

HUMAN RIGHTS COMMITTEE

Romanov v. Ukraine

Communication No 842/1998

30 October 2003

CCPR/C/79/D/842/1998*

ADMISSIBILITY

Submitted by: Sergei Romanov (not represented by counsel)

Alleged victim: The author

State party: Ukraine

Date of communication: 11 August 1998 (initial submission)

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

Meeting on 30 October 2003

Adopts the following:

Decision on admissibility

1.1 The author of the Communication is Sergei Nicholaiovich Romanov, a Russian citizen, born in 1976 and resident of Ukraine. He claims to be a victim of a violation by Ukraine of articles 2, paragraphs 1 and 3(a), 7, 9, paragraph 1, and 14 paragraphs 1, 2 and 5 of the Covenant. He is not represented by counsel.

1.2 The Optional Protocol entered into force for the Ukraine on 25 October 1991.

The facts as presented by the author

2.1 At the end of 1995 the author found himself in urgent need of money and devised a plan to rob one Mr. Maksimenko. Mr. Maksimenko was an acquaintance of a young woman with whom the

author lived, Ms Podlesnaya¹. In November 1995 she visited Maksimenko's apartment and slipped a drug, clopheline, into Maksimenko's drink. Maksimenko fell asleep, whereupon Podlesnaya telephoned the author and let him into the apartment. With a hatchet found in the apartment, the author sought to break open a particular box. Unexpectedly, Maksimenko woke up, and the author, frightened, struck him with the hatchet, and Maksimenko fell to the floor. The author and Podlesnaya then stole property from the apartment. Maksimenko survived, and the author was arrested and committed to stand trial. He claims that at no time did he have any intention of killing Maksimenko.

2.2 On 30 October 1996 the author was convicted by the Kiev City Court of four offences under the Ukrainian Criminal Code. The Court found him guilty of attempted murder, aggravated robbery, attempted robbery, and incitement of a minor to commit a criminal act; he was sentenced to 15 years imprisonment and confiscation of all personal property. In relation to the charge of attempted murder, the Court found that the dose of clopheline administered to the victim was life threatening, and that the author had intended to kill the victim when he struck Maksimenko with the hatchet. In regard to the latter, the Court found that the author had struck him several times on the head, causing serious injury, and that this occurred whilst the victim was unconscious after having been drugged. The author appealed his conviction for attempted murder to the Supreme Court of the Ukraine. The appeal was dismissed on 10 July 1997.

2.3 The author claims that the evidence, including physical and medical evidence regarding the victim's injuries, and the psychiatric evidence about the author's state of mind, does not support his conviction for attempted murder. Thus, the Court should not have deferred to the evidence of Podlesnaya in relation to the author's state of mind at the time he struck the victim. He claims Podlesnaya was hysterical after the drug was administered, and that her only knowledge of what happened during the assault with the hatchet came from the author himself. He claims that in any event, Podlesnaya later retracted her testimony to the effect that the author had intended to kill Maksimenko. She allegedly had only said such things because she was told the author was facing the death penalty, and that a similar fate might await her if she did not cooperate. The judgment of the first instance Court, and on appeal, considered Podlesnaya's new testimony and rejected it as having been made at the behest of the author.

The complaint

3.1 The author contends that he was wrongly convicted of attempted murder, because he did not know that the clopheline given to the victim was life threatening, and did not know what he was doing at the time he struck the victim over the head. He disputes the Courts' findings of evidence, particularly the reliance on his accomplice's testimony, and states that he was not afforded a fair trial. He contends that the Court did not presume him innocent until proven guilty. He also claims that his arguments about the relevant evidence, and what really occurred in Maksimenko's apartment, were not considered by the Supreme Court of Ukraine, and that his right to have his conviction reviewed by a higher tribunal according to law was therefore violated. He claims that, given the circumstances, the State party violated articles 2, 7, 9 and 14 of the Covenant. He does not however link specific and concrete actions of the State party to the particular alleged violations of the Covenant.

3.2 The author alleges that various provisions of the Ukrainian Code of Criminal Procedure were breached in the course of his trial and the appeal, principally related to the Courts' alleged mishandling of his arguments and the relevant evidence.

The state party's observations on admissibility and merits

4.1 By note of 27 March 1999, the State party contends that the author's communication is groundless and therefore inadmissible. It states that the author's guilt was established by the author's own testimony, that of his accomplice, several other witnesses, as well as forensic and other evidence.

4.2 By note of 1 June 1999 the State party contested the merits of the author's communication. It reiterated that the author's claims, to the effect that he had no intention to kill the victim, were fully considered by the Ukrainian courts, in accordance with applicable law, and rejected.

Comments of the author on the State party's observations

5.1 In his comments on the State party's observations dated 24 August 1999, the author claims that the State party ignored his arguments regarding the evidence in his case. He reiterates his earlier contentions, namely that he was wrongly convicted. He claims that the State party's reply refers to the Courts' decisions, but that these do not reflect what actually occurred, and are unjust. He states that the State party ignored his submissions about the alleged procedural breaches of the trial court, and the failure of the Ukrainian Supreme Court to properly consider all of his arguments, a failure which he says breached Ukrainian criminal procedure laws.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 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 that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3. With regard to the author's claims under articles 2, 7 and 9 of the Covenant, the Committee considers that the author has not provided information sufficient to substantiate his allegations and accordingly declares them inadmissible under article 2 of the Optional Protocol.

6.4 In respect of the author's claims under article 14, paragraphs (1) and (2), the Committee considers that the subject matter of the allegations relates in substance to the evaluation of facts and evidence in the course of proceedings in the Ukrainian courts. The Committee recalls its jurisprudence and reiterates that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial

or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice². 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 (2) to be inadmissible under article 3 of the Optional Protocol.

6.5 In relation to the author's right to have his conviction and sentence reviewed by a higher tribunal according to law, as provided for in article 14(5), the Committee notes that an appellate procedure should, consistent with the Committee's jurisprudence, entail a full review of the conviction and sentence, together with a due consideration of the case at first instance. In this regard, the Committee notes that, from the material provided, Ukrainian law requires the appeal court to consider all relevant evidence and arguments. It further appears from the judgment of the Ukrainian Supreme Court that it did consider the author's arguments, particularly in relation to his accomplice's evidence, and that it considered the author's version of events. The Supreme Court found, based on its review of the decision at first instance, that there was no basis to allow the appeal. In light of the above, the Committee considers that the author has not substantiated his claims under article 14(5), and that it is therefore inadmissible pursuant to article 2 of the Optional Protocol.

[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, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

1. Ms Podlesnaya was a minor at this time.

2. See for example Communication No. 790/1997, Cheban v Russian Federation, Views adopted on 24 July 1997.