HUMAN RIGHTS COMMITTEE

Zheludkov v. Ukraine

Communication No. 726/1996

29 October 2002

CCPR/C/76/D/726/1996

VIEWS

Submitted by: Mrs. Tatiana Zheludkova (represented by counsel Mr. Igor Voskoboinikov)

Alleged victim: Alexander Zheludkov

State party: Ukraine

Date of communication: 28 March 1994 (initial submission)

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

Meeting on 29 October 2002,

Having concluded its consideration of communication No. 726/1996, submitted to the Human Rights Committee on behalf of Mr. Alexander Zheludkov 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 under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mrs. Valentina Zheludkova, Ukrainian national of Russian origin. She submits the communication on behalf of her son, Alexander Zheludkov, an Ukrainian national of Russian origin, at the time of the submission detained in an Ukrainian prison. She claims that her son is a victim of violations of articles 2, 7, 9, 10 and 14 of the International Covenant on

Civil and Political Rights. The author is represented by counsel.1/

Facts as submitted by the author

2. The author states that her son was arrested on 4 September 1992 and was charged, alongside two other men, with the rape of a minor, a 13-year-old girl, H.K. The rape was alleged to have occurred on 23 August 1992. On 28 March 1994, the author's son was convicted by the Ordzhonikidzevsky District Court (Mariupol) and sentenced to seven years' imprisonment. His appeal to the Donetsk Regional Court was dismissed on 6 May 1994. His subsequent appeal to the Supreme Court of Ukraine was dismissed on 28 June 1995.

Complaint

3.1 The author claims that her son is a victim of a violation of articles 7 and 10 of the Covenant on the ground that, both on the date of his arrest and on other occasions before his trial, he was severely ill-treated and because of the inhuman conditions of detention. With regard to the first ground, she states, in particular, that on 4 September 1992, her son was brought to a police station to give evidence as a witness in a case concerning a theft. She states that at the police station he was taken to a room where he was severely beaten with metal objects by several policemen for many hours. Her son identifies one of the assailants as Mr. K., a police captain and father of the victim of the alleged rape. The author further claims that Mr. K. forced her son to write a confession to the alleged rape. She explains that he declined to make any complaints to a man in civilian dress who subsequently came into the interrogation room to ask him some questions, fearing that he would be beaten again if he complained. The author claims that her son has suffered serious injuries as a result of the beatings and states that he is still in bad health. In particular, he suffered severe damage to his left eye. She supplies no medical evidence, since her son has no access to his medical records. However, she provides a report by a doctor of the institution where her son was detained, which shows that he did complain to the doctor about the state of his eye. Furthermore, she has put before the Committee an extensive series of medical records aimed at showing that he was in good health until 1992.

3.2 With regard, in particular, Mr. Zheludkov's physical condition while detained and the lack of medical attention in the institution in which he was detained, the author also alleges that her son at one time suffered from methane poisoning, but that her efforts to secure medicine for him were hindered. With regard to the conditions of detention in general, the author states that the institution is severely overcrowded and that there is an alarming shortage of food, medicaments and other "absolutely essential things".

3.3 The author also alleges that her son is a victim of a violation of articles 9, paragraph 2, and 14, paragraph 3, as, during the first 7 days of detention after his arrest he was not given access to a lawyer, and because he was not charged with the crimes until 50 days after the arrest.

3.4 The author alleges that her son's right to a fair trial, as provided for in article 14, paragraph 1, was violated in the proceedings against him. The author again invokes that her son's confession was coerced and also claims that the remaining evidence against him was fabricated to cover up a previous crime - a burglary of his apartment by Mr. K's daughter (the victim of the rape) and another woman.

Also with regard to the trial, the author alleges that her son was deprived of the chance to examine a witness at his trial.

3.5 The author states that all available domestic remedies have been exhausted. With regard to the conviction and sentence for rape, reference is made to the trial and the unsuccessful appeals mentioned in paragraph 2 above. With regard to the alleged beatings of Mr. Zheludkov, the author's representatives claim that they petitioned both the courts and the prosecuting authorities several times from 1992 to 1994, but that the prosecuting authorities refused to institute criminal proceedings against the alleged assailants. Copies of their letters and petitions have been forwarded to the Committee.

State party's submission and author's comments thereon

4.1 In its submission of 21 April 1997, the State party merely replies that the arguments of the author that her son did not take part in the crime that his interrogation was conducted by impermissible means, that he was slanderously accused of the offence and that the investigating authorities and the court broke the law have been examined and found groundless and that his criminal acts were correctly assessed and his punishment was determined in the light of the public danger represented by the crimes committed and of information about his character.

4.2 In her letter of 15 September 1997, the author offers no further comments on the communication or on the State party's submission, and requests the Committee to proceed with the examination of the admissibility of the communication.

Decision on admissibility

5.1 On 7 March 1999, the Committee, acting through its Working Group, pursuant to Rule 87, paragraph 2, of its rules of procedure, examined the admissibility of the communication.

5.2 The Committee ascertained, in accordance with article 5, paragraph 2 (a) of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation. Similarly, the Committee found that the author had exhausted domestic remedies for purposes of article 5, paragraph 2 (b), of the Optional Protocol.

5.3 Concerning the author's claim that her son was beaten by police officers upon his arrest in September 1992 and that his confession was coerced, the Committee noted that although the allegations had not been explicitly refuted by the State party, the judgement from the court of first instance revealed that the author's allegations were examined by the court, which found them groundless. As to the prosecution's refusal to initiate criminal proceedings against the alleged assailants, the Committee noted that the prosecution examined the author's request and that they concluded that there was no basis for opening proceedings. In the absence of a clear showing of partiality or misconduct by the court or the prosecuting authorities, the Committee was not in a position to question their evaluation of the evidence and found that this part of the communication was inadmissible under article 2 of the Optional Protocol.

5.4 Similarly, the Committee found that the author's claim of a violation of article 14 on the ground that the evidence against her son was fabricated, was likewise inadmissible under article 2 of the Optional Protocol as the author had not substantiated a claim of bias or misconduct by the court.

5.5 With regard to the alleged violations of article 14, paragraph 3, on the ground that Mr. Zheludkov had been deprived of the opportunity to examine a witness during the trial, the Committee noted that the author did not raise this issue on appeal. The Committee therefore held this part of the communication inadmissible under article 2 of the Optional Protocol, because the author had failed to substantiate sufficiently her claim for the purposes of admissibility.

5.6 The Committee noted the author's allegation that her son was not charged until 50 days after the arrest and that it appeared that he was not brought before a competent judicial authority in this period. The Committee considered that this may raise issues under article 9, paragraphs 2 and 3, and held the communication admissible under both of these provisions.

5.7 With regard to the alleged violations of article 10, paragraph 1, on the ground of the conditions of detention in general and the lack of medical attention in particular, the Committee noted the author's assertion that her son was denied access to his medical records and that the State party did not refute any of the author's allegations in this respect. The Committee held that this claim had been substantiated sufficiently to be considered on the merits.

5.8 The Human Rights Committee therefore decided, on 7 March 1999, at its sixty-fifth session, that the communication was admissible insofar as it might raise issues under articles 9, paragraphs 2 and 3, and 10, paragraph 1, of the Covenant.

The State party's observations on the merits

6.1 In its observations on the merits dated 26 December 1999, the State party informed the Committee that, following the decision on admissibility, the Public Prosecutor's Office of Ukraine conducted an inquiry. It was established that Mr. Zheludkov had been arrested on 4 September 1992 and that on 7 September 1992 he was placed in pre-trial detention by decision of the Public Prosecutor's Office. Mr. Zheludkov was charged on 14 September 1992, within the 10-day limit provided for charges to be brought after determination of the preventive measure, as stated in article 148 of the Code of Criminal Procedure. The State party contends that, in view of the foregoing, the allegation referred to in the decision on admissibility to the effect that Mr. Zheludkov was not charged until 50 days after the arrest, did not reflect the actual situation.

6.2 The State party affirms that the decision to bring criminal proceedings against Mr. Zheludkov's was verified by the Public Prosecutor's Office on several occasions. During the preliminary investigation and trial, he was held at Mariupol detention centre. His file and medical records indicate that he was admitted on 14 September 1992 and underwent a medical examination. When the doctors questioned him about his state of health, he allegedly replied that he had had Botkin's disease (epidemic infectious jaundice) in 1983 and that in 1986 he had been operated on for an abdominal perforation with haemorrhaging in the right chest area. Reportedly he neither complained about his health nor lodged a formal complaint to the effect that he had been beaten during questioning. The

medical examination found him to be in good health. On arriving at the centre he was given a mattress, pillow, quilt and sheets, as well as cutlery and a bowl. He was assigned a place to sleep and fed according to accepted standards. During his stay in the centre from 14 September 1992 to 27 May 1994, he did not complain to the administration about either his conditions of detention, food or medical care. He did not contact the medical service until 2 February 1994, when he complained of loss of vision in his left eye. The doctor's diagnosis was myopia. The reasons for the loss of vision did not appear in the medical records and Mr. Zheludkov did not consult the doctor on that matter again.

6.3 The State party maintains that owing to the time elapsed, it was not possible to determine whether Mr. Zheludkov, his counsel or his mother petitioned the centre's administration to issue a certificate attesting to Mr. Zheludkov's state of health or enable him to consult his medical records. However, as a result of a procedure initiated by his mother, a copy of a medical certificate concerning Mr. Zheludkov's state of health, drawn up on 2 March 1994 at the request of his counsel and signed by the centre's doctor, was found in the files of the Public Prosecutor's Office. The certificate reads as follows: *In reply to your request of 22 February 1994, may I inform you that Mr. Zheludkov has been registered with the medical service of medical establishment Yu-Ya 312/98 since 14 November 1992. He has lodged no complaint concerning his state of health. He was found to have an internal cutaneous haemorrhage in the right chest area. According to his medical history he had Botkin's disease in 1983 and was operated on in 1986. Currently complains of loss of vision in his left eye. The establishment is not in a position to determine his level of myopia.* The State party argues that the information contained in the certificate fully corresponds to the contents of the medical record and that this refutes the arguments to the effect that Mr. Zheludkov was not allowed to consult his medical records.

6.4 In accordance with a request by Mr. Zheludkov's present counsel concerning his state of health, medical tests were allegedly ordered. He was sent to the interregional prison hospital for diagnosis of after-effects of methane poisoning (1986),2/ with vasomotor cephalalgia, chronic bronchitis, vegetative asthenic syndrome and loss of vision in the left eye. He allegedly remained in observation in the hospital from 31 October to 14 November 1994, during which period he received appropriate medical care. He left the hospital with the following diagnosis: residual effect from hydrocarbon poisoning, toxic encephalopathy, moderate asthenic syndrome and chronic bronchitis in remission. Examinations by a neuropathologist and a therapist were allegedly recommended, and Mr. Zheludkov was declared fit to work.

6.5 The State party goes on to say that during his period in prison from 27 May 1994 to 29 December 1998 Mr. Zheludkov requested medical care on various occasions for various reasons,3/ and stresses that at no time between his arrest and his release did he complain of failure to receive medical care or of the quality of the medical care he received.

6.6 The State party accordingly concludes that the information contained in the decision on admissibility regarding the unsatisfactory conditions of detention in the Mariupol pre-trial detention centre and the failure to provide medical care in the places where the Mr. Zheludkov was held during the investigation and in prison, with denial of access to his medical file, should be considered insufficiently substantiated.

Author's comments on the State party's observations

7.1 In her comments, dated 27 January 2001, the author states that the State party, in its observations, did not refute the argument to the effect that her son had not been brought before a competent judicial authority until 50 days after his arrest. Article 148 of the Code of Criminal Procedure allegedly contains no deadline for informing people of the charges against them.4/ The State party's statement to the effect that the author was charged on 14 September is unsubstantiated by documentary evidence and, accordingly, a fabrication. The author goes on to say that article 155 of the Code of Criminal Procedure stipulates that a person cannot be held in custody for more than three days, after which he or she must be transferred to a detention centre. The only exceptions are cases where no detention centre exists or where transfer is impossible due to poor road conditions. The author's son, however, was detained near Mariupol, where there is a detention centre. The author concludes by saying that conditions of detention were poor since the detention centre was not designed to hold people for a period of more than three days, whereas he had stayed there for 10 days.

7.2 The author states that the detention centre did not receive the same medical documentation as that available during the preliminary investigation. She therefore maintains that documents were missing. The file allegedly contains the conclusions of a medical examination which he underwent at his own request, in connection with his statement that he had been beaten. Documents attesting to his state of health after his poisoning 5/ and other documents are also allegedly missing. The result, according to the author, was to deprive her son of adequate medical assistance during those periods.

7.3 The author attaches copies of documents showing that counsel asked to consult Mr Zheludkov's medical file on several occasions without success.6/ In the author's view, the State party's statement to the effect that it was not able to determine whether Mr. Zheludkov, his counsel or his mother petitioned the centre's administration to issue a certificate attesting to Mr. Zheludkov's state of health or enable him to consult his medical records can no longer be maintained.

Issues and proceedings before the Human Rights Committee

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 provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee must decide whether the State party violated Mr. Zheludkov's rights under articles 9, paragraphs 2 and 3, and article 10, paragraph 1 of the Covenant. The Committee notes the author's claim that her son was held for more than 50 days without being informed of the charges against him and that he was not brought before a competent judicial authority during this period, and further, that medical attention was insufficient, and that he was allegedly denied access to the information in his medical records.

8.3 The Committee notes the information provided by the State party to the effect that, after Mr. Zheludkov's arrest on 4 September 1992 on suspicion of having participated in a rape, his detention was extended by approval of the competent prosecutor in the Novoazosk district on 7 September

1992, and that he was charged on 14 September 1992 - within the legally prescribed 10-days period. It also notes the author's allegations that her son was not informed of the precise charges against him until he had been in detention for 50 days and that he was not brought before a judge or any other official empowered by law to exercise judicial functions during this period. The State party has not contested that Mr. Zheludkov was not brought promptly before a judge after he was arrested on a criminal charge, but has stated that he was placed in pre-trial detention by decision of the procurator (*prokuror*). The State party has not provided sufficient information, showing that the procurator has the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3 of the Covenant. The Committee therefore concludes that the State party violated the author's rights under paragraph 3 of article 9 of the Covenant.

8.4 With regard to the alleged violation of article 10, paragraph 1, in respect of the alleged victim's treatment in detention, in particular as to his medical treatment and access to medical records, the Committee takes note of the State party's reply, according to which Mr. Zheludkov received medical care and underwent examinations and hospitalization during his stay in the centre and the prison, and that a medical certificate based on the medical records was issued, upon request, on 2 March 1994. However, these statements do not contradict the argument presented on behalf of the alleged victim that despite repeated requests, direct access to the actual medical records was denied by the State party's authorities. The Committee is not in a position to determine what the relevance of the medical records in question would be for the assessment of the conditions of Mr. Zheludkov's detention, including medical treatment afforded to him. In the absence of any explanation for such denial, the Committee is of the view that that due weight must be given to the author's allegations. Therefore, in the circumstances of the present communication, the Committee concludes that the consistent and unexplained denial of access to medical records to Mr. Zheludkov must be taken as sufficient ground for finding a violation of article 10, paragraph 1, of the Covenant.

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 of the view that the facts before it disclose a violation of paragraph 3 of article 9, and paragraph 1 of article 10, of the International Covenant on Civil and Political Rights.

10. The Committee is of the view that Mr. Zheludkov is entitled, under article 2, paragraph 3 (a) of the Covenant, to an effective remedy, entailing compensation. The State party should take effective measures to ensure that similar violations do not recur in the future, especially by taking immediate steps to ensure that the decisions concerning the extension of custody are taken by an authority, having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3 of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures

taken to give effect to these Views. The State party is also requested to publish the Committee's Views.

[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.]

Individual Opinion by Committee Member Mr. Nisuke Ando

I concur with the Committee's finding that the State party violated the author's son's rights under article 9, paragraph 3, of the Covenant (8.3). However, I find a difficulty in sharing the Committee's finding that the consistent and *unexplained* denial by the State party of access to the son's medical records constitutes a violation of article 10, paragraph 1 (8.4).

For one thing, the State party does explain that, as a result of a procedure initiated by his mother and at the request of his counsel, a medical certificate concerning the son's state of health was drawn up and signed by the centre's doctor and that the information contained in the certificate fully corresponds to the contents of the medical records (6.3). For another, the Committee admits that it is not in the position to determine what the relevance of the medical records in question would be for the assessment of the conditions of the son's detention, including medical treatment afforded to him (8.4).

I do think that the State party should make the medical records available to the son. Nevertheless, I am unable to convince myself that the denial of access to the medical records, as such, constitutes a violation of article 10, paragraph 1, by the State party in the instant case.

(Signed): Mr. Nisuke Ando

Individual Opinion by Committee Member Mr. P. N. Bhagwati

I have had the opportunity to read the views expressed by the majority of members of the Committee. While I agree with the majority, in finding that there was a violation by the State party of the author's son's rights under article 9, paragraph 3 of the Covenant, I am unable to agree with the finding reached by the majority that the consistency and unexplained denial by the State party of access to the medical records of her son, constituted a violation of article 10, paragraph 1 of the Covenant.

The State Party has averred in paragraph 6.3 of the communication that as a result of a procedure initiated by the author a copy of a medical certificate concerning her son's state of health, drawn up on 2 March 1994 at the request of her counsel and signed by the doctor of the detention centre, was made available to her and that the information contained in this medical certificate fully corresponded to the contents of the medical records. This averment has not been denied or disputed by the author. It is in the circumstances difficult to appreciate or determine what more information about her son's health or physical condition could have been obtained by the author by having access to the medical

records and how the denial of such access prevented her from being able to establish a violation of her son's rights under article 10, paragraph 1. I am of the view that, in any event, denial of access to medical records could not by itself constitute a violation of article 10, paragraph 1, for access to medical records could only be intended to obtain evidence for establishing a violation of article 10, paragraph 1 and refusal to make such evidence available could not be regarded as constituting a violation of that article.

I am accordingly unable to agree with the majority that the denial of access to the medical records constitutes a violation of article 10, paragraph 1 of the Covenant.

(Signed): Mr. P. N. Bhagwati

Individual Opinion by Committee Member Ms. Cecilia Medina

I concur with the Committee's decision in this case, but differ on the reasoning behind it with regard to the existence of a violation of article 10, paragraph 1, of the Covenant, as set out in paragraph 8.4 of the Committee's Views.

I consider that the Committee's reasoning excessively restricts the interpretation of article 10, paragraph 1, by linking the violation of that provision to the possible relevance which the victim's access to the medical records might have had for the medical treatment that he received in prison, in order to assess "the conditions of Mr. Zheludkov's detention, including medical treatment afforded to him".

Article 10, paragraph 1, requires States to treat all persons deprived of their liberty "with humanity and with respect for the inherent dignity of the human person". This, in my opinion, means that States have the obligation to respect and safeguard all the human rights of individuals, as they reflect the various aspects of human dignity protected by the Covenant, even in the case of persons deprived of their liberty. Thus, the provision implies an obligation of respect that includes all the human rights recognized in the Covenant. This obligation does not extend to affecting any right or rights other than the right to personal liberty when they are the absolutely necessary consequence of the deprivation of that liberty, something which it is for the State to justify.

A person's right to have access to his or her medical records forms part of the right of all individuals to have access to personal information concerning them. The State has not given any reason to justify its refusal to permit such access, and the mere denial of the victim's request for access to his medical records thus constitutes a violation of the State's obligation to respect the right of all persons to be "treated with humanity and with respect for the inherent dignity of the human person", regardless of whether or not this refusal may have had consequences for the medical treatment of the victim.

(Signed): Ms. Cecilia Medina

Individual Opinion by Committee Member Mr. Rafael Rivas Posada

I agree with paragraph 8.3 of the decision, which concludes that the State party violated the rights of the author's son under article 9, paragraph 3, of the International Covenant on Civil and Political Rights, but I disagree with the part of paragraph 8.4 of that decision which concludes that the denial of access to medical records to Mr. Zheludkov constitutes a sufficient ground for finding a violation of article 10, paragraph 1, of the Covenant.

Firstly, I do not find that the author's complaint that the authorities had unjustly withheld her son's medical records, which, according to her, had been requested several times, is sufficiently substantiated. It is true that, on two occasions, 30 September and 31 October 1994, the authorities replied that it was not possible to provide them, the first time because the detainee had been transferred to prison together with his file and the second time because, on that day, the detainee had been taken to hospital for tests and his medical records were thus needed. The third reply to the author's request, from the Ministry of the Interior, explained that such authorization was the prerogative of the courts. On the face of it, none of these replies seems to be unfounded. Moreover, the authorities issued a medical certificate on 2 March 1994 which, they maintain, contained all the information relating to his medical record. That assertion by the State party was not contradicted by the author, who never claimed in her complaint that her son had suffered harm for not having had at his disposal medical records about whose existence at any time we cannot be absolutely certain.

Secondly, a person's medical or clinical records are merely a means or instrument for facilitating medical treatment or care which should be based on them. They are not an end in themselves, but a means of achieving a result, namely, preserving or restoring a person's health.

In the present case, the State party maintained that it had given Mr. Zheludkov proper medical attention and, in paragraph 8.4, the Committee does not refer to the absence of medical attention as the ground for the violation of article 10, paragraph 1, of the Covenant, but only to the denial of access to medical records. I find it contradictory to say that the refusal to provide the alleged documents containing the medical records, which were supposedly needed for the attention that the detainee required, constitutes a violation of the Covenant and, at the same time, to recognize implicitly that the medical care was adequate, since the author did not base her complaint on that aspect.

Lastly, but not least importantly, because this consideration is the key point of this dissenting opinion, even if the importance of the possession of medical records was independent of the medical attention to which a detainee is entitled, I do not agree that the interpretation of article 10, paragraph 1, of the Covenant should be stretched that far. To conclude that the denial of access to medical records to a person deprived of his liberty, assuming such denial is proved, constitutes "inhuman" treatment and is contrary to "respect for the inherent dignity of the human person" goes beyond the scope of the said paragraph and runs the risk of undermining a fundamental principle which must be above whimsical interpretations.

For the reasons stated, I disagree with the part of paragraph 9 of communication No. 726/1996 that refers to article 10, paragraph 1, of the Covenant as having been violated by the State party.

5 November 2002

(Signed): Mr. Rafael Rivas Posada

[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.]

Notes

1/ The International Covenant on Civil and Political Rights entered into force for Ukraine on 23 March 1976, and the Optional Protocol on 25 October 1991.

2/ As a result of a work accident.

3/ The State gives the dates of the different reasons for medical visits of Mr. Zheludkov: bronchitis, broken tibia, generalized weakness, pains in the chest area, urinary system problems and haemorrhoids.

4/ The author attaches the Ukrainian text of the law. Article 148, paragraph 4, of the Code of Criminal Procedure reads as follows: "In exceptional cases, for persons suspected of having committed a crime a preventive measure may be imposed before the charges against them have been brought. In such cases the charges must be brought no later than 10 days from the time when the preventive measure is taken. If the charges are not brought within this time period, the preventive measure shall be annulled."

5/ The author does not indicate the type of poisoning involved; she is apparently referring to her son's methane poisoning in 1986.

6/ Three refusals, addressed to counsel. The first, dated 31 October 1994, is the administration's refusal to authorize counsel access to the file on the ground that the detainee was due to be transferred that day to the interregional hospital for tests and that his file was to be sent with him. The second document, dated 30 September 1994, is a reply from the detention centre, explaining that it cannot give access to the medical records, as the detainee has been transferred to prison, together with his file, and indicating only the information in its possession in the centre's register, to the effect that a commission of experts examined the author's son and concluded that he left the centre in good health. The third refusal, dated 5 January 1995, is a reply by the Ministry of the Interior to the author's son's counsel at the time, explaining that the Ministry of the Interior cannot authorize access to medical records, such authorization being the prerogative of the courts.