

HUMAN RIGHTS COMMITTEE

G. C. and O. B. v. Russian Federation

Communication No. 637/1995

14 October 1996

CCPR/C/58/D/637/1995 */

ADMISSIBILITY

Submitted by: G. C., later joined by his wife, Mrs. O. B. (names deleted)

Alleged victims: The authors

State party: Russian Federation

Date of communication: 15 May 1995 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 2 August 1995 (not issued in document form)

Date of present decision: 14 October 1996

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is G. C., a Peruvian citizen, and legal resident of the United States. He submits the communication on behalf of himself and his wife, Mrs. O. B., a Russian citizen, who later joined him as co-author of the communication. Mr. G. C. claims to be a victim of violations by Russia of articles 9, 12, 13, 14, 17 and 26. With respect to his wife, it is claimed that she is a victim of violations by Russia of articles 9, 12, 14, 17 and 26.

Facts as presented by the authors

2.1 Mr. G. C. owns a U.S. -based corporation and came to Russia to establish business investments. He and his wife were running the Russian operation of the business from Moscow.

2.2 The authors entered into a two-year lease for an apartment in Moscow on 1 August 1994. The lease was arranged through a real estate agency and signed by four of the five listed owners. They were allegedly told that the fifth owner, the ex-husband of one of the owners, was deceased.

2.3 The authors claim that, beginning on 10 November 1994, they began receiving harassing phone calls from the fifth owner, who turned out to be alive and a Vice-Minister of Social Security, apparently a very powerful government official, and from people claiming to be his attorneys. The fifth owner came to the apartment several times within the next few days, demanding to know where his (ex-) wife and daughter were and ordering the authors to vacate the apartment. He told them that the lease contract was not valid and that the family had no right to rent them the apartment. He allegedly also threatened them, telling them that he was very powerful and that foreigners had no rights in Russia.

2.4 Because of these calls and visits, in November and December 1994, the authors sought help from the 75th Militia, the Legal Department of the Region, the Attorney General of the Region, the Department of Anti-Organized Crime, the District Exploitation Department, the Fiscal Police, the U.S. Embassy, the Peruvian Embassy and CNN as well as from family and friends. They were allegedly told by the Russian officials that nothing much could be done because of the fifth owner's powerful position and that their best recourse would be to find another apartment.

2.5 They allegedly continued to receive more threatening phone calls and notes left on their door throughout December, which include threats of death, rape and other forms of physical violence. They also received visits from police officials who claimed to be investigating the case, but refused to show identification.

2.6 On 27 December 1994, the fifth owner visited them and attempted to force Mr. G. C. to sign a document releasing the apartment. He later returned with more people, including the Sub-Chief of the 75th Militia, who made further threats and reiterated that foreigners had no rights in Russia. By January 1995, Mr. G. C.'s in-laws were allegedly also receiving threats. When they again asked for help, they were allegedly advised by the Attorney General to take the law into their own hands since foreigners had no rights. The authors finally hired bodyguards for their protection.

2.7 On 4 March 1995, the authors returned home to discover that the apartment had been broken into, the front door destroyed. Their neighbours claimed not to have seen or heard anything. The threats also continued. The 75th Militia allegedly refused to file a report on these events.

2.8 On 28 March 1995, the authors came home and found several men in and around the apartment. They quickly fled the area and were able to escape by running into the CNN building. They have not been back to the apartment since that time. All their belongings, including their identification documents and expensive office equipment, were left in the apartment.

2.9 They remained in hiding for several days after this incident, staying in hotels and at the U.S. Embassy. When they contacted attorneys in Moscow, they were told that their case had no chance of success and their best recourse would be to leave Russia. When the matter reached the Russian press, the fifth owner made a statement saying that the real perpetrator was the real estate agency who cheated both parties and that the authors should take their case to court.

2.10 On 6 April 1995, while still in hiding, the author allegedly received another threat showing that the person making the threat knew where they were. Fearing that their communications were being monitored, they decided to go into hiding even from their bodyguards and those trying to help them for at least a while.

2.11 Mr. G. C. was eventually able to get a new Peruvian passport after bribing Russian authorities to give him a document stating that he had lost his passport, which was required by the Peruvian Embassy. He was also able to bribe officials to give him an exit visa. Mr. G. C. left Russia in April 1995.

2.12 Mrs. O. B. was unable to get a new passport because the Russian authorities required that she come and work on the paperwork in person, which she and her husband determined was too dangerous. Beginning on 3 May 1995, Mr. G. C.'s in-laws allegedly received threatening phone calls from the fifth owner, demanding that Mrs. O. B. meet with him.

2.13 On 13 November 1995, Mr. G. C. informs the Committee that his wife has left Russia, using false papers, in the company of her mother and her younger sister, and that they are staying with him in a hotel in Prague, Czech Republic. Mr. G. C. claims that in September 1995, his wife had been told by the fifth owner that she would be charged with theft of private property, if she continued to refuse to meet with him. Mr. G. C., however, claims that the property left in the apartment was his, and that there were no private belongings in the apartment when they moved in. Mr. G. C.'s wife then agreed to meet with the fifth owner, who allegedly recorded false statements made by her concerning Mr. G. C.'s mafia connections. Mr. G. C.'s wife was then interrogated by the KGB on three occasions, during which she was allegedly threatened and at one time sexually abused. She was allegedly forced to sign (unspecified) false and defamatory statements. She was also told that in exchange for a payment of US\$ 400,000, they would stop all procedures against her and her husband.

The complaint

3.1 Mr. G. C. claims that with respect to him, these incidents constitute a violation by Russia of articles 9, 12, 13, 14, 17 and 26. With respect to his wife, it is claimed that these incidents constitute a violation by Russia of articles 9, 12, 14, 17 and 26.

3.2 The authors request intervention to obtain the return of their personal belongings, totaling about \$150,000; the return of the apartment for the duration of the lease or a reimbursement of what they have paid; reimbursement of the expenses incurred due to these incidents, totaling \$50,000; and compensation for the loss of the investments in Russia they were forced to abandon, totaling \$1.7 million. The authors further request the United Nations to grant refugee status for Mrs. O. B., as well as to provide her with the necessary documents to enable her to move to the United States.

3.3 The authors contend that, because of the threats made against them and the unwillingness of the authorities to help them, the available remedies are ineffective.

3.4 It is stated that the case is not being examined under another procedure of international investigation or settlement.

State party's observations on admissibility and authors' comments thereon

4.1 By submission of 3 April 1996, the State party informs the Committee that an inquiry has shown that on 24 January 1995, the fifth owner of the apartment submitted a complaint to the Procurator's Office in Moscow against Mr. G. C. for his unauthorized installation in his apartment. On 19 February 1995, it was decided not to initiate criminal proceedings in the matter, since the dispute was considered to be one of a private nature. However, on 30 May 1995, this decision was overruled by the Interdistrict Procurator's Office and criminal proceedings were initiated under articles 200 and 122 of the Criminal Code.

4.2 Inquiries made by the Internal Affairs Directorate of the western Administrative District of Moscow established that one of the five owners of the apartment concluded a lease contract with Mr. G. C. through a brokerage firm, without the consent of the other owners. In November 1994, the fifth owner consequently demanded that the authors vacate the apartment, because the contract was invalid. The authors did not comply, suggesting that the dispute should be settled judicially. On 28 March 1995, the fifth owner then seized the apartment, taking advantage of the authors' absence.

4.3 The investigations further show that the fifth owner claims that items of value had been stolen from the apartment, amounting to US\$ 300,000. The authors claim that as a result of the seizure, they have lost a total of US\$ 120,000.

4.4 On 24 October 1995, inquiries in the case were discontinued on the basis of article 5, paragraph 2, of the Code of Criminal Procedure. On 1 February 1996, however, after having received the authors' communication to the Committee, the decision to discontinue the investigation was overruled by the Moscow Procurator's Office, and the case was transmitted for further investigation into the question of the liability of the brokerage firm, and whether the owner who concluded the lease had been advised of the consequences of concealment of information.

4.5 The State party states that the author's communication to the Committee has been added to the materials of the criminal case and that the issues raised by their communication will be examined in the course of the investigation. It adds that the investigation is being monitored by the Office of the Procurator-General of the Russian Federation.

4.6 The State party concludes that, under these circumstances, the communication is inadmissible for non-exhaustion of domestic remedies.

5.1 The authors take issue with the State party's contention that their case is a private matter. In this connection, they point out that the Russian authorities have failed to provide them protection against the intimidation and violence used by the fifth owner of the apartment against them. The authors claim that the owner acted in his official capacity as a Deputy Minister of the Government.

5.2 The authors further claim that they have sought every remedy provided by the law, without success, and that the fact that the authorities have initiated an investigation does not prevent the Committee from examining the communication. In this connection, they point out that the authorities only began an inquiry a year after their communication had been brought to their attention, and that the investigation is only aimed at the property dispute, not at the criminal acts of

the fifth owner against the authors. They further contend that they can only claim damages if official criminal proceedings were initiated, which is not the case. The authors conclude that the delaying tactic of the authorities is inhuman, immoral and not legal.

5.3 Mr. G. C. further states that it is not true that the owner who signed the lease did not consult with the other owners. He states that he spoke several times with two of the other owners. He further states that when he asked after the whereabouts of the fifth owner, he was told that he was dead or disappeared.

Issues and proceedings before the Committee

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

6.2 The Committee notes that part of the communication relates to a dispute between Mr. G. C. and a Russian Government official over the latter's private property. Although the authors have claimed that the Government official acted in his official capacity, the Committee finds that the authors have failed to provide any substantiation for this claim. The Committee further notes that the right to property and the right to housing are not protected by the Covenant on Civil and Political Rights, and that, moreover, the dispute concerns a private matter between the authors and the owner of the house. In so far as the communication relates to the dispute over the apartment and the authors' belongings therein, the communication is inadmissible *ratione materiae* as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.3 As regards Mr. G. C.'s claim under article 13 of the Covenant, the Committee notes that he has failed to adduce facts that might show that issues under this article arise in his situation. In particular, the Committee notes that the Russian authorities did not expel Mr. G. C. but that Mr. G. C. left Russia on his own initiative. Therefore, this part of the communication is also inadmissible under article 3 of the Optional Protocol.

6.4 The Committee has noted the State party's objection to the admissibility of the communication, on the basis that a criminal investigation is being conducted in the matter concerning the liability of the brokerage firm for renting the apartment to the authors. The Committee considers however, that this investigation cannot be considered as a remedy to be exhausted by the authors within the meaning of article 5, paragraph 2(b), of the Optional Protocol and concludes that it is therefore not prevented from examining the communication on its merits.

6.5 The authors claim that the Russian authorities have failed to protect them from intimidation and harassment, and that their requests for protection were not heeded because Mr. G. C. was a foreigner. The Committee considers that these claims may raise issues under articles 9, paragraph 1, 17 and 26, of the Covenant, which need to be examined on the merits.

6.6 The Committee considers that Mr. G. C.'s claim that he had no access to the courts, since he was advised that foreigners had no rights, may raise issues under articles 14, paragraph 1, and 26, of the Covenant, which need to be considered on the merits.

6.7 The Committee has noted the authors' claim that they had difficulty leaving Russia, Mr. G. C. because he had to bribe officials in order to obtain an exit visa, and Mrs. O. B. because in the circumstances she was unable to get a passport, and considers that this claim may raise issues under article 12, paragraph 2, of the Covenant, which need to be considered on the merits.

6.8 Mrs. O. B. has claimed that she was threatened and ill-treated by KGB officials in September 1995. The Committee considers that this claim may raise issues under articles 7 and 9, paragraph 1, of the Covenant, which need to be examined on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 9, paragraph 1, 12, paragraph 2, 14, paragraph 1, 17 and 26, of the Covenant.

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the authors.

[Done in English, French, and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.