



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-first session  
5 - 30 July 2004

**VIEWS**

**Communication No. 815/1998**

Submitted by: Alexander Alexandrovitch Dugin (represented  
by counsel, A. Manov)

Alleged victim: The author

State party: Russian Federation

Date of initial communication: 1 December 1997 (initial submission)

Documentation references: Special Rapporteur's rule 91 decision,  
transmitted to the State party on 13 May 1998  
(not issued in document form)

CCPR/C/72/D/815/1998, decision on  
admissibility adopted on 12 July 2001

Date of adoption of Views: 5 July 2004

On 5 July 2004, 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. 815/1998. The text of the Views is appended to the present document.

[ANNEX]

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\* Made public by decision of the Human Rights Committee.

**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-first session

concerning

**Communication No. 815/1998\*\***

Submitted by: Alexander Alexandrovitch Dugin (represented  
by counsel, A. Manov)

Alleged victim: The author

State party: Russian Federation

Date of initial communication: 1 December 1997 (initial submission)

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

Meeting on 5 July 2004

Having concluded its consideration of communication No. 815/1998 submitted to the  
Committee on behalf of Alexander Alexandrovitch Dugin 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 Alexander Alexandrovitch Dugin, a Russian citizen, born in 1968, who at the time of submission of the communication was imprisoned in the Orel region of Russia.<sup>1</sup> He claims to be a victim of a violation by the Russian Federation of articles 14, paragraphs 1, 2, 3(a), (e) and (g), 5, and article 9, paragraphs 2 and 3 of the Covenant. He is represented by counsel.

**The facts as submitted**

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, 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. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

2.1 On the evening of 21 October 1994, the author and his friend Yuri Egurnov were standing near a bus stop when two adolescents carrying beer bottles passed by. The author and his friend, both of whom were drunk, verbally provoked Aleksei Naumkin and Dimitrii Chikin in order to start a fight. When Naumkin tried to defend himself with a piece of glass and injured the author's hand, the author and his accomplice hit him on the head and, when he fell down, they kicked him in the head and on his body. Naumkin died half an hour later.

2.2 On 30 June 1995, Dugin and Egurnov were found guilty by the Orlov *oblastnoi* (regional) court of premeditated murder with aggravating circumstances. The judgment was based on the testimony of the author, his accomplice, several eyewitnesses and the victim, Chikin, several forensic reports and the crime scene report. Dugin and Egurnov were each sentenced to 12 years' imprisonment in a correctional labor colony.

2.3 During the Orlov court hearing, the author did not admit his guilt, while Egurnov did so partially. In his appeal to the Supreme Court of the Russian Federation on 12 September 1995, Dugin requested that the judgment be overturned. He claimed that he hit Naumkin only a few times and only after Naumkin had struck him with a broken bottle. He also contended that he had approached Egurnov and Naumkin only to stop them from fighting. His sentence was disproportionate and his punishment particularly harsh, having been handed down without regard for his age, his positive character witnesses, the fact that he has a young child, and the lack of premeditation.

2.4 On 12 September 1995, the Supreme Court of the Russian Federation dismissed the author's appeal from his conviction, and on 6 August 1996 the same court denied the author's appeal against his sentence.

### **The complaint**

3.1 The author's counsel states that the surviving victim, Chikin, was not present during the proceedings in the Orlov court, even though the Court took into account the statement he had made during the investigation. According to counsel, Chikin gave contradictory testimony in his statements, but as Chikin did not appear in Court, Dugin could not cross-examine him on these matters, and was thus deprived of his rights under article 14, paragraph 3 (e), of the Covenant.

3.2 Counsel further claims that the presumption of innocence under article 14, paragraph 2, of the Covenant was not respected in the author's case. He bases this statement on the forensic expert's reports and conclusions of 22 and 26 October, 9 November, 20 December 1994 and 7 February 1995, which were, in his opinion, vague and not objective. He states, without further explanation, that he had posed questions to which the court had had no answer. He therefore requested the court to have the forensic expert appear to provide clarification and comments, and to allow him to lead additional evidence. The court denied his request.

3.3 Counsel refers to serious irregularities in relation to the application of the Code of Criminal Procedure, since the preliminary inquiry and investigation were partial and incomplete, criminal law was improperly applied, and the court's conclusions did not correspond to the facts of the case as presented in Court. The court did not take all necessary measures to guarantee respect for the legal requirement that there should be an impartial, full and objective examination of all of the circumstances of the case.

3.4 Counsel also claims that the author was notified of his indictment for murder only seven days after he was placed in detention and that article 14, paragraph 3 (a), and article 9, paragraphs 2 and 3, of the Covenant were thus violated.

3.5 Counsel alleges that, while Dugin was in detention, he was subjected to pressure by the investigator on several occasions, in an attempt to force him to give false statements in exchange for a reduction in the charges against him. He claims that the investigator threatened that, if he did not do so, his indictment, which had originally been for premeditated murder, would be replaced by an indictment for a more serious offence, namely murder with aggravating circumstances. The author did not give in to the threats and, as had been threatened, the investigator changed the indictment. According to the author, that constituted a violation of article 14, paragraph 3 (g).

3.6 With regard to the allegation of a violation of article 14, paragraph 5, the author states, without further providing details, that his case was not properly reviewed.

3.7 The author also claims that the crime scene report should not have been taken into account during the proceedings because it contained neither the date nor the time of the completion of the investigation, and did not contain enough information about the investigation report. The prosecution witnesses said that there had been a metal pipe present during the fight, however the crime scene report did not refer to such a pipe. The investigator did not examine any such item and the file contains no further information on it.

#### **The State party's submission**

4.1 In its submission of 28 December 1998, the State party states that the Office of the Procurator General of the Russian Federation had carried out an investigation into the matters raised in the communication. The prosecution's investigation had found that, on 21 October 1994, Dugin and Egunov, who were both drunk and behaving like 'hooligans', beat up Naumkin, a minor, kicking and punching him in the head and on his body. Naumkin tried to escape, but was caught by Dugin, who knocked him to the ground and beat his head against a metal pipe. He and Egunov then started beating the minor again, also kicking him in the head. Naumkin subsequently died of head and brain injuries.

4.2 According to the State party, the author's guilt was established by the fact that he did not deny having beaten up Naumkin, and by detailed statements given by eyewitnesses with no interest in the outcome of the case, as well as the testimony of Chikin.

4.3 The cause of Naumkin's death and the nature of the injuries were established by the court on the basis of many forensic medical reports, according to which Naumkin's death was caused by skull and brain injuries resulting from blows to the head.

4.4 The State party maintains that the author's punishment was proportionate to the seriousness of the offence, information about his character and all the evidence in the case. The Office of the Procurator-General concluded that the present case did not involve any violations likely to lead to any change or overturning of the courts' decisions, and that the proceedings against Dugin had been lawful and well-founded.

#### **Comments by counsel on the State party's submissions**

5.1 In his undated comments, counsel contends that the State party did not address the main allegations contained in the communication, particularly with regard to the violation of the

right to request that witnesses able to provide information on behalf of the accused should be heard and summoned by the court. Secondly, the court heard the case in the absence of Chikin, who was both a victim and a witness in the case.

5.2 Counsel also refers to the fact that the court did not respect the principle that any doubt should be interpreted in favour of the accused. Nor had it responded to the author's claims that: the author had requested a forensic expert to be summoned to appear in court but that, without even meeting in chambers, the judges dismissed his request; and the author had had no opportunity to look at the records of the proceedings, (although he does not specify when, i.e. before the cassation appeal or during the initial proceedings.)

5.3 Finally, Counsel maintains that the author was not informed of the content of article 51 of the Constitution of the Russian Federation, which states that "no one shall be obliged to give evidence against himself, his spouse or his close relatives".

### **Admissibility decision**

6.1 During its seventy-second session, the Human Rights Committee examined the admissibility of the communication. It observed that the State party had not objected to the admissibility of the communication, and ascertained that the requirements of article 5, paragraph 2(b), of the Optional Protocol had been satisfied.

6.2 The Committee ascertained that the same matter was not already being examined under another procedure of international investigation or settlement. In this respect it had been established that, after the case had been submitted to the Committee in December 1997, an identical claim was submitted to the European Court of Human Rights in August 1999, however this claim was declared inadmissible *ratione temporis* on 6 April 2001. The Committee therefore concluded that it was not prevented from considering the communication under article 5, paragraph 2(a), of the Optional Protocol.

6.3 With regard to the author's allegation under article 9, paragraph 2, of the Covenant, the Committee concluded that the author had been aware of the grounds for his arrest. As to the allegation under article 9, paragraph 3, of the Covenant, the Committee noted that the author had failed to substantiate his claim, and, in accordance with article 2 of the Optional Protocol, declared this part of the communication inadmissible.

6.4 However, the Committee considered that the author's allegations of violations of article 14 of the Covenant could raise issues under this provision. Accordingly, on 12 July 2001, the Committee declared the communication admissible in so far as it appeared to raise issues under article 14 of the Covenant.

### **The state party's observations on admissibility and merits**

7.1 By note dated 10 December 2001, the State party submitted its comments on the merits of the communication. It stated that on 11 March 1998, the Presidium of the Supreme Court had reviewed the proceedings against the author in both the Orlov Court (30 June 1995) and the Supreme Court (12 September 1995). It reduced the sentence imposed on the author from 12 to 11 years imprisonment, excluding from the consideration of aggravating circumstances the fact that the author had been intoxicated at the time of the offence. In all other respects the decisions were confirmed.

7.2 In relation to the author's claim that he had no opportunity to cross examine Chikin, the State party noted that the witness had been summonsed to Court from 23 to 26 June 1995, but had not appeared. A warrant was issued to have him brought before the Court, but the authorities could not locate him. Under articles 286 and 287 of the Code of Criminal Procedure, the evidence of witnesses is admissible even in their absence, in circumstances where their appearance in Court is not possible. The Court decided to admit the written statement of Chikin into evidence, after hearing argument from the parties as to whether this should occur. According to the transcript of proceedings, no questions were asked by counsel after the statement was read into evidence. The State party notes that the author did not object to the trial starting in the absence of Chikin.

7.3 The State party denies that the evidence of the forensic expert was not objective, and states that, after the first forensic opinion was considered incomplete, four additional opinions from the same expert were obtained by the investigator. The conclusions of the expert were consistent with the testimony of other witnesses, namely that the author had punched and kicked the deceased, and hit him with a metal pipe. The Court refused the author's request to cross-examine the expert and to summon additional witnesses to support his opinion that the deceased had been involved in another fight shortly before his death. In this regard, Russian law did not require courts to summons expert witnesses. Further, the opinions of the expert had been examined and verified in the Republican Centre for Forensic Medical Examination.

7.4 As to the author's claims regarding his detention without charge for 7 days, the State party notes that the Code of Criminal Procedure allows a suspect to be detained without being charged for a period of up to 10 days in exceptional circumstances. In the author's case, criminal proceedings were initiated on 22 October 1994, the author was arrested the same day, and he was charged on 29 October 1994, within the 10 day limit imposed by law.

7.5 The State party refutes the author's claims that the investigator threatened to charge him with a more serious offence if he did not cooperate, and states that, in response to a question by the presiding judge during the proceedings, the author had confirmed that the investigators had not threatened him, but that he had given his statements 'without thinking.'

7.6 The State party rejects the author's claims that the crime scene report did not bear a date or refer to the metal pipe against which the deceased was said to have hit his head; on the contrary, the report states that it was compiled on 22 October 1994, and that there is a reference to the metal pipe, together with a photograph in which the pipe can actually be seen.

7.7 The State party contends that there is no basis to conclude that the proceedings against the author were biased or incomplete, and notes that the author made no such complaints to the Russian Courts or authorities. It states that the author was questioned in the presence of a lawyer of his choosing, and during the period of his arrest he stated that he did not require a lawyer. Finally, the State party notes that the reason why the author was not informed about his rights under article 51 of the Constitution, which provides that an accused is not required to testify against oneself, was because the Supreme Court only introduced such a requirement by judgment of 31 October 1995 – the author's trial was held in June 1995. In any event, the author was informed about his rights under article 46 of the Code of Criminal Procedure, which states that an accused has the right to testify, or not to testify, on the charges against him.

#### **Comments of the author on the State party's observations**

8. In his comments on the State party's observations dated 5 February 2002, the author contends that the witness Chikin could have been located and brought to court for cross examination, with a minimum of 'goodwill' from the State party. He states that the court's refusal to grant his request to adduce further medical evidence violated his rights under article 14, paragraph 3(e), of the Covenant, and that the 7 day delay in his being charged was incompatible with article 14, paragraph 3(a), which requires that an accused is promptly informed of the charges against him. The author reiterates his claims about the alleged threat made by the investigator, and about the trial not being objective. He also notes article 51 of the Constitution had had direct legal force and effect since 12 December 1993.

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

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol. The Committee is mindful that, although it has already considered the admissibility of the communication, it must take into account any information subsequently received from the parties which may bear on the issue of the admissibility of the author's outstanding claims.

9.2 Firstly, the Committee notes that the author's submission of 5 February 2002, regarding the alleged violations of article 14, paragraph 3(a), is substantively identical to that advanced by the author under article 9, paragraph 2 (see paragraph 3.4 above), which was declared inadmissible. Further, the allegation, although invoking article 14, paragraph 3(a), does not relate to this provision factually. In the circumstances, the Committee considers that the author has failed sufficiently to substantiate this particular claim, for the purposes of admissibility. Accordingly, the author's claim under article 14, paragraph 3(a), of the Covenant is inadmissible under article 2 of the Optional Protocol.

9.3 The author claims that his rights under article 14 were violated because he did not have the opportunity to cross-examine Chikin on his evidence, summon the expert and call additional witnesses. While efforts to locate Chikin proved to be ineffective for reasons not explained by the State party, very considerable weight was given to his statement, although the author was unable to cross-examine this witness. Furthermore, the Orlov Court did not give any reasons as to why it refused the author's request to summon the expert and call additional witnesses. These factors, taken together, lead the Committee to the conclusion that the courts did not respect the requirement of equality between prosecution and defence in producing evidence and that this amounted to a denial of justice. Consequently, the Committee concludes that the author's rights under article 14 have been violated.

9.4 In light of the Committee's views above, it is not necessary to consider the author's claims regarding the objectivity of the evidence produced in court.

9.5 On the basis of the material before it, the Committee cannot resolve the factual question of whether the investigator in fact threatened the author with a view to extracting statements from him. In any event, according to the State party, the author did not complain about the alleged threats, and in fact told the Court that he had not been threatened. In the circumstances, the Committee considers that the author did not exhaust domestic remedies in relation to these allegations, and declares this claim inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

9.6 As regards the author's claims that he was not advised of his rights under article 51 of the Constitution, the Committee notes the State party's submission that the author was

informed of his rights under article 46 of the Code of Criminal Procedure, which guarantees the right of an accused to testify, or not to testify on the charges against him. In the circumstances, and in particular taking into account that the author did not challenge the State party's above argument, the Committee considers that the information before it does not disclose a violation of article 14, paragraph 3(g).

9.7 As far as the claim under article 14, paragraph 5, is concerned, the Committee notes that it transpires from the documents before it that the author's sentence and conviction have been reviewed by the State party's Supreme Court. The Committee therefore concludes that the facts before it do not reveal a violation of the above article.

10. The Human Rights Committee, acting under article 5(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 14 of the Covenant.

11. Pursuant to article 2, paragraph 3(a) of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including compensation and his immediate release.

12. By becoming a State 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 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 cases where a violation has been established. The Committee wishes to receive from the State party, within 90 day, 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.

[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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