit to the Committee, within 180 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.

## Dissent/Concurrence

N/A