



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/83/D/918/2000
15 April 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2005

DECISION

Communication No. 918/2000

Submitted by: Galina Vedeneyeva (represented by Alexander Manov, Director of the International Protection Centre in Moscow)

Alleged victim: Konstantin Vedeneyev (the author's son)

State party: Russian Federation

Date of communication: 24 February 1997 (initial submission)

Document references: Special Rapporteur's rule 97 (old rule 91) decision, transmitted to the State party on 10 April 2000 (not issued in document form).

Date of decision: 29 March 2005

Subject matter: Torture to obtain a confession, prison conditions, death from tuberculosis in detention.

Substantive issues: Failure to exhaust domestic remedies; burden of proof.

Articles of the Covenant: 6(1), 7 and 10(1).

Articles of the Protocol: 5(2)(b)

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-third session

concerning

Communication No. 918/2000**

Submitted by: Galina Vedeneyeva (represented by Alexander Manov, Director of the International Protection Centre in Moscow)

Alleged victim: Konstantin Vedeneyev (the author's son)

State party: Russian Federation

Date of communication: 24 February 1997 (initial submission)

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

Meeting on 29 March 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Galina Maksimova Vedeneyeva, a Russian citizen. She claims that her son, Konstantin Vedeneyev, a Russian citizen born in 1966, deceased, is a victim of a violation by the Russian Federation of articles 6(1), 7 and 10(1) of the Covenant. She is represented by Karina Moskalenko, Director of the International Protection Centre in Moscow.

1.2 The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, and Mr. Roman Wieruszewski.

Factual background

2.1 The author states that on 20 April 1994, Konstantin Vedeneyev was arrested in Tomsk on suspicion of having committed a murder in Moscow. He was transferred to Moscow and taken to Pretrial Detention Centre No 1, and on an unspecified subsequent date to Moscow Pretrial Detention Centre No 2, for interrogation. Vedeneyev initially protested his innocence, but allegedly was tortured by police officers to extract a confession from him. The author received letters from her son which described the treatment he suffered, which included being beaten and subjected to electric shocks. As a result of this treatment, Vedeneyev eventually provided a false confession to the murder in question, which he later retracted. He saw a lawyer for the first time on 6 May 1994. The investigation into the case concluded on 20 December 1994, and the case was due to be heard in early 1995.

2.2 The author states that her son's letters described the unacceptable conditions in which he was held at Moscow Pretrial Detention Centre No 2. He was kept in an over-crowded cell with 100 other inmates, had no bed to sleep on, and received inadequate food. Vedeneyev contracted tuberculosis but received no proper medical treatment. His condition worsened, and on 26 January 1995, Vedeneyev was transferred to Pretrial Detention Centre No1 for medical treatment, where he died on 28 January 1995. The cause of death recorded on his death certificate was tuberculosis of the lungs. The author states that her son had been a strong and healthy man when he was taken into custody.

2.3 On an unspecified date, the author filed a complaint with the Moscow City Procurator, in which she stated that her son had been tortured to extract a confession; that he was not provided with access to legal counsel until over two weeks after his arrest; and that he was kept in terrible conditions at Moscow Pretrial Detention No 2, where he contracted tuberculosis. She stated that keeping her son under such conditions amounted to an extrajudicial death sentence, and requested that those responsible for her son's death be brought to justice.

2.4 By letter dated 21 March 1996, the director of Pretrial Detention Centre No 2 informed the author that he had received her complaint from the Moscow City Procurator, and that the circumstances of her son's death had been investigated. He stated that no violations of rules relating to conditions of detention or the provision of medical assistance to detainees had been identified. According to the letter, Vedeneyev had been diagnosed with acute tuberculosis on 17 November 1994, for which he received appropriate medical treatment; on 20 January 1995, his condition worsened, resulting in him being hospitalized; he was further diagnosed with a severe pneumonia. He was finally taken to a surgery department at Moscow Pretrial Detention Centre No 1 on 26 January 1995, but efforts to save his life were unsuccessful.

2.5 The author states that she filed appeals with the regional, municipal and general procurators, but does not provide any details about these appeals, other than to state that they were unsuccessful.

The complaint

3. The author states that her son was subjected to torture and cruel, inhuman and degrading treatment, in violation of his rights under article 7 of the Covenant. She contends that the conditions in Moscow Pretrial Detention Centre No 2 were such that her son was not

treated with humanity and respect for his dignity during his detention at that facility, in violation of article 10(1); and that her son's death from tuberculosis in these circumstances amounted to a violation of his right to life under article 6(1) of the Covenant.

State party's submission and author's comments

4. In its submission of 10 December 2001, the State party contends that the communication is inadmissible because the author failed to exhaust domestic remedies, as she did not appeal to the General Procurator of the Russian Federation, nor to the Supreme Court.

5. In a submission dated 22 August 2004, the author states that she does not consider the Procurator General of the Russian Federation or the Supreme Court to be bodies capable of providing effective remedies. She does not provide any explanation for this submission.

6. In a further submission dated 7 February 2005, the State party provides further information on the appeal processes which it says were available to the author, but were not exhausted. It states that all decisions of organs of state power are subject to appeal, as guaranteed by article 46 of the Russian Constitution. Under Russian law, representatives of a victim are able to file an appeal on his or her behalf. The grounds for changing a decision at first instance include the decision's non-compliance with legal provisions, unjustness, or disparity between the conclusions drawn at first instance and the relevant facts. The Law on the procurator provides that any complaints about unlawful actions are reviewable by the procuracy, and that a complaint to the procuracy does not preclude a person from filing a complaint directly in a Court. The State party reiterates its view that the communication is inadmissible for non-exhaustion of domestic remedies.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Human Rights 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.

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

7.3 The Committee has noted the State party's submission that the author did not exhaust available domestic remedies, as she did not take her complaints about the alleged mistreatment of her son to the General Procurator of the Russian Federation and subsequently to the Supreme Court. Whilst the author contends that these bodies would not provide an effective remedy in the present case, no explanation has been provided by her in support of this contention. The Committee considers that, whilst the author of a communication does not bear the sole burden of proof for a contention that a particular domestic remedy is ineffective, an author must at least present a *prima facie* argument in support of such a proposition, and substantiate his or her reasons for believing that the remedy in question is or would be ineffective. In the present case, the author has not done this.

8. Accordingly, the Committee decides that:

(a) the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;

(b) this decision shall be communicated to the State party and the author.

[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.]
