

HUMAN RIGHTS COMMITTEE

Gridin v. Russian Federation

Communication No 770/1997*

20 July 2000

CCPR/C/69/D/770/1997

VIEWS

Submitted by: Mr. Dimitry L. Gridin (Represented by Mr. A. Manov of the Centre for Assistance to the International Protection)

Alleged victim: The author

State party: Russian Federation

Date of the communication: 27 June 1996

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

Meeting on 20 July 2000

Having concluded its consideration of communication No. 770/1997 submitted to the Human Rights Committee by Mr. Dimitry L. Gridin, 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, and the State party,

Adopts the following:

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

1. The author of the communication is Mr. Dimitriy Leonodovich Gridin, a Russian student, born on 4 March 1968. He claims to be a victim of a violation by Russia of articles 14, paragraphs 1, 2, 3(b),(e) and (g). The case also appears to raise issues under articles 9 and 10 of the Covenant. He is represented by Mr. A. Manov of the Centre for Assistance to the International Protection.

The facts as submitted by the author

2. The author was arrested on 25 November 1989 on charges of attempted rape and murder of one Ms. Zykina. Once in detention, he was also charged with six other assaults. On 3 October 1990, the Chelyabinsk Regional Court found him guilty of the charges and sentenced him to death. His appeal to the Supreme Court was rejected on 21 June 1991. Further appeals were rejected on 21 October 1991 and 1 July 1992. Appeals to the Prosecutor's Office were likewise rejected, respectively on 12 December 1991, 16 January and 11 March 1992. On 3 December 1993, the author's death sentence was commuted to life imprisonment.

The complaint

3.1 The author alleges that a warrant for his arrest was only issued on 29 November 1989, over three days after he was detained. He further states that he was denied access to a lawyer, despite his requests, until 6 December 1989.

3.2 He claims that he was interrogated during 48 hours, without being given any food and without being allowed to sleep. His glasses had also been taken away from him and he could not see much because of his shortsightedness. During the interrogation, he was beaten.¹ He states that he was told that his family was letting him down and that the only way to avoid the death penalty would be to confess. He then confessed to the six charges as well as to three other charges.

3.3 It is alleged that the author's lawyer was not informed by the investigator of scheduled court actions. In particular, in January 1990 the author was sent for a medical expertise and his lawyer was not informed.

3.4 The author claims that the handling of the evidence violated the Russian Code of Criminal Procedure. It is said that the author's clothes were transported to the laboratory in the same bag as the victims', and that therefore no value can be attached to the outcome of the examination that fibers of his clothes were found on the victims'. It is also claimed that there were irregularities in the identification process. The author alleges that he was led through the hall where the victims were sitting on the day of the identification. When one of the victims failed to point him out as the perpetrator, allegedly the investigator took her hand and pointed to the author. It is further submitted that the description by the victims of their attacker completely differs with the author's appearance.

3.5 The author claims that his right to presumption of innocence was violated. Between 26 and 30 November 1989 radio stations and newspapers announced that the author was the feared "lift-boy" murderer, who had raped several girls and murdered three of them. Also, on 9 December 1989, the head of the police announced that he was sure that the author was the murderer, and this was broadcasted on television. Furthermore, the author alleges that the investigator pronounced the author guilty in public meetings before the court hearing and called upon the public to send prosecutors. As a consequence, the author states that at his trial ten social prosecutors were present whereas he was defended by one social defender² who was later forced to leave the court room.³ According to the author, the court room was crowded with people who were screaming that the author should be sentenced to death. He also states that the social prosecutors and the victims were threatening the witnesses and the defense and that the judge did not do anything to stop this. Because

of this, there was no proper opportunity to examine the main witnesses in court.

3.6 At the first day of the hearing, the author pleaded not guilty.⁴ He was then placed in a lock-up. He complains that he was never allowed to discuss things with his lawyer in private.

3.7 He also complains that the witnesses who could have confirmed his alibi were not examined in court. Moreover, some statements given during the preliminary examination disappeared from the record.

3.8 It is further claimed that in violation of Russian law, the records of the trial were only compiled and signed on 25 February 1991, whereas the hearing finished on 3 October 1990. Three witnesses filed complaints to the Supreme Court, because of discrepancies between the record and what they had in fact testified.

3.9 The above is said to constitute violations of article 14, paragraphs 1, 2, 3(b),(e) and (g).

The State party's submission and the author's comments there on:

4.1 By submission dated 16 February 1998, the State party contends that the communication should be declared inadmissible since it was not submitted by the author himself, but by counsel on his behalf.

4.2 In a further submission, dated 26 February 1999, the State party addresses the merits of the communication. In this respect it submits that in order to respond to the Committee's request the Russian Federation Procurator's Office reviewed the author's case. It verified the statements of the victims and witnesses, the inspection of the place where the incidents took place, and the conditions under which the author was identified. In this respect, the State party contends that the argument that the author was innocent of the charges and that the investigation methods used violated his rights to a defence, as well as the issue of public pressure were all reviewed by the Supreme Court in its capacity as an Appeal Court, which considered them to be unfounded.

4.3 The State party contends that neither the author nor his lawyer ever raised the issue of police coercion before the courts. It further contends that the author was represented by a lawyer throughout the preliminary investigation, during which the author provided detailed information in respect of the crimes. According to the State party the author only retracted from these statements in court due to pressure placed on him by members of his family.

4.4 With respect to the allegation that the author was unable to read the statements since he was denied reading glasses, the State party notes that from the court records the author stated that he could read at a distance of 10 to 15 centimetres without glasses and furthermore, the investigators provided the author with glasses. Consequently, the State party rejects any violation of the Covenant in this respect.

4.5 Finally, the State party states that Mr. Gridin was questioned in the presence of the defence lawyer who was assigned to him in accordance with the law. The State party notes that Mr. Gridin was arrested on 25 November 1989 and on 1 December 1989 his mother V.V. Gridina, wrote

requesting that the defence lawyer should be invited to participate in the investigations. On 5 December 1989 an agreement was concluded between Gridin's relatives and the lawyer who, from that time, was allowed to participate.

5. The author's counsel in a letter dated 14 September 1999, reiterates the claims of the original submission and points out that by the State party's own admission the author was unrepresented from 25 November to 1 December 1989.

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 ascertained as required under article 5, paragraph 2, (a) of the Optional Protocol that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has objected to the admissibility of the communication, since the communication had been submitted by counsel and not by the author himself. The Committee, points out that according to its rules and practice the author may be represented by counsel and it is not therefore precluded from examining the merits of the communication. The Committee rejects the States party's contention that the communication should be declared inadmissible in this respect.

6.4 With respect to the allegations of ill-treatment and police coercion during the investigation period including denying the author the use of reading glasses, it appears from the material before it that most of these allegations were not raised before the trial court. All the arguments were raised on appeal but the Supreme Court found them to be unsubstantiated. In these circumstances, the Committee finds that the author has not substantiated a claim within the meaning of article 2 of the Optional Protocol.

6.5 With regard to the allegation that his lawyer was not informed of the dates of the court actions which dealt with medical issues the Committee notes that this matter was reviewed by the Supreme Court which found it to be in accordance with law and consequently considers that this claim remains unsubstantiated for purposes of admissibility.

7. The Committee declares the remaining claims admissible, and proceeds with the examination of the merits of all admissible claims, in the light of the information made available to it by the parties, as required by article 5 paragraph 1, of the Optional Protocol.

8.1 With respect to the allegation that the author was arrested without a warrant and that this was only issued more than three days after the arrest, in contravention of national legislation which stipulates that a warrant must be issued within 72 hours of arrest, the Committee notes that this matter has not been addressed by the State party. In this regard, the Committee considers that in the circumstances of the present case the author was deprived of his liberty in violation of a procedure

as established by law and consequently it finds that the facts before it disclose a violation of article 9, paragraph 1.

8.2 With regard to the author's claim that he was denied a fair trial in violation of article 14, paragraph 1, in particular because of the failure by the trial court to control the hostile atmosphere and pressure created by the public in the court room, which made it impossible for defence counsel to properly cross-examine the witnesses and present his defence, the Committee notes that the Supreme Court referred to this issue, but failed to specifically address it when it heard the author's appeal. The Committee considers that the conduct of the trial, as described above, violated the author's right to a fair trial within the meaning of article 14, paragraph 1.

8.3 With regard to the allegation of a violation of the presumption of innocence, including public statements made by high ranking law enforcement officials portraying the author as guilty which were given wide media coverage, the Committee notes that the Supreme Court referred to the issue, but failed to specifically deal with it when it heard the author's appeal. The Committee refers to its General Comment No 13 on article 14, where it has stated that: "It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case the Committee considers that the authorities failed to exercise the restraint that article 14, paragraph 2, requires of them and that the author's rights were thus violated.

8.4 With regard to the remaining allegations contained in paragraphs 3.4 and 3.7 supra, the Committee notes that the Supreme Court addressed the specific allegations by the author that, the evidence was tampered with, that he was not properly identified by the witnesses and that there were discrepancies between the trial and its records. However, the rejection by the court of these specific allegations did not address the fairness of the trial as a whole and therefore does not affect the Committee's finding that article 14, paragraph 1, of the Covenant was violated.

8.5 With respect to the allegation that the author did not have a lawyer available to him for the first 5 days after he was arrested, the Committee notes that the State party has responded that the author was represented in accordance with the law. It has not, however, refuted the author's claim that he requested a lawyer soon after his detention and that his request was ignored. Neither has it refuted the author's claim that he was interrogated without the benefit of consulting a lawyer after he repeatedly requested such a consultation. The Committee finds that denying the author access to legal counsel after he had requested such access and interrogating him during that time constitutes a violation of the author's rights under article 14, paragraph 3 (b). Furthermore, the Committee considers that the fact that the author was unable to consult with his lawyer in private, allegation which has not been refuted by the State party, also constitutes a violation of article 14, paragraph 3 (b) of the Covenant.

9. 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 disclose a violation of article 14, paragraphs 2 and 3(b), of the Covenant.

10 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Gridin with an effective remedy, entailing compensation and his immediate release. The State party is under an obligation to ensure that similar violations do not

occur in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. P.N. Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

[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 Committee's annual report to the General Assembly.]

Notes

- 1/ It is said that medical expert opinions of 18 January and 30 August confirm this.
- 2/ The author refers to social prosecutors and social defenders as provided for under the Russian system, who act in addition to the public prosecutor and defence counsel.
- 3/ From the file it appears that two social defenders were available to the author and that it was one of these who was forced to leave the court room.
- 4/ From the file it appears that the author pleaded not guilty of all charges except for the assault on Ms Zykina.