

HUMAN RIGHTS COMMITTEE

Y. G. v. Ukraine

Communication No. 648/1995

19 March 1997

CCPR/C/59/D/648/1995 *

ADMISSIBILITY

Submitted by: N. V. G. (name deleted)

Alleged victim: His son, Y. G.

State party concerned: Ukraine

Date of communication: 27 February 1995 (initial submission)

Documentation references: Prior decision - Special Rapporteur's rule 91 December, decision, transmitted to the State party on 22 August 1995 (not issued in document form)

Date of present decision: 19 March 1997

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is N. V. G.. He submits the communication on behalf of his son, Y. G., born in 1978. He claims that his son is the victim of a violation by Ukraine of article 14 of the Covenant.

The facts as submitted by the author

2.1 The author's son, Y. G., was sentenced, on 14 October 1993, by the District Court of Crimea to six years' imprisonment after having been convicted of complicity in a murder that occurred on 4 February 1993. On 13 January 1994 the Supreme Court of Ukraine upheld the decision.

2.2 Y. G. states that he was arrested on 25 February 1993 on suspicion of having committed minor

thefts in the apartment building in which he was living. After interrogation, he confessed. Subsequently, he allegedly was threatened by two members of the militia (mentioned by name) and put under pressure to confess complicity in a murder that had occurred a month before. They then gave him a declaration to sign that he had been informed of his rights; after he had signed it, they added by hand that he had not wished legal representation. He then was put in a cage without food; in the cage, it was impossible to stand up or lie down. He requested, unsuccessfully, to be allowed to see his father.

2.3 The next day the threats were repeated, and since he was hungry and felt he could not take the pressure any longer, he agreed to confess complicity in the murder. He was set free the following day.

2.4 Subsequently, Y. G.'s father engaged a lawyer for his defence and asked a Captain P., who was in charge of the Committee of Minors, to intercede. On an unspecified date, Y. G. rejected the charges related to the murder in front of a video camera in the office of the deputy chief of the militia, in the presence of, inter alia, the deputy prosecutor, the preliminary investigator, P., and his lawyer. Allegedly, the deputy prosecutor, while leaving the room, told him that he would put him under arrest. Thereafter, the others told him to confess. Y. G. requested to have his father called, but this was refused. Afraid, he then confessed. Apparently, he was then taken into detention.

2.5 Y. G. claims that the prosecutor then removed his lawyer from his defence and that he was not allowed visits from his father for over half a year, although he wanted him to be present at the interrogations.

The complaint

3.1 It is submitted that Y. G. was convicted on the basis of his forced confession, in violation of article 14, paragraph 3 (g), of the Covenant. The father states that there was no corroborative evidence to justify the conviction. In this connection, Y. G. states that he has learned from his father that there is a letter in his file, signed by Y. G., handwritten by someone else, in which he confesses to the crime. He denies ever having seen or signed the letter. The father states that he was not allowed to familiarize himself with the file until after the trial, even though he was Y. G.'s representative according to the indictment. Y. G. states that his lawyer at the trial did not defend him properly, but acted against his interests and never told him about this document. He states that he has filed protests with the Supreme Court and with the President, to no avail.

3.2 Y. G.'s father states further that his son had been under psychiatric observation and was considered mentally retarded (a copy of a statement by a psychiatrist is included). However, no psychiatric expertise was ordered by the Court.

State party's observations on admissibility and author's comments thereon

4.1 By submission of 25 December 1995, the State party informs the Committee that it has investigated the matter and found that Y. G.'s conviction and sentence were justified. According to the State party, his guilt was demonstrated by the body of evidence gathered in the case and corroborated by the statements of the co-accused and of Y. G. himself. In this context, the State

party emphasized that Y. G. confessed to the crime during the preliminary investigation and gave details of the circumstances surrounding the assault.

4.2 The State party further states that the Supreme Court of Ukraine, the highest court instance, considered and rejected the complaint that Y. G.'s guilt was not proven, that his right to a defence during the preliminary investigation was violated and that the investigation and the examination of the case by the Court had been insufficient. The Criminal Division of the Supreme Court confirmed Y. G.'s conviction and sentence on 13 January 1994.

5. In his comments on the State party's submission, the author contends that the case against his son was fabricated, that some of the documents in the file were falsified, and that the so-called confession was not written by his son, but was a fabrication. The author further challenges the forensic medical examination.

Issues and proceedings before the Committee

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

6.2 The Committee notes that the State party has indicated that all available domestic remedies have been exhausted.

6.3 The Committee has ascertained, as required by 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.

6.4 The Committee notes that the author has claimed that his son, Y. G. was forced to sign a confession and that his defence was interfered with. The Committee considers that these claims may raise issues under article 14 of the Covenant, which need to be examined on the merits.

6.5 Although the author has specifically invoked only article 14, the Committee considers that the facts as submitted might also raise issues under articles 7, 9, 10 and 24 of the Covenant.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of the present decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments that he may wish to make should reach the Human Rights Committee,

in care of the High Commissioner/Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That the present decision shall be communicated to the State party and to the author of the communication.

[Done in English, French and Spanish, the English text being the original version.]

* All persons handling this document are requested to respect and observe its confidential nature.