

## HUMAN RIGHTS COMMITTEE

### Kuznetsov v. Russian Federation

Communication No 874/1999

7 November 2003

CCPR/C/79/D/874/1999\*

### ADMISSIBILITY

*Submitted by: Mr. Yuri Vladimirovich Kuznetsov (represented by counsel, Mr. Alexander G. Manov)*

*Alleged victim: The author*

*State party: Russian Federation*

*Date of communication: 16 May 1996 (initial submission)*

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

Meeting on 7 November 2003

Adopts the following:

### **Decision on admissibility**

1.1 The author of the communication is Mr. Yuri Kuznetsov, a Russian citizen born in 1964, who, at the time of submission of the communication, was detained in Ekaterinbourg (Russia). He claims to be a victim of violations by the Russian Federation<sup>1</sup> of article 14, paragraph 3 (b), (e) and (g), of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts, as submitted by the author

2.1 The author was a truck driver in a State-owned company in the city of Kachkanara (Russia). In the evening of 6 September 1990, he and a colleague, Mr. Fomkin, were drinking in the author's truck in the parking lot of the company. The same evening, they drove out to buy more alcohol;

they met with a person called Alekseev and returned together to the company's yard, continuing to drink. After an argument with the author, Alekseev left the truck; later, the author drove the truck to the exit of the company's yard to give a lift to Fomkin. As he had no travel documents, a controller refused to let him leave the yard. The author parked the truck near the exit and, letting Fomkin sleep inside, walked home.

2.2 In the morning, the author learned that Alekseev had been run over in the company's yard during the night and had died. The author expressed doubts as to whether he and Mr. Fomkin could have run over Alekseev, but Fomkin reassured him that it could not have been them.

2.3 The author was arrested on an unspecified date afterwards. On 8 October 1991, the City Court of Kanchkanara acquitted him. Following an appeal by Alekseev's widow and a prosecutor, the Sverdlovsk Regional Court, on 20 November 1991, annulled the decision of the City Court and returned the case for re-trial. On 17 February 1992, the Kachkanara City Court reaffirmed that the author's guilt was not proven. On 20 March 1992, the Sverdlovsk Regional Court again quashed this judgment, declaring it illegal and unfounded, and requesting another re-trial by the same court, but with a different composition. On 19 August 1992, the Nizhne-Turinsky City Court (Sverdlovsk Region) found the author guilty of the use of a technically defective truck, causing the death of Alekseev (article 211, part 2 of the Criminal Code) and sentenced him to 4 years in prison, with a 5 years' prohibition to drive a vehicle. This decision was confirmed by the Sverdlovsk Regional Court on 23 December 1992 and by the Supreme Court on 26 February 1993.

### The claim

3. The author claims that he was unrepresented during the investigation, notwithstanding his request to be represented. During a cross-examination of Mr. Fomkin, on 16 April 1991, the author was allegedly put under pressure, threatened and beaten, to make him confess; Fomkin, also under pressure, urged the author, to accept his version of the facts, so as to avoid an indictment for murder. He further alleges that during the hearings in the Nizhne-Turinsky City Court, some 20 persons which could have testified to his innocence were not called to testify. In the author's opinion, all of the above constitutes a violation of article 14, paragraph 3 (b),(e), and (g), of the Covenant.

### State party's observations

4. By Note verbale of 16 November 1999, the State party argues that the Committee has no justifiable grounds to examine the communication, because the Supreme Court has already dealt with the case on three occasions, giving particularly close attention to the author's claim that he was convicted on the basis of unsound evidence and his right to defence was violated. The State party notes that no violations of the Criminal Procedure Code were found to have been committed during the investigation and the judicial proceedings. The Supreme Court found no reason to overturn the relevant courts judgments. The State party adds that the author was released on parole on 23 August 1996.

### Author's comments

5.1 By letter of 24 October 2001, counsel states that the State party ignored significant circumstances of the case: more than 20 witnesses – alleged to be "guarantors of Mr. Kuznetsov's innocence" - were not invited to testify in Court; Fomkin had denied the author's involvement in the crime during eight months, and changed his deposition only after his arrest, after he allegedly was threatened; the author was also put under pressure, threatened and beaten, to make him confess.

5.2 Counsel reiterates that the author had accepted Fomkin's version only because the investigator had promised to release him; also on the investigator's initiative, the author wrote a letter to his wife, but leaving it in the hands of the investigator, in which he admitted his guilt. Counsel recalls that the author was unrepresented during the investigation.

### Consideration of the admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 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 the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. The requirements of article 5, paragraphs 2 (a) and (b) of the Optional Protocol are thus met.

6.3 The Committee has noted the author's claim, under article 14, paragraph 3 (g), that he was threatened and beaten during the investigation to make him confess. In the absence of any other relevant information, from the author or details in substantiation of this claim, the Committee considers that the author has failed to substantiate, for purposes of admissibility, this part of the communication, which consequently is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee has noted the claim under article 14, paragraph 3 (b), that the author did not have the assistance of a lawyer despite his request to this effect. This claim relates to the period of pre-trial detention, after which the author was twice acquitted. The author has not provided information as to how lack of representation at that time, prior to the entry into force of the Optional Protocol in respect of the State party, affected the third trial in April 1992 in a way that would constitute, if proven, a violation of article 14 (3) (b). Consequently, this part of the communication is inadmissible under articles 1 and 2 of the Optional Protocol.

6.5 As to the author's remaining claim under article 14, paragraph 3 (e), that more than 20 witnesses were not called to testify on his behalf before the Nizhne-Turinsky Court, the Committee notes that the author does not claim, in his case before the Committee, that he asked the witnesses in question to testify, or that they were refused by the Court, or otherwise prevented by the State party from testifying. Consequently, this part of the communication is outside the scope of article 14, paragraph 3 (e), and hence inadmissible under article 3, of the Optional Protocol.

7. Accordingly, the Human Rights Committee decides:

(a) That the communication is inadmissible under articles 1, 2 and 3, of the Optional Protocol to the Covenant;

(b) That this decision shall be communicated to the State party and to the authors of the communication.

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[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.]

\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

#### Notes

1. The Covenant entered into force for the State party on 23 March 1976 and the Optional Protocol on 1 January 1992.