



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
Ninety-ninth session
12 to 30 July 2010

Decision

Communications No. 1343/2005

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| <u>Submitted by:</u> | Bogdan Dimkovich (not represented by counsel) |
| <u>Alleged victim:</u> | The author |
| <u>State party:</u> | Russian Federation |
| <u>Date of communication:</u> | 28 August 2004 (initial submission) |
| <u>Documentation references:</u> | Special Rapporteur's rule 92/97 decision, transmitted to the State party on 14 January 2005 (not issued in document form) |
| <u>Date of adoption of decision:</u> | 26 July 2010 |

* Made public by decision of the Human Rights Committee..

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| <i>Subject matter:</i> | Alleged violation of a right to obtain examination of a witness |
| <i>Procedural issue:</i> | Evaluation of facts and evidence |
| <i>Substantive issue:</i> | Right to obtain examination of a witness |
| <i>Article of the Covenant:</i> | 14, paragraph 3 (e) |
| <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 (ninety-ninth session)

concerning

Communication No. 1343/2005**

Submitted by: Bogdan Dimkovich (not represented by counsel)
Alleged victim: The author
State party: Russian Federation
Date of communication: 28 August 2004 (initial submission)

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

Meeting on 26 July 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Bogdan Dimkovich, a citizen of the Russian Federation, born in 1959. He claims to be the victim of a violation by the Russian Federation of article 14, paragraph 3 (e), of the Covenant. The Optional Protocol came into force for the State party on 1 January 1992. He is unrepresented.

The facts as presented by the author

2.1 In August 2000, the author was charged under article 264 of the Criminal Code for negligent driving and causing a serious injury, by overtaking another vehicle in dangerous circumstances which resulted in a collision. During the proceedings at Belorechenski Regional Court on 11 October 2001 and 29 November 2001, the author made a written request to call and examine one Mr. Komzarov, allegedly an eyewitness of the accident, whose testimony, he believes, would support his account. However, the request was denied. On 3 December 2001, the author was found guilty and sentenced to six months of correctional labour.

2.2 The author submits that the evidence against him consisted mainly of the statements by the driver of the other vehicle involved in the accident, by his passenger, by the author and by the author's wife. He claims that Mr. Komzarov was available to give testimonies

** 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, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

throughout the duration of the hearing. The author first requested to call Mr. Komzarov as a witness at the beginning of the court hearing, which was on 11 October 2001. The Court rejected the request allegedly because the author had not previously stated that the person in question had in fact witnessed the accident.

2.3 The author filed an appeal with the Krasnodarsk Regional Court, in which he sought to have his conviction overturned on a number of grounds, including the lower court's refusal to allow him to call and examine Mr. Komzarov. On 23 January 2002, the court dismissed his appeal, but made no reference to the author's complaint that the witness was not called. The author then filed an application for supervisory review with the Supreme Court, where again he complained about not being able to call the witness in question. On 28 August 2003, the Supreme Court dismissed the application, but did not refer to his complaint about not being able to call the witness.

2.4 The author claims that in each appeal, the Court stated that the conviction was supported by evidence from a number of sources, including forensic evidence gathered from the scene of the accident, and the facts that the author had not disputed.

The complaint

3. The author claims that his right under article 14, paragraph 3 (e) has been violated as he was not allowed to obtain the examination of the witness Mr. Komzarov.

State party's observations

4.1 On 21 June 2005, the State party reiterated that the author was found guilty of violating the traffic rules and rules of transport exploitation under section 264 of the Criminal Code and sentenced to six months of correctional labour with 10 per cent withdrawal from the salary. On 19 August 2000, the author, while driving his vehicle M 2141 and overtaking the vehicle ZAZ, went onto the opposite lane, where it collided with the vehicle GAS 31029. As a result, the wife of the author was injured.

4.2 The State party submits that the circumstances of the crime were established on the basis of an inspection of the accident scene, testimonies by the parties and conclusions of auto and forensic expertise. The court sentence was confirmed by the cassation court. It submits that the main argument of the author is that the court illegally denied his request to examine the witness Mr. Komzarov, thus his sentence is illegal. It argues that the author's requests during the court proceedings were considered in accordance with the Criminal Procedure Code, which was in force at the time. From the explanations given by Mr. Komzarov during the pretrial investigation, it was inferred that he did not witness the accident. At the beginning the request for examination of Mr. Komzarov was filed by the author's wife, who at the same time confirmed that he was not an eyewitness.

4.3 The State party confirms that during the court proceedings on 29 November 2001, the author requested the examination of Mr. Komzarov to confirm the misconduct of the driver of the ZAZ vehicle, which was in front of the author's vehicle during the accident. It submits that in a situation of danger, a driver should take all measures to reduce the speed of his vehicle. In the circumstances of the case, the author should have kept a distance from the vehicle in front and reduced his speed. The case materials show that the author signed the detailed scheme of the accident. Neither during the pretrial investigation nor during the court proceedings did the author claim that the scheme was imprecise or incorrect. Instead he confirmed that he agreed with it.

4.4 The State party submits that under article 14, paragraph 3 (e), of the Covenant the state authorities are obliged to investigate the evidence in order to establish the circumstances of the crime and the guilt. It argues that the testimony of Mr. Komzarov is irrelevant in the present case and the author's contention in that respect is unfounded.

4.5 The decision of the Collegium of the Krasnodarsk Regional Court dismissing the appeal of the author on 23 January 2002 left the sentence unchanged. The decision of the Supreme Court of 28 August 2003 rejected the appeal of the author under the supervisory review procedure. The State party submits that no violations of the rights of the author during the court proceedings are revealed and that the communication should be declared inadmissible.

Author's comments

5.1 On 3 August 2005, the author submitted his comments on the State party's observations and claimed that the State party acknowledged the fact that the court rejected his requests to call Mr. Komzarov to give evidence, however the State party did not recognize that this constituted a violation of his right. He refers to the statement by the State party that Mr. Komzarov was not an eyewitness of the accident, and claims that the State party's arguments do not have a legal basis, as under the Criminal Procedure Code, one cannot refer to circumstances that have not been examined during the court proceedings and not noted in court transcript. Therefore, the State party cannot assess whether Mr. Komzarov was an eyewitness to the accident or not, as such matter can be examined only by a court.

5.2 The author claims that under article 14, paragraph 3 (e), of the Covenant, he had a right to obtain examination of witnesses under the same conditions as for witnesses who testified against him. The court invited two witnesses, Beshuk M.A. and Beshuk R.M., who testified against the author. However the court refused to invite Mr. Komzarov, who could have testified that the main guilty person of the accident was the driver of the vehicle ZAZ, who ran away from the crime scene and could not be found.

Additional comments by the State party

6.1 On 24 May 2006, the State party submitted that the author's reference to the Criminal Procedure Code was distorted. Under section 240, part 3, of the Code the verdict could be based only on those circumstances which were examined during the court proceedings. The decisions that were taken based on petitions initiated during the court proceedings would be liable to be excluded from such consideration. The procedure for such petitions is established under section 271 of the Criminal Procedure Code.

6.2 The State party reiterates that the author was sentenced to six months of correctional works with withdrawal of 10 per cent of the wage. It submits that during the court proceedings the author requested to invite Mr. Komzarov or to read out his testimony given during the pretrial investigation. The court refused, as Mr. Komzarov was not included in the list of persons who needed to be called to the court proceedings. Besides, the author did not inform the court whether Mr. Komzarov was in fact a witness of the accident or whether he could give testimony on the substance of the charges. Beshuk M.A. and Beshuk R.M. were included in the list as they were the eyewitnesses to the accident and their testimonies were of value as evidence. There was no ground to doubt the credibility of their testimony as they eyewitnessed the accident and gave similar versions of the incident during the pre-trial investigation. The case materials also show that Mr. Komzarov was not an eyewitness of the accident. The fact that Mr. Komzarov was not invited to the court proceedings did not in any way affect the completeness or validity of the proceedings. The decision of the Collegium of the Krasnodarsk Regional Court of 23 January 2002 left the sentence unchanged.

Issues and proceedings before the Committee*Consideration of admissibility*

7.1 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. 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.

7.2 The Committee notes the author's allegations under article 14, paragraph 3 (e), of the Covenant that the court refused to invite and examine the witness Mr. Komzarov, which, in his view, was fundamental to establishing the author's innocence. The Committee also notes the State party's submission that Mr. Komzarov was not an eyewitness to the accident and that is why he was not included in the list of witnesses as required by the procedure. Moreover, the author did not state positively that Mr. Komzarov could give testimony on the substance of the charges. The Committee notes that the author has not provided any explanation on the relevance of Mr. Komzarov's possible testimony to the charges against him. The Committee observes that the author's claims relate primarily 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 justice.¹ The materials before the Committee do not contain sufficient elements to demonstrate that the court proceedings suffered from any such defects. Accordingly, the Committee considers that the author's claim is insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

8. The Committee therefore 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.]

¹ See, *inter alia*, communication No. 541/1993, *Simms v. Jamaica*, decision on inadmissibility adopted on 3 April 1995, para. 6.2.