



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
One hundredth session
11 to 29 October 2010

Decision

Communications No. 1344/2005

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| <u>Submitted by:</u> | Mikhail Korolko (not represented by counsel) |
| <u>Alleged victim:</u> | The author |
| <u>State party:</u> | Russian Federation |
| <u>Date of communication:</u> | 25 June 2004 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 92/97 decision, transmitted to the State party on 21 June 2005 (not issued in document form) |
| <u>Date of adoption of decision:</u> | 25 October 2010 |

* Made public by decision of the Human Rights Committee.

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| <i>Subject matter:</i> | Allegations of criminal procedure violations, inhuman conditions of detention and discrimination on the grounds of social status |
| <i>Procedural issue:</i> | Evaluation of facts and evidence, insufficient substantiation |
| <i>Substantive issues:</i> | Right to fair trial, right to obtain examination of witnesses, inhuman conditions of detention, discrimination on social grounds, right to appeal to higher instances |
| <i>Articles of the Covenant:</i> | 10, 14, paragraphs 1, 3 (e) and 5, 26 |
| <i>Article of the Optional Protocol:</i> | 2 |

[Annex]

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth session)

concerning

Communication No. 1344/2005**

Submitted by: Mikhail Korolko (not represented by counsel)
Alleged victim: The author
State Party: Russian Federation
Date of communication: 25 June 2004 (initial submission)

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

Meeting on 25 October 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mikhail Korolko, a Russian citizen born in 1969, who is currently serving a prison sentence in the Russian Federation. He claims that his rights have been violated by the State party, but invokes no specific articles of the Covenant. However, the communication may raise issues under articles 10, 14, paragraphs 1, 3(e) and 5, and 26, of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

The alleged facts as presented by the author

2.1 On 17 January 2000, the Labytnangski City Court found the author guilty of planning and executing escape from a prison where he was serving a nine-years sentence for theft. The author claims that he escaped from the prison due to death threats from the prison chief, who allegedly tried to extort bribes from him. He did not mention the reason for his escape during investigation and trial, as he had been returned to the same prison, and feared for his life.

2.2 During the investigation and trial, neither the police nor the court examined the question of his reasons for escaping, as they were required to do under Russian law. None of the available witnesses were questioned on that. The author's request to call prison

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

guards and other persons as witnesses was denied by the Court. The court transcript submitted by the author mentions his request to invite the Director of one school, where he hid after his escape. The request was denied as the Director was not an eye-witness of the crime. He adds that had these people been called to give evidence, the true reasons for his escape would have come to light, i.e. without having to raise it himself. The author submits that it was not incumbent on him to explain his reasons for escaping, as he was entitled to remain silent.

2.3 The author filed appeals in the Regional Court and the Supreme Court, in which he explained the reasons for his escape, and in particular that, while he was waiting for the judgement to be delivered, he was at the mercy of the same prison commandant who had caused him to escape. After his conviction for escape, he was moved to a different prison, and felt safe to complain. He claims to have requested an investigation into his complaint against unlawful actions by the prison administration and such request be added to his case file. In his appeals the author complained that the prosecution had the obligation to inquire into the reasons for his escape, but that it failed to do this.

2.4 The author's appeals were dismissed because the author had not raised the relevant issues at first instance, and had in fact told the court that his reason for escaping was to flee to Central Asia. The author denies the latter argument and notes that this would have been one of the consequences of his escape, but not a reason for it. He claims that his appeals were not examined on the merits and that his case file does not have his petitions concerning his conditions in prison.

2.5 The author refers to the response of the General Prosecutor's office to his complaint, which stated that he did not mention the death threats to none of his accomplices in escape. He claims that the statement is false, as none of his accomplices were asked about the reasons for his escape.

2.6 He adds that he was discriminated against on the basis of his social status as he was already convicted for another crime.

The complaint

3.1 The author does not claim a violation of specific provisions of the Covenant. He states, however, that his right to fair trial was violated as the court did not take into account the bribery and death threats from the prison chief - his reasons for escape from prison. He also claims that his right to obtain examination of witnesses was violated as the court denied his request to call witnesses who could testify on his reasons for escape.

3.2 The author further alleges that his right to have his claim in relation to the reason for his escape reviewed by higher instances was violated and he was discriminated on the grounds of his social status as a convicted person.

3.3 As stated, the author does not invoke any articles of the Covenant. However, as noted, the communication may raise issues under articles 10, 14, paragraphs 1, 3(e) and 5, and 26, of the Covenant.

State party's observations on admissibility and merits

4.1 On 15 June 2005, the State party submitted that the author was found guilty under section 313, paragraph 2 (a), of the Criminal Code for planned escape from a place of detention and sentenced to 8 years of imprisonment. In addition to his previous sentences, that made a total of 13 years of imprisonment in a colony of special regime. The case was examined in a public hearing in accordance with the criminal procedure law and the Constitution. The author's guilt was proven by thoroughly investigated evidence.

4.2 The State party submits that none of the author's claims were confirmed. According to his accomplices, the author never mentioned that he had received death threats. The prosecutor's office of Yamalo Nenets Autonomous Region informed that the author did not complain of any illegal actions by the prison staff during 1998-1999.

4.3 During the court proceedings, the author requested to call the director of the school N 6 in Salekhard as a witness. He was hiding at the building of this school after his escape. The request was denied by the court as the person in question was not an eye-witness of the crime. No other requests were made by the author during the court proceedings.

4.4 The State party argues that the author's statement regarding his request for investigation into his complaint against unlawful actions by the prison administration and that this request be added to his case file is false. According to the court transcript the author confessed his guilt regarding his escape and asked that his confession statement be included in his case file. The author's petitions in his case file do not contain any statements that his escape was forced.

4.5 On 31 March 2005, the Labitnanski City Court changed the sentence of the author to 10 years of imprisonment in a colony of strict regime.

4.6 The author's claim that his right to appeal was violated is unfounded. He was explained the terms and procedure of appeal as well as his right to study the court transcript and to comment on it. The cassation court examined all his arguments and responded to each of them. The matters raised in the cassation appeal were related to the severity of the penalty and calculation of his prison term.

4.7 The State party concludes that no violation has been found either during the investigation or during the trial. The supervisory complaint of the author of 11 March 2005 is under consideration by the Supreme Court. Therefore, the State party claims that the author has not exhausted domestic remedies.

4.8 The State party reiterated the same arguments in its submission of 24 May 2006.

Author's comments on the State party's observations

5.1 In a letter dated 15 August 2005, the author argues that none of his accomplices were asked whether he had received death threats. The fact that his accomplices were not aware of the death threats does not prove that he did not have such a reason. In its decision the court indicated that they were not part of the organized group, which means that each of them had his own reason for escape. This does not exclude the fact that some of his accomplices were not aware of the reasons the others had.

5.2 Regarding the State party's comment that he did not file any complaint against the prison administration during 1998 and 1999, he argues that all correspondence of inmates is censored. Thus, a complaint against the prison administration would never have reached its destination and it would have made his situation even worse. In addition, the complaint to the prosecutor's office is not effective and its consideration is usually prolonged.

5.3 He refers to the State party's submission that he was refused to call a witness as he was not an eye witness of the crime and submits that such refusal violates his right, as this witness could prove that he was forced to escape. He adds that the court transcript was not well written, as it misses some of the questions and answers. For example, it does not reflect a statement by the judge that he would have to leave the court room, if he did not stop repeating that he was forced to escape due to the conditions in prison. He had no opportunity to provide his comments to the court transcript as he was in a punishment cell and all his correspondence was checked by the same prison chief who had threatened him with death.

5.4 He confirms that on 31 March 2005 his term was reduced by 3 years and his regime was changed to strict. The rest of the State party's information is false, for example the statement that he submitted a complaint under the supervisory review procedure on 11 March 2005.

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 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 matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the author has not exhausted domestic remedies, as the author's appeal of 11 March 2005 under the supervisory review procedure was under consideration by the Supreme Court. The author contested that such statement is false. The Committee recalls its previous jurisprudence,¹ 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. In such circumstances, 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 As for the author's claim that the court did not examine the question of his reasons for escaping and refused his request to invite a witness who could testify in that respect. The Committee notes the State party's argument that the author confessed his guilt in escape, that his case file does not contain any statements that the escape was forced and that his request to invite one witness was denied because the person in question was not an eye-witness of the crime. The Committee observes 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 does not contain enough elements to demonstrate that the court proceedings suffered from such defects. Accordingly, the Committee considers that the author has failed to substantiate his claims under article 14, paragraphs 1 and 3 (e), of the Covenant and thus declares them inadmissible under article 2 of the Optional Protocol.

6.5 As for the author's claims concerning the bribery and death threats from the prison chief as well as discrimination on the grounds of his status, the Committee notes the State party's argument that the author did not complain of any illegal actions by the prison staff

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 the 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.

in 1998-1999. The author claims that he made a request for investigation of unlawful actions by the prison chief, while at the same time he states that he could not complain as he was under the mercy of the same prison chief who threatened him. The Committee notes the contradictions in the author's statements as well as lack of sufficient information in the file on the nature and circumstances surrounding the alleged death threats. Accordingly, the Committee considers that the claims under articles 10 and 26 of the Covenant are also insufficiently substantiated for purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the author's claim that the reason for his escape was not reviewed by higher instances, the State party submitted that the cassation court examined all his arguments and responded on each of them. The Committee notes that from the materials provided by the author and his own statements it would appear that he did not explain the reason for his escape either during the investigation or during the trial. It therefore considers that his allegations under article 14, paragraph 5, have not been sufficiently substantiated and thus finds them inadmissible under article 2, of the Optional Protocol.

7. The Committee therefore, for reasons just stated, decides:

- a) That the communication is inadmissible under article 2 of the Optional Protocol;
- b) That this 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.]