



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. 3786/2020*,**

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| <i>Communication submitted by:</i> | A.P. (represented by counsels Alaksiej Michalevic and Nikita Matyushchenkov) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Lithuania |
| <i>Date of communication:</i> | 16 January 2020 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's decision in accordance with rule 92(3) of the Rules of Procedure (not issued as an official document) |
| <i>Date of adoption of Decision:</i> | 6 November 2020 |
| <i>Subject matter:</i> | Conditions of detention and right to fair trial upon extradition of the author to Russian Federation |
| <i>Procedural issue:</i> | substantiation of claims, exhaustion of domestic remedies |
| <i>Substantive issue:</i> | Fair trial; cruel, inhuman or degrading treatment or punishment; conditions of detention. |
| <i>Articles of the Covenant:</i> | 7 and 14 |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (2) (b) 1 |

1.1 The author is A.P., a national of Russian Federation. He claims that Lithuania will violate his rights under articles 7 and 14 of the Covenant should it extradite him to the Russian Federation. The Optional Protocol entered into force for Lithuania on 20 February 1992. The author is represented by counsels, Alaksiej Michalevic and Nikita Matyushchenkov.

1.2 On 24 January 2020, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided to deny the author's request for interim

* Adopted by the Committee at its 130 th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication:
Tania Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Christoph Heyns, David Moore, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



measures in order to suspend his extradition. The Special Rapporteur also decided to refer the submission to the Committee for consideration of its admissibility.

Facts as submitted by the author

2.1 Since 2003, the author established business partnership with E. and Sh. The author was a guarantor before the banks for the loans of their joint companies. In 2014, when the author asked his partners, who allegedly wasted the companies' resources, to return the loans, they threatened him with violence and abuse. On 9 January 2017, a criminal case was opened against the author and his business partners under article 159 (4) of the Russian Criminal Code (commission of a large-scale fraud). It concerned two instances of allegedly illegal VAT recovery by two private companies operated by the author's former business partners.

2.2 On 12 March 2017, the author sought asylum in Lithuania. He claimed that the criminal case against him was fabricated and unlawfully initiated, using the power of corrupt officials and his former business partners. He feared retribution from his business partners should he be returned to Russia. On 30 March 2018, the Migration Department refused to grant him asylum. It found the author's allegations of persecution hypothetical in nature, and based on poor and uncertain probability. The author's application for subsidiary protection was rejected as well. The Migration Department found that the available data was insufficient to prove that his criminal case was fabricated. It also noted that the author was prosecuted on a suspicion of having committed a crime, and that there was no evidence that such prosecution was based on discriminatory reasons or was disproportionate. The Migration Department pointed out, among other, that there were no reports indicating a risk of arbitrary detention and false charges in Russia except on political grounds.

2.3 On 9 April 2018, the author was charged with two counts of large-scale fraud in Russia. On 30 April 2018, he lodged an appeal against the Migration Department's decision to the Vilnius Regional Administrative Court. He claimed that his family was receiving threats from private individuals threatening him. On 5 June 2018, the Court rejected his appeal having found the evidence concerning possible persecution in Russia to be insufficient and the decision of the Migration Department to be lawful and justified. On 18 June 2018, the author appealed to the Supreme Administrative Court. His appeal was rejected on 22 August 2018.

2.4 On 16 November 2018, a Russian court authorized the author's preliminary detention for 2 months after his return. On 26 December 2018, the Prosecutor General's Office of Russia requested the author's extradition. They provided diplomatic assurances that the author would be prosecuted only for crimes for which his extradition was sought and would not be subjected to torture or ill-treatment. On 29 November 2019, the Vilnius District Court authorized the author's extradition. On 6 December 2019, the author appealed to the Court of Appeal of Lithuania. At this point in time, he raised claims concerning inadequate conditions in Russian detention facilities. He referred, among others, to data showing that there are numerous instances of torture and inhuman treatment in the detention centres in the Rostov region (where the author was to be extradited), as well as overall poor and unhygienic conditions of detention. He alleged failure of the Vilnius District Court to request additional documents from the Russian Federation, connected to the criminal investigation against him. He claimed that if extradited he would not have a fair trial, referring to international reports about politically-motivated criminal prosecution in the Russian Federation, lack of judicial independence and a low percentage of acquittals in criminal cases. On 20 December 2019 the Court of Appeal of Lithuania authorised the author's extradition. The Court of Appeal considered the claims raised by the author concerning inadequate conditions of detention and found them to be of a very general nature. The Court did not find any flaws in the proceedings of the Vilnius District Court or any evidence that the author would be denied a fair trial upon extradition.

The complaint

3.1 The author claims that the conditions in detention facilities in Russia amount to degrading treatment and will violate his rights under article 7 of the Covenant. In particular, he points to overcrowding, lack of sanitary standards and heating among others. He also refers to reports on incidents of torture in detention facilities. He also alleges that the

conditions of transportation to prison as well as conditions of detention and treatment of prisoners in Russian prisons amount to a violation of article 7 of the Covenant. He claims that the Lithuanian authorities did not properly assess his claims of inadequate conditions of detention and thus did not comply with their procedural obligations under article 7 of the Covenant. The author claims that the diplomatic assurances provided by the Russian Federation should not be accepted by the State party as a guarantee from inhuman and degrading treatment in detention.

3.2 The author further claims that if extradited, he will be denied fair trial guarantees in violation of article 14 of the Covenant. He claims that the criminal case against him was fabricated, and that the Deputy Prosecutor General of the Russian Federation supervising the criminal case against him agreed with the investigator that he has committed the crimes in question. It is likely that the prosecutor would always support the position of the investigative authority and hamper exercise of author's rights in legal proceedings. He further claims that since his former business partners were found guilty, and he was mentioned as an accomplice in judgments in their cases, the court will be able to use those judgments to find him guilty. It would not be possible for him to prove his innocence. The author also claims that the acquittal in Russian system is 0.24%, which would further contribute to the risk of his being found guilty.

Issues and proceedings before the Committee

Considerations of admissibility

4.1 Before considering any claim 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.

4.2 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.

4.3 The Committee notes the author's claim that he exhausted all available and effective domestic remedies. The Committee notes, however, that from the information on file, it seems that the author did not raise before domestic courts his claims concerning the conditions of transportation to prison, raised under article 7 of the Covenant. The Committee also notes that the author had not raised before domestic courts, his claims under article 14 of the Covenant, raised before the Committee, i.e. the alleged bias of the Deputy Prosecutor General of the Russian Federation and the lack of possibility to prove his innocence before Russian courts. Neither did the author raise before domestic courts concerns about the insufficiency of the diplomatic assurances offered by the Russian Federation. Accordingly, in the absence of any information or explanation of pertinence on file, the Committee declares these parts of the author's claim under articles 7 and 14 inadmissible under article 5 (2) (b) of the Optional Protocol.

4.4 The Committee notes the author's claim that article 7 of the Covenant will be violated should he be extradited to the Russian Federation, in view of the conditions of detention in the Russian detention facilities, in particular those in the Rostov region. The Committee also notes the author's claim that the Lithuanian courts have not properly considered these allegations. The Committee notes, however, that the author's claim concerning conditions of detention has been considered by the Court of Appeal of Lithuania, which found the author's allegations to be of a very general nature and that they were insufficient to conclude that his rights will be violated only on account of general conditions of detention. The Committee notes that the author disagrees with the conclusion of the Court of Appeal without providing concrete arguments to support his claim of inadequate assessment by the courts. In light of this, the Committee finds the author's claim under article 7 of the Covenant insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

4.5 The author's remaining argument under article 14 of the Covenant concerning the low rate of acquittals by Russian courts cannot in itself be considered a sufficient substantiation of the author's allegation of lack of fair trial upon extradition. The Committee therefore finds

the author's claim under article 14 insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides that:

- (a) The communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
 - (b) The decision be transmitted to the State party and to the author.
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