

HUMAN RIGHTS COMMITTEE

Cheban v. Russian Federation

Communication No. 790/1997

24 July 2001

CCPR/C/72/D/790/1997

VIEWS

Submitted by: Mr. Sergei Anatolievich Cheban et al (represented by counsel, Ms. Elena Kozlova)

Alleged victims: The authors

State party: The Russian Federation

Date of communication: 12 March 1997 (initial submission)

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

Meeting on 24 July 2001,

Having concluded its consideration of communication No. 790/1997 submitted to the Human Rights Committee by Mr. Sergei Anatolievich Cheban et al 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 authors of the communication, and the State party,

Adopts the following:

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

1.1 The authors of the communication, dated 12 March 1997, are Sergei Anatolievich Cheban, born on 27 February 1977, Sergei Alexandrovich Mishketkul, born on 20 February 1977, Vasili Ivanovich Philiptsevich, born on 14 April 1978, and Stanislav Igoervich Timokhin, born on 22 November 1978. They claim to be victims of a violation by the Russian Federation of article 14,

paragraphs 1, 2 and 3 (e), and article 14, paragraph 4 of the Covenant. They assert also that they were denied a jury trial available to others, raising issues under article 26. The authors are represented by counsel.

Factual Background (1)

2.1 The authors were convicted on 17 February 1995, by the Moscow City Court, of criminal acts committed on 24 January 1994, consisting of rape of a minor (who was aged 13 at the time of the incident), accompanied by violence and threats, and of acting in concert by prior agreement to commit the crimes. At the time of the offences of which they were convicted, the authors were all aged between 15 and 16 years and were attending a boarding school in Moscow. The Moscow City Court reached its verdict on the basis of: the evidence given by the victim; written statements from witnesses; written statements by the authors; the police report on the arrest of the authors; and two forensic examinations which had found that the victim had had sexual relations and that the authors were capable of having sexual relations.

2.2 In passing sentence, the Court said that it took account of the age of the accused and of character references in their favour. Philiptsevich was sentenced to six years' imprisonment and the other three accused to five years' imprisonment each. On appeal in cassation, the Supreme Court upheld the decision of the Moscow City Court and confirmed the sentences. Subsequently, the Vice-President of the Supreme Court lodged with the Presidium of that Court an objection to the sentences, pursuant to the rules governing the supervision of the judiciary. On 10 April 1996 the Presidium of the Supreme Court reduced the sentences to four and a half years imprisonment for Philiptsevich and four years each for the other three accused.

The Complaint

3.1 The authors assert that the Moscow City Court arrived unfairly at its conclusion, giving too much weight to the account of the victim. They assert that, since there were no eyewitnesses or other direct evidence of rape, the judge based his conclusions chiefly on the victim's statements. Counsel for the accused had called on the court to have the victim undergo psychiatric and psychological examination, in order to assess how well she was able to perceive and understand facts and circumstances, but no such examination had been undertaken.

3.2 At trial, the accused had also requested a reconstruction of the incident, and the submission of a description of the scene of the alleged crime, including photographs and diagrams, which, in the view of the authors, would have determined whether or not they were guilty of the rape alleged. These requests were denied. The authors argue that the denial of their request constitutes a breach of articles 14, paragraphs 1, 2 and 3 (e), of the Covenant.

3.3 The facts as stated by the authors may also imply claims that the State party committed breaches of article 14, paragraph 4, and article 26 of the Covenant. As regards article 14, paragraph 4, the facts as stated by the authors suggest that the court did not take into account the age of the accused. The authors sought on several occasions to invoke article 20 of the Russian Constitution, 1993, which provides that cases in which an accused subject to the death penalty may, at his request, be tried before a jury. Denial of a jury trial to the authors might also raise an issue under article 26

because of a difference in treatment between them and other accused persons who received a jury trial.

The State party's response

4.1 The State party responds that the claims of breach of constitutional rights; the assertion that the author's guilt was not sufficiently proven and that the pre-trial investigation and formalities were incomplete, have been investigated several times by the appropriate judicial authorities and have not been confirmed. The State party declares that throughout the judicial hearings the prosecution and the accused enjoyed equal rights.

4.2 The State party asserts also that a jury trial could not have been given to the accused since there was no provision in its law for trial by jury within the city of Moscow at that time.

4.3 The authors had the services of legal counsel from the moment of their arraignment, and their procedural rights were explained to them several times, in the presence of counsel.

Comments by the authors on the State party's response

5. In their comments on the State party's reply, the authors reiterate that their trial was unfair because they were prevented from gathering and submitting evidence of their innocence.

Issues and proceedings before the Committee

6.1 Before considering claims in a communication, the Human Rights Committee, in accordance with rule 87 of its rules of procedure, must decide whether the claim is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the case is not being examined under another procedure of international investigation, and that domestic remedies had been exhausted. The requirements laid out in article 5, paragraph 2, of the Optional Protocol are, therefore, satisfied.

6.3 The Committee notes that the State party has raised no objections to the admissibility of the communication.

6.4 With regard to the authors' allegations of violation of the presumption of innocence (article 14, paragraph 2, of the Covenant), the Committee finds that this claim has not been sufficiently substantiated for purposes of admissibility.

6.5 With regard to the alleged violations of article 14, paragraphs 1, 3 (e), and paragraph 4, the Committee notes that the author's claims essentially relate to the evaluation of facts and evidence as well as to the implementation of domestic law. The Committee recalls that it is in general for the courts of State parties, and not for the Committee, to evaluate the facts in a particular case and to interpret domestic legislation. The information before the Committee and the arguments advanced by the authors do not show that the Courts' evaluation of the facts and their interpretation of the law were manifestly arbitrary or amounted to a denial of justice. The Committee concludes that these

claims are therefore inadmissible under articles 2 and 3 of the Optional Protocol.

6.6 The other claims submitted are admissible and the Committee proceeds to consider them on the merits.

Consideration on the merits

7.1 Although the authors do not cite article 26 of the Covenant, the Committee is of the view that it must consider, in light of the submissions of the authors, whether that article has been breached.

7.2 The claim of discrimination made by the authors is that they were denied a jury trial, while a jury trial was granted to some other accused persons in courts of the State party. The Committee notes that while the Covenant contains no provision asserting a right to a jury trial in criminal cases, if such a right is provided under the domestic law of the State party, and is granted to some persons charged with crimes, it must be granted to others similarly situated on an equal basis. If distinctions are made, they must be based on objective and reasonable grounds.

7.3 The authors claim that they should have been afforded a trial by jury, afforded to all accused persons liable to the death penalty. The Committee notes, however, that in the present case the authors were juveniles at the time the crimes were committed and thus they were not subject to the death penalty according to domestic legislation.

7.4 Another possible claim of violation of article 26 is that trial by jury was made available in trials in some parts of the country but not in Moscow where the authors were tried and convicted. The Committee notes that under the Constitution of the State party the availability of jury trial is governed by federal law, but there was no federal law on the subject. The fact that a State party that is a federal union permits differences among the federal units in respect of jury trial does not in itself constitute a violation of article 26 (2). As the authors have provided no information on cases in which jury trials have been held in non-capital cases in the city of Moscow, the Committee cannot conclude that the State party violated article 26.

8. 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 article of the Covenant.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

[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. The communication contains no direct presentation of the facts by either the authors or counsel.
2. The Russian Constitution provides in its Article 5 that Regions, and cities with federal status, are equal units ("subjects") of the Russian Federation, have their own legislative authority, and can enact their own legislation. (Article 65 enumerates the units of the Federation. Moscow city and Moscow Region, are equal and separate "subjects" of the Russian Federation.) See also Core document, HRI/CORE/1/Add.52,25 October 1995, paragraphs 24 and 30.