



Valetov v. Kazakhstan

Communication No. 2104/2011

Country: Kazakhstan

Region: Europe

Year: 2014

Court: United Nations Human Rights Committee United Nations Human Rights Committee

Health Topics: Health care and health services, Infectious diseases, Prisons, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial

Facts

Nikolai Valetov, a Russian national, was arrested and charged in June 2001 with murder by Kyrgyzstan authorities while living in Kyrgyzstan. In addition to maintaining that he was framed for this crime by the police, Valetov further claimed that he was tortured by the police so severely while in pre-trial detention that he was permanently disabled. In August 2001 Valetov escaped from the detention center and made his way to Kazakhstan.

In February 2003, Valetov was convicted of theft and robbery in Kazakhstan, and was sentenced to seven years' imprisonment. Valetov escaped from the Kazakh prison in April 2004. At an unspecified point after January 2006, he was rearrested in that country. He was due to be released on 15 July 2011, but based on a request for extradition by the Prosecutor General of Kyrgyzstan on 11 July 2011, he was held on 'extradition remand' under Article 534 of Kazakhstan's Code of Criminal Procedure. Valetov claims he was refused access to a lawyer throughout July 2011.

On 23 August 2011 the Kazakhstan Prosecutor General granted Kyrgyzstan's request for extradition. Valetov's appeal of Kazakhstan's granting extradition was rejected by the Kostanay District Court, exhausting his options to resist the extradition under Kazakhstan law. Valetov claimed in the District Court suit that he was likely to be tortured upon extradition to Kyrgyzstan because torture was routinely used in Kyrgyz prisons, because he was tortured before, and because of his history of prison escape.

Valetov then petitioned the United Nations Human Rights Committee (the Committee). He argued that Kazakhstan granting Kyrgyzstan's extradition request would result in Valetov being tortured, a violation by Kazakhstan of Article 7 of the International Covenant on Civil and Political Rights (the Covenant). Valetov further alleged that during the extradition proceedings in July 2011, he was denied access to a lawyer, violating Article 14, Paragraph 3 of the Covenant. In September 2011, the Committee requested that Kazakhstan not extradite Valetov while it considered the petition, but he was extradited to Kyrgyzstan despite this request in October 2011. Valetov claimed that he had in fact been subjected to torture since his extradition.

Decision and Reasoning

The Committee first expressed its disapproval that Kazakhstan had extradited Valetov to Kyrgyzstan despite its receipt of the Committee's request that it delay such extradition until the Committee had concluded its consideration of Valetov's claim, in violation of its commitment under the Optional Protocol.

The Committee rejected Valetov's claim as to Article 14, Paragraph 3 (regarding certain due process guarantees) of the Covenant. Under Article 2 and Article 5, Paragraph 2(b) of the Optional Protocol of the International Covenant on Civil and Political Rights (the Optional Protocol), all available remedies must be exhausted before submitting a claim to the Committee. Because Valetov failed to bring the claim of being denied access to a lawyer to the District Court in Kazakhstan, available remedies were not exhausted and the complaint was therefore not admissible.

The Committee accepted Valetov's claim as to Article 7 (guaranteeing freedom from torture) of the Covenant. With respect to Article 7, the Committee held that 'States [sic] parties must not expose individuals to the danger of torture or cruel, inhuman, or degrading treatment. . . This rule, the Committee said, imposed a duty on a state considering an extradition request to conduct a 'thorough assessment' of the risks that the

extradition would expose the detainee to such treatment.

The Committee determined that Kazakhstan had failed to meet that duty. Although there were credible reports of widespread use of torture against detainees in Kyrgyzstan, Kazakhstan failed to properly take these reports into consideration, or to consider Valetov's claims of prior torture by Kyrgyz police officers despite it being sufficiently severe that it left visible evidence of the torture. Furthermore, Kazakh officials failed to visit Valetov after his extradition to Kyrgyzstan despite Valetov's request that they do so.

Decision Excerpts

The Committee recalls that, at the time of the author's extradition, it was known, or should have been known to the State party's authorities that there were credible public reports of widespread use of torture against detainees in Kyrgyzstan. It observes that, in assessing the existence of a real risk of irreparable harm in the country requesting the extradition, the competent Kazakh authorities had to take into account all relevant considerations, including the prevailing circumstances in Kyrgyzstan. Section 14.5.

Thus, the Committee observes that the decision of the Kazakh authorities to extradite the author to Kyrgyzstan, without conducting a proper investigation of the allegations of torture and ignoring credible reports of a widespread use of torture against detainees there, as well as unjustified refusal to carry out a medical examination prior to his extradition, points at serious irregularities in the decision-making procedures and demonstrates that the State party failed to consider important risk factors associated with an extradition. The Committee further notes that the failure of the State party to subsequently visit the author and monitor conditions of his detention indicates that the procurement of assurances from the Office of the Prosecutor General of Kyrgyzstan should not have been accepted by the State party as an effective safeguard against the risk of violation of the rights of author. Therefore, the Committee concludes that the author's extradition amounted to a violation of article 7 of the Covenant. Section 14.7.

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is requested to put in place effective measures for the monitoring of the situation of the author of the communication, in cooperation with the receiving State. The State party should provide the Committee with updated information, on a regular basis, of the author's situation. The State party is also under an obligation to prevent similar violations in the future. Section 16.