



**International Covenant
on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March - 1 April 2005

DECISION

Communication No. 1357/2005

Submitted by: A. K. (not represented by counsel)
Alleged victim: The author
State party: Russian Federation
Date of communication: 7 August 2004 (initial submission)
Date of decision: 29 March 2005

Subject matter: Alleged unfair review of psychiatric assessment.

Substantive issues: Admissibility

Articles of the Covenant: 14(1)

Articles of the Protocol: 5(2)(a)

[ANNEX]

*Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-third session

concerning

Communication No. 1357/2005**

Submitted by: A. K. (not represented by counsel)

Alleged victim: The author

State party: Russian Federation

Date of communication: 7 August 2004 (initial submission)

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

Meeting on 29 March 2005

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. A. K., a Russian citizen, born in 1960 and resident of the Russian Federation.¹ He claims to be a victim of a violation by the Russian Federation of article 14, paragraph 1, and article 2, paragraph 3. He is not represented by counsel.

Factual background

2.1. In 1979, the author was diagnosed as suffering from schizophrenia. On 11 September 1989, he underwent a psychiatric examination at the Commission of the Chief Psychiatrist of the Russian Federation to review his condition. According to the author, the examining psychiatrist concluded that he suffered from an 'acute schizophrenoid psychosis', rather than actual schizophrenia; the psychiatrist told him that his new diagnosis would be formalized once she had obtained pertinent documents about the author's psychiatric history. However,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

¹ The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

the psychiatrist's formal conclusion on 8 January 1990 was that there were in fact no reasons to change the original diagnosis of 1979.

2.2 The author challenged this decision in the Preobrazhenski Municipal Court. He contended that all relevant medical documentation was available to the treating psychiatrist at the time of the psychiatric examination, and that her diagnosis that he suffered from the lesser affliction of 'acute schizophröidal psychosis', rather than actual schizophrenia, was binding. He claimed that the psychiatrist had then unlawfully changed her finding, without any evidentiary basis, and wrongly concluded that he suffered from schizophrenia.

2.3 On 20 September 1994, the court held that the psychiatrist had acted within the limits of her authority and that there were no grounds to review her decision. The treating psychiatrist had explained, and the court had accepted, that the views she had formed about the author's condition at the end of the examination were provisional, and that she had to await the receipt of the author's psychiatric documentation before reaching her final conclusion. Upon receipt of the documents, she had concluded that there were in fact no grounds to change the original diagnosis.

2.4 The author's appeal to the Moscow City Court was dismissed on 6 December 1994; subsequent appeals to the Supreme Court of the Russian Federation were dismissed on 31 October 1995 and 13 March 1997 respectively.

The complaint

3.1 The author contends that his complaint about his diagnosis was not the subject of fair and impartial proceedings, and that the court's evaluation of the evidence regarding the events in question was arbitrary, resulting in a denial of justice, in violation of article 14, paragraph 1, of the Covenant. He also claims that he was not afforded a remedy for the violation of his Covenant rights, in breach of article 2, paragraph 3.

Issues and proceedings before the Committee

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

4.2 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.

4.3 The Committee considers that the subject matter of the allegations in the author's communication relates in substance to the evaluation of facts and evidence in the course of proceedings before the State party's courts. The Committee recalls its jurisprudence and notes that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or

amounted to a denial of justice.² The material before the Committee does not indicate that the conduct of the judicial proceedings in the author's case suffered from such deficiencies. Accordingly, the Committee considers the author's claims under article 14, paragraphs 1 and 3, are inadmissible under article 2 of the Optional Protocol.

5. The Committee therefore decides that:

- (a) the communication is inadmissible pursuant to article 2 of the Optional Protocol;
- (b) this decision will be transmitted to the author and, for information, to the State party.

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

² See Communication No. 541/1993, *Simms v Jamaica*, inadmissibility decision of 3 April 1995.