



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1946/2010

#### Views adopted by the Committee at its 112th session (7-31 October 2014)

<i>Submitted by:</i>	Yuri Bolshakov (not represented by counsel)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	9 February 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 May 2010 (not issued in document form); Admissibility decision adopted on 6 March 2012
<i>Date of adoption of decision:</i>	15 October 2014
<i>Subject matter:</i>	Unfair trial
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i> ; exhaustion of domestic remedies
<i>Substantive issues:</i>	Fair hearing by a competent, independent and impartial tribunal in the determination of rights and obligations in a suit at law
<i>Articles of the Covenant:</i>	14, paragraph 1
<i>Articles of the Optional Protocol:</i>	5, paragraph 2 (b)



## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)**

concerning

#### **Communication No. 1946/2010\***

*Submitted by:* Yuri Bolshakov (not represented by counsel)

*Alleged victims:* The author

*State party:* Russian Federation

*Date of communication:* 9 February 2010 (initial submission)

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

*Meeting on* 15 October 2014,

*Having concluded* its consideration of communication No. 1946/2010, submitted to the Human Rights Committee by Yuri Bolshakov 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 pursuant to article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication is Yuri Bolshakov, a Russian Federation national born in 1965, residing in Pskov, Russian Federation. He claims to be a victim of a violation by the Russian Federation of his rights under article 14, paragraph 1, of the International Covenant on Civil and Political Rights.<sup>1</sup> The author is not represented by counsel.

1.2 On 5 April 2010, the Special Rapporteur on new communications and interim measures decided that the admissibility of the communication should be considered separately from the merits.

#### **The facts as presented by the author**

2.1 The author is a retired civil servant of the Ministry of Internal Affairs of the Russian Federation. For his service, he was granted first and second grade medals for excellence in

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\* The following members of the Committee participated in the examination of the present communication: Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlatescu.

<sup>1</sup> The Optional Protocol entered into force for the Russian Federation on 1 October 1991.

service. He applied for social assistance in addition to his pension, in accordance with article 5 of the Pskov District Law No. 401- OZ, “Regarding social assistance measures to different categories of citizens residing in Pskov District”. According to that article, pensioners who have the status of “labour veteran” qualify for certain additional social benefits. The author claimed that, according to the Russian Federation Law “Regarding Veterans”, individuals who have received medals and have qualified for a pension obtain the status of labour veteran.

2.2 On 24 March 2006, the Velikie Luki Territorial Department of the Principal State Administration of Social Development and Labour of Pskov District rejected the author’s application for social benefits in his capacity as a labour veteran. The author appealed against the decision of the Department to the City Court of Velikie Luki, which, on 28 April 2006, issued a ruling that overturned the decision of the administration and granted the author social assistance.

2.3 The Department did not file a cassation appeal against the City Court decision, but later filed with the Pskov Region Court a motion for a supervisory review of that decision. The Pskov Region Court accepted the motion and, on 13 October 2006, reversed the City Court’s decision and denied the author social benefits.

2.4 The author filed a request before the Supreme Court of the Russian Federation for a supervisory review against the ruling of the Pskov Region Court. That request was rejected by a ruling dated 31 May 2007.

2.5 On an unspecified date at the end of 2009, the author attempted to have the 13 October 2006 decision of the Pskov Region Court overturned by filing for a review on the basis of newly discovered circumstances. On 22 January 2010, the Plenary of the Pskov Region Court rejected the motion. The panel of judges who reviewed the motion included four judges who had participated in the panel that issued the 13 October 2006 decision. The author contends that he has exhausted all available and effective domestic remedies.

### **The complaint**

3. The author alleges that the reversal by the Pskov Region Court of the City Court’s decision of 28 April 2006, after the latter had entered into force, in the course of the application of an extraordinary legal remedy, violates the principal of legal certainty. Furthermore, he argues that the fact that his application in 2009 to review the decision of the Pskov Region Court dated 13 October 2006 was handled by practically the same panel of judges who issued the original decision violates the principles of judicial independence and impartiality. The author therefore claims to be a victim of violations by the State party of his rights under article 14, paragraph 1, of the Covenant.

### **State party’s observations on admissibility**

4.1 On 24 March 2011, the State party submitted its observations on the admissibility of author’s communication. It confirmed that the author had filed an appeal in the City Court against the refusal of the Velikie Luki Territorial Department of the Principal State Administration of Social Development and Labour of Pskov District to grant him social benefits in accordance with the Pskov District Law No. 401-OZ, “Regarding social assistance measures to different categories of citizens residing in Pskov District”. On 28 April 2006, the City Court overturned the decision of the administration and granted him social benefits.

4.2 The Department requested the City Court to explain its decision of 28 April 2006 and provide the legal basis for its findings in favour of the author. In a court resolution dated 9 June 2006, the City Court indicated that Mr. Bolshakov had been eligible for social benefits in accordance with article 5 of the Pskov District Law No. 401-OZ. On 13 October

2006, the Pskov Region Court, examining the case under the supervisory review procedure, reversed the decision of the City Court and denied the author social benefits. The author's appeal against the decision of the Pskov Region Court was rejected by the Supreme Court on 31 May 2007.

4.3 The State party submits that the author's claim with regard to the reversal of the City Court's decision of 28 April 2006 through a supervisory review is inadmissible. It maintains that article 14 of the Covenant cannot be invoked in the present case, because the proceedings regarding the lawfulness of the refusal of State organs to provide social benefits do not concern "the determination of rights and obligations in a suit at law".

4.4 The State party submits that, according to the practice of the Human Rights Committee, cases that fall under the determination of rights and obligations in a suit at law concern, in particular, such matters as the quantum of an individual's retirement benefits (pension),<sup>2</sup> the appeal against the results of a psychiatric examination,<sup>3</sup> and the award of compensation.<sup>4</sup> It further refers to general comment 32,<sup>5</sup> in which the Committee discusses the concept of determination of rights and obligations.

4.5 According to the decision of the City Court of 28 April 2006, the Department was obliged to grant the author social benefits as provided under the Pskov District Law No. 401-OZ, as the case concerned the application of the said law to the author. The Court's decision was not concerned with vesting in the author any specific rights or obligations having any material or other civil law character. As the proceedings did not concern the determination of rights and obligations in a suit at law, article 14 is therefore not applicable to the author's case and his claim cannot be considered by the Committee.

4.6 Should the Committee consider that article 14 is applicable to the author's case, the State party argues that article 14 does not prohibit the States parties from reversing judicial decisions by way of supervisory review or other procedures provided for by law.

4.7 As regards the author's allegation that the reversal of the decision of the City Court in the course of supervisory proceedings represents a violation of the principle of legal certainty of judicial decisions that have entered into force, the State party submits that, unlike article 6 of the European Convention of Human Rights, article 14 of the Covenant does not prohibit the reversal of a decision by way of supervisory review, and that this is confirmed by the Committee's practice. According to the Committee's jurisprudence, it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case.<sup>6</sup> The State party further maintains that the reversal of the decision of the City Court under supervisory review was done in view of important breaches of national law norms by the court of first instance.

4.8 The State party also recalls the jurisprudence of the Committee to the effect that the right of equal access to a court, embodied in article 14, paragraph 1, concerns access to first instance procedures and does not address the issue of the right to appeal or other remedies.<sup>7</sup>

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<sup>2</sup> See communication No. 1524/2006, *Yemelianov et al. v. Russian Federation*, decision adopted on 22 July 2008.

<sup>3</sup> See communication No. 1357/2005, *A.K. v. Russian Federation*, decision adopted on 29 March 2005.

<sup>4</sup> See communication No. 1507/2006, *Sechremelis, Sechremelis and Angeliki widow of Balagouras v. Greece*, Views adopted on 25 October 2010.

<sup>5</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>6</sup> See communications No. 1188/2003, *Riedl-Riedenstein et al v. Germany*, decision adopted on 2 November 2004, para. 7.3; No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, para. 9.3; and No. 1138/2002, *Arenz et al v. Germany*, decision adopted on 24 March 2004, para. 8.6.

<sup>7</sup> Communication No. 450/1991, *I. P. v. Finland*, decision adopted on 26 July 1993, para. 6.2; general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

Paragraph 5 of article 14, which provides for the right to review of the sentence, does not apply to procedures determining rights and obligations in a suit at law.<sup>8</sup> Therefore, the review of decisions concerning the determination of rights and obligations in a suit at law does not come under the purview of article 14, paragraph 1, of the Covenant.

4.9 According to the City Court's resolution of 9 June 2006, in which it explained its decision of 28 April 2006, Mr. Bolshakov was eligible for social benefits in accordance with article 5 of the Pskov District Law No. 401-OZ. However, the author was not conferred the status of labour veteran and was therefore not entitled to receive social assistance under article 5 of that Law. That conclusion was reflected in the decisions of the Pskov Region Court and the Supreme Court dated 13 October 2006 and 31 May 2007, respectively. Therefore, the reversal under the supervisory review of the City Court's decision of 28 April 2006 by the Pskov Region Court was in compliance with national legislation and international law norms.

4.10 The State party submits as inadmissible that the author's claim with regard to the alleged violation of the right to a fair hearing by an impartial tribunal in the course of the examination of his 2009 application for a review (on the basis of newly discovered circumstances) of the Pskov Region Court decision of 13 October 2006. It submits that the author has not exhausted domestic remedies as regards the alleged violation of the right to a fair hearing. According to article 397, paragraph 2, of the Civil Procedure Code, the court's refusal to review a decision, a court's resolution or a ruling of the supervisory court on the basis of newly discovered circumstances, is subject to appeal. However, the author did not appeal to the Supreme Court against the refusal of the Pskov Region Court of 22 January 2010 to review the decision of 13 October 2006. Therefore, the author's communication is inadmissible for failure to exhaust domestic remedies, as required under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.

4.11 The State party also submits that article 14 of the Covenant does not apply to the procedure of examining an application for review of a judicial decision, as the examination of an application for review on the basis of newly discovered facts does not involve the examination of any criminal charges or the determination of rights and obligations in a suit at law.<sup>9</sup> It submits that no violations of the author's rights under the Covenant were committed by the national courts in the course of examining his case concerning the refusal of the Department to grant him social assistance.

4.12 Accordingly, the State party submits that the author's communication is inadmissible under the Optional Protocol.

#### **Authors' comments on the State party's submission**

5.1 On 28 April 2011, the author contests the State party's argument that his communication is inadmissible because the dispute over his eligibility for benefits under Pskov District Law No. 401-OZ does not involve the determination of rights and obligations in a suit at law. He submits that the State party's own submission contradicts that observation, since it indicates that, according to that Law, he could have been accorded eight different benefits, several of which include monetary allowances. At the same time, the author notes that the State party submitted that, according to the Committee's practice, the "determination of rights and obligations in a suit at law" may concern, inter alia, the determination of the size of a pension or monetary payments, and that it made reference to the Committee's Views in communications No. 1524/2006 and No. 1357/2005. The author

<sup>8</sup> See communication No. 450/1991, *I. P. v. Finland*, decision adopted on 26 July 1993, para. 6.2.

<sup>9</sup> A similar approach is taken by the European Court of Human Rights, for example, in *Barantseva v. Russian Federation*, Judgement dated 4 March 2010.

submits that, in that manner, the State party has confirmed that his court case, and in particular the 24 April 2006 decision of the City Court, concern the determination of rights and obligations in a suit at law, within the scope of article 14, paragraph 1, of the Covenant.

5.2 The author submits that the State party contradicts itself, by first submitting that the communication should be declared inadmissible for non-exhaustion of domestic remedies, for failure to file an appeal with the Supreme Court to review the case on the basis of newly discovered circumstances, and at the same time claiming that such proceedings would not concern the determination of his rights and obligations in a suit at law. According to the author, the State party admits that the above-mentioned avenue is ineffective and at the same time requires him to exhaust it.

5.3 The author makes reference to the Committee's jurisprudence, which he says shows that fundamental violations that justify the reversal of a judicial decision that has entered into force include, for example, error in establishing the jurisdiction, significant violations of the procedure and abuse of power. The mere existence of two points of view regarding the substance of an issue does not constitute grounds for a review. The court's decision on 28 April 2006, which had entered into force, was revoked by the higher court with the reasoning that the first instance judge had allowed "incorrect application and interpretation of the norms of the Law on Veterans". The author maintains that the above-mentioned grounds do not constitute a fundamental violation that would justify the deviation from the principle of legal certainty, and therefore the author's right to fair trial had been violated. The author further stresses that the court's decision, which had entered into force, was revoked by the higher instance on the basis of the initiative of a State body, and that, in a democratic society such as the Russian Federation, an enforceable court decision should not have been revoked on the basis of "formalistic grounds".

5.4 The author submits that, on 22 January 2010, the Pskov Region Court conducted a hearing following the author's application that its decision of 13 October 2006 be reviewed on the basis of newly discovered circumstances. The author maintains that, since the hearing took place, it should have been conducted in compliance with the requirements of article 14 of the Covenant. However, the author submits that the impartiality requirement was violated, since the review was conducted practically by the same judges who had issued the original decision.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 On 6 March 2012, during its 104th session, the Human Rights Committee reviewed the admissibility of the communication. With regard to the author's claim that the reversal by the Pskov Region Court of the 28 April 2006 decision of the City Court, after the decision had entered into force, in the course of the application of an extraordinary legal remedy, violates his rights under article 14, paragraph 1, of the Covenant, the Committee noted that the State party has raised a *ratione materiae* objection. The Committee recalled that the concept of a "suit at law" under article 14, paragraph 1, of the Covenant was based on the nature of the right in question rather than the status of one of the parties.<sup>10</sup> The Committee considered that the proceeding in the City Court concerning the eligibility of the author to social benefits, some of which include monetary payments, constituted determination of rights and obligations in a suit at law. The Committee therefore considered

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<sup>10</sup> See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 16. See also communications No. 454/1991, *Pons v. Spain*, Views adopted on 30 October 1995, para. 9.3, and No. 441/1990, *Casanovas v. France*, Views adopted on 19 July 1994, para. 5.2.

that the procedures applicable to the City Court's decision on the issue were subject to article 14, paragraph 1. The Committee noted the State party's argument that it was generally for the courts of the States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, but observed that the degree to which a final judgment of a court could be impaired by a subsequent action of public authorities did not depend exclusively on domestic legislation, and potentially raised issues under article 14, paragraph 1, of the Covenant.<sup>11</sup> The Committee declared the communication admissible *ratione materiae* with regard to the author's claim that the removal of legal effect from the City Court judgment violated his rights under article 14, paragraph 1, of the Covenant.

6.2 The Committee noted the author's claim that his application for review of the 13 October 2006 Pskov Region Court decision on the basis of new circumstances had been denied on 22 January 2010 by largely the same panel of judges who had issued the original decision, and that the composition of the panel violated his rights under article 14, paragraph 1, of the Covenant. The Committee noted, however, that the State party had challenged the admissibility of that claim on the grounds of non-exhaustion of domestic remedies, namely, the author's failure to appeal to the Supreme Court against the refusal of the Pskov Region Court to review the decision of 13 October 2006, and that the author had not adequately addressed that challenge in his comments. In the light of this, the Committee considers that the author failed to exhaust domestic remedies and declares the claim inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

#### **Absence of State party's observations on the merits**

7. In its decision on the admissibility of the case, transmitted to the State party on 2 April 2012 in English and re-transmitted on 25 June 2012 in Russian, the Committee requested the State party to provide its observations on the merits. On 21 January 2014, the Committee again requested the State party to provide it with information on the merits of the communication. On 26 February 2014, the State party resubmitted its observations on the admissibility of the communication. On 5 June 2014, the Committee again requested the State party to provide it with information on the merits of the communication. The Committee notes that the information has not been received from the State party. The Committee regrets the State party's failure to respond in a timely manner to the Committee's request to provide information regarding the substance of the author's claim. It recalls that, under article 4, paragraph 2, of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that those have been properly substantiated.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The question before the Committee is whether, in the circumstances of the present case, the quashing of the judgment of the City Court of Velikie Luki by the decision of the

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<sup>11</sup> See communications No. 203/1986, *Munoz Hermoza v. Peru*, Views adopted on 4 November 1988, para. 11.3; No. 823/1998, *Czernin et al. v. the Czech Republic*, Views adopted on 29 March 2005, paras. 7.4 and 7.5; and No. 1507/2006, *Sechermelis et al. v. Greece*, Views adopted on 25 October 2010, para. 10.4.

Pskov Region Court on supervisory review, at the request of the Velikie Luki Territorial Department of the Principal State Administration of Social Development and Labour of Pskov District, violated the author's rights under article 14, paragraph 1, of the Covenant. The Committee notes in that connection that the paragraph in question applies not only to criminal matters but also to the determination of rights and obligations of a civil nature in a suit at law. The right to determination of such rights and obligations in a fair hearing by a competent, independent and impartial tribunal entails that administrative authorities should respect the final outcome of judicial proceedings against them, and that such proceedings should achieve a final outcome with expeditiousness.<sup>12</sup>

8.3 The Committee observes that, in the present case, the City Court issued its judgment on 28 April 2006 and that, although the Department did not file a cassation appeal within the allotted time, the Department requested the City Court to clarify the legal basis of its ruling, to the effect of which the City Court issued a resolution on 9 June 2006. Just over three months later, on 15 September 2006, the Department initiated supervisory review proceedings before the Pskov Region Court, which granted a review and quashed the City Court's judgment less than a month later, on 13 October 2006. The author's own request for a supervisory review against the Pskov Region Court ruling before the Supreme Court of the Russian Federation was rejected by a ruling of 31 May 2007. Taken together, these proceedings led to the quashing of the City Court's judgment on the grounds of an erroneous interpretation of domestic law within six months of that judgment. The author does not argue that the conduct of the supervisory review failed to comply with the procedural requirements of domestic law as they existed in 2006. The Committee also observes that the author has not presented any evidence that the principle of adversary proceedings or the equality of arms was violated in the course of the supervisory review proceedings. In the specific circumstances of the case, the Committee considers that the above sequence of events cannot be seen as denying the author a fair and expeditious determination of the rights he asserted. The Committee, accordingly, is not in a position to conclude that the author's rights under article 14, paragraph 1 of the Covenant were violated in the present case.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the State party has not violated article 14, paragraph 1 of the Covenant.

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<sup>12</sup> See communications No. 203/1986, *Munoz Hermoza v. Peru*, Views adopted on 4 November 1988, para. 11.3; No. 823/1998, *Czernin et al. v. the Czech Republic*, Views adopted on 29 March 2005, paras. 7.4 and 7.5; and No. 1507/2006, *Sechermelis et al. v. Greece*, Views adopted on 25 October 2010, para. 10.4. See also general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 27.