



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7 - 25 July 2008

DECISION

Communication No. 1524/2006

<u>Submitted by:</u>	Mr. Albert Yemelianov et al. (not represented by counsel)
<u>Alleged victims:</u>	Mr. Albert Yemelianov and 33 other individuals.
<u>State party:</u>	The Russian Federation
<u>Date of communication:</u>	29 August 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form)
<u>Date of adoption of Decision:</u>	22 July 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Right to receive retirement benefits at particular rate, guaranteed by the State.

Substantive issue: Fair trial; evaluation of facts and evidence; interpretation of national law.

Procedural issues: Substantiation of claims.

Articles of the Covenant: 2; and 14, paragraph 1

Article of the Optional Protocol: 2

[ANNEX]

ANNEX

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

Ninety-third session

concerning

Communication No. 1524/2007*

<u>Submitted by:</u>	Mr. Albert Yemelianov et al. (not represented by counsel)
<u>Alleged victims:</u>	Mr. Albert Yemelianov and 33 other individuals.
<u>State party:</u>	The Russian Federation
<u>Date of communication:</u>	29 August 2006 (initial submission)

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

Meeting on 22 July 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The communication is submitted by Mr. Albert Yemelianov, a Russian national, born in 1936, on his behalf and on behalf of thirty three other Russian citizens¹. The authors claim that

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhango, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ Mr Yemelianov provides signed authorizations from the other 33 alleged victims, namely: 1. Mr. Mikhail Borisov; 2. Mr. Genady Volkov; 3. Mr. Gumer Gibadullin; 4. Mr. Anatoly Golyudov; 5. Mr. Vyacheslav Zaikov; 6. Mr. Shaukat Zakirov; 7. Mrs. Zaytuna Ziyatdnova (on behalf of Mr. Baki Ziyautdinov); 8. Mr. Ivan Illarionov; 9. Mr. Alexandre Isaev; 10. Mrs. Asiya Ismagilova (on behalf of Mr. Talgat Ismagilov); 11. Mr. Oleg Kovalenko; 12. Mr. Evgeny Kozlov; 13. Mr. Alexei Konyaev; 14. Mr. Vassily Lemenkov; 15. Mrs. Zoya Listkova (on behalf of Mr. Mikhail Listkov); 16. Mr. Alexandre Maslenkov; 17. Mr. Gabdulgilem Nabiullin; 18. Mr. Evgeny Nikiforov; 19. Mr. Yuri Nikonov; 20. Mr. Sergei Ogarkov; 21. Mr. Valery Ogurtsov;

they are all victims of violations, by the Russian Federation, of their rights under articles 2, paragraphs 1 and 3; and article 14, paragraph 1, of the Covenant. The authors are unrepresented by counsel.

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

The facts as submitted by the authors

2.1 The authors are retired pilots from the Russian civil aviation, currently residing in the Republic of Tatarstan in the Russian Federation. Upon retirement, they became entitled to a pension paid by the State. The quantum of their retirement benefit under the pension was calculated under Law No 340-1 of 20 November 1990, '*On State Pensions in the Russian Federation*' ('the Pension law'). The pension benefit included an additional bonus related to the specificity of the author's work (*пенсия за выслугу лет*).

2.2 On 25 February 1999, a new law was passed² which amended the 1990 Pension law ('the Amending law'). The Amending law set a new maximum pension to which a retired civil aviation pilot in the alleged victims' situation could receive, namely a pension equal to 2.2 times the "average monthly salary" in the Russian Federation, and was thus more favourable to the authors. The Amending law also provided, however, that henceforth, only part of the retirement pensions would be covered by the State budget (equal to three and a half times the minimum pension provided to those who have attained pension age). The rest would be covered by the contributions received from relevant airline companies- the exact amount per month dependant upon the amount of contributions made per quarter.

2.3 The authors state that they have not received the full benefit to which they are entitled under the Amending law, as the Tatarstan's Department of the Pension Fund of the Russian Federation did not interpret correctly the provisions of the Amending law when applying it to their cases in recalculating their pensions.

2.4 On an unspecified date, Mr. Yemelianov brought two identical proceedings (one on his behalf, and the other as a collective complaint on behalf of the 33 other authors) in the State party's domestic courts against the Pension Fund of the Russian Federation, seeking to recover what they consider their full pension entitlement. On 6 April 2000, the Soviet District Court of Kazan rejected his application³. On 27 April 2000, the Moscow District Court of Kazan rejected

22. Mr. Anatoly Ozerkin; 23. Mrs. Nina Parfenova (on behalf of Mr. Genady Parfenov); 24. Mr. Vladimir Podkatilov; 25. Mrs. Natalya Radosteva (on behalf of Mr. Anatoly Radostev); 26. Mr. Vladimir Rachkov; 27. Mr. Talfat Safin; 28. Mr. Alexander Tanygin; 29. Mr. Damir Khabibullin; 30. Mrs. Lyudmila Khabibullina (on behalf of Mr. Rinat Khabibullin); 31. Mr. Vassily Kholod; 32. Mr. Leonid Shabolin; and 33. Mr. Eduard Shaykhutdinov.

² Federal law No.37 amending the Law on State pensions.

³ The Court noted that under the Amending Law « On State pensions » of 25 February 1999, the maximum pension benefit for retired civil aviation pilots cannot exceed 2.2 times the average monthly salary in the State. The pensions are financed as follows: the State Budget ensures the part of the benefit that does not exceed 3.5 times the minimum pension provided to those who have attained pension age, and the part that exceeds this amount is financed on a pro rata basis from the additional contributions received to the Pension Funds of the aviation companies; this

the collective application. In each case, the courts found that the Pension Fund had correctly calculated and paid the alleged victims' pensions under the new law. No violations of the State party's laws were found to have occurred.

2.5 The authors filed appeals against these decisions in the Supreme Court of the Republic of Tatarstan. On 16 May 2000 and 4 July 2000 respectively, the Supreme Court of Tatarstan rejected the appeals⁴. The authors submit that the Supreme Court of Tatarstan did not conduct a legal evaluation of the relevant laws nor did it determine whether the conclusions of the courts of first instance were correct. Subsequent petitions to the Supreme Court of Tatarstan for supervisory review of the first instance courts' decisions were dismissed in 5 July 2000 and 18 August 2000.

2.6 The authors also made applications in the Supreme Court of the Russian Federation for a supervisory review of the first instance decisions. On 3 July 2001 and 15 April 2002, respectively, their requests were rejected by the Supreme Court⁵.

2.7 A new Law on the State pensions of the Russian Federation was adopted in 2001 and entered into force on 1 January 2002. According to its provisions, the authors' maximum pension entitlement remained unchanged and could not exceed 2.2 times the average salary in the Russian Federation.

2.8 According to the authors, at this point in 2002, they realised that their previous right to have an additional pension benefit related to the specific nature of their profession (see paragraph 2.1 above) was not abolished by the Amending law (1999), and they were of the view that, since 1999, they have been arbitrarily deprived of this benefit by the Pension Fund. On an unspecified date, they wrote to the Pension Fund in Tatarstan in this regard. On 4 December 2002, the Deputy Chairman of the Fund informed them that their pensions had been calculated correctly.

2.9 The authors then requested to have their cases re-examined on the basis of new circumstances⁶ and filed (exact dates not specified) applications in the Moscow and Soviet District Courts of Kazan. On 28 February 2003 and 27 March 2003, respectively, their appeals

second amount is adjusted every quarter. The Court maintained that the authors have received all their entitlements from the State budget and have received additional amounts as per the complementary contributions effectively made to the Pension Fund of the aviation companies.

⁴ The Supreme Court of Tatarstan noted the authors' claims that the first instance courts' decisions were groundless, but rejected them, confirmed the legality of previous decisions and affirmed that the recalculation of the pensions was made in accordance with the provisions of the Amending law.

⁵ The authors also requested to have their cases examined under the supervisory proceedings to the Office of the Prosecutor General (exact dates not specified). Their requests were rejected on 14 April 2002.

⁶ The authors' requests were dismissed as the courts decided that their applications did not conform with the regulations for re-opening cases on the basis of new elements.

were rejected. The authors appealed these decisions with the Supreme Court of Tatarstan, which were dismissed on 24 March and 28 April 2003⁷.

2.10 On an unspecified date, the authors submitted new applications to the Moscow District Court of Kazan, claiming that the Pension Fund Department of Tatarstan incorrectly applied both the provisions of the 1999 and 2001 Pension laws to their cases. On 26 June 2003, the Court refused to act on their complaints and gave the authors up to 10 July 2007, to clarify and substantiate their claims. Given that this was not done, the Court returned the authors' claims on 14 July 2007. The authors have sent numerous subsequent appeals to the Supreme Court of Tatarstan and the Supreme Court of the Russian Federation, for supervisory review, which were dismissed. They have also sent unsuccessful complaints to the Ombudsman, and to other institutions, including to the Constitutional Court of the Russian Federation.

2.11 The authors add that many of them are elderly and in poor health and they cannot afford their medical needs.

2.12 On 10 December 2001, they applied to the European Court of Human Rights invoking a violation of their rights under Russian pension laws as well as their rights to a fair trial. On 11 March 2004, the Court declared the application inadmissible, on the basis that it did not disclose any violation of the rights as protected by the European Convention on Human Rights.

The complaint

3. The alleged victims claim a violation of their rights under article 2, paragraphs 1 and 3; and article 14, paragraph 1, as they have been denied justice because the courts, when assessing their claims on the alleged incorrect interpretation of the law by the Pension Fund of Tatarstan in recalculating their pensions, failed to reply to their numerous questions, and as they had no recourse to an effective remedy in respect to the breach of their pension rights. They claim that the State party has failed to provide them with the full amount of their pension benefits they consider they are entitled to under law as they did not receive the maximum pension. In addition, they claim that they have been deprived, without legal grounds, of the additional payment in relation to the specific nature of their profession. They also affirm, without providing clarifications, that the courts which examined their cases were not established by law.

State party's observations on admissibility and merits

4.1 In its submissions dated 15 February 2007 and 30 July 2007, the State party recalls the facts of the case. Mr. Yemelianov's claim against the Russian Federation's Pension Fund Department in Tatarstan to receive an additional pension amount and compensation, was rejected by the Soviet District Court of Kazan. This decision was confirmed by the Supreme Court of Tatarstan on 16 May 2000.

4.2 On 27 April 2000, the Moscow District Court of Kazan rejected an identical collective complaint made on behalf the 33 remaining alleged victims. This decision was confirmed by the Supreme Court of Tatarstan on 4 July 2000.

⁷ The courts concluded that the authors' claims were identical to those examined in April 2000.

4.3 On 27 March 2003, the Soviet District Court of Kazan rejected Mr. Yemelianov's complaint to have the case re-opened on the basis of new evidence; this decision was confirmed by the Supreme Court of Tatarstan on 28 April 2003. On 25 September 2003, the Supreme Court of Tatarstan rejected Mr. Yemelianov's request for a supervisory review in this regard. An identical request was rejected by the Supreme Court of the Russian Federation on 8 August 2005.

4.4 On 28 February 2003, the Moscow District Court of Kazan rejected the remaining 33 authors' request to have the case re-examined on the basis of new evidence; this decision was upheld by the Supreme Court of Tatarstan on 24 March 2003. On 10 October 2003, the Supreme Court of Tatarstan rejected their request for a supervisory review in this respect. This decision was confirmed by the Supreme Court of the Russian Federation, on 26 October 2004⁸.

4.5 The State party submits that all of the authors' numerous complaints were properly examined by its authorities and domestic courts. The Pension legislation in force was applied lawfully to the alleged victims' cases and the amount of their pension benefits was correctly calculated. The case was equally examined on several occasions by the Prosecutor's Office and the Ombudsman.

4.6 The State party adds that in relation to certain decisions of its domestic courts, the alleged victims could have, but did not, make applications for supervisory review.

Author's comments on the State party's observations

5. By letters of 10 April 2007 and 18 November 2007, the authors reiterated their previous allegations. They add, in particular, that the Office of the Ombudsman has in fact refused to examine their complaints by explaining that it was not competent to act.

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 communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that although the authors previously submitted an application to the European Court of Human Rights, this application has been determined and is no longer before the Court. The State party has not entered any reservation concerning complaints, the subject matter of which has been submitted for examination under another procedure of international investigation or settlement. Accordingly, the requirements of article 5, paragraph 2(a) of the Covenant are satisfied in this case. It also appears to the Committee that domestic remedies have been exhausted. Whilst the State party contended that the alleged victims failed to apply for supervisory review in respect of certain decisions, the Committee recalls its jurisprudence and its

⁸ The State party points out, in respect to the requests of the authors that the courts rejected their claims as none of the grounds listed in article 392 of the Civil Procedure Code of the Russian Federation, which could have permitted to reopen their case on the basis of new evidence, was ever invoked in their claims.

General comment No. 32, according to which supervisory review does not constitute an effective remedy, for purposes of article 5, paragraph 2 (b).⁹

6.3 The Committee notes the authors' mere allegation that their complaints were examined by tribunals that were not established by law. In the absence of any other pertinent information in this respect, the Committee considers that this part of the communication is inadmissible under article 2, of the Optional Protocol, as insufficiently substantiated.

6.4 The Committee takes note of the authors' claim that they have been denied justice because the courts, when assessing their claims, did not correctly apply the relevant laws, and failed to reply to their numerous questions. As a consequence, they have had no recourse to an effective remedy in respect to the breach of their pension rights. The Committee observes that in the present case, the substance of the authors' communication seeks to challenge the evaluation of facts and evidence, and the interpretation of domestic law, as made by the State parties' courts. It recalls its jurisprudence and notes that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the relevant proceedings or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.¹⁰ The material before the Committee does not permit it to conclude that the conduct of the judicial proceedings in the alleged victims' case suffered from such deficiencies. Accordingly, and in the absence of any other pertinent information, the Committee considers the authors' claims are insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

7. Therefore, the Human Rights Committee decides:

- (a) that the communication is inadmissible pursuant to article 2 of the Optional Protocol; and
- (b) that this decision shall be communicated to the authors and to 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.]

⁹ See the Committee's General comment No. 32 (article 14), document CCPR/C/GC/32, paragraph 50: "A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor."; and, for example, Communication No. 836 of 1998, *Gelazauskas v Lithuania*, Views adopted 17 March 2003.

¹⁰ See, inter alia, Communication No. 541/1993, *Errol Simms v Jamaica*, inadmissibility decision of 3 April 1995.