HUMAN RIGHTS COMMITTEE

Perel v. Latvia

Communication No. 650/1995

30 March 1998

CCPR/C/62/D/650/1995*

VIEWS

Submitted by: Meer and Shulamit Vaisman

Victim: Their nephew

State party: Latvia

Date of communication: 31 May 1995 (initial submission)

Date of decision on admissibility: 3 July 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1998,

Having concluded its consideration of communication No.650/1995 submitted to the Human Rights Committee by Mr. Martin Perel, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

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, 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, was dismissed on 14 March 1994. 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.

2.3 At the trial, 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 author state that the prosecution attached great weight on the confession and testimony if 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".[1]

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 (premises and enterprise) was not owned by Three Stars and that it would have been impossible for Mr. Perel to give it to him. 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, paragraphs 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 would justify 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.

The Committee's admissibility decision

6.1 At its 57th session, the Committee examined the admissibility of the communication. It noted the State party's argument that the communication was inadmissible for non-

exhaustion of domestic remedies, since the Chief Prosecutor had not yet decided whether or not to order a retrial. The Committee considered, 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 was therefore not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication.

6.2 The Committee noted that the State party had not raised any other objections to admissibility and considered 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 inculpating Mr. Perel, which may raise issues under article 14, paragraph 1, of the Covenant. In this connection, the Committee wished 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. On 3 July 1996, the Human Rights Committee therefore decided that the communication was admissible.

Submissions from the parties concerning the merits of the communication

8.1 In a further submission, the authors of the communication submit that on 17 July 1996, Mr. Perel's counsel was notified by the Prosecutor General's office that his request to reopen the case was rejected. His appeal against this decision was turned down on 23 August 1996. Under Latvian law, reopening of cases is allowed only when there are circumstances, not known to the court when the sentence was imposed, which alone or in conjunction with earlier established circumstances, exonerate a convicted person, or reduce his guilt.

8.2 In the decision of 17 July 1996, the Prosecutor's Office recalls that, in his petition to the Supreme Court of 27 January 1994, confirmed that he had committed the crime because he was under threat by Mr. Perel. He also stated that Mr. Perel had tried to make him change his testimony. In other submissions, Lokshinsky indicated that his testimony at trial was false, and that his co-accused were innocent, and that he himself had only been a witness to the murders which he had not been able to prevent. The Prosecutor's Office considered that, in view of all the circumstances in the case, and observing that Mr. Lokshinsky did not provide specific details of the new version of events, there was no reason to reopen the case. In this context, it is stated that a witness, who died according to Lokshinsky, was in fact still alive and denied having been on the site of the crime.

8.3 From the decision of 23 August 1996, it appears also that the Prosecutor was of the view that Mr. Perel had been convicted on the basis of other evidence than just the testimony of Lokshinsky, which was corroborated by other testimonies and circumstantial evidence.

8.4 The authors argue that there is no substantiation for the Prosecutor's statement that Lokshinsky was put under pressure by Mr. Perel and his family. Neither has Lokshinsky's

statement at the trial, that he committed the crime because Mr. Perel threatened him with reprisal, been substantiated by evidence, according to the authors. They argue that reopening of the case would clarify many issues of facts and evidence, and maintain that Mr. Perel was convicted solely on the basis of Lokshinsky's evidence against him. They contend that Mr. Perel's conviction and the subsequent failure to reopen his case, are the result of anti-semitism.

8.5 The authors provide a copy of a statement by Mr. Lokshinsky, dated 7 June 1995, in which he states that he gave false testimony during the trial because of pressure by the investigators. They also provide a copy of a statement of 21 June 1996, in which he denies that he turned himself in to the police and denies that he was ever promised a reward of 5000 rubles. In the statement, Lokshinsky also states that, during the pre-trial examination, he was visited by representatives of a law firm who offered him a million rubles (about $ 8,000) if he would change his testimony saying that the murders were committed in the course of a spontaneous argument.

9.1 In its observations, dated 14 February 1997, under article 4 of the Optional Protocol, the State party explains that in 1996 the Supreme Court reviewed repeated complaints by Mr. Lokshinsky and Mr. Perel, in order to decide whether a new hearing was justified. After revision of the case the Supreme Court forwarded a petition to the General Public Prosecutor. On 17 July 1996, the Prosecutor's Department rejected the petititon, as no new circumstances were found to justify the reopening of the case.

9.2 The State party submits that the court proceedings were fair and that no violations of the Covenant have taken place. In this context, the State party submits that Mr. Perel was found guilty on the basis of all the evidence gathered in the case.

9.3 With regard to the statements of Mr. Lokshinsky, the State party submits that he has been put under pressure by Mr. Perel to obtain his release.

9.4 The State party provides an English translation of the Supreme Court's verdict of 29 June 1993. It appears from the Court judgment that there was evidence that the work relations between Mr. Perel on the one hand and Mr. Yermolenko and Mr. Shevchuk on the other had become conflictuous and that Mr. Yermolenko and Mr. Shevchuk had decided to terminate the arrangement. The State party also provides a translation of the appeal judgement of the Supreme Court of 30 September 1993, of the verdict of the Presidium of the Supreme Court, dated 14 March 1994, and of the verdict of the Supreme Court's Plenum of 19 December 1994.

9.5 From the translation of the letter, dated January 1996, of the Chairman of the Supreme Court, it appears that Mr. Lokshinsky petitioned the Court on 27 January, 3 May and 6 June 1994, stating that all depositions given by him during the investigation and court proceedings had been guided by the desire to survive, that they were false, and that the co-accused had testified at his request that the murder was ordered by Mr. Perel. The Chairman of the Supreme Court pointed out contradictions in the evidence and forwarded the request for reopening of the case to the Public Prosecutor, invoking Mr. Lokshinsky's petitions as new

facts. By decision of 17 July 1996, the Public Prosecutor rejected the request for reopening. It was considered that in his statements Mr.Lokshinsky had stated that he had been put under pressure by Mr. Perel, and that, other than denying his testimony given at the trial, he did not provide any specific information contradicting the findings of the court. The Prosecutor also refers to press articles, and states that investigations confirmed the evidence on which the Court's judgment was based, and contradicted the versions published in the press. An alleged witness reported to be killed, was in fact alive and denied having been witness to the murder. The Prosecutor rejected the claim that Mr. Perel's conviction was an expression of anti-semitism. On the basis of the outcome of his investigations, the Prosecutor declined the reopening of the case.

10. In their comments on the State party's submission, the authors emphasize the contradictions in the evidence as put forward by the President of the Supreme Court, and conclude that this shows that the evidence against Mr. Perel was fabricated. The failure of the Prosecutor to reopen the case is said to constitute a violation of article 2, paragraph 3(a), of the Covenant.

11.1 In a further submission of 25 July 1997, the State party provides a copy of a "Compatibility Exercise of Latvian legislation to the European Convention on Human Rights". It explains that a new penal code has been elaborated with the assistance of experts from the Council of Europe.

11.2 Concerning the case of Mr. Perel, the State party submits that he has been transferred to a less strict detention regime on 20 June 1996. The State party further denies the authors' suggestion that the judgement in his case was inspired by anti-semitism, stating that the Prosecutor has investigated these allegations and found them groundless.

Issues and proceedings before the Committee

12.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

12.2 The Committee recalls its jurisprudence that it is generally not for the Committee, but for the courts of States parties, to evaluate facts and evidence in a specific case, unless it can be ascertained that the evaluation was manifestly arbitrary or amounted to a denial of justice. The Committee has carefully examined the Court judgments in the instant case, and considers that the trial did not suffer from such defects.

12.3 With regard to the authors' argument that the State party's failure to reopen the case against Mr. Perel constitutes a violation of the Covenant, the Committee notes from the materials presented to it that the statements by Mr. Lokshinsky, revoking the evidence he gave at trial, were examined by the competent authorities, and that Mr. Perel's counsel was given an opportunity to present observations and arguments. In the circumstances, the Committee considers that there is no substantiation for the contention that the decision not to reopen the case was manifestly arbitrary or amounted to a denial of justice.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any of the provisions of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committeee's annual report to the General Assembly.]

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*/ Made public by decision of the Human Rights Committee.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Thomas Buergenthal, Lord Colville, Ms. Ch. Chanet, Mr. Omran el Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr.Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ It does not appear that this statement was made in court as well.