



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-sixth session  
13 – 31 March 2006

**VIEWS**

**Communication 889/1999**

<u>Submitted by:</u>	Valentin Zheikov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	10 August 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 November 1999 (not issued in document form)
<u>Date of adoption of Views:</u>	17 March 2006

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- Made public by decision of the Human Rights Committee.

*Subject matter:* Unsuccessful attempt of Russian citizen to see criminal proceedings instituted

*Substantive issues:* Torture, degrading treatment or punishment, right to humane treatment and respect for dignity

*Procedural issues:* None

*Articles of the Covenant:* 2, 7, 10, paragraph 1

*Articles of the Optional Protocol:* None

On 17 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 889/1999. The text of the Views is appended to the present document.

[ANNEX]

**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  
Eighty-sixth session

concerning

**Communication 889/1999\***

Submitted by: Valentin Zheikov (not represented by counsel)

Alleged victim: The author

State party: Russian Federation

Date of communication: 10 August 1998 (initial submission)

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

Meeting on 17 March 2006,

Having concluded its consideration of communication No. 889/1999, submitted to the Human Rights Committee by Valentin Zheikov 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 Valentin Zheikov, a Russian citizen born in 1947. He claims to be a victim of violations by the Russian Federation<sup>1</sup> of articles 7 and 10 of the International Covenant on Civil and Political Rights. He is unrepresented.

**Factual background**

2.1 In the evening of 20 February 1996, at around 8 p.m., the author was pushed down the stairs of a bathhouse in Tula by a man wearing a khaki suit. The author lost his balance and fell. At 9:30 p.m. he attempted to re-enter the bathhouse but was prevented from doing so by

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

<sup>1</sup> The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

two men in civilian clothes. They asked him to follow them and took him to the local police station, allegedly hitting him on his back. At the station, he was searched and allegedly beaten on his head, groin and spleen area, so that he lost consciousness. He was later delivered to the Proletarskiy District Office of Internal Affairs, where he asked for and was brought an ambulance. The author allegedly refused to go to the hospital, as he wanted to take some documents from a duty officer. At 5 a.m. on 21 February 1996, he left for home. He called an ambulance for a second time on 23 February 1996. As a result of the injuries sustained, he was hospitalised several times and diagnosed as suffering from craniocerebral trauma and hydrocephalic hypertension.

2.2 On 22 February 1996, he filed a complaint with the Proletarskiy District Office of Internal Affairs of Tula. On 14 March 1996, this Office decided not to institute criminal proceedings, because of lack of evidence. This decision was annulled as unfounded by the prosecutor of Proletarskiy District Prosecutor Office of Tula. On 7 April 1996, the investigator of this Office once again decided not to institute criminal proceedings, as there was insufficient evidence that a crime had been committed. He found that on 20 February 1996, the author had been drunk and behaved in a disorderly manner at the bathhouse. He had verbally abused a woman working at the bathhouse, whereupon two off-duty officers of the Proletarskiy District Office of Internal Affairs present removed him from the scene. A duty officer at the police station testified that at approximately 10:30 p.m. on 20 February 1996, the author, who was then heavily intoxicated, was brought to the station. While the duty officer drew up registration documents, the author refused to provide personal data and started to behave in a provocative manner which necessitated the use of force against him. The officer testified that he had to apply force because Zheikov ignored all verbal orders because of his intoxication. The investigator concluded that the duty officer had acted in compliance with articles 12 and 13 of the Law governing the militia that allowed militia officers to apply physical force to detain persons that committed an administrative offence. He concluded that the author was detained while committing an administrative offence, and had sought to use force against the duty officer.

2.3 On numerous occasions, the author requested the Prosecutor's office of Tula Region to institute criminal proceedings, but all criminal cases opened by the office were subsequently closed by the same office, on the ground that there was insufficient evidence that a crime had been committed. In addition, the author addressed himself to the Office of the General Prosecutor, which on four occasions annulled the decision of the Prosecutor's office of Tula Region to close the criminal case.

### **The complaint**

3. The author claims that the State party violated his rights under articles 7 and 10 of the Covenant, and that it failed to take any steps to punish those responsible for causing bodily injury to him.

### **State party's observations on admissibility and merits and author's comments**

4. By Note Verbale dated 12 July 2000, State party advised that the Office of the General Prosecutor of the Russian Federation had conducted an inquiry into the facts at the basis of the author's complaint to the Committee. It determined that the decision to close criminal proceedings initiated to investigate the author's allegations was unfounded and referred it to the Prosecutor's office of Tula Region for further investigation. The State party added that

the Office of the General Prosecutor was monitoring, at that time, the conduct of the investigation and its outcome.

5. On 5 October 2000, the author transmitted a letter from the Prosecutor's office of Tula Region dated 29 September 2000, by which he was informed that the criminal case was suspended as the investigation had exhausted all possibilities of identifying the culprits responsible for the treatment of the author. The author added offensive remarks addressed to the Committee and the United Nations in general, related to their alleged inability effectively to assist him. In a letter with similarly offensive language received on 10 October 2000, he claimed that on 22 June 1999, officers of the Ministry of Internal Affairs had hit him on the head, insulted him and subjected him to torture. On 22 February 2001, the author forwarded a copy of a letter with insults addressed to the General Prosecutor of the Russian Federation. On 10 August 2001, he provided a document allegedly certifying that he had been recognized as a disabled person, with physical handicaps, third category. On 26 November 2005, the author informed the Committee that he would be satisfied by compensation totalling USD 18 billion for injuries suffered, as well as moral harm and material damages.<sup>2</sup>

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

#### **Consideration of admissibility**

6.1 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 case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. As to the requirement of the exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies have been exhausted. In the absence of any pertinent information from the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

6.3 The Committee considers there to be no impediment to the admissibility of the author's claims under articles 7 and 10 of the Covenant.

#### **Consideration of the merits**

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol. It further notes that the State party advised that the General Prosecutor Office had conducted an inquiry into the facts of the author's complaint to the Committee, determined that the decision to close criminal proceeding initiated to investigate the author's allegations was unfounded and referred it for further investigation. The State party has not, however, challenged the facts as submitted by the author, and has not provided any pertinent information about the substance of the author's claims.

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<sup>2</sup> This submission was not transmitted to the SP.

7.2 The Committee has noted the author's claim that on 20 February 1996, he was ill-treated by person(s) acting in an official capacity (see paragraphs 2.1, 2.2 and 5.1 above). The State party's prosecutorial authorities have conducted several investigations into the author's allegations, which confirmed that he was detained and acknowledged that physical force was applied to him in accordance with the law (paragraph 2.2). The Committee recalls that a State party is responsible for the security of any person it deprives of liberty and, where an individual deprived of liberty receives injuries in detention, it is incumbent on the State party to provide a plausible explanation of how these injuries occurred and to produce evidence refuting these allegations.<sup>3</sup> It also recalls its jurisprudence<sup>4</sup> that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In this case, the State party does not deny that force was used against the author, and that investigations have thus far failed to identify those responsible (para.5) although the resolution of 7 April 1996 mentioned the names of the duty officers, and that the author has not been afforded an effective remedy, in form of proper investigations into his treatment. The Committee thus concludes that the lack of adequate investigation into the author's allegations of ill-treatment amounted to a violation of article 7 of the Covenant, read together with article 2. In the light of this finding, it is unnecessary to examine the author's allegation of a violation of article 10, paragraph 1.

8. 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 article 7, read together with article 2, of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including completion of the investigation into the author's treatment, if still pending, as well as compensation. The State party is also under an obligation to take measures to prevent similar violations in the future.

10. 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 the Committee's Views. The State party is also requested to publish the Committee's Views.

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<sup>3</sup> Siragev v. Uzbekistan, Communication No. 907/2000, Views adopted on 1 November 2005, para.6.2.

<sup>4</sup> Bleier v. Uruguay, Communication No. 30/1978, Views adopted on 24 March 1980, para.13.3, Dermitt Berbato et al. v. Uruguay, Communication No. 84/1981, Views adopted on 21 October 1982, para.9.6.

[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.]

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