

Toshev vs. Tajikistan

Facts

The author submitted the communication on behalf of his brother, Mr. Iskandarov who was leader of the Democratic Party of Tajikistan and was imprisoned at the time of submission.

Mr. Iskandarov was accused of unlawful possession of firearms and being responsible for an attack to the prosecutor's office on 27 August 2004. He was unlawfully apprehended in Moscow on 15 April 2005, then transferred to Tajikistan and detained in the Detention Centre of Ministry of Security. His arrest was announced later but his location was not informed to his family. During the detention he was kept awake and interrogated every night; his request for skin medicine was also refused.

His case was examined by the Criminal panel of the Supreme Court. Mr. Iskandarov's lawyer complained about the unlawful arrest in Moscow, the unlawful detention at the Ministry of Security, the denial of private meeting between the victim and his lawyer during his detention, as well as the ignorance of the lawyer's requests during the preliminary investigation to postpone the examination of the three suspected accomplice of Mr. Iskandarov and to merge them with Mr. Iskandarov's one; as well as to hold Mr. Iskandarov's case pending until they submit their written comments. The court rejected most of these claims and ignored the lawyer's request to interrogate some state officials. The interrogation, if admitted by the court, might serve as evidence rebutting certain charge against Mr. Iskandarov. On 5 October 2005 the Court found Mr. Iskandarov guilty of several crimes and sentenced him a prison of 23 years together with the deprivation of his title of Major-General.

The author claims several violation of the Covenant by the State party, including **Art.9 §1 §3** regarding the unlawful arrest and detention; **Art.7** regarding the cruel treatment during the detention; **Art.14 §1 §3(e)** regarding the biased legal proceedings and the ignorance of the lawyer's requests by the Court; **Art.14 §3(b) (d)** regarding the denial of private meeting between the victim and his lawyer; and **Art.14 §3(g)** regarding the physical threats during the detention.

The State party failed to provide any information with regard to the author's claims. The Committee recalls that in such case due weight will be given to the author's allegations as long as they are well substantiated (No.1117/2002 [Khomidova v. Tajikistan](#) 2004; No. 985/2001 [Aliboeva v. Tajikistan](#) 2005).

Consideration of admissibility

The Committee considers that the requirements under Art.5 §2 (a)(b) of the OP – namely no parallel international proceeding is ongoing and the exhaustion of domestic remedies – have been met, therefore the claims from the author are admissible.

Key words

- Torture
- Arbitrary detention
- Rights of detainees
- Fair hearing
- Preparation of and right to defense
- Access to witness
- Self-incrimination

Relevant Provisions

- Article 7
- Article 9 §1 §3
- Article 14 §1 §3 (b)(d)(e)(g)

Violated Provisions

- Article 7
- Article 9 §1 §3
- Article 14 §1 §3 (b)(d)(e)(g)

Consideration of merits

Article 9 §1: The Committee recalls that deprivation of liberty is permissible only when it is not arbitrary and takes place in accordance with domestic law (No. 1461/2006 & 1462/2006 & 1476/2006 & 1477/2006 [Zhakhongir Matsukov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov v. Kyrgyzstan](#) 2008). In this case the detention of Mr. Iskandarov at Ministry of Security without providing legal aid to him amounts to a violation of this Article.

Article 9 §3: The Committee considers that the public prosecutor in this case cannot be qualified as ‘having the institutional objectivity and impartiality’ which is required by Art.9 §3 (No. 1348/2005 [Rozik Ashurov v. Tajikistan](#) 2007; No. 521/1992 [Kulomin v. Hungary](#) 1996; No. 1218/2003 [Platonov v. Russian Federation](#) 2005). Therefore there is a violation of this Article.

Article 14 §1 §3(e)(g): The Committee considers that the Court failed to address requests from the lawyer and to take into consideration those complaints on the unlawful arrest and detention. These failures amount to a violation of Art.14 §1 §3(e)(g) of the Covenant.

Article 14 §3 (b)(d): The Committee considers that the deny of Mr.Iskandarov’s access to legal counsel during the first 13 days of the detention constitutes a violation of Art.14 §3 (b)(d).

Conclusions

The Committee finds a violation by the State party of Art.7; Art.9 §1 §3; and Art.14 §1 §3 (b)(d)(e)(g). The State party is obligated to provide an effective remedy to the author, including either immediate release or a retrial with all the guarantees enshrined under the Covenant. The State party is also under an obligation to prevent similar events happening in the future. The Committee wishes to receive the information on follow-up from the State party within 180 days and requests the State party to publish its views.

Dissent/Concurrence

N/A