

## HUMAN RIGHTS COMMITTEE

### Perel v. Latvia

Communication No. 650/1995

3 July 1996

CCPR/C/57/D/650/1995 \*/

### ADMISSIBILITY

*Submitted by:* Shulamit and Meer Vaisman

*Victim:* Their nephew, Martin Perel

*State party:* Latvia

*Date of communication:* 31 May 1995 (initial submissions)

*Documentation references:* Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 23 August 1995 (not issued in document form)

*Date of present decision:* 3 July 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 authors of the communication are Meer and Shulamit Vaisman, citizens of the United States. They submit the communication on behalf of their nephew, Martin Perel, 1/ who is currently in prison in Latvia. They claim that Mr. Perel is a victim of violations by Latvia of article 14 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Latvia on 22 September 1994.

#### The facts as submitted by the authors

2.1 Mr. Perel was convicted on 29 June 1993 of organizing the murders, on 31 August 1992, of Vladimir Yermolenko and Nikolai Shevchuk and sentenced to 15 years' imprisonment. His conviction was upheld on 30 September 1993 by the Judicial Board for Criminal Cases of Latvia's

Supreme Court. A second appeal to the Board, on 31 January 1994, based on the newly revealed circumstance of a retraction by one of the witnesses, was dismissed on 22 March 1994. The Board stated that reconsideration of evidence on which the judgment was based was unwarranted. The Supreme Court Plenum, on 19 December 1994, considered the request for review, but refused to impose a lesser sentence, finding that Mr. Perel was, indeed, the organizer of the murders.

2.2 Mr. Perel's co-defendants, all of whom were convicted of the perpetration of the murder, were Yakov and Felix Lokshinsky, Andrei Volkov and Vadim Rokotov. Yakov Lokshinsky, who admitted to the murders, also received a 15 years' sentence, while his accomplices received lesser sentences. None of Mr. Perel's co-defendants appealed their convictions or sentences.

2.3 At the trial, 2/ the case for the prosecution was that, on 31 August 1992, Yakov Lokshinsky and his accomplices carried out the order placed by Martin Perel to murder Vladimir Yermolenko and Nikolai Shevchuk, the president and vice-president of the store Three Stars. Alexander Plyachenko, a visitor to the store at the time, was also killed. All three men were stabbed to death in the store premises. The prosecution's case was mainly based on the testimony of Yakov Lokshinsky, who confessed to the crime and implicated Mr. Perel as the organizer of the crime. Lokshinsky asserted that Mr. Perel had promised him legal assistance to put the investigators "on the wrong track", 5,000 rubles and ownership of the Health Improvement Complex, a facility operated by the management of Three Stars. He also alleged that Mr. Perel had familiarized him with the layout and work schedule of the store in anticipation of the murders.

2.4 The motive of Mr. Perel was established by the prosecution to be "selfish reasons" to obtain sole ownership of the store Three Stars from his co-owners Vladimir Yermolenko and Nikolai Shevchuk, since the association was set to be dissolved and the property divided on 1 September 1992. Mr. Perel has, however, contended throughout the proceedings that he had no motive to murder any of the deceased. It is asserted that the business was owned by Mr. Yermolenko and Mr. Perel, and not Mr. Shevchuk, who was just an employee. In addition, it is contended that the company had no assets and, in fact, was in debt due to loans Mr. Yermolenko had taken out. Passing of ownership in the case of death would also not have been from one business associate to the other, but to the heirs, in this case Mrs. Yermolenko. It is asserted that she was the company's bookkeeper and, as such, was fully informed about the affairs of the business and capable of running it.

2.5 The prosecution attached great weight on the confession and testimony of Mr. Lokshinsky, because it was contended that he had turned himself in to the police voluntarily on 3 September 1992. The Deputy Police Commissioner and Chief of Detectives, however, issued a statement denying that Mr. Lokshinsky turned himself in and asserting rather that he had been arrested at the initiative of the police. The statement was quoted in several newspapers, including the 9 June 1993 issue of "Diyena" and the 27 August - 2 September 1993 issue of "The Baltic Observer". 3/

2.6 The authors submit that Mr. Lokshinsky's initial confession to the police did not contain any mention of involvement by Mr. Perel and such mention was only made in later testimony allegedly at the direction of the Attorney-General's Office and the trial court. It is claimed that Mr. Lokshinsky stated in his initial confession, made on 3 September 1992, that he had not wanted to kill anyone, and only when Mr. Yermolenko started to insult and humiliate him did he attack and kill the three individuals at the store. No mention was made of Mr. Perel or anyone else ordering

the perpetration of the murders.

2.7 In addition, it is contended that because Mr. Lokshinsky was the director of the Health Improvement Complex and an executive of Three Stars, he knew that the Complex was not owned by Three Stars and that it would have been impossible for Mr Perel to give it to him. <sup>4/</sup> As an employee of three Stars, he was also already familiar with the layout and work schedule of the store, without being shown this specifically for the purpose of facilitating the murders.

2.8 It is also asserted that the Attorney-General's Office was aware that the Health Improvement complex was not owned by Three Stars because the Attorney-General was personally involved in a bitter dispute with Mr. Yermolenko regarding the validity of the rental contract for the Complex premises. The Attorney-General, in a letter dated 21 July 1992, told him that the business' activities were illegal because the underlying contract was invalid and asked him to vacate the Complex premises. In a letter to the editor of a local newspaper, published in August 1992, a few weeks before the murders, Mr. Yermolenko accused the Attorney-General's Office of having organized crime connections. In the same letter, he appealed for help, stating that the Three Stars management felt threatened by a competitor with whom they had serious conflicts. It is alleged that the authorities failed to investigate these conflicts as a potential motive for the murders.

2.9 At trial, Mr. Lokshinsky contradicted his statement to the police and testified that Mr. Perel had not promised him anything, but rather had threatened him and his family. Subsequently, in a letter dated 27 January 1994 to the Supreme Court of Latvia and in a letter dated 3 May 1995 to the Chief Justice, he stated that he had given false testimony at trial in order to limit his own responsibility and escape the death penalty. He also admitted that his accomplices who had corroborated his evidence had nothing to do with the case and had lied, at his request, in order to implicate Mr. Perel. He also requested the Supreme Court to drop all charges against all his co-defendants, including Mr. Perel.

2.10 The authors inform the committee that a group of writers, jurists and journalists have formed an International Committee in Defense of Martin Perel, and have appealed to the Latvian authorities for Mr. Perel's release.

### The complaint

3. The authors allege that Mr. Perel's right to a fair trial and his right to presumption of innocence under article 14(1) and (2) of the Covenant have been violated.

### State party's observations on admissibility and author's comments thereon

4.1 By submission of 9 February 1996, the State party confirms that the Supreme Criminal Court by judgment of 29 June 1993 sentenced Mr. Perel to 15 years' imprisonment, for arranging the deaths of the president and vice-president of Three Stars. This conviction was confirmed on 30 September 1993. On 14 March 1994, the Presidium of the supreme Court rejected objections made by its vice-chairman with regard to the reclassification of the crime of the younger brother of Mr. Yakov Lokshinsky and with regard to the sentences of Mr. Perel and Mr. Yakov Lokshinsky. On 19 December 1994, the plenary of the Supreme Court, reviewing the presidium's decision, reclassified the crime of the younger brother, but confirmed Mr. Perel's conviction and sentence.

4.2 The State party further points out that under Latvian criminal law, a trial can be reopened on the basis of new evidence. Accordingly, in view of Mr. Perel's and Mr. Lokshinsky's protestations, the Supreme Court has made an application to the Chief Prosecutor to see whether the availability of new evidence justifies a retrial. The State party concludes therefore that all domestic remedies have not yet been exhausted.

5.1 In their comments on the State party's submission, the authors reiterate their previous statements that Mr. Perel is innocent and that the attributed motive for ordering the murders did not exist. They further point out that one of the murder victims was indeed the president of Three Stars, but the other just a regular employee, and not vice-president as the State party suggests.

5.2 The authors further state that Mr. Perel's counsel has repeatedly written to the Chief Justice and Prosecutor General in order to show that Mr. Perel had become victim of a fabricated case. On 16 January 1996, the Chief Justice sent the case to the Prosecutor General of Latvia under articles 388 to 390 of the Code of Criminal procedure. Article 388 provides for the reopening of a case in the light of new circumstances, inter alia when a sentence was based on deliberate false witness testimony. On 20 February 1996, in a letter to Mr. Perel's father, the Prosecutor General's Office stated that, after having conducted several investigations, the case would not be reopened. By letter of 1 March 1996, Mr. Perel's counsel protested the decision not to reopen the case. On 15 March 1996, the Prosecutor General's Office responded that it was still in the process of verifying the new evidence in the case. The authors point out that it is now more than three months since the request for reopening of the case was made and that the case has still not been reopened. They contend that the refusal by the Prosecutor General to reopen the case amounts to a violation of article 2, paragraph 3(b), of the covenant.

#### 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 has noted the State party's argument that the communication is inadmissible for non-exhaustion of domestic remedies, since the Chief Prosecutor has not yet decided whether or not to order a retrial. The Committee considers, however, that a request to reopen a case on the basis of new evidence, once regular remedies have been exhausted, does not form part of the domestic remedies that must be exhausted in order to satisfy the admissibility requirement set forth in article 5, paragraph 2(b), of the Optional Protocol. The committee is therefore not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication.

6.3 The Committee notes that the State party has not raised any other objections to admissibility and considers that the communication should be examined on the merits, in particular in respect to the way in which the State party's authorities assessed or failed to assess the retraction by the main witness of the statement inculcating Mr. Perel, which may raise issues under article 14, paragraph 1, of the Covenant. In this connection, the Committee would like to receive precise information from the State party on the steps taken to investigate Mr. Lokshinsky's assertion of 27 January 1994, repeated on 3 May 1995, that he had given false evidence at trial.

7. The Human Rights committee therefore decides:

(a) that the communication is admissible;

(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. The State party is further requested to provide copies and translations of all relevant decisions taken by its Courts and its authorities, in particular of the Supreme Court's decision of 19 December 1994;

(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.]

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

1/ It is unclear from the authors' submissions what Mr. Perel's nationality is.

2/ No copy of trial transcript or judgment of first instance is furnished.

3/ It is unclear from the authors' submissions whether this statement was made in court as well.

4/ It is unclear from the authors' submissions whether Three Stars' non-ownership of the complex refers only to the Complex premises, which were being rented, or to the premises and the enterprise itself. Mr. Lokshinsky himself states, in his letter to the Supreme Court, that the Complex was sold by Yermolenko and Perel and that the new owners assumed ownership on 1 October 1992.