

HUMAN RIGHTS COMMITTEE

Baulin v. Russian Federation

Communication No. 771/1997

31 October 2002

CCPR/C/76/D/771/1997

ADMISSIBILITY

Submitted by: The Center of Assistance to International Protection

Alleged victim: Alexander Baulin

State party: The Russian Federation

Date of communication: 15 July 1996 (initial submission)

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

Meeting on 31 October 2002,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Alexander Baulin, a Russian citizen, born on 29 November 1951, at the time of the submission detained at the Corrective Institution in Rybinsk. He claims to be a victim of a violation by Russia 1/ of article 14, paragraphs 1 and 3 (e) of the International Covenant on Civil and Political Rights (the Covenant). He is represented by counsel.

The facts as submitted by the author

2.1 On 25 May 1988 at about 4 p.m., the author, in the state of alcoholic intoxication, entered the apartment of his ex-wife in her absence. The couple, notwithstanding their divorce, had allegedly continued to have sexual relations, which they kept secret from the ex-wife's mother, Ms. Isaeva. While in the apartment, the author heard the voices of the two women from the outside, and in order

to avoid meeting his mother-in-law, he hid in a wardrobe. After about an hour and a half in the wardrobe, he accidentally spilt some liquid and was discovered.

2.2 While in the closet he heard his ex-wife criticizing and ridiculing him. When he was discovered, he was in a rage and assaulted his ex-mother-in-law and his ex-wife, with a knife that he had found in the closet. Counsel submits that the injuries inflicted were superficial, since the author only used the flat part of the knife. His ex-wife allegedly ran away from him to the window and cried for help. She then climbed on the window sill, sat on it, lost her balance and fell from the fourth floor to her death. While the author admits the wrongness of his actions during the events that led up to the death of his ex-wife, he denies having sought or participated in her death.

2.3 The author's first court hearing took place from 28 December 1988 to 12 January 1989. The author was charged with having committed a premeditated murder under aggravating circumstances pursuant to articles 102 (g) and 193 (2) of the Criminal Code. However, the court found the evidence insufficient to convict him, and ordered an additional pre-trial investigation. In a second court hearing that took place on 29 June 1989, following the new pre-trial investigation, the author was charged and convicted pursuant to article 102 (g) 2/ of the Criminal Code, and sentenced to eight years of imprisonment. This sentence was appealed by both the mother of the deceased and the author. On 14 March 1990, the Moscow City Court found Mr. Baulin guilty pursuant to articles 102 (g) and 193 (2) of the Criminal Code, for having committed a premeditated murder under aggravating circumstances, and sentenced him to 13 years of imprisonment in a strict regime labour camp.

2.4 The case for the Prosecution was that Mr. Baulin visited his wife on 25 May 1988, inflicted injuries with a knife and subsequently pushed her out of the window of the flat. She died on the spot. The main eyewitness, Mr. Baulin's former mother-in-law, gave evidence during the trial, blaming Mr. Baulin for pushing her daughter out of the window. Ms. Baulin's neighbours, Mr. and Ms. Novitsky, had seen Ms. Baulin falling from her apartment on the 4th floor window as though she had been pushed. Other witnesses testified that they had seen her falling out of the window but that they had not seen anyone push her. The medical and other expert testimony was inconclusive.

2.5 The author points out that in her first statement to the police, Mr. Baulin's ex-mother-in-law testified that she had tried to pull Mr. Baulin away from her daughter while he was stabbing her. Her daughter then broke away and sat on the window sill, crying for help. The ex-mother-in-law tried to unlock the door to seek help outside and when she turned around, her daughter had fallen down. Only after the funeral, did she change her testimony to the effect that Mr. Baulin had come to the apartment with the intention to kill her daughter and that he had grabbed her, placed her on the window sill and then pushed her. She then changed the details of her testimony on several occasions. According to counsel, this makes the witness' evidence unreliable and Mr. Baulin's conviction unsafe. Moreover, several of the Baulin's acquaintances testified in court that Ms. Isaeva, even at her daughter's funeral, had not yet voiced the version of the author's guilt in Ms. Baulin's fall out of the window, and a neighbour of Ms. Isaeva, Mr. Monakov, stated on 25 June 1988, that Ms. Isaeva had told him that Ms. Baulina had jumped from the window.

2.6 The Supreme Court confirmed the City Court's judgement on 28 June 1990, stating, with regard to counsel's argument that Ms. Isaeva and Mr. and Ms. Novitsky had given false testimonies, that this

issue was examined by the court and that there was no support for it. With regard to counsel's argument that the court had not examined the forensic experts' conclusions, the Supreme Court stated that not only had the conclusions of the experts during the preliminary investigation been subjected to examination, there was also an expert testimony given at the trial. Finally, the Supreme Court concluded that the criminal procedural law had not been violated. Attempts by counsel to have the case reopened through an appeal for a judicial review to the presiding Supreme Court judge, and to the General Procurator of the Russian Federation, have failed.

Complaint

3.1 The author claims that the courts violated his right to fair trial, in particular the presumption of innocence and his right to have witnesses called for the defence.

3.2 He claims that he was convicted on the basis of insufficient and contradictory evidence, since the conviction was based on his ex-mother-in-law's testimony at the trial, which contradicted her earlier statements and was inconsistent with the statements of other witnesses. Also in respect of the statements of the expert forensic examination, which was by no means unequivocal, the court insisted on considering them as such, and did not acknowledge those aspects of the expert conclusions that supported the author's version of the events. The author claims that the court was biased in contravention of article 14, paragraph 1, of the Covenant. This claim also appears to raise an issue under article 14, paragraph 2, of the Covenant.

3.3 The author claims that the court refused him the right to call and cross-examine witnesses and experts. In particular, the court denied the author the right to call police officers Golub, Gorynov, Semin and Aletiev who had questioned the author's ex-mother-in-law subsequent to the death of her daughter and who had conducted the pre-trial investigations. However, in the first hearing of January 1989, the court did hear the testimonies of police officers Golub and Gorynov. They stated that before she was taken to the hospital, Ms. Isaeva had said that the author had stabbed her and Ms. Baulina, but that she had not seen him throwing her daughter out of the window.

3.4 The author was also denied the right to call Dr. Sogrina, who had stated at the pre-trial investigation that he had witnessed Ms. Baulina sitting on the window sill with her back turned towards him, and that after a while, just before she fell, she turned and put her legs over the window sill. He also gave her first aid after she fell. Furthermore, the court denied the author the right to call his son Ilya, whose testimony could have cast light on the defendant's intentions, as well as other witnesses proposed by the defence. The court rejected the defences' request to call a forensic expert on his behalf, and to cross-examine the forensic experts that were already in place, in order to clarify contradictions in their findings, and counsel claims that this rejection was particularly disadvantageous to the author, since the court did not take into account the multiple possible versions of the events as set out by the experts, but relied on the version presented by the prosecution. Counsel claims that the courts' denial of the author's right to obtain the attendance of witnesses on his behalf and the cross-examination of forensic experts, amount to a violation of article 14, paragraph 3 (e) of the Covenant.

The State party's submission on the merits of the communication

4.1 By note verbale of 9 October 1997, the State party made its submission, contending that the author's allegations did not establish any violation of Covenant rights, since the preliminary and judicial proceedings were conducted in a completely objective manner and since the author had been sentenced according to law.

4.2 The State party contended that the author was convicted for the killing of his ex-wife on the basis of the testimony of his ex-mother-in-law and other witnesses, the opinions of commissions of experts in forensic medicine and forensic biology, the data contained in the records of an on-site inspection and a reconstruction of the crime, and other facts duly studied by the court. The author's alternative version of the occurrence of Ms. Baulin's death was duly considered by the court of the first instance and by the court of cassation, and found to be groundless.

Comments by the author

5. On 27 September 2001, the author submitted comments on the State party's submission. He points out that the State party's submission merely reiterates the domestic courts' decisions, but does not address the alleged violations of the Covenant, under article 14, paragraphs 1 and 3 (e).

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 the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the trial against the author was initiated in 1988 and that the last court ruling was issued in June 1990, that is, prior to the entry into force of the Optional Protocol in respect of the State party on 1 January 1992. In the light of the fact that the author has not made any specific claims based on such continuing effects of alleged violations of the Covenant during his trial that would on their own constitute a violation of the Covenant, the Committee considers that it is precluded *ratione temporis* from considering the communication.

6.3 The Committee therefore decides:

- (a) That the communication is inadmissible under article 1 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and to the State party.

[Done 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.]

* 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. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer and Mr. Maxwell Yalden.

Notes

1/ The Covenant entered into force for the State party on 23 March 1976, the Optional Protocol on 1 January 1992 (accession). Upon acceding to the Optional Protocol, the State party made the following declaration:

"The Union of Soviet Socialist Republics, pursuant to article 1 of the Optional Protocol, recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Union of Soviet Socialist Republics, in respect of situations or events occurring after the date on which the Protocol entered into force for the USSR. The Soviet Union also proceeds from the understanding that the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the individual in question has exhausted all available domestic remedies."

2/ In the complaint to the Attorney-General, counsel refers to article 102 (D), but the courts refer to article 102 (g).