



## N.S. Nenova et al. v Libya

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**Country:** Libya

**Region:** Africa

**Year:** 2012

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

### Facts

#### FACTS

All the authors save one who had arrived in 1999, all arrived in Libya between February 1998 and 1999 to work as members of a Bulgarian medical team at al-Fatah paediatric hospital in Benghazi. The authors were arrested by Libyan police & charged with murder on suspicion of having infected 393 children with HIV virus at al-Fatah hospital in Benghazi; the penalty for that crime being death. They were interrogated and tortured (beatings, threats, sleep deprivation, sensory deprivation, isolation) into confessing.

The People's Prosecution Office charged the authors and their fellow defendant Ashraf El-Hagog Jumaa with conspiracy charges and capital offences including deliberately causing an epidemic by injecting 393 children at al-Fatah hospital with HIV. The first trial was before the People's Court (the extraordinary court for crimes against the State). The authors were granted access to a lawyer ten (10) days after the trial. Two (2) of the authors also retracted their confessions stating they were made under torture. The Court halted proceedings and referred the case back to the Criminal Prosecution Office. The prosecutor withdrew the charges and presented new charges of illegal drug testing and deliberate infection of 426 children with HIV.

The second trial was before an ordinary criminal court, the Benghazi Appeals Court. The charges were based on the confessions made by the authors & bottles of contaminated blood plasma found in the home of one of the authors. The court appointed two (2) experts who gave expert opinion that was contrary to the prosecution's charge of deliberate infection. The court appointed a 2nd team of experts that rejected the findings made by the first team and made a finding in the prosecution's favour. The defence called for a further expert appraisal, but the Court dismissed the request. The court sentenced the author and their co-Defendant to death for causing death of 46 children and infecting 380 others. The accused appealed to the Supreme Court. The Supreme court quashed the judgment of the Benghazi Appeals Court & remanded the case back to the Tripoli Court. During this entire process the accused were denied bail on the ground that they were insufficient guarantees that they would appear.

At the lower court, the prosecution requested the death penalty for the authors and their co-Defendant. They were again found guilty and sentenced to death. The authors appealed to the Supreme Court in 2006. The authors allege that the Court held only one sitting lasting a day and upheld the death sentences. The High Judicial Council announced that the sentence would be commuted to life imprisonment pursuant to a compensation agreement reached with the victims' families. In July 2007, authors were transferred to Bulgaria to serve their sentences and once there, they were immediately pardoned and released.

On 7 May 2004, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment sent an urgent appeal to the State party regarding the authors' and co-defendant's case, asking for information about the allegations of torture and an unfair trial.

### Decision and Reasoning

libya\_t5\_ccpr\_1880\_2009 The Committee concluded that the torture inflicted on the authors and the absence of a prompt, thorough and impartial investigation of the facts constitute a violation of article 7, alone and read in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights Covenant. The Committee found that the arbitrary arrest of the authors without being informed the charges against them and not being brought before court until after three (3) months after their arrest constituted a violation of article 9 of the Covenant. The Committee concluded that the trial and conviction of the authors

constitute a violation of article 14 of the Covenant. This occurred through 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 defence, through the lack of access to a lawyer prior to the beginning of the trial.

### **Decision Excerpts**

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