
Gunan vs. Kyrgyzstan

Facts

On 21 and 30 May 1998, two acts of terrorism with explosive devices were carried out in Kyrgyzstan. In July 1998 in Kazakhstan, the author and other three passengers were arrested because the police found explosive devices in their car. The Kyrgyz authorities established a connection between one of the suspects for the blasts and the author. On 14 May 1999 the author was extradited from Kazakhstan to Kyrgyzstan. The author claimed that the next 3 days he was subject to different forms of ill-treatment at the police (beatings with sticks and with a truncheon on his feet while hooded), until he signed several incriminating statements in the absence of a lawyer (which was only appointed on 30 July 1999). Although him and the other co-accused retracted these statements in court as made by force, the statements were used for convicting them as guilty. The author was transferred to Osh and claims that again he received systematic ill-treatment by officers, who even beat him up in front of the lawyer they themselves assigned to him. The author did not claim ill-treatment nor requested a medical examination out of fear, and neither did his officially appointed lawyer.

On 3 May 2000 the Osh city court found the author guilty on several counts and sentenced him to 22 years imprisonment. The author's complaints about ill-treatment and forced confession were found groundless and dismissed. The case was appealed to the regional court, which found that the city court had performed an incomplete evaluation of the facts and evidence, had ignored the author's interrogation in the absence of a lawyer and the lack of investigation into the allegations of ill-treatment and forced confession, and reversed the case back for re-examination. On 9 January 2001, following the objection of the Prosecution's office, the Supreme Court found the reversal decision of the regional court groundless and reversed again the case to the city court.

On 12 March 2001 the Osh City Court in closed session sentenced the author to death, despite several inconsistencies in the evidence and witnesses' statements. The sentence was upheld on appeal at various instances

Consideration of admissibility

Article 5 §2(a)(b) of the Optional Protocol (OP): The Committee is of the view that the present Communication fulfils the requirements under Art.5 §2(a) (b) of the Optional Protocol. The claims under Art.2 §3; 6; 7; 9; 10 §1; and 14 §1 §3 (b) (d) (g) are sufficiently substantiated and thus admissible.

Consideration of merits

Art.7 and Art.14 §3(g): Regarding the author's claim that he was tortured during the interrogation and was compelled to sign self-incriminating statements in the absence of a lawyer, the Committee recalls that 'once a complaint about ill-treatment contrary

Key words

- Right to life
- Torture and ill-treatment
- Conditions of detention
- Fair hearing
- Preparation of and right to defense
- Self-incrimination

Relevant Provisions

- Article 6
- Article 7
- Article 9
- Article 10 §1
- Article 14 §1
- Article 14 §3 (b) (d) (g)

Violated Provisions

- Article 6
- Article 7
- Article 14 §1
- Article 14 §3 (b) (d) (g)

to Art.7 has been filed a State party must investigate it promptly and impartially' ([General Comment No. 20, §.14](#)). Since there was no indication that the claims had been investigated, the State party failed in considering the author's complaints adequately and duly during the domestic legal proceedings and violated Art.7 and 14 §3 (g) of the Covenant. The Committee did not examine separately the author's claim under Art.10 §1.

Art. 14 §3(b)(d): The Committee considered the allegations that the author was extradited on 14 May 1999 and was not granted legal assistance until 30 July, he was interrogated on several occasions without receiving legal assistance and that he was refused copies of the prosecution's submission to the Supreme Court, thus being deprived of the right to raise objections against those submissions. In the absence of any refuting information by the State, the Committee found a violation of Art.14 §3 (b) (d).

Art. 14 §1 in relation to Art 14 §3(b)(d)(g): Although, in general, the Committee does not enter into the evaluation of facts and evidence, unless the conduct of the trial or the evaluation was manifestly arbitrary or amounted to a denial of justice, in this case it considered that the national courts failed in guaranteeing a fair hearing to the author. The Committee took note of the author's allegations that national courts did not properly assess the inconsistencies in the witness testimonies and establish the causal link between the finding of explosives and the two terrorist acts ([No. 1519/2006 *Khostikoev v. Tajikistan*](#), §7.3). Hence, it found a violation of Art. 14 §1 §3 (b) (d) (g).

Art. 6 §2, read in conjunction with Art. 14: The Committee recalls its jurisprudence ([General Comment No.32](#), §59), No. 719/1996 [Levy v. Jamaica](#), §7.3; No. 730/1996 [Marshall v. Jamaica](#), §6.6; No. 1096/2002 [Kurbanov v. Tajikistan](#), §7.7; No. 1044/2002 [Shakurova v. Tajikistan](#), §8.6; No. 1304/2004 [Khoroshenkov v. Russian Federation](#), §9.11) that a death sentence sentenced upon an unfair trial which is in violation of Art.14 will disclose simultaneously a violation of Art.6 too.

The Committee did not examine separately the author's claims under Art.2 §3 and Art. 9.

Conclusions

The Committee found that the State was in violation of Art.6 read together with Art.14; Art.7 and Art.14 §3(g); and 14 §1; §3 (b) (d). The State is under obligations to carry out an investigation on the alleged torture and ill-treatment; to initiate criminal proceedings against those who are responsible for these treatments; considering the author's retrial according to the guarantees of the Covenant or his release as well as full reparation, including adequate compensation. The State is also under an obligation to take steps to prevent similar violations in the future. The Committee wishes to receive information about the measures taken in 180 days and to have this views published.

Dissent/Concurrence

Partially dissenting opinion from Mr. Rafael Rivas Posada: Mr. Posada considers there is no direct violation of Art.6 §1 since the author is still alive. He also disagrees

with §59 of the [General Comment No. 32](#), indicating that Art.6 is violated if a death sentence is imposed not following the due process requirements of Art.14. In his opinion the correct formulation would be a violation of Art.6 §2 read together with Art. 14.

Concurring opinion from Mr. Yuji Iwasawa and Mr. Cornelis Flinterman: The concurring members expanded the reasoning of the Committee according to which there was a violation of Art.14 §3(b)(d), indicating that Art. 14 guarantees also the right of everyone to ‘communicate with counsel’ and requires that ‘the accused is granted prompt access to counsel’ ([General Comment No. 32](#), §34)

Concurring opinion from Mr. Rajsoomer Lallah and Mr. Fabian Omar Salvioli: The concurring members held that a violation of Art.6 should not be found ONLY if a person is deprived of his/her life (as argued by Mr. Rivas Posada). Given that the consequence of a death sentence is fundamental and irreversible, Art.6 §1 requires a State party to effectively protect the inherent right to life and to ensure this protection ‘not only by the existence of a law in fact but also in the application of that law’. Therefore an imposition of death penalty based on an unfair trial which is in violation of Art.14 shall disclose a separate violation of Art.6.