



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-seventh session
12 to 30 October 2009

DECISION

Communication No. 1537/2006

<u>Submitted by:</u>	Yekaterina Gerashchenko (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Belarus
<u>Date of communication:</u>	13 December 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 December 2006 (not issued in document form)
<u>Date of adoption of decision:</u>	23 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Allegation of procedural violations.

Procedural issue: Insufficient substantiation, evaluation of facts and evidence, non-exhaustion of domestic remedies

Substantive issues: Fair trial, discrimination.

Articles of the Covenant: 14 and 26.

Articles of the Optional Protocol: 2 and 5, paragraph 2 (b).

[Annex]

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-seventh session

concerning

Communication No. 1537/2006**

Submitted by: Yekaterina Gerashchenko (not represented by
counsel)

Alleged victim: Yekaterina Gerashchenko

State party: Belarus

Date of communication: 13 December 2006 (initial submission)

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

Meeting on 23 October 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Ms. Yekaterina Gerashchenko, a citizen of Belarus born in 1950. She claims to be a victim of a violation by Belarus of her rights under articles 14 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented.

The facts as presented by the author

2.1 From 2001 to April 2003, the author worked as a guard in a collective agricultural firm in Gomel (Belarus). During her work she witnessed repeatedly that staff from the administration of the firm was involved in stealing firm's products.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

2.2 On 29 July 2002, the author also witnessed the chief of the firm's guards, Mr. Rakushevich severely beating a former employee. After she denounced the facts, she received threats to be fired from her job. On 14 April 2003, while the author was at work, she received a visit by Mr. Rakushevich. Ten minutes after he left, she was approached by two policemen, friends of Mr. Rakushevich, the deputy of Mr. Rakushevich and a cleaner named Ms. Kuzmenko. She claims that they accused her of being drunk and Ms. Kuzmenko tested her with an alcohol tester. The author claims that day she had not drunk and had only taken a medication for her heart, which contained alcohol. The author submits that Ms. Kuzmenko was not qualified to do the alcohol test and provided copy of a letter from the Ministry of Health in that regard. The author requested to be taken to a medical centre, but her request was ignored. She also asked the administration to be allowed to leave her post, so that she could go to a medical centre, but her request was rejected again. She claims that she could not leave her post without the administration's permission as, in such case, she could be fired for being absent during working hours. After the incident she worked for three more consecutive days. She argues that if the allegations of her being drunk were true, she would have been immediately removed from her post. She was dismissed on 18 April 2003 and she claims that the trade union, which she belonged to, was not informed of her dismissal.

2.3 The author complained to the Gomel District Court about her dismissal. On 4 April 2003, the court rejected her complaint, confirming that her dismissal was lawful. The author claims that the court ignored the fact that Ms. Kuzmenko did not have a required medical qualification to do the alcohol test. It allegedly argued that she could have undergone another test at a medical establishment if she did not agree with the test results.

2.4 The author appealed the decision of the Gomel District Court to the Gomel Regional Court. Separately from her appeal, on 9 September 2003, the Gomel District Prosecutor also introduced a cassation motion to the Gomel Regional Court against the decision of the Gomel District Court, and requested her re-employment, and returning her case for further investigation. On 30 September 2003, the Gomel Regional Court upheld the decision of the Gomel District Court. On an unspecified date, the author complained under a supervisory review procedure to the Supreme Court of Belarus. On 24 March 2004, the Court dismissed her appeal.

The complaint

3.1 The author claims that the alcohol test was carried out in violation of established procedures, as it was made by a cleaner with no medical qualifications. This aspect was allegedly ignored by the court, which raises issues under article 14, paragraph 1, of the Covenant.

3.2 The author does not provide any information related to her allegations of violation of article 26 of the Covenant.

State party's observations on admissibility and merits

4.1 On 22 February 2007, the State submits, that the author has not exhausted domestic remedies, since, under section 436 of the Civil Procedure Code, a supervisory review appeal can be submitted within three years after the court's decision enters into force. The author did not submit such an appeal to the Prosecutor's office.

4.2 The State party reiterates that the author was fired from her job under section 42, paragraph 7, of the Labour Code for being drunk during her working hours. It contends that her state of inebriation was confirmed by evidence examined during the court proceedings, including witness statements and the result of an alcohol test. Therefore, no violation of the Covenant took place in connection with the termination of her employment contract.

4.3 The same arguments were reiterated by the State party in its submission of 10 June 2008.

Author's comments on the State party's observations

5.1 On 23 June 2006, the author refutes the State party's argument regarding non-exhaustion of domestic remedies and submits that she appealed under the supervisory review procedure to the Supreme Court, but the appeal was rejected. She argues that an appeal to the Prosecutor's office under the supervisory review procedure is optional and not mandatory, as the Prosecutor's office is not responsible for review or annulment of court decisions.

5.2 On 28 July 2008, the author submits that the court relied mainly on testimonies by the witnesses proposed by the defendant, namely the local policemen, friends of Mr. Rakushevich, and Ms. Kuzmenko. The author claims that the letter from the Ministry of Health, which states that such tests can be conducted only by medical personnel, was ignored by the court.

5.3 The author adds that the court materials included a document which confirms that the alcohol tester used to test her level of alcohol intake, did not undergo a technical examination to verify that it functioned properly. She claims that her case was fabricated.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes the State party's argument that the author failed to appeal to the Prosecutor's office under the supervisory review procedure of section 436 of the Civil Procedure Code. The author contests this argument, stating that an appeal to the Prosecutor's office under the supervisory review procedure is optional. The Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary mean of appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence.¹ In such circumstances and also noting that the

¹ See the Committee's General comment No. 32 (article 14), document CCPR/C/GC/32, paragraph 50: "A system of supervisory review that only applies to sentences whose execution has

author has appealed to the Supreme Court, which has rejected her appeal, the Committee considers that, in the present case, it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (b), from examining the communication.

6.4 The Committee notes the author's claim that her right under article 26 of the Covenant was violated. However, the author does not provide information to illustrate her claims in this respect. Accordingly, this part of the communication is deemed inadmissible, as insufficiently substantiated, under article 2 of the Optional Protocol.

6.5 With regard to the alleged violation of article 14, paragraph 1, the Committee notes the author's claim that the court relied mainly on the testimonies of the witnesses invited by the defendant as well as her claim of irregularities in the manner in which the alcohol test was carried out. The Committee also notes the State party's submission that her state of inebriation was confirmed by evidence examined during the court proceedings. The Committee observes, however, that the author's claims relate to the evaluation of facts and evidence by the State party's courts. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice². The material before the Committee do not contain any elements to demonstrate that the court proceedings suffered from such defects. Accordingly, the Committee considers that the author has failed to substantiate her claims of a violation of article 14, paragraph 1, under article 2 of the Optional Protocol, and nor in this respect can the communication therefore be admitted.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the author.

[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.]

commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor."; and, for example, Communication No. 836 of 1998, *Gelazauskas v Lithuania*, Views adopted 17 March 2003

² See, inter alia, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.