



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/88/D/996/2001
13 November 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October – 3 November 2006

DECISION

Communication No. 996/2001

<u>Submitted by:</u>	Mr. Vadim Stolyar (represented by Mrs. Karina Moskalenko, Moscow International Protection Centre)
<u>Alleged victim:</u>	the author
<u>State Party:</u>	the Russian Federation
<u>Date of communication:</u>	16 February 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 July 2001 (not issued in document form)
<u>Date of adoption of Decision:</u>	31 October 2006

Subject matter: Right to be represented by a lawyer at all stages of criminal proceedings.

Substantive issues: ill-treatment, habeas corpus, unfair trial

Procedural issues: Substantiation of claim

Articles of the Covenant: 7; 9; 14

Article of the Optional Protocol: 2

[ANNEX]

* Made public by decision of the Human Rights Committee.
GE.06-45396

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-eighth session

concerning

Communication No. 996/2001*

<u>Submitted by:</u>	Mr. Vadim Stolyar (represented by Karina Moskalenko, Moscow International Protection Centre)
<u>Alleged victim:</u>	the author
<u>State Party:</u>	the Russian Federation
<u>Date of communication:</u>	16 February 1999 (initial submission)

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

Meeting on 31 October 2006,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mr. Vadim Stolyar, a Russian national of Ukrainian origin, born in 1977. He claims to be victim of violation by the Russian Federation of his rights under articles 7; 9; and 14, paragraphs 1 and 3, (d), (e), and (g), of the Covenant¹. He is represented by counsel, Mrs. Karina Moskalenko, Moscow International Protection Centre.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

¹ The Optional Protocol entered into force for the State party on 1 January 1992.

Facts as submitted by the author

2.1 During the night of 11 February 1995, the author walked with a friend, R., near a warehouse in a remote area in Mityshchy city (Russia). They met two pedestrians (Mr. and Mrs. B., both retired) and asked them for cigarettes. Mr. B. drew a knife from his bag, injured R. in the spleen area, and ripped the back of the author's jacket. R. then left the scene. In order to protect himself, the author hit Mr. B.'s hand with a metal bar he had found in the snow. The latter fell to the ground, and his wife helped him to get up and to leave the scene. The author then went home; R. was already there and his companion and the author's wife were treating his injury.

2.2 On 12 February, Mrs. B. reported the attack to the police. She explained that she had lost consciousness after being hit with a metal bar, and when she recovered, her husband was no longer near her. The author contends that Mr. B. was found early that morning next to a dormitory located near the crime scene. He was brought to a hospital where he died at around 9 a.m., allegedly, because of improper medical care.

2.3 During the night of 13 to 14 February 1995, at around 1 a.m., five civilian policemen came to the author's apartment. His spouse opened the door and they entered, woke up the author, handcuffed him and brought him to a police station, without informing him of the reasons for arrest. They charged him with an administrative offence, for resisting his arrest. On 14 February 1995, the author was brought to the Mytishchinsk City Court, which ordered seven days of administrative arrest. The author claims that he never resisted the policemen during the arrest.

2.4 During his administrative detention, the author was interrogated as a witness in relation to the murder of Mr. B., and allegedly was severely beaten on two occasions by the investigators, who applied pressure on him in order to force him to confess guilt. During this time, he also participated in a reconstitution of the crime at the crime scene. On 17 February, allegedly without reason, he was handcuffed to a radiator in a corridor of the police station. He claims that even after he confessed guilt, his procedural status was not changed until 20 February 1995.

2.5 On 6 March 1995, his wife appealed to the Mityshchinsk City Prosecutor, claiming that her husband's arrest was unlawful. On 5 April 1995, the Prosecutor's Office replied that the arrest had been lawful, as her husband was suspected of having committed a murder. On an unspecified date, the author's lawyer filed a protest motion with the Mytishchinsk District Prosecutor's Office, and this Office forwarded a protest motion to the President of the Mytishchinsk City Court. The author contends that the fact that the Prosecutor transmitted the protest motion shows that his administrative arrest was unlawful².

2.6 On 31 October 1996, the Mytishchinsk City Court sentenced the author to 10 years' imprisonment. He was found guilty of murder, robbery and hooliganism, under articles 108 (2), 206 (2), 146-2 (a), of the Criminal Code. On 17 December 1996, the Criminal Collegium of the

² The author does not give any information on the outcome of this appeal. From the subsequent State party's submission, however, it transpires that on 24 April 1995, the Mityshchinsk City Court has ruled not to give suit to this protest motion, finding that the author's administrative case for hooliganism was lawful and grounded (see 4.8 infra).

Moscow Regional Court confirmed the judgment, which was also subsequently examined by the Supreme Court, under a supervisory procedure, and once again confirmed.

The complaint

3.1 The author claims that, in violation of articles 7 and 14, paragraph 3 (g), he was beaten by investigators during his administrative detention, to force him to confess his guilt.

3.2 In addition, the fact that he was unlawfully placed under administrative arrest while in fact he was detained on a murder charge and was interrogated on this count, amounts to a violation of his right to liberty and security of person, under article 9 of the Covenant.

3.3 The author claims that article 14, paragraph 1, of the Covenant, was violated, as the court was partial. He argues that the court's evaluation of evidence was in violation of the principle of equality of arms, as all testimony provided by the injured party was fully taken into account, though often contradictory and several times modified during the preliminary investigation. At the same time, according to the author, all evidence presented on his behalf was rejected by the Court.

3.4 The author claims that, in violation of article 14, paragraph 3 (d), his lawyer was allowed to meet with him only seven days after his arrest, on 20 February 1996, although the author's mother had privately retained this lawyer on 14 February. The investigating officers also used violence against his co-accused, R., who confirmed this in court. The fact that he was kept at the police premises for seven days, without being transferred to a pre-trial detention centre, in the absence of a lawyer, has to be considered as indirect evidence of the beatings he was subjected to. In substantiation, he provides a copy of the trial transcript dated 29 October 1996, where he informed the court that "when he was brought to the police office, he was beaten there". He affirms that the court ignored his statements to this effect.

3.5 According to the author, article 14, paragraph 3 (e), of the Covenant was violated, as the court refused to summon all potential witnesses, in particular S., K., and G., whose testimonies, allegedly contradicted the prosecution's version. He contends that these testimonies were on record in the criminal case file, and although "the court was obliged to summon the witnesses and to interrogate them and evaluate their depositions", it failed to do so.

State party's observations

4.1 In its comments of 11 July 2002, the State party affirmed that the Supreme Court and the General Prosecutor's Office examined the author's communication, and both concluded that his allegations of violations of the Covenant and the Criminal Procedure Code during the preliminary investigation and the trial were without foundation.

4.2 According to the State party, the trial court comprehensively and fully examined all the available evidence, evaluated it in its totality, and concluded that the author and his co-accused R. did in fact attack a family of retired persons (Mr. and Mrs. B.), robbed them and ran away. Shortly afterwards, without any reason, the author returned to the crime scene and hit Mr. B. several times with a metal bar, as result of which Mr. B. later died.

4.3 The author was arrested as a suspect on 20 February 1995, and on 22 February, in the presence of his lawyer, was charged with murder and robbery. On 23 February, he was placed in preventive detention. During the preliminary investigation and detention and the trial, he was informed about his procedural rights as a suspect, including his right to be represented by a lawyer and of the right not to testify against himself (art. 51 of the Russian Constitution).

4.4 According to the State party, the court established that the author was guilty of having committed a premeditated robbery in collusion, acting in a group, hooliganism, and of intentionally having caused severe corporal injuries causing death. A forensic expert concluded that Mr. B. had suffered from ("subdural") brain haematoma, and had suffered broken ribs and pleural and pulmonary damage, also constituting serious bodily injuries. The expert concluded that death was caused by an internal cranial-brain trauma. All injuries had been caused with a blunt and solid object; it was not excluded that the trauma was caused by hits with a metallic bar, as traces of metal were discovered on the victim's skin.

4.5 The State party contends that the Court found no grounds not to believe Mrs. B., as her testimony was coherent and confirmed by experts' conclusions, and other evidence, including the testimonies of three witnesses unrelated to her.

4.6 The material in the criminal case file reveals that during the trial, witnesses were called on the author's behalf as well. According to the State party, the court evaluated all the evidence examined during the court trial, including those testimonies. The list of witnesses to be summoned, contained in the criminal case file, does not contain the names of S., K., and G., and during the trial neither the author nor his counsel have requested to call those persons.

4.7 The Mityshchinsk City Prosecutor's Office investigated the author's and his co-defendant's allegation that moral and physical pressure were used by the investigators to force them admit guilt. The Prosecutor's Office concluded that these allegations were unfounded.

4.8 The State party denies as groundless the author's assertion that the referral of the protest motion to the Mityshchinsk City Court (against the decision of 14 February 1995 to place him on administrative arrest) shows that he was subjected unlawfully to an arrest, on an "invented" administrative case. Indeed, on 24 April 1995, the Mityshchinsk City Court decided to reject this protest motion.

4.9 During the administrative arrest, the author was interrogated by an investigator, as a witness in a criminal case. According to the State party, the court did not take into account these depositions as evidence which established the author's guilt when deciding on the case. His guilt was established based on the victim's and witnesses' testimonies, and on expert conclusions. The author's allegations that the deceased first attacked him and his co-accused R. with a knife, and injured his co-accused, were examined but rejected by the court.

Author's comments

5. The author presented his comments on 16 May 2006. He reiterated, in detail, his previous allegations and dismissed the State party's observations as superficial. He contended that the State party limited itself to confirming the grounds for his conviction on a murder charge, and

pointed out that no documentary evidence has been adduced by the State party in substantiation of its observations.

State party's additional observations

6.1 On 16 August 2006, the State party submitted additional observations. It recalls that the author's allegations about insufficient grounds for his conviction and the lack of objectivity of the preliminary investigation were examined by the Office of the Prosecutor General and found to be unfounded. Also, in April 2002, the Supreme Court examined the author's criminal case (under a supervisory proceeding), and confirmed the sentence.

6.2 The author's allegation that before his interrogation as a witness, he was not informed of his right not to testify against himself does not correspond to reality. The interrogation record contains a handwritten annotation made by the author, to the effect that he was informed of this right, and he was informed of his rights, in particular of his right not to testify against himself. In addition, his depositions as a witness were not taken into consideration by the court.

6.3 The State party rejects the author's allegation about a violation of his right to defence. According to the criminal case file, on 17 February 1995, he was informed of the relevant provisions of the Criminal Procedure Code, but refused the services of a lawyer.

6.4 The identification parade on which the author was recognised by Mrs. B. was held in the presence of a lawyer and witnesses, and was conducted in strict compliance with the procedural requirements, and correctly accepted as admissible evidence by the court. The court had no reason not to believe Mrs. B., as her deposition was consistent with the remainder of the evidence. The principle of equality of arms was also respected, and both defence and prosecution were afforded equal rights in court.

6.5 The State party also rejects the author's allegations on the partiality of the court as groundless, and points out that all demands formulated by the parties in the trial received adequate examination.

Author's comments

7.1 The author commented on the State party's observations on 31 August 2006. He notes that the State party still has not adduced documentary evidence in support of its arguments, but limited itself in confirming in general terms the grounds for his conviction.

7.2 The author confirms that after his arrest, he was informed of his right not to testify against himself, but claims that when he was interrogated as a witness, he was warned that his criminal liability could be engaged in case of false testimony.

7.3 Finally, he recalls his allegations under article 14, paragraph 3 (e), about the failure of the court, despite its obligation to do so, to call and interrogate three witnesses (S., K., and G.) because their depositions during the preliminary investigation contradicted the prosecution's version.

Issues and proceedings before the Committee

Admissibility considerations

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the same matter is not being examined under any other international procedure, and that the State party does not contest that domestic remedies have been exhausted. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol, have therefore been met.

8.3 The author has claimed that, contrary to article 7, of the Covenant, he was beaten during the initial stages of his arrest to force him to confess his guilt, and that after he complained about this in court, his claim was ignored. The State party has objected that the Mytishchinsk City Prosecutor's Office has investigated the author's pertinent allegations and concluded that they were unfounded. In the absence of any other pertinent information, in particular the absence of detailed description of the alleged acts of ill-treatment the author was allegedly subjected to, and in the absence of medical evidence or information as to whether the author or counsel complained about these allegations during the investigation, the Committee considers that the author has failed sufficiently to substantiate this claim, for purposes of admissibility. In the circumstances, this claim is inadmissible under article 2, of the Optional Protocol.

8.4 The author claims a violation of article 9, as, allegedly, he was unlawfully detained for seven days, from 14 to 20 February 1995, because the investigators falsely accused him of resisting his arrest and the court confirmed this sanction. The Committee notes that the author's counsel appealed, on an unspecified date, the administrative sanction to the Prosecutor's Office, which submitted a protest motion to the Court, but the Court rejected the motion. In the absence of other pertinent information in this connexion, the Committee considers that the author has failed sufficiently to substantiate this allegation, for purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.5 The author claims that contrary to article 14, paragraph 1, his trial was not fair, because the court was partial and took into consideration only the victim's description of the crime but rejected his own version. The State party argues that its Supreme Court and its General Prosecutor's Office examined the author's communication and concluded that his allegations of Covenant violations during the preliminary investigation and the court trial are unfounded. It added that the trial court established the author's guilt after having fully evaluated all the available evidence during the trial. In substance, these allegations relate to the evaluation of facts and evidence, and the Committee recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice³. In the absence of other pertinent information that would show that this is the situation in the present case, the Committee

³ See Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

considers that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

8.6 The author has claimed a violation of his right to defence as protected by article 14, paragraph 3 (d), since after being placed under administrative arrest by a court order, from 14 February to 20 February 1995, his privately retained lawyer was not allowed to see him until 20 February. The State party argues that the author was arrested as a suspect on 20 February 1995, and charged with murder on 22 February, and that, in any event, on 17 February, he had refused, in writing, to be legally represented. This was not refuted by the author. In the circumstances of the present case, and in absence of any further relevant information in this relation, the Committee considers that the author has failed to sufficiently substantiate his allegations, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2, of the Optional Protocol.

8.7 The author claims a violation of article 14, paragraph 3 (e), as three witnesses called on his behalf – S., K., and G., - whose testimonies allegedly would have contradicted the prosecution's version, were not summoned by the court. The State party objects that the list of witnesses to summon in the case file does not mention the names of S., K., and G., and that, in court, neither the author nor counsel requested to call these individuals as witnesses; this was uncontested by the author. In the circumstances, the Committee considers that the author has failed sufficiently to substantiate this allegation, for purposes of admissibility, and it is accordingly inadmissible under article 2 of the Optional Protocol.

8.8 The author has also claimed that contrary to article 14, paragraph 3 (g), he was forced by the investigators to confess his guilt. The State party has replied that both during the preliminary investigation and in court, he was informed about his procedural rights as a suspect, and in particular his right not to testify against himself. The Mityshchinsk City Prosecutor's Office investigated the author's and his co-defendant's allegations that moral and physical pressure were used by the investigators to force them admit guilt, and concluded that these allegations were unfounded. The Committee notes that the author did not refute the State party's affirmations: he acknowledges that he was informed of his right not to testify against himself, but claims that at the same time he was informed of his criminal liability if he gave false testimony. In the circumstances, and in the absence of any other pertinent information in this connection, the Committee considers that the author has failed to sufficiently substantiate his allegations, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
