

OPINION No. 9/1999 (RUSSIAN FEDERATION)

Communication addressed to the Government on 15 July 1998

Concerning Grigorii Pasko

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged.
5. According to the source, Mr. Grigorii Pasko, 38 years old, a commander in the Russian navy, is also a correspondent for the newspaper of the Russian Pacific Fleet ("Boyevaya Vakhta"), Vladivostok. For several years he has written about the continued breakage for recycling of old nuclear submarines, and the failure of Russian authorities to process radioactive waste material resulting from the breakage of these submarines. Despite

resistance, all articles published on these issues were approved by the editor-in-chief of the newspaper, as required. In addition, Mr. Pasko has worked for Japanese mass media, including the newspaper “Asahi”, and the TV station NHK.

6. According to subsequent information from the source, the trial, held in camera before the military court of the fleet in Vladivostok, began on 21 January 1999. The court stripped two of Grigorii Pasko’s lawyers of their power of attorney on 27 January 1999 on the ground that they had allegedly passed on trial information to the media and obstructed the work of the judges. Grigorii Pasko is accused of spying and disclosing State secrets, offences carrying a maximum of 20 years’ imprisonment.

7. The Working Group concludes from the above that:

(a) Regarding the charges against Grigorii Pasko:

- He was motivated only by a concern to alert national and international opinion to the risks to the environment from the breakage for recycling of defective nuclear submarines, as a result of their dilapidated condition, and from the clandestine dumping of their nuclear waste into the Pacific Ocean by the Russian fleet;
- Damage to or protection of the environment is an issue that knows no boundaries, especially where radioactive pollution is concerned;
- Consequently, it should be possible freely to engage in ecological criticism: this forms part of the right to freedom of expression “regardless of borders”, as laid down by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;
- The accusations of spying and disclosure of State secrets on which the action against Grigorii Pasko is based have no grounds beyond his dissemination of information on environmental protection;
- Article 7 of the Russian Federal Law on State secrets appropriately provides that in no case may information on environmental conditions, emergencies and disasters posing a risk to human life and health be considered a State secret;
- This clearly applies in this case to the charges against Grigorii Pasko.

On this first issue, the Working Group therefore considers that the deprivation of liberty of Grigorii Pasko is in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

(b) Regarding the conditions of the trial:

- It was held in camera before a military court of the Russian Pacific fleet when it was precisely the nuclear vessels of the Pacific Fleet that Grigorii Pasko had criticized: this situation is bound to cast doubt on the impartiality of this tribunal;

- Two of his lawyers were stripped of their power of attorney by the court;
- The investigating authorities refused Grigorii Pasko's request that they should examine in an independent and impartial manner the documents confiscated from him on 13 November 1997;
- Information obtained in an illegal manner (by wire-tapping) was added to the case file as evidence against Grigorii Pasko.

On this second issue, the Working Group therefore considers that the conduct of the proceedings before the military judicial organs violates the individual's right to a fair trial as guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and violates them so seriously as to render arbitrary the deprivation of liberty.

8. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Grigorii Pasko is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the applicable categories to the consideration of the cases submitted to the Working Group.

9. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary measures to remedy the situation ensuring that the articles of the Penal Code on national security are applied with due regard for the guarantees of freedom of expression laid down by international standards and by the Russian Constitution and laws.

Adopted on 20 May 1999