



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 4097/2022*, **

<i>Communication submitted by:</i>	G.S. (represented by counsel Yegor Boychenko)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Republic of Moldova
<i>Date of communication:</i>	26 January 2021 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 February 2022 (not issued in document form)
<i>Date of adoption of decision:</i>	31 October 2023
<i>Subject matter:</i>	Right to a fair trial
<i>Procedural issue:</i>	Abuse of the right of submission
<i>Substantive issues:</i>	Right to a fair trial; presumption of innocence; right to appeal; imprisonment on the ground of inability to fulfil a contractual obligation
<i>Articles of the Covenant:</i>	11, 14 (1) and (2), 14 (5) and (7) and 15 (1)
<i>Article of the Optional Protocol:</i>	3

1.1 The author of the communication is G.S. a national of Romania, born in 1962. The author claims a violation by the State party of his rights under articles 11, 14 (1) and (2), 14 (5) and (7) and 15 (1) of the Covenant. The Optional Protocol entered into force for the State party on 21 September 1971. The author is represented by counsel.

1.2 On 30 May 2023, pursuant to rule 93 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to grant the State party's request for the admissibility of the communication to be examined separately from the merits.

Facts as submitted by the author

2.1 In February 2005, the author was appointed as General Director of the company LLC Vitaproduct for a period of three years until February 2008. Vitaproduct was established

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gomez Martinez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernan Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobaujeh Tchamdja Kpatcha, Teraya Koji, Héléne Tigroudja and Imeru Tamerat Yigezu.



in February 2004 by Orhei-Vit s.a, located in the Republic of Moldova. Vitaproduct was established to sell fruit juice and canned fruit products in the Russian Federation. All Vitaproduct business operations took place in the Russian Federation, the buyers being Russian companies or individual entrepreneurs. The cooperation between Vitaproduct and Orhei-Vit was based on a framework sale and purchase agreement, according to the terms of which Orhei-Vit delivered the goods and Vitaproduct received and paid for them. Vitaproduct was responsible for and bore the expenses of customs clearance and storage.

2.2 The author notes that, due to an oversupply of goods in an amount similar to the entire Orhei-Vit production for the Russian market, between 2006 and 2008 he had to spend more money on marketing and advertising than was usual and make extra payments to agents in order to promote Orhei-Vit goods. For the same reasons, he had to agree to products being sold on condition that payment would be in instalments on delivery. Unfortunately, certain buyers paid for the goods late or did not pay at all. On behalf of Vitaproduct, the author sued the defaulting buyers and obtained court decisions in favour of Vitaproduct, however debts often remained unpaid and Vitaproduct's debts accumulated.

2.3 In March 2008, the author requested the management of Orhei-Vit to extend his contract as General Director of Vitaproduct, however this was not done and as a result he was no longer in a position to manage the company. From the summer of 2008 he therefore ceased carrying out any managerial functions in relation to Vitaproduct and had no knowledge about its further operations. In 2009, Orhei-Vit sued Vitaproduct in arbitration proceedings in the Russian Federation and was awarded reimbursement of the debts. Due to the termination of Vitaproduct's business activities, Orhei-Vit was unable to enforce the court decision. Orhei-Vit still had a number of lawful opportunities under Russian civil law to claim debts from Vitaproduct and the author, remedies it did not pursue. Instead, on 13 January 2010, the General Director of Orhei-Vit lodged a criminal complaint against the author with the Russian investigation authorities for alleged large-scale fraud, embezzlement of Vitaproduct's funds and failure to pay debts. On 22 November 2010, the Russian investigation authorities decided not to initiate criminal proceedings against the author for lack of *corpus delicti*. The Company did not challenge this decision, although it had the right to do so under the Criminal Procedure Code.

2.4 After the unsuccessful attempt to initiate criminal proceedings against the author in the Russian Federation, Orhei-Vit lodged a criminal complaint against the author with the Office of the Anti-Corruption Prosecutor in the Republic of Moldova on 30 December 2010. On 1 February 2011, criminal proceedings were initiated against the author. In January 2012, the author travelled to the Republic of Moldova from Romania. He was stopped at the border and requested to report to a police station the next day. He was detained the following day and remained in detention during the entire criminal proceedings. He was not allowed any visits from his family members while in detention. The hearing took place from March to June 2012 before the District Court of Buiucani. The Court found that there was no evidence that the author had misappropriated Vitaproduct goods or monetary funds, but rather that, due to the inefficient management of the company's financial flows, funds were directed to other purposes, such as marketing and advertising campaigns, logistics and maintenance. The Court concluded that such actions could be qualified only as causing damages by abuse of trust under article 196 of the Criminal Code. It sentenced the author to the payment of a fine and rejected Orhei-Vit's claims for damages as unsubstantiated. The court ordered the author's immediate release. After the judgment, the author and his family left the Republic of Moldova and emigrated to the United Kingdom of Great Britain and Northern Ireland, where they currently reside.

2.5 As the author only learned later, Orhei-Vit and the prosecutor then lodged appeals against the judgement of the court of first instance. On 20 November 2012, the Appeal Court of Chisinau quashed the judgment of the court of first instance and convicted the author of fraud, sentencing him to 10 years' imprisonment, and granted Orhei-Vit its claim for damages in full. The Court provided very limited reasoning for its judgment, only stating that as the author was the General Director of Vitaproduct and was empowered by his position to use the funds of the company at his own discretion, he had misappropriated the funds. The author claims that he was not informed of the appeal proceedings and that in the proceedings he was represented by a State-appointed lawyer, with whom he had no contact. The judgment was

not delivered to the author. Only in mid-February 2013 was he informed by an acquaintance in the Republic of Moldova about the judgment. On 25 February 2013, he filed an application before the Supreme Court with a request for reinstatement of the time limit for lodging an appeal in cassation through a lawyer he had retained in the Republic of Moldova. On 22 May 2013, the Supreme Court rejected the request, finding that the Criminal Procedure Code did not allow for reinstatement of time limits for appeals in cassation under any circumstances.

2.6 On 25 June 2020, the author was arrested in London, following an extradition request by the Moldovan authorities. On 24 May 2021, Westminster Magistrates' Court rejected the extradition request, finding that the Moldovan authorities had failed to provide sufficient assurance that the author would not be subjected to torture or other inhuman or degrading treatment if he returned to and was detained in the Republic of Moldova, and it concluded that the extradition would be in violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The prosecutor decided to not appeal the decision and the author was released from detention on 26 May 2021.

2.7 The author notes that the final decision regarding the criminal proceedings in the Republic of Moldova is dated 22 May 2013. However, he submits that this does not constitute an abuse of submission under rule 99 (c) of the Committee's rules of procedure, as he argues that it was only in the course of the extradition proceedings in the United Kingdom that the facts of the violation of his rights became known to him. In the course of these proceedings, he obtained legal advice on the criminal and civil law provisions of the Russian Federation and the Republic of Moldova with respect to his activities as the General Director of Vitaproduct, his liability for the company's debts, the civil law remedies available to Orhei-Vit to claim the debts and the provisions of Moldovan criminal law. He claims that the information obtained revealed a number of significant violations of the laws of both States by Orhei-Vit and the Moldovan investigation authorities in relation to the criminal proceedings against him.

Complaint

3.1 The author claims that the Office of the Anti-Corruption Prosecutor in the Republic of Moldova lacked the competence to institute criminal proceedings against him under the Criminal Procedure Code, in violation of his rights under article 14 (1) of the Covenant. He also argues that the law enforcement authorities did not assess whether they had the competence to investigate the case, considering that Orhei-Vit's criminal complaint was based on the same facts and arguments that were turned down by the Russian investigation authorities and that all the business operations of Vitaproduct and any alleged criminal activity by the author took place in the Russian Federation and under its laws. The author further argues that the reasoning of the Appeal Court of Chisinau was clearly arbitrary and amounted to a manifest error in its assessment of facts and evidence and interpretation of the law. The Court, having analysed the same evidence as the court of first instance, which expressly confirmed the "purely business nature" of the author's actions, drew the completely opposite conclusion, but failed to provide reasonable justification and explanations for that conclusion.

3.2 The author notes that during the hearings in the court of first instance he was handcuffed the entire time, which he claims was done with the express purpose of humiliating him and making him appear to be a dangerous criminal before the public and the court, in violation of the principle of presumption of innocence under article 14 (2) of the Covenant.

3.3 The author notes that he was convicted of fraud and sentenced to 10 years' imprisonment by the Court of Appeal after his acquittal by the court of first instance. He should therefore have had the right to appeal the conviction and sentence of the Court of Appeal before the Supreme Court by way of a substantive review. However, he argues that the Supreme Court rejected his appeal in cassation by interpreting article 422 of the Criminal Procedure Code as a blanket prohibition against reinstating the time limits for a cassation appeal without considering his particular situation, namely, (a) the fact that he did not know about the appeal hearing and had no legal representative of his own choosing present at the hearing and (b) once he was informed about the appeal judgment, he immediately lodged an appeal in cassation with a request for an extension of the time limit for an appeal. The author

argues that, by rejecting his request for an extension of the time limit to file an appeal and by rejecting his appeal in cassation, the State party violated his rights under article 14 (5) of the Covenant.

3.4 The author argues that the particularities of his case make the principle of *non bis in idem* applicable with respect to the competence of the Moldovan authorities to prosecute and punish him for an alleged crime that had already been dealt with in the Russian Federation, in violation of his rights under articles 14 (7) and 15 of the Covenant. He claims that the facts of his case demonstrate that all the alleged activities were performed within the territory of the Russian Federation under agreements with Russian legal entities and governed by the laws of the Russian Federation; that all documentation concerning the allegedly unlawful activities was kept in the Russian Federation; and that all the documentary evidence for the proceedings were submitted by Russian law enforcement authorities.

3.5 The author claims that Orhei-Vit used the criminal procedure in circumvention of the law to settle a business conflict between him and the management of the company, based on the debts incurred by Vitaproduct. The author further claims that the criminal charges were possible because of Orhei-Vit's connections with the authorities. He argues that, as such, the Court of Appeal violated his rights under article 11 of the Covenant by convicting him and sentencing him to imprisonment merely on the grounds of his inability to fulfil a contractual obligation.

State party's observations on admissibility

4.1 On 11 April 2022, the State party submitted its observations on the admissibility of the communication. The State party considers that the communication is inadmissible as an abuse of submission under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

4.2 The State party notes that the author filed the complaint before the Committee on 26 January 2021, while the final domestic remedy was exhausted in the State party on 20 November 2012 by a judgment of the Chisinau Court of Appeal and the subsequent dismissal on 22 May 2013 by the Supreme Court of the author's appeal, in which the Supreme Court found his appeal to be time-barred and thus inadmissible. It argues that the author has not substantiated his claim that he would have been unable to submit the complaint earlier than 2021 and that the communication therefore constitutes an abuse of submission. The State party notes in this connection that in filing his appeal before the Supreme Court on points of law, the author engaged a lawyer of his own choosing and would therefore, at least at this stage, have been aware of the alleged procedural violations referred to in his complaint. The State party further notes that the author left the Republic of Moldova at a time when he knew there was a criminal case being brought against him. It states that the Court of Appeal repeatedly summoned the author to appear at the hearing, however to no avail. The State party notes that, even if it was the initiation of extradition proceedings against him that caused the author to file the complaint, the request for extradition was rejected by the United Kingdom courts in a final decision. The State party argues that, as such, the author is no longer at risk of extradition from the United Kingdom to the Republic of Moldova.

Author's comments on the State party's observations on admissibility

5.1 On 4 November 2022, the author submitted his comments on the State party's observations; he maintains that the communication is admissible.

5.2 The author notes that in May 2013 the Supreme Court in Chisinau rejected his request for leave to appeal in cassation for missing the time limit for lodging an appeal. The Supreme Court ruled that article 422 of the Code of Criminal Procedure did not allow in absolute terms the reinstatement of the time limit for appeal in cassation under any circumstances. He therefore argues that, despite his engaging counsel to defend his rights, the latter's professional services were to no avail, since the Supreme Court did not review in substance the arguments raised by him.

5.3 The author further argues that everything abruptly changed on 25 June 2020, when he was arrested in London, following an extradition request by the Moldovan authorities. He was detained and extradition proceedings were started before the Westminster Magistrates'

Court. The author reiterates his argument that it was only in the course of the extradition proceedings that he became aware of significant violations of the laws by Orhei-Vit and the Moldovan investigation authorities in relation to the criminal proceedings against him.

5.4 The author also notes that he has challenged his notice in the International Criminal Police Organization (INTERPOL) system, issued at the request of the Moldovan authorities. At its 120th session, held from 11 to 15 April 2022, the Commission for the Control of INTERPOL's Files found in favour of his arguments and ruled that the data concerning the author processed in its information system were not compliant with the INTERPOL rules applicable to the processing of personal data and that they should be deleted. In particular, the Commission stated in its decision that, in view of the author's arguments and the elements before it, and in the absence of proper clarification or counter-arguments submitted by the National Central Bureau of Moldova in reply to the author's claims, the Commission found that there were (a) serious doubts as to the actual criminal character of the case against the author; (b) concerns had been raised about the fair trial guarantees under the Covenant in the context of the criminal proceedings; and (c) the author ran the risk of ill-treatment in case of his possible return to and detention in the Republic of Moldova. The author reiterates his argument that the relevant date, as concerns rule 99 (c), is therefore the extradition proceedings initiated at the request of the State party in 2020.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication 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 The Committee notes the State party's submission that the communication should be found to be inadmissible as an abuse of submission under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure. The Committee further notes the author's argument that it was only in the course of the extradition proceedings initiated in 2020 that he became aware of significant violations of his rights in the criminal proceedings against him and his argument that the relevant date as concerns rule 99 (c) is therefore that date of the extradition proceedings initiated at the request of the State party in 2020.

6.4 The Committee recalls that, according to rule 99 (c) of the Committee's rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication. The Committee notes that the application of this rule is discretionary and requires an assessment of the specific circumstances of each case.¹

6.5 In the present case, the Committee notes that the final domestic decision in the author's case was issued on 22 May 2013, when the Supreme Court rejected the author's application for reinstatement of the time limit for filing an appeal in cassation, while the communication was submitted to the Committee in January 2021, that is with a delay of about eight years after the final domestic decision was issued. The Committee takes note of the author's argument that the delay in submission was due to the fact that it was only in the course of the 2020 extradition proceedings in the United Kingdom that the facts relating to the violations of his rights became known to him. However, the Committee notes that, in his complaint, the author himself stated that in mid-February 2013, he was informed of the judgment issued by the Appeal Court on 20 November 2012, at which point he retained counsel in order to file an application before the Supreme Court, with a request for

¹ See, inter alia, *F.A.H. and others v. Colombia* (CCPR/C/119/D/2121/2011), para. 8.3.

reinstatement of the time limit for lodging an appeal in cassation. The Committee therefore considers that the author has not explained why he did not submit his complaint to the Committee until 2021, considering that he must have become aware of the alleged violation of his rights that he invokes in the present communication at the latest in February 2013, when he attempted to challenge his conviction before the Supreme Court in the State party.

6.6 The Committee thus considers that the author has failed to provide reasons justifying the delay in submitting his communication. In the absence of any other information or explanation of relevance on file, the Committee considers the delay to be unreasonable and excessive enough to amount to an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.
