



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

Communication No. 55/2014

**Decision adopted by the Committee at its eighty-seventh session
(3-28 August 2015)**

<i>Submitted by:</i>	M. M. (represented by counsel, Sergei Golubok)
<i>Alleged victim:</i>	The petitioner
<i>State Party:</i>	Russian Federation
<i>Date of the communication:</i>	6 August 2013 (initial submission)
<i>Date of the present decision</i>	7 August 2015
<i>Subject matter:</i>	Prolonged duration of preliminary investigation based on racial discrimination
<i>Substantive issue:</i>	Discrimination on the ground of race
<i>Procedural issue:</i>	Admissibility — exhaustion of domestic remedies
<i>Articles of the Convention</i>	2 (1) (a), 5 (a) and 6



Annex

Decision of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (eighty-seventh session)

concerning

Communication No. 55/2014*

Submitted by: M. M. (represented by counsel, Sergei Golubok)
Alleged victim: The petitioner
State Party: Russian Federation
Date of the communication: 6 August 2013 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 7 August 2015,

Having concluded its consideration of communication No. 55/2014, submitted to the Committee by M. M. under article 14 of the Convention,

Having taken into account all information made available to it by the petitioner of the communication, his counsel and the State party,

Adopts the following:

Decision

1. The petitioner is M. M., a national of Somalia currently residing in the United States of America. He claims to be victim of a violation by the Russian Federation¹ of his rights under articles 2 (1) (a); 5 (a); and 6 of the Convention. He is represented by counsel.

The facts as submitted by the petitioner

2.1 In May 2012, a criminal case was initiated against the petitioner in the Russian Federation on the basis of articles 30, paragraph 3, and 291, paragraph 3 (b), of the Russian Criminal Code, for an attempt to offer a particularly large bribe to an official in order to

* The following members of the Committee participated in the examination of the present communication: Marc Bossuyt, Jose Francisco Cali Tzay, Anastacia Crickley, Fatimata-Binta Victoire Dah, Ion Diaconu, Afiwa-Kindena Hohoueto, Yong'an Huang, Patricia Nozipho January-Bardill, Anwar Kemal, Melhem Khalaf, Gun Kut, Jose S. Lindgren Alves, Pastor Elias Murillo Martinez and Yeung Kam John Yeung Sik Yuen. In accordance with rule 89 of the rules of procedure, Alexei S. Avtonomov did not participate in the consideration of the communication.

¹ The Convention was ratified by the Russian Federation on 4 February 1969, and the declaration under article 14 was made on 1 October 1991.

transport foreign nationals illegally through the border between the Russian Federation and Finland. He was detained on 28 May 2012 then placed in custody on 31 May 2012 by a decision of the Court of the Primorskiy District in Saint Petersburg, which was upheld on appeal by the Saint Petersburg City Court. On 6 November 2012, the duration of the preliminary investigation was extended until 14 December 2012 by the Deputy Head of the Saint Petersburg Department of the Investigation Committee.

2.2 On 26 November 2012, the Head of the Investigation Committee upheld the decision of 6 November 2012 to extend the duration of preliminary investigation owing to the complexity of the preliminary investigation, including the need to properly identify the accused persons, one of whom presented false identity documents, and the time needed to translate numerous procedural documents and to interrogate several foreign nationals who needed an interpreter.

2.3 On 6 December 2012, the Deputy Head of the Investigation Committee further extended the duration of the preliminary investigation in the petitioner's case until 29 January 2013. The extension was upheld by the Head of the Investigation Committee on 9 January 2013.

2.4 On an unspecified date in December 2012, the petitioner lodged an appeal to the Petrogradskiy District Court in Saint Petersburg against the decision of 26 November 2012 to extend the period of the preliminary investigation. He submitted the appeal under article 125 of the Criminal Procedure Code, which enables the participants in a criminal case to file a judicial appeal regarding the legality of actions and decisions of an interrogator, investigator, head of an investigative body or prosecutor made at the stage of the preliminary investigation.

2.5 On 7 February 2013, the District Court rejected the appeal because the preliminary investigation had ended and the criminal case had been transferred to court for trial on 28 December 2012. The District Court indicated in its decision that the petitioner could raise his complaint before the trial court.

2.6 On the same day, 7 February 2013, the petitioner appealed the decision of the District Court before the Saint Petersburg City Court. He insisted on his right to have his appeal considered on the basis of article 125 of the Criminal Procedure Code, arguing that he did not intend to appeal the legality of a specific action or admissibility of evidence collected during the preliminary investigation, rather the decision to extend the period of preliminary investigation, which could not be effectively reviewed by the trial court. He argued that the basis for the decision to extend the duration of preliminary investigation, i.e., the need to provide interpretation and translation, was discriminatory under article 2 of the Convention. The City Court rejected his appeal on 4 June 2013 and upheld the decision of the lower court; the City Court informed the petitioner of his right to file a cassation appeal to the Presidium of the Saint Petersburg City Court within one year. The petitioner did not appeal further.

The complaint

3.1 The petitioner claims that the duration of the investigation, and hence his pretrial detention, was repeatedly extended on discriminatory grounds related to his inability to read and speak Russian, thus breaching his rights under article 2 (1) (a) of the Convention.

3.2 He further alleges that the fact that he requested and was provided with an interpreter free of charge led to a prolongation of the investigation, and that he was therefore not afforded equal treatment before the organs administering criminal justice, in particular the Investigation Committee, in violation of article 5 (a) of the Convention.

3.3 The petitioner also submits that, since his complaint about the alleged discrimination during his criminal investigation was not considered on the merits by the District and City Courts, he was denied an effective remedy contrary to article 6 of the Convention.

3.4 The petitioner asks the Committee on the Elimination of Racial Discrimination to find a violation of articles 2 (1) (a), 5 (a) and 6 of the Convention in his case and to grant him appropriate remedy.²

State party's observations on admissibility

4.1 By its note verbale of 16 May 2014, the State challenged the admissibility of the communication owing to the failure of the petitioner to submit a cassation appeal against the decision of the District Court of 7 February 2013. The State party also submits that the issues raised by the petitioner before the District Court concerning the extension of the period of preliminary investigation could have been raised before the trial court when his criminal case was considered on the merits.

4.2 Addressing the petitioner's allegation of racial discrimination due to his inability to speak Russian, the State party notes that, when deciding on whether to place the petitioner in pretrial detention, the Primorskiy District Court of Saint Petersburg took into account (a) the gravity of charges against him; (b) his lack of a permanent place of residence in the territory of the Russian Federation; (c) the fact that he did not live at his registered address in Moscow; (d) his declared intention to leave the county and to apply for citizenship abroad; and (e) his lack of any declared source of income. The decision to extend the preliminary investigation was made given the complexity of the case, which required, *inter alia*, a large amount of investigative actions involving foreign nationals, translation and interpretation and a number of investigative and procedural actions and forensic examinations in order to establish the exact identity of those accused. The State party submits that there is no indication of any act involving racial discrimination against the petitioner during the investigation.

4.3 The State party adds that the petitioner was provided with an interpreter upon his own request. Procedural documents were translated on the day of their adoption or the next day and neither the petitioner nor his counsel raised concerns about the work of the interpreter. It adds that there was no violation of the petitioner's rights at any stage of the criminal procedure concerning his detention, the extension of the duration of his detention or the decision of the District Court to reject his appeal filed under article 125 of the Criminal Procedure Code.

Petitioner's comments on the State party's observations on admissibility and merits

5. On 23 June 2014, the petitioner addressed the issue of non-exhaustion of domestic remedies and argued that the domestic remedies to challenge the decision of the City Court of 4 June 2013 would have been ineffective. He contends that the decisions of the domestic courts not to consider his appeal under article 125 of the Criminal Procedure Code on the merits were made on the basis of a ruling of the Supreme Court of the Russian Federation prohibiting the judicial review of decisions taken at the investigation stage after the referral of the criminal case in court, for trial.³ Therefore, all subsequent appeals against the decisions of the District and City Courts would have been unsuccessful. The petitioner also

² In his initial submission, the petitioner asked for an appropriate remedy in the light of his ongoing detention and trial. By the time of consideration of the communication by the Committee, the petitioner had left the Russian Federation and now resides in the United States.

³ Resolution of the Supreme Court Plenary, No. 1, of 10 February 2009, para. 9.

alleges that the remedies suggested by the State party have been considered ineffective by the Human Rights Committee and the European Court of Human Rights.⁴

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide whether or not the communication is admissible.

6.2 The Committee notes that the petitioner's complaint is based on the allegation that he is a victim of racial discrimination. The Committee also notes the State party's argument that there was no indication of racial discrimination at any stage of proceedings in the petitioner's case.

6.3 In order to consider the petitioner's claims admissible, the Committee has to determine whether the petitioner has alleged facts that constitute discrimination on the basis of race, colour, descent or national or ethnic origin. The Committee notes that, according to the petitioner, the acts of discrimination against him were manifested in the extension of the duration of the preliminary investigation. The Committee also notes that the State party has claimed in response that the extension of the preliminary investigation was necessitated by the complexity of the case, which required, inter alia, a large amount of investigative actions, involving foreign nationals, translation and interpretation, and that the petitioner himself requested an interpreter and has not complained about the interpreter's work or the quality of the interpretation throughout the proceedings. The Committee notes that the petitioner has not denied these claims, which, in the view of the Committee, amount to a reasonable explanation of the extension of the duration of the preliminary investigation and which, as a consequence, rebuts the petitioner's claim of intentional discrimination. Moreover, the Committee observes that the petitioner has not explained how the alleged discrimination on the grounds that he did not speak the language of the country amounts to racial discrimination as defined in article 1 (1), of the Convention.

6.4 In the light of the above, the Committee considers that the petitioner has not presented sufficient indications to demonstrate that he was a victim of racial discrimination. The Committee, considering that the petitioner has failed to sufficiently substantiate his claims, concludes that the communication is not compatible with the provisions of the Convention as required by rule 91 (c) of its rules of procedure. Accordingly, it declares the communication inadmissible under article 14 (1) of the Convention. In the light of this conclusion, the Committee decides that it is not necessary to examine any other inadmissibility ground.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and the petitioner.

⁴ The petitioner has not referred to any specific case-law.