



Laptsevich v. Belarus

Country: Belarus

Region: Europe

Year: 2000

Court: United Nations Human Rights Committee United Nations Human Rights Committee

Human Rights: Freedom of expression, Right to due process/fair trial

Facts

The claimant argued that his freedom of expression as guaranteed under Article 19, Paragraph 2 of the International Covenant on Civil and Political Rights (the Covenant) was violated by Belarus after he distributed leaflets leafleted for the anniversary of the proclamation of independence of the People's Republic of Belarus. He claimed that the administrative Commission had confiscated 37 copies of the leaflets he had distributed and subsequently charged and fined him 390 000 roubles under article 172(3) of the Code of Administrative Offenses on the ground that he disseminated leaflets that did not bear the required publication data.

All available domestic remedies had been exhausted. He claimed that article 172(3) of the Administrative Offenses Code doesn't apply to his case as the print run of 200 was indicated on the leaflets and they were neither periodicals nor publications intended for sale, for which they could not be given any kind of serial number, index or registration number. Hence he claimed that the sanctions were in violation of the right to freedom of expression and opinion and the right to disseminate information guaranteed under Articles 33 and 34 of the Constitution of the Republic of Belarus.

The state party responded that the provision was applicable to the case as the author was in violation of that provision, and the exceptions from the publication data requirements for print runs less than 300 would not apply to leaflets. The state pointed out that the leaflets also misrepresented the historical formation of the State of Belarus (stating the 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). The state claimed that the enforcement of the legislation conformed with its obligation under Article 19 of the Covenant.

The claimant accepted that he called the Bolsheviks "occupiers" but said that all dates and facts mentioned in the leaflet were historically correct, and that the Republic of Belarus is a "non-ideologized" state; any sanction based on this expression violated Article 19 of the Covenant. He claimed that the sanctions against him were planned to prosecute him on political motives because he was the chairman for a branch of an opposition party in Mogile.

Decision and Reasoning

The Committee examined the case under Article 5, Paragraph 1 of the Optional Protocol and held that the state party restricted the claimant's freedom to impart information protected by article 19, paragraph 2 of the Covenant. The state did this by applying requirements under Article 1 of the Press Act to a leaflet (with a print run as low as 200) to include publication data such as index and registration numbers which could only be obtained from the administrative authorities.

The Committee held that it could not reevaluate the findings of the Belorussian courts to decide on the applicability of Article 172(3) of the Administrative Offenses Code to this case. However, the Committee pointed out that the state party's restrictions had to be necessitated and justified under Article 19 Paragraph 3 of the Covenant. The exceptions under Article 19 Paragraph 3 allow for the respect of the rights and reputation of others or the protection of national security, public order, or public health or morals.

The committee held that the state party failed to justify how the requirements for registration to obtain an index and registration numbers would be applicable to this case, how the requirement was necessary for one of the legitimate reasons under Article 19, Paragraph 3, and why (during non-compliance) confiscation in addition to

pecuniary sanctions would be effected. Those acts of the state party could not be deemed necessary for the protection of public order or for respect of the rights and reputations of others. Thus the Committee found that the state party violated Article 19, Paragraph 2 of the Covenant.

The Committee held that:

The state party was obligated to compensate the claimant a sum not less than the present value of the fine and any legal costs he had paid.

The state party was under obligation to take measures to prevent similar violations in the future.

The state party responds to the committee, within 90 days, on the measures taken to give effect to the committee's views.

Decision Excerpts

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