



International Covenant on Civil and Political Rights

Distr.: General
21 October 2015

Original: English

Human Rights Committee

Communication No. 2036/2011

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

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| <i>Submitted by:</i> | Zinaida Yusupova (not represented by counsel) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Russian Federation |
| <i>Date of communication:</i> | 8 June 2010 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's rule 97 decision, transmitted to the State party on 7 April 2011 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 21 July 2015 |
| <i>Subject matter:</i> | The author is denied compensation as a victim of Stalin-era political repression |
| <i>Procedural issues:</i> | Admissibility — exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Compensation for the victim of unlawful arrest or detention; arbitrary arrest and detention |
| <i>Articles of the Covenant:</i> | 2 (2) and (3), and 9 (5) |
| <i>Articles of the Optional Protocol:</i> | 2 and 3 |



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2036/2011*

Submitted by: Zinaida Yusupova (not represented by counsel)
Alleged victim: The author
State party: Russian Federation
Date of communication: 8 June 2010 (initial submission)

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

Meeting on 21 July 2015,

Having concluded its consideration of communication No. 2036/2011, submitted to it by Zinaida Yusupova under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author of the communication is Zinaida Yusupova, a Russian Federation national born in 1936. The author claims to be a victim of violation, by the Russian Federation, of her rights under article 2 (2) and (3) and article 9 (5) of the Covenant. In her later submission, the author also claims a violation of her rights under article 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The texts of individual opinions by Committee member Sir Nigel Rodley (dissenting) and by Committee member Anja Seibert-Fohr, joined by Committee members Yuji Iwasawa, Yuval Shany and Konstantine Vardzelashvili (dissenting), are appended to the present Views.

The facts as submitted by the author

2.1 The author submits that in 1944, she and her parents were forcibly removed from their home city of Grozny and deported to Kazakhstan. She claims that the removal was based on their Chechen ethnicity. The author submits that the deportation was based on Decree No. 116/102 of the Presidium of the Supreme Council of the Union of Soviet Socialist Republics, of 7 March 1944, and on State Committee Ordinance No. 5073 of 3 January 1944. As a result, the author's family lost their property and was subjected to forced internment in Kazakhstan for 13 years.

2.2 The author further submits that on 16 May 2005 she received a certificate from the Ministry of Internal Affairs of Chechnya, in the Russian Federation, confirming that she had been a victim of political repression, namely, that she had been subjected to forced internment as a person of Chechen ethnicity. The certificate also states that the author had been rehabilitated in accordance with article 3, paragraph (b), of federal law No. 1761 of 18 October 1991 on the rehabilitation of the victims of political repression.

2.3 The author submits that, in accordance with article 16 of law No. 1761,¹ she is entitled to compensation for the repression that she suffered. To that end, she filed a request with the Kirov district administration for the payment of a monthly monetary allowance as compensation, which was rejected. The administration reasoned that the author already received other forms of social assistance, a labour pension and a category 2 disability pension. It argued that since the author already receives other social benefits she could not, in addition to those, receive compensation for being a victim of repression.

2.4 The author submits that her social benefits as a labour veteran and as a person with disabilities should be treated separately from the payments for being a victim of political repression. She therefore appealed the refusal of the district administration to the Kirov District Court, claiming that she is entitled to compensation for her 13 years of forced internment and that the pension that she receives as a person with disabilities does not compensate her for those years.

2.5 On 25 July 2006, while recognizing that the author was a victim of political repression, the District Court rejected her appeal and confirmed the decision of the district administration. The court considered that, in accordance with article 10 of the law of the Astrakhan region on social benefits of certain categories of persons, rehabilitated persons are entitled to only one type of social assistance.² It found that the author already received benefits as a person with disabilities, such as free medical assistance, free medicine, monthly payments, a 50 per cent discount on utility service bills and a discount on public transportation fares, among others. The court reasoned that the author was not entitled to any additional compensation.

2.6 The author submits that, on 23 August 2006, she filed an appeal against the Kirov District Court's decision before the Astrakhan Regional Court, which was rejected on 15 September 2006. In its decision, the Regional Court agreed fully with the lower court. The Regional Court stated that, as a person with disabilities, the author already received a 50 per cent discount on utility service bills — the same benefit she would receive as a victim of political repression. The same was true for discounted fares for public transportation. As

¹ Article 16 states that rehabilitated persons, and persons who are recognized as victims of political repression, are provided with social benefits in accordance with the laws of each territory (region) of the Russian Federation. The expenses related to the payment of social benefits of such persons are to be covered by the local budgets of the territories (regions) of the Russian Federation.

² Article 10 states, inter alia, that if a citizen has a right to the same social benefits under the law, the said social benefits are provided only under one justification, chosen by the citizen.

regards the request for additional monthly monetary compensation, the Regional Court concluded that the author did not have a right to multiple payments under different laws.

The complaint

3.1 The author maintains that her rights under article 9 (5) of the Covenant were violated, since the authorities failed to compensate her for the 13 years of internment, despite the fact that they recognized that she was a victim of political repression based on her ethnicity. She also claims that her right to an effective remedy under article 2 in that regard was violated because the domestic legislation does not provide for an adequate avenue for victims of political repression to seek compensation as provided for in article 9 (5) of the Covenant.

3.2 In her submission dated 3 October 2011, the author additionally maintains that her rights under article 26 were also violated.

State party's observations on admissibility and merits

4.1 In its note verbale dated 15 July 2011, the State party submits that the author was indeed recognized as a victim of political repression, on the basis of the fact that, in 1944, she and her parents had been forcibly removed from the city of Grozny. The Kirov District Court and, subsequently, the Astrakhan Regional Court, rejected the author's complaint regarding her claim for compensation as a victim of political repression. The author filed a supervisory appeal before the Supreme Court of the Russian Federation; however, the submission deadline was missed, and the appeal was therefore rejected on 14 March 2008.

4.2 The State party fully supports the findings of those courts, and submits that the rights of the author are fully protected, in accordance with the federal law on the rehabilitation of the victims of political repression and the law of the Astrakhan region on social benefits of certain categories of persons. The courts afforded the author a thorough review of her claims, in accordance with the relevant laws and regulations.

Author's comments on the State party's observations

5.1 On 3 October 2011, the author submitted that the State party at the federal level must provide for compensation for the victims of political repression. She considers that social benefits and compensation for the victims of political repression should be treated separately. The payments as provided for by the law on political repression are intended as compensation for irreparable physical and moral suffering that resulted from repression.

5.2 The author claims that by denying her compensation, the State party violated the provisions of article 26 regarding the equal protection of the law for all persons.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the 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.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the exhaustion of domestic remedies, the Committee notes that the State party has neither invoked article 5 (2) (b) of the Optional Protocol, nor demonstrated the effectiveness of the procedure of supervisory appeal to the Supreme Court for the

compensation claims of the kind brought by the author.³ The Committee therefore considers that it is not precluded by virtue of article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the author's submission that the State party violated its obligations under article 2 (2) and (3) of the Covenant since she could not seek an effective remedy within the domestic legislation, which does not provide for an adequate avenue for victims of political repression to seek compensation. However, the author also submits that, in accordance with article 16 of Law No. 1761, she is entitled to compensation for the repression suffered (see para. 2.3 above). Without prejudice of the other obligations that the State may have under the Covenant in relation to victims of political repression, the Committee therefore concludes that, in the special circumstances of the case, the author's claim under article 2 (2) and (3) have not been sufficiently substantiated for purposes of admissibility. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 Similarly, the Committee considers that the author failed to substantiate, for purposes of admissibility, her allegations under article 26 of the Covenant regarding the State party's failure to provide the equal protection of the law to all persons. It thus declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes that the author was deprived of her liberty for 13 years, between 1944 and 1957, and that this deprivation of liberty, which has been recognized to be unlawful and arbitrary by the State party, occurred before the entry into force of the Covenant. However, it also notes that the author's claims relate to her right to compensation under article 9 (5) and not to her right not to be arbitrarily detained under article 9 (1) of the Covenant. The Committee further notes that, on 25 July 2006, the Kirov District Court recognized the author as a victim of political repression but denied her right to compensation in addition to the benefits she already receives as a person with disabilities. It thus considers that it is not precluded *ratione temporis* from examining the alleged violations of article 9 (5) of the Covenant.

6.7 In the absence of any challenge to the admissibility, the Committee declares the remaining claims of the author admissible insofar as they appear to raise issues under article 9 (5) of the Covenant, and proceeds to the consideration on the merits.

Consideration of the merits

7.1 The Committee notes the author's claims that the State party violated her rights under article 9 (5), in that it failed to provide compensation for the years of internment she and her family suffered when they were forcibly removed from their home city of Grozny and deported to Kazakhstan.

7.2 The Committee also notes the State party's argument that the author did not have a right to additional compensation as a victim of political repression because she was already receiving similar social benefits, and the State party's claims that its courts have considered the author's claims and decided to deny her request.

7.3 The Committee recalls that under article 9 (5) of the Covenant, anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. The Committee stated in its general comment No. 35 (2014) on liberty and security of the

³ See communication No. 2243/2013 *Husseini v. Denmark*, Views adopted on 24 October 2014, para. 8.3.

person that under article 9 (5) the remedy must not exist merely in theory, but must operate effectively and payment must be made within a reasonable period of time.

7.4 The Committee notes that, in accordance with article 16 of Law No. 1761 on the rehabilitation of the victims of political repression, the author is entitled under domestic law to compensation for the repression that she suffered. However, the Committee notes that according to article 10 of the above-mentioned Astrakhan regional law, social benefits can be provided only under “one justification” and that the administration of the Kirov district, the Kirov District Court and the Astrakhan Regional Court have interpreted this provision in such a way that the author was unable to obtain compensation in relation to the physical and moral harm she suffered for 13 years, thus denying her an enforceable right to compensation as set out in article 9 (5).

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it reveal a violation of the author’s right to compensation under article 9 (5) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including reconsideration of her request for compensation through a procedure that takes into consideration the Committee’s findings. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and to have them disseminated widely in the official language of the State party.

Appendix I

Individual opinion of Committee member Sir Nigel Rodley (dissenting)

1. I believe the Committee should have found this case inadmissible *ratione temporis* under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

2. Article 1, second sentence, reads: “No communication shall be received by the Committee if it concerns a State party to the Covenant which is not a party to the present Protocol.” In fact, the Russian Federation was not a party to the Optional Protocol at the time of the tragic events that befell the author and so many others or at the time of the adoption of Law No. 1761 of 18 October 1991. The State party only became party to the Optional Protocol on 1 January 1992.

3. A possible, indeed desirable, interpretation of the quoted sentence would merely be that, as long as the events complained of took place after the State party became bound by the Covenant, and as long as the communication was submitted after the Optional Protocol entered into force for the State party, the Committee can consider the case. Unfortunately, the Committee long ago decided that the Protocol itself has no retroactive effect (see communication Nos. 422/1990, 423/1990 and 424/1990, *Aduayom et al. v. Togo*, Views adopted on 12 July 1996, para. 7.3, despite the convincing individual opinion to the contrary of Committee member Fausto Pocar). Over the ensuing decades the Committee has felt itself obliged to respect that precedent; see now general comment No. 33 (2008) on the obligations of States parties to the Optional Protocol, paragraph 9. As a result, article 1 denies the Committee even the right to “receive” the communication.

4. In the present case, the Committee chose to ignore the issue, since the State party inexplicably failed to invoke this ground for inadmissibility. While I take the view that it is not for the Committee to officiously do the State party’s work, I do not see how it can proceed when there is not even the semblance of the basis of jurisdiction required by article 1. Indeed, it may be that the communication was registered only as a result of an oversight.

5. The Committee’s additional conclusion that the State party did not invoke the non-exhaustion of domestic remedies ground for inadmissibility (see para. 6.3 above) is hardly justified in view of the State party’s references to domestic procedures and the author’s failure to meet the deadline for one of them (see para. 4.10 above). However, the State party could have been more explicit and it certainly did nothing to explain how the missed procedure would have provided an effective remedy.

6. This dissent should provide cold comfort for the State party. Its laconic response to the author’s communication (see paras. 4.1 and 4.2 above) showed scant respect for the author and barely discharged its obligation under the Protocol to cooperate with the Committee. It would be desirable for the State party to reflect on whether it has also properly protected its own interests.

Appendix II

Individual opinion of Committee member Anja Seibert-Fohr, joined by Committee members Yuji Iwasawa, Yuval Shany and Konstantine Vardzelashvili (dissenting)

1. We cannot join the majority in its analysis and conclusions on this communication as we disagree with its evaluation of admissibility. The Committee should have decided that the communication was inadmissible under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights. Pursuant to that provision, a State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. In the present case, however, the author claims compensation for forced deportation and internment that took place from 1944 to 1957, long before the Covenant entered into force on 23 March 1976. Because of this time frame, the abuses suffered by the author and her parents, though grave in nature, cannot be qualified as violations of the Covenant unless they continued, or had effects which themselves constitute a violation, after its entry into force. The decision of 25 July 2006 by the Kirov District Court, however, cannot be regarded as an event establishing the temporal jurisdiction of the Committee over the claim. First, the decision merely interpreted a pre-existing statute from 1991, which was adopted prior to the entry into force of the Optional Protocol for the State party, and cannot be regarded to have changed the author's legal situation. Second, the Court decision from 2006 and the 1991 law did not affirm the conduct comprising the original acts of repression, nor did they give rise to any new independent violation. To the contrary, they recognized the author as a victim of political repression and confirmed her entitlement to certain social benefits. Therefore, in the absence of a new violation or a continuing violation affirmed by the State party after ratification of the Covenant and the Optional Protocol, the author cannot claim to be a victim of a primary violation of the Covenant for the purposes of the Optional Protocol.

2. Neither do the alleged shortcomings of the author's compensation constitute a violation of the rights protected under the Covenant. The author claims a violation of articles 2 (3) and 9 (5) of the Covenant. However, the Committee has repeatedly held that it is precluded *ratione temporis* from considering communications relating to events that occurred prior to the international entry into force of the Covenant, including claims for compensation.^a Article 2 (3) is accessory in nature and does not provide for an independent free-standing right. It stipulates that each State party undertakes "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". Thus, under article 2 the right to a remedy arises only after a violation of a Covenant right has been established.^b However, in the present case the events that could have constituted violations of the Covenant and in respect of which remedies could have been invoked occurred long before the entry into force of the Covenant and the Optional Protocol for the Russian Federation. Therefore, the matter cannot be considered by the Committee. Neither

^a See, for example, communications No. 717/1996, *Acuña Inostroza et al. v. Chile*, decision of inadmissibility adopted on 23 July 1999, para. 6.4, and No. 718/1996, *Vargas Vargas v. Chile*, decision of inadmissibility adopted on 26 July 1999, para. 6.4.

^b See communication No. 275/1988, *S.E. v. Argentina*, decision of inadmissibility adopted on 26 March 1990, para. 5.3.

can it be considered under article 9 (5) of the Covenant, which is also dependent on a prior violation of the Covenant. Article 9 (5) articulates a specific example of an effective remedy for human rights violations.^c Therefore, the Committee was precluded from considering the communication pursuant to article 1 of the Optional Protocol. This is regardless of whether or not the State party challenged the admissibility of the communication. Even when a State party does not raise objections to the admissibility of a communication, the Committee must examine whether it is competent *ratione temporis* to consider the communication.^d Had it done so properly in accordance with article 1 of the Optional Protocol, it should have decided that the communication was inadmissible.

^c See general comment No. 35 (2014) on liberty and security of the person, para. 49.

^d See communications No. 768/1997, *Mukunto v. Zambia*, Views adopted on 23 July 1999, para. 6.3, and No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para. 10.