



Tolipkhuzhaev v. Uzbekistan

Comm. No. 1280/2004, U.N. Doc. CCPR/C/96/D/1280/2004 (HRC 2009)

Country: Uzbekistan

Region: Asia

Year: 2009

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

Health Topics: Prisons

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

Facts

The case is about the failure of the State, which was party to International Covenant on Civil and Political Rights (â€œICCPRâ€•) and its Optional Protocol, to ensure the individualsâ€™ rights to a fair trial (Article 14), the right to life (Article 6), the rights of detainees (Article 10), and freedom from torture and other ill-treatment (Article 7).

The deceased, an Uzbek military officer, stole jewelry, money, and other items from his former commanderâ€™s residence in 2001. He fled to Kazakhstan, but was arrested, found guilty of theft, and sentenced to three years in prison. He was transferred to Uzbekistan on 13 September 2002, and was allegedly beaten and tortured by local police officers into confessing he had killed the commanderâ€™s children to conceal the theft. The deceased did not receive immediate medical treatment, and was not accepted to the Investigation Detention Centre (SIZO), away from the police officers, until 26 September 2002.

During the trial, the Military Court of Uzbekistan refused to examine additional evidence or interrogate witnesses who could testify about the deceasedâ€™s torture and help prove his innocence. In 2004, the trial court found the deceased guilty of murder of two children with aggravating circumstances, theft, and desertion from the Uzbek armed forces, and sentenced him to death. The appellate court upheld the death sentence.

The United Nations Human Rights Committee (â€œCommitteeâ€•) requested that the Uzbek authorities not carry out the deceasedâ€™s execution pending the review of his case by the Committee. The Uzbek authorities informed the Committee that the Supreme Court had vacated and remanded the appellate decision. However, in 2005, the deceasedâ€™s father submitted to the Committee the death certificate of the deceased showing that the execution had been carried out. In 2008, the Uzbek authorities confirmed the execution but maintained that the Supreme Court had received the request to stay the execution only after the execution.

Decision and Reasoning

The Committee first observed that a State party to the ICCPR and the Optional Protocol is obligated to cooperate with the Committee in good faith, and any action that would prevent or frustrate the Committee would be incompatible with such obligation (para. 6.2.), and that flouting the Committeeâ€™s request to stay execution of the deceased undermined the Committeeâ€™s role in protecting the rights guaranteed under the ICCPR (para. 6.4.).

The Committee then noted that the case was not being examined elsewhere, and domestic remedies were exhausted. The Committee, however, dismissed the claims of the deceasedâ€™s father under Art. 6(4); Art. 9; Art. 16; and Art. 14(2) of ICCPR as insufficiently substantiated, pursuant to article 2 of the Optional Protocol. The rest of the claims under Art. 6 (the right to life); Art. 7 (freedom from torture); Art. 10 (the rights of detainees); and Art. 14(1) and (3) (the right to a fair trial) were deemed admissible.

The Committee held that the Uzbek authorities failed to investigate the deceasedâ€™s torture allegations promptly and impartially, in violation of his rights under Art. 7 and 14(3)(g) of the ICCPR. The Committee also held that the courts separately violated the deceasedâ€™s right under 14(1) by failing to properly address the deceasedâ€™s complaints, thereby putting the fairness of the entire trial in jeopardy. The Committee also held that although the imposition of a death sentence does not constitute a per se violation of Art. 6, the deceasedâ€™s death sentence, imposed and carried out in violation of Art. 14 (the right to a fair trial), was in violation of Art. 6. The Committee found it unnecessary to examine separately the claim based on Art. 10.

The Committee concluded that Uzbekistan is obligated to provide the deceased's father with an effective remedy, including adequate compensation, criminal investigation to establish responsibility for the deceased's ill treatment, and prevention of similar violations in the future, in accordance with Art. 2(3)(a) of ICCPR.

Decision Excerpts

“Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present case, the author alleges that his son was denied his rights under various articles of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol by executing the alleged victim before the Committee concluded its consideration and examination of the case, and the formulation and communication of its Views.” Para. 6.3.

“The Committee considers that in the present case, the courts, and this was uncontested by the State party, failed to address properly the victim's complaints related to his ill treatment by the police and did not pay due attention to the numerous requests of the author's son and his defence counsel to have a number of witnesses interrogated and other evidence examined in court in this connection. The Committee considers that as a consequence, the criminal procedures in Mr. Tolipkhuzhaev's case were vitiated by irregularities, which places in doubt the fairness of the criminal trial as a whole. In the absence of any pertinent observations from the State party in this respect, and without having to examine separately each of the author's allegations in this connection, the Committee considers that in the circumstances of the case, the facts as presented reveal a separate violation of the author's son's rights under article 14, paragraph 1, of the Covenant.” Para. 8.4.

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