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HUMAN RIGHTS COMMITTEE
Eighty-second session
18 October – 5 November 2004

DECISION

Communication No. 851/1999

Submitted by:	Mr. Vladimir S. Zhurin (not represented by counsel)
Alleged victim:	Mr. Vladimir V. Zhurin (the author's son)
State party:	Russian Federation
Date of initial communication:	15 December 1998 (initial submission)
Document references:	Special Rapporteur's rule 86/91 decision, transmitted to the Sate party on 10 February 1999. (not issued in document form)
Date of decision:	2 November 2004

[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-second session

concerning

Communication No. 851/1999[**]

Submitted by:	Mr. Vladimir S. Zhurin (not represented by counsel)
Alleged victim:	Mr. Vladimir V. Zhurin (the author's son)
State party:	Russian Federation
Date of initial communication:	15 December 1998 (initial submission)

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

Meeting on 2 November 2004

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Vladimir S. Zhurin, a Russian national, on behalf of his son Vladimir V. Zhurin, also a Russian born in 1966, who at the time of submission of the communication, was under sentence of death following a judgement given in 1990 by the Supreme Court of Bashkir Autonomous Soviet Republic (today the Republic of Bashkortostan, Russian Federation). He claims that his son is a victim of violations by the Russian Federation[1]

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

[1] The Covenant entered into force for the State party on 23 March 1976, the Optional Protocol on 1 January 1992 (accession). Upon acceding to the Optional Protocol, the State party made the following declaration:

"The Union of Soviet Socialist Republics, pursuant to article 1 of the Optional Protocol, recognizes the competence of the Human Rights Committee to receive and consider

of his rights under articles 6, 7, 10, and 14, paragraphs 1, 2, and 3, (b), (d), (e), and (g), of the Covenant. The author is not represented by counsel.

1.2 On 10 February 1999, the Human Rights Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party under rule 86 of the Committee's rules of procedure not to carry out the death sentence against Mr. Zhurin while his case was under consideration by the Committee. From a subsequent submission of the author, dated 10 March 1999, it transpired that Mr. Zhurin's death sentence was commuted to life imprisonment by Presidential Decree of 23 September 1993.

The facts as submitted by the author

2. The author notes that his son was sentenced to death on 12 January 1990 for premeditated murder involving the use of violence, a premeditated murder in order to hide another crime, and for robbery involving the use of violence. The Supreme Court of the Russian Socialist Federative Soviet Republic (RSFSR) upheld the sentence on 11 May 1990. He was found guilty, with four other persons (including his brother E. Zhurin) of having committed different crimes including murders in Russia and the then Uzbek Soviet Socialist Republic between 1984 and 1988.

The claim

3.1 The author contends that during the investigation, his son was handcuffed to his chair and beaten to make him confess his guilt. For three months after his arrest on 3 May 1988, he was unable to meet with his family. Only in July 1988, after numerous interventions with the authorities by the family, his son was "shown" to the family; according to the author, his son's face was swollen and bruised, and he was depressed. Article 7 of the Covenant is said to have been violated by reason of the treatment Mr. Zhurin was subjected to.

3.2 Article 10 of the Covenant is said to have been violated during the investigation, as Mr. Zhurin was beaten and deprived of food, thus violating his human dignity; he was detained together with "criminal recidivists" who threatened him with physical violence; and the investigators threatened to hang him in his cell and to disguise his death as a suicide.

3.3 According to the author, his son's guilt was not proven by the prosecution and the tribunal, in violation of the right to a fair trial under article 14, paragraphs 1 and 2, and the sentence was devoid of any legal basis. According to him, his son's conviction was based on the testimonies of persons who had a particular interest in the outcome of the case: his son's co-accused Mr. Kitsaev (who allegedly received a lighter sentence) and Mr. Kayumov (who

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communications from individuals subject to the jurisdiction of the Union of Soviet Socialist Republics, in respect of situations or events occurring after the date on which the Protocol entered into force for the USSR. The Soviet Union also proceeds from the understanding that the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the individual in question has exhausted all available domestic remedies."

allegedly was obliged to testify under duress during the investigation, and who retracted his testimony later in court).

3.4 Mr. Zhurin's rights under article 14, paragraph 3 (b), are said to have been violated as his lawyer was allowed to see him only once the indictment had been prepared by the investigation, i.e. when the case had already been "fabricated". The author claims that on 24 May 1988, he requested the Prosecutor of Chelyabinsk to allow him to retain a private lawyer for his son, but he was not allowed to do so. Subsequent meetings with his lawyer allegedly took place in the presence of an investigator, and the lawyer and the author's son did not have sufficient time to acquaint themselves with the charges. Mr. Zhurin allegedly prepared the cassation appeal himself, as his lawyer was unwell, and there was neither any time nor any possibility to hire another lawyer.

3.5 Article 14, paragraph 3 (d), of the Covenant, is said to have been violated, as Mr. Zhurin was not represented by a lawyer from the beginning of his detention and the author's requests to this effect were denied. The author claims that not a single request made by the defence and by his son were considered or granted by the court. According to him, his son should have been tried by a jury, not a single judge.

3.6 The author claims that his son's rights under article 14, paragraph 3 (e), of the Covenant were violated, because the court denied his requests to cross-examine different witnesses and to ask for the appearance of additional expert witnesses.

3.7 According to the author, article 14, paragraph 3 (g) was violated in the case of his son, as he was forced by the investigators to confess his guilt on every charge.

3.8 Finally, the author claims that article 6 was violated with respect to his son, because he was illegally sentenced to death after a procedurally flawed trial, for murders that he did not commit.

State party's observations on admissibility and merits

4.1 On 26 January 2000, the State party observed that Mr. Zhurin's death sentence was upheld by the Supreme Court of the RSFSR on 11 May 1990. On 23 September 1993, he received a Presidential pardon, and the death sentence was commuted to life imprisonment.

4.2 The State party contends that Mr. Zhurin's criminal case was examined, on appeal, by the Supreme Court as well as on two occasions by the Prosecutor's Office under a supervisory procedure, and the courts' rulings in the case were found to be lawful and well-founded.

4.3 According to the State party, the circumstances of the case were examined fully, thoroughly, and objectively. There were no breaches of criminal or procedural law that would lead to an overturn of the conviction. The issue of Mr. Zhurin's mental state was also investigated thoroughly, including through an in-patient psychiatric test, which concluded that he was of sound mind. According to the State party, the evidence was properly assessed, and Mr.

Zhurin's punishment was imposed in accordance with the law in force at the time the offences were committed.

Author's comments

5. On 21 July 2000, the author merely reiterated his initial claims and dismissed the State party's submission as incorrect.

Issues before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 As to the ratione temporis requirement, the Committee has noted the author's claims set out in paragraphs 3.1 to 3.8 above. It notes that the Covenant entered into force for the Russian Federation on 23 March 1976, and the Optional Protocol on 1 January 1992. In this case, the author was found guilty of murder and other crimes, and sentenced to death by decision of the Supreme Court of the Bashkir Republic on 12 January 1990. The final judicial decision in his case was handed down by the Supreme Court of the Russian Federation (RSFSR) on 11 May 1990, i.e. before the entry into force of the Optional Protocol for the State party.

6.4 The Committee recalls its jurisprudence that a State party's obligations under the Covenant apply as of the date of its entry into force for that State party[2]. The Committee has also consistently held that it cannot consider, under the Optional Protocol Procedure, alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party concerned, unless the violations complained of continue after the entry into force of the Optional Protocol[3]. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.

6.5 In the present case, the author's claims under articles 7, 10, and 14 of the Covenant (paragraphs 3.1 to 3.8 above), all relate to events which occurred before the State party formally recognised the Committee's competence under the Optional Protocol. The Committee recalls its jurisprudence that a term of imprisonment, without the involvement of additional factors, does not amount per se to a "continuing effect", in violation of the Covenant, sufficient to bring the original circumstances giving rise to the imprisonment ratione temporis within the Committee's

[2] See, for example Communication No. 520/1992, Könye and Könye v. Hungary.
[3] Idem.

jurisdiction[4]. In the absence of any pertinent information about any possible continuing effects of the alleged violations after the entry into force of the Optional Protocol for the State party, i.e. 1 January 1992, which would in themselves constitute a violation of the Covenant, the Committee concludes that this part of the communication is inadmissible ratione temporis, pursuant to article 1 of the Optional Protocol.

6.6 In the circumstances, and given that the author's sentence to death was commuted in 1993, the Committee sees no need to examine the author's remaining claim under article 6.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible pursuant article 1 of the Optional Protocol;

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

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

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[4] See, for example, Yong-Joo Kang v. Republic of Korea, Communication No. 878/1999, and Baulin v. Russian Fedretaion, Communication No 771/1997.