
Levinov vs. Belarus

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Facts

The author was a representative of the association 'Belarus Helsinki Committee' which was monitoring the 2007 local elections for local council of deputies. During the monitoring the author found that in most of the electoral constituencies (34 out of 40 constituencies) there is only one candidate; and the election in fact lack of choice. The author therefore decided to launch a campaign against this situation. On the night of 13 January 2007 (the day before the ballot) when the author was placing posters against the elections, he was arrested by local police.

The author was accused of minor hooliganism and was detained in a temporary facilitation. His request for bail was rejected by the police; they also refused to provide him with medication for his hypertonic problem. The author was brought to the District Court two days' later, found guilty of minor hooliganism and sentenced to a fine of 62,000 Belarusian Roubles. The author claims that the judge was affected and biased in favor of the police; the decision was not officially pronounced to him, neither he was explained the possibility of appeal. He found later that he, together with another 6 individuals working for the association was previously targeted by the police, and the charge was only a pretext.

On 17 July 2007 the author appealed to the Vitebsk Regional Court, after then to the chairperson of the Supreme Court. On 26 December 2007 and 5 February 2008, his appeal was rejected respectively by the two courts. The author claims several violation of the Covenant by the State party, including Art.7 and Art.10 regarding the refusal of his medication request during the detention; Art.9 §3 regarding the arbitrary arrest; Art.14 §1 §2 §3(b) regarding the biased and improper legal judgment; Art.19 §1 §2 for he was prevented from expressing his opinion through the distribution of poster; and Art.26 for he was arrested based on his opinion on the local election.

The State party commented on the author's claims. The legal decision of the domestic court was grounded, and the author's action on 13 January 2007 when he was arrested – using offensive language against police and disturbed the local public order – constitutes an offence under the domestic law. The author failed to exhaust domestic remedies since he did not appeal with the Prosecutor's Office which is an option he could choose after receiving the Regional Court's decision. The State party also contested the author's allegations on the independence of Belarusian judiciary, which – according to the State party – is well kept in accordance with the Constitution and the Laws.

The author rebutted the State party's comments that according to the domestic law, the court rulings concerning fining are not subject to appeal. In addition, appeal is not an effective remedy if the prosecutor is affected by or biased to political powers.

Key words

- Fair hearing
- Preparation of defense

Relevant Provisions

- Article 14 §1, 3(b)

Violated Provisions

- None

Consideration of admissibility

The Committee agrees with the author that as established in its jurisprudence (No. 1537/2006 [Yekaterina Gerashchenko v. Belarus](#) 2009), ineffective remedy is not considered as domestic remedies which need to be exhausted under Art.5 §2 (b) of the OP.

Regarding the alleged violation of Art.7 and Art.10 by refusing the author's request for medication, the Committee considers that the claim is not well substantiated since the author himself refused to be administrated an injection by the emergency unit called. Therefore this part of claims is found inadmissible.

Regarding the alleged violation of Art.9 by refusing the request for bail, the Committee considers this part of claims has already been examined by the District Court which ordered a release on 15 January 2007. Therefore this part of claims is found inadmissible. The alleged violation of Art.14 §2 was neither well substantiated by the author thus found inadmissible.

Regarding the alleged violation of Art.19 and Art.26, the Committee considers that the State party has not refuted those right directly, neither the author raised allegations on the infringement of these rights before the domestic court. Therefore this part of claims is found inadmissible.

The Committee considers the remaining part of the claims – on Art.14 §1 and 3b are admissible and therefore will proceed to the merits on these two Articles.

Consideration of merits

Article14 §1: The Committee Considers that the author has complained about the irregularities of the legal proceedings – including the alleged non-announcement of the court's decision to him and the possibility of appeal – before the domestic court; and the presiding judge of the District Court did explain to him the decision of his case on 23 January 2007. Therefore the Committee did not find a violation of Art.14 §1 in this case.

Article14 §3b: The Committee considers that the author was provided with legal aid and represented by a lawyer during his trial, and there is no investigation carried out before he received the legal service from his counsel. Therefore the Committee did not find a violation of Art.14 §3b in this case

Conclusions

The Committee did not find a violation by the State party in the present case.

Dissent/Concurrence

N/A