



Nenova et al. v. Libya

Communication No. 1880/2009

Country: Libya

Region: Africa

Year: 2012

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

Health Topics: HIV/AIDS, Medical malpractice, Prisons, Public safety

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of religion, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to life

Facts

Four out of the five claimants in this case arrived in Libya between February 1998 and February 1999 to work as members of a Bulgarian medical team at Al-Fatah pediatrics hospital; the other claimant had arrived in Libya in 1991 and had been working at a different hospital. On 9 February 1999, the authors together with eighteen other members of medical teams, all Bulgarian, were arrested by the Libyan police without being told of the grounds for their arrest. Seventeen were released on 16 February 1999. The claimants and another co-defendant who had been arrested on 29 January 1999 were charged with murder, on suspicion of having infected 393 children with the HIV virus at Al-Fatah Hospital in Benghazi.

On 15 May 1999, the case was referred to the People's Prosecution Office (parquet populaire) which charged them all with:-

- acts against Libyan sovereignty leading to indiscriminate killing for the purpose of subverting State security (a capital offense);

- conspiracy and collusion to commit the above premeditated crimes;

- deliberately causing an epidemic by injecting 393 children at Al-Fatah hospital with the HIV virus (a capital offense);

- premeditated murder with lethal substances, by injecting children with HIV (a capital offense) and;

- acts contrary to Libyan law and traditions (illegal production of alcohol, consumption of alcohol in public places, illegal foreign currency dealings and illicit sexual relations).

On 16 May 1999 the claimants were brought before the People's Prosecution Office. The first trial on 7 February 2000 rested on the confessions and the assertions by the Head of State that the accused were CIA and Mossad agents. Ten days later the accused alleged to the court that they had been tortured. In June 2001, the court rejected the complaints of two complainants retracting their confessions on the ground that they had been tortured to make their confessions, without ordering an inquiry. They all pleaded not guilty at trial.

In August 2002, the Indictments Chamber of the Benghazi Appeals Court upheld the charges presented by the prosecutor and referred the case to an ordinary criminal court, the Benghazi Appeals Court. The charges were based on confessions made by one of the complainants and the co-defendant to the prosecutor, and the results of a search of the home of one of the claimants where the police allegedly discovered five bottles of contaminated blood plasma. The second trial heard professional opinions from two groups; the first group of (two professors) testified that the blood samples at the hospital were infected a year before the claimants/the nurses had begun working at the hospital and the latter/second group rejected the findings of the first group saying that the HIV epidemic was a deliberate act. On 6 May 2003, the Benghazi Appeals Court sentenced the claimants and the co-defendant to death for having caused the death of 46 children and infecting 380 others. The claimants and the co-defendant appealed on points of law to the Libyan Supreme Court; the Supreme court quashed the judgment of the Benghazi Appeals court and returned the case for retrial to the Tripoli Court on 25 December 2005, refusing claimants' release on bail.

The Tripoli court found the claimants and the co-defendant guilty and sentenced them to death on 11 May 2006; the court had not gone through the torture allegations arguing that another court had already dismissed them. Claimants appealed to the Supreme Court which upheld the death sentences on 11 July 2007 and on 17 July 2007, the High Judicial Council announced that the sentence would be commuted to life

imprisonment pursuant to a compensation agreement reached with the victims's families. Then on 24 July 2007 as a result of negotiations between Libya and Governments of other countries, the claimants were transferred to Bulgaria to serve their sentences. Once there, they were immediately pardoned and released. Their torture claims since 2000 had not been investigated by Libyan courts, for lack of evidence one time and for lack of jurisdiction on another.

The Complaint

The claimants argued that the State party had violated Articles of the International Covenant on Civil and Political Rights ("Covenant") as:

The death sentence imposed violated Article 6, Paragraph 2 as the trials were unfair and arbitrary and although the sentence had been commuted to life imprisonment this could not relieve the state party from its obligation under this article.

The claimants were severely tortured for the purpose of extracting confessions in violation of Article 7 and by the time they got the chance to complain about it, no action was taken by the prosecutor or by the court. The treatment they endured throughout their period of detention was undignified in violation of this article. One of the claimants was forced to renounce her faith and convert to Islam; claimants also alleged that they were deprived of access to the open air, to physical exercise and to contact with the outside, including their families, and were denied the possibility of seeing a doctor in private.

The arrests and the detention were arbitrary and claimants were not brought before the prosecutor within 24 hours of detention in violation of Article 9, Paragraph 1. They were not promptly informed of the charges against them and when they were finally told by the prosecutor, a legal counsel was not present in violation of Article 9, Paragraph 2. Claimants were not brought promptly before a "judicial authority" and they had only seen the prosecutor before the trial date in violation of Article 9, Paragraph 3.

In violation of Articles 10 and 7, claimants were allowed to see their children and other family members only three or four times over a total of eight years in detention.

Claimants did not have access to an interpreter during trial, were not assigned a lawyer until 17 February 2000 (10 days after the trial began) and a full year after their arrest, were forced to testify against themselves under torture. There was not a lawyer was in attendance when they made their confessions before the prosecutor and the court and the testimony of the first team of experts (that no evidence had been found for a deliberate injection of HIV contaminated material [bio-terrorism]) was rejected without sufficient reasons. The second search of one of the claimant's home was conducted where neither the claimants nor a defense lawyer were present and the court mistook the findings of one search for another and the trial suffered unreasonable delays of over eight years, all in violation of Article 14.

The state party discriminated on the basis of race, skin colour, language, religion, and nationality and violated their claimants' rights under Articles 6, 7, 9, 10, and 14. All the Libyans arrested in the case were freed almost immediately or released on bail, were not remanded in custody during the trial, and were all eventually acquitted.

As redress for the violations suffered, the claimants asked the committee to decide for their reparation, including financial compensation, for physical and moral injury. They also asked for the state party to be urged to take steps to act on its obligations under the Covenant and the Optional Protocol, and to ensure that no similar violations occur in future.

The State Party's Observations

The state party asked the committee to declare the complaint inadmissible without providing grounds. The state party claimed that there had been lengthy legal and judicial proceedings to establish the truth in a case involving over 450 children whose fundamental right to life had been violated. It considered that the claimants were afforded all the safeguards of a proper trial in conformity with international standards and that Libyan civil society organizations, international human rights organizations, and foreign diplomatic missions in Libya followed the proceedings throughout. It argued that the defendants received a fair trial in which they were afforded full legal safeguards and were able to exercise their right to defense through a team of lawyers.

The state party noted that the claimants' torture allegations against the committee that was set up to investigate the case were investigated and brought before the Benghazi Court of First Instance, which acquitted the investigating committee. A total of 115 visits were paid to the convicts in prison by members of foreign organizations and foreign diplomatic missions. The Minister of Justice asked for members of the claimants' families to be allowed to visit them every Sunday throughout their detention. A team of lawyers from Bulgaria were given permission to help with the defense of the accused. On the claimants' appeal against the 19 December 2006 judgment of the Benghazi Appeals Court, the Supreme Court answered all the objections they raised.

The claimants replied to the state party's arguments saying that they were discriminated against on account of their nationality because Bulgarians working at different hospitals in Benghazi were arrested by the Libyan police with 18 members of the international medical team (17 were released after 7 days), and there was no evidence of their guilt by the time of their arrest. The only evidence against them was obtained after their arrest and consisted of confessions obtained under duress, and the discovery of five bottles of contaminated blood plasma at the home of one of the claimants.

Decision and Reasoning

The Human Rights Committee held that because the death sentence was not upheld, the claimants had no factual basis to claim that the death sentence was imposed following an unfair trial in violation of Article 6 of the Covenant; that claim had not been substantiated and was inadmissible under Article 2 of the Optional Protocol. The Human Rights Committee concluded that the treatment inflicted on the claimants constituted torture and the explanations provided by the state party were not such as to conclude that a prompt, thorough, and impartial investigation was carried out despite the presentation of clear evidence of torture. The torture inflicted on the claimants and the absence of a prompt, thorough, and impartial investigation of the facts constituted a violation of Article 7 of the Covenant, alone and read in conjunction with Article 2, Paragraph 3, of the Covenant.

The Human Rights Committee decided not to address the complaints under Article 10 of the Covenant. Regarding the claim raised under Article 9 of the Covenant, the Human Rights Committee found a violation as there was not any pertinent explanation from the state party. The state party was held "responsible for an accumulation of violations of the right to fair trial particularly as regards the violation of the right not to testify against oneself, the violation of the principle of equality of arms, which was violated through the unequal access provided to evidence and expert opinions, and the defendants' right to have adequate time and facilities for the preparation of their defense, through the lack of access to a lawyer prior to the beginning of the trial." [Para. 7.10]. Thus, the trial and conviction of the claimants violated Article 14 of the Covenant and the Human Rights Committee decided not to address complaints under Articles 2 and 26 but it found that the state party was in violation of Article 7, read alone and together with Article 2, Paragraph 3, and Articles 9 and 14 of the Covenant.

The Human Rights Committee ordered that the state party provide the claimants with an effective remedy, including conducting, as an alternative to what has already been undertaken by the state party, a thorough, in-depth investigation of the allegations of torture and to prosecute those responsible for the treatment inflicted on the claimants, and to grant the claimants appropriate redress, including compensation in accordance with its obligation under Article 2, Paragraph 3 (a), of the Covenant. The state party was also required to take action to prevent similar violations in the future.

Decision Excerpts

• The Committee reaffirms its jurisprudence that the burden of proof cannot rest on the author of a communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. • Para. 7.5

• In cases where the author has submitted allegations to the State party that are corroborated by credible evidence and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider those allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. • Para. 7.5

• The State party is duty-bound not only to conduct thorough investigations into alleged violations of human rights, including violations of the prohibition of torture, but also to prosecute, try and punish the culprits. • Para. 7.5

• With regard to the incommunicado detention, the Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provision against detention incommunicado. • Para. 7.5

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