



**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. 967/2001

Submitted by: Valentin Ostroukhov, (represented by counsel, Mrs. Ledeneva, Mrs. Voskobitova, and Mrs. K. Moskalenko, Moscow International Protection Centre)

Alleged victim: The author

State party: Russian Federation

Date of communication: 27 April 1999

Document references: Special Rapporteur's rule 97 (old rule 91) decision, transmitted to the State party on 28 February 2001 (not issued in document form)

Date of adoption of decision: 31 March 2005

Subject matter: New legal qualification of illegal possession of drugs

Procedural issues: Non substantiation of claim for purposes of admissibility

Substantive issue: retroactive application of lighter sentence after legislative change
Articles of the Covenant: 14, paragraph 1, and 15, paragraph 1.

Article of the Optional Protocol: 2

[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. 967/2001**

Submitted by: Valentin Ostroukhov, (represented by counsel, Mrs. Ledeneva, Mrs. Voskobitova, and Mrs. K. Moskalenko, the Moscow International Protection Centre)

Alleged victim: The author

State party: Russian Federation

Date of communication: 27 April 1999

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

Meeting on 31 March 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mr. Valentin Ostroukhov, a Russian national born in 1977, who at the time of submission of the communication was serving a prison sentence in Komi Republic (Russian Federation). He claims to be a victim of violations by the Russian Federation of articles 14, paragraph 1, and 15, paragraph 1, of the Covenant. He is represented by counsel.

Factual background

2.1 On 27 August 1996, the author purchased 10 grams of marijuana from an unknown person, allegedly out of curiosity. Shortly afterwards, he was questioned by a police patrol near his home, and the drugs were discovered. He was arrested and placed in preliminary detention. On 10 November 1997, the Tagansky Inter-municipal Court of Moscow found him

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhango, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

guilty of illegal purchase and storage of drugs without intention to sell, and sentenced him to one year and six months imprisonment under article 224 (3) of the Criminal Code of RSFSR, in force at the time when the crime was committed¹.

2.2 The author notes that at the time of the crime – 27 August 1996 - the old Criminal Code was still in force and under its provisions the illegal purchase and storage of “small” amounts of marijuana constituted a crime. According to him, the Summary Table of the Drug Control Standing Committee of 17 April 1995 stipulated that 10 grams of marijuana was a “small” amount.

2.3 The author points out that during the time of the investigation and at the time of the court proceedings, a new Criminal Code had entered into force (on 1 January 1997). According to its article 228, criminal responsibility is engaged only in the event of the illegal purchase and storage of drugs in “large” or “very large” amounts, and, in the author’s opinion, the possession of “small” amounts of drugs was thus decriminalized². By virtue of article 10 of the new Criminal Code, this decriminalization had to apply retroactively to persons who had committed similar crimes before the entry into force of the new Code. In spite of this, the Court convicted him on 10 November 1997.

2.4 Mr. Ostroukhov appealed against the court of first instance judgment to the Moscow City Court, requesting that the judgment be quashed and that the case be dismissed. In the appeal, he referred to article 228 of the new Criminal Code which decriminalized the possession of “small” amounts of marijuana. On 11 December 1997, the Moscow City Court upheld the judgment of 10 November 1997.

2.5 The author then appealed to the President of the Moscow City Court, with a request under the supervisory procedure (nadzor). On 20 January 1998, the President of the Moscow City Court explained that the author’s complaint was groundless, because the sanction under article 228 of the new Criminal Code for the possession of 10 grams of marijuana without intention to sell was in fact heavier than the sanction under article 224 of the former Criminal Code. The author filed several more complaints with the Office of the Prosecutor General and with the Supreme Court. The Chairman of the Supreme Court examined his case and concluded that it had transpired from the Summary Table of the Standing Committee on Drug Control of 1 August 1995 and its annexed List No 1 (“On Amounts of Drugs that Can be Considered Small, Large and Very Large”) of 4 June 1997, that the purchase and storage of 10 grams of marijuana constituted a crime both at the time of its commission, as well as under the new Criminal Code.

¹ Article 224 (3) of the Criminal Code of the Russian Soviet Federative Socialist Republic reads as follow: “*The illegal manufacturing, acquisition, storing, transport or sending of narcotic substances without intention to sell – is punished by a deprivation of liberty up to three years or by correctional labor up to two years*”.

² According to article 228 of the new criminal Code, “*Illegal Manufacture, Acquisition, Keeping, Carriage, Sending or Sale of Narcotic Means or Psychotropic Substances*
1. The illegal acquisition or keeping without the purpose of sale of narcotic means or psychotropic substances on a large scale shall be punished by deprivation of freedom for a term of up to three years.”.

2.6 According to the author, the new Summary Table of the Standing Committee on Drug Control of 4 June 1997 provided that 10 grams of marijuana constitute a “large” amount, and was applied for the qualification of the offence he committed on 27 August 1996.

The claim

3. The author alleges that he is a victim of violations by the Russian Federation of his rights under articles 14, paragraph 1, and 15, paragraph 1, of the Covenant. He states that in 1996 he was charged with possession of a “small quantity” of marijuana, and in November 1997 was convicted and sentenced to a term of imprisonment. He alleges that his conviction was unlawful, because on 1 January 1997, a new Criminal Code had entered into force, which decriminalised the possession of small quantities of marijuana; under Russian law, legislation which decriminalises an offence should be applied retrospectively.

The State party’s observations

4.1 By note of 31 July 2001, the State party explained that the Office of the Procurator-General had examined the author’s criminal case under the supervisory procedure. It affirms that author’s counsel based his defence arguments on the Summary Table of the Standing Committee on Drug Control of 1 August 1995, according to which 10 grams of dried marijuana constituted “a small quantity” of narcotics, and accordingly did not justify the institution of criminal proceedings against the author under the Criminal Code then in force.

4.2 According to the State party, the above arguments were not persuasive, because the quantities of narcotics mentioned in the Standing Committee’s summary tables of 1 August 1995 and 4 June 1997 are at best mere scientific recommendations for experts. The Standing Committee’s findings have no legal force, and the rule that criminal law should not have retroactive effect does not apply to them. According to the State party, it is exclusively for the courts to decide, in the light of all the circumstances, whether a given amount of narcotics is to be qualified as constituting a “small”, “large” or “exceptionally large” amount.

Author’s comments on the State party’s observations

5. The author commented on the State party’s observations by letter of 14 November 2002. He argues that the Summary Tables of the Standing Committee on Drug Control of 1 August 1995 and of 4 June 1997 constitute, *de facto*, a source of law, because in any event they were used to qualify his acts in legal terms, and, according to him, they do not constitute mere scientific recommendations.

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 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 that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted. It thus considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol have been met.

6.3 The Committee has noted the author's claim that his rights under articles 14, paragraph 1 and 15, paragraph 1, were violated since he was convicted unlawfully by the Tagansky Inter-municipal Court of Moscow on 10 November 1997, under the provisions of the Criminal Code of 1960, for possession of 10 grams of marijuana (a quantity qualified at this time as a "small"), notwithstanding that on 1 January 1997, the State party's new Criminal Code had entered into force, and that according to its provisions, the purchase and storage of "small" amounts of drugs was decriminalised. The Committee notes however that the Tagansky Inter-municipal Court of Moscow addressed the issue and based its judgment of 10 November 1997 on the old Criminal Code, arguing that the sanction for the illegal purchase and storage of 10 grams of marijuana was lighter than the sanction under the new Criminal Code. In appeal, the Moscow City Court determined that the possession of such an amount of drugs was a crime both under the old and the new Code.

6.4 In essence, the author's main argument relates to the legal qualification of the purchase of the above amount of marijuana, considered as a "small" under the law in force in 1996, and "large" under the new Criminal Code of 1997. According to the author, the new Criminal Code decriminalised the purchase of "small" amounts of marijuana and therefore he should be acquitted, since the amount he possessed was "small" according to the Summary Table of the Drug Control Standing Committee of 17 April 1995. The Committee has noted that this argument was addressed by the Courts and was found to be groundless. The Committee notes that the author's claim relates, in its nature, to an evaluation of facts and evidence and to interpretation of domestic legislation. It reiterates its jurisprudence that the evaluation of facts and evidence and interpretation of domestic legislation is in principle a matter to be decided by the courts of States parties, unless the evaluation of facts and evidence was clearly arbitrary or amounted to a denial of justice.³ As the author has provided no evidence to show that the appellate courts' decisions suffered from such defects, the Committee considers this claim as unsubstantiated for purposes of admissibility and thus inadmissible under article 2 of the Optional Protocol.

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, for information.

[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.]

³ See, for example, Communication No. 842/1998, Sergei Romanov v. Ukraine, Inadmissibility Decision adopted on 30 October 2003.