
Kungurov vs. Uzbekistan

Facts

The author and another 11 individuals tried to register a human rights NGO created by them, aiming at monitoring governmental actions and human rights abuse and disseminating information on the protection of human rights. During the first consultation with the Ministry of Justice regarding the registration, the author was told that no human rights NGO would be registered. On 7 August 2003 the author submitted the first application for registration as a 'national NGO', in order to be able to carry out human rights activities throughout the country. The decision of the Minister of Justice pointed out to 26 defects (most of them grammatical or stylistic) in the documentation of the application and therefore the application was returned 'without consideration'. The main substantive objections to registration were (i) the fact that the activities of the NGO fall 'within the scope of competence of state organs' and (ii) the fact that the NGO applied to be registered as a national NGO, although it did not function in all parts of the country. The author argued that the decision was inconsistent with the domestic law regulating NGO organisation and registration, which does not foresee the possibility of returning an application 'without consideration' but only allows for refusal or approval. The author argues that returning an application 'without consideration' could prevent the decision from being appealed before domestic courts.

On 14 December 2003 the author challenged this decision before the Inter-District Court of Tashkent City, arguing in essence that the application contained three technical amendable mistakes that would not justify refusal. The author also argued that the refusal to register was in violation of Art.22 of the Covenant. At the hearing, the representative of the MoJ asserted that even a single 'shortcoming' would suffice to justify the return of a registration application 'without consideration'. On 12 February 2004 the Court refused the appeal on the grounds that 1) the author admitted that the original application contained errors and 2) some provisions of the NGO statutes were inconsistent with current legislation or contradicted each other. The Court did not address the alleged violation of the Covenant. The author challenged this decision several times before different courts without success.

On 27 December 2003 the author submitted a second application for registration, in which only technical errors were corrected (the author believed that these are all the errors necessary for correction). On 1 March 2004 the 2nd application was decided again as 'without consideration', based on the grounds that not all of the errors indicated by the Ministry last time had been corrected. The author decided not to try a 3rd time, but instead carried out relevant activities with 6 other members without registering the organisation. This put the members in a great risk of criminal liability.

Consideration of admissibility

The Committee considered that the present case fulfilled the requirements under

Key words

- Domestic implementation
- Freedom of opinion
- Freedom of association

Relevant Provisions

- Article 2 §2
- Article 19 §2
- Article 22 §1

Violated Provisions

- Article 19 §2
- Article 22 §1

Art.5 §2 (a) (b) of the OP with regard to the first application; both two claims under Art.22 and Art.19 of the Covenant were well substantiated by the author. Therefore the present case was considered admissible.

Consideration of merits

Art. 22 §1 of the Covenant: the key issues regarding the claim under this Art. are: 1) whether the refusal to register the NGO amounts to a restriction of the author's right under Art.22; 2) whether the restriction can be justified under §2 of the same Art. Regarding issue 1), the Committee considered the substantive and technical requirements prescribed in the domestic law, for which 'not even a single shortcoming would be tolerated', as *de facto* restrictions. Regarding issue 2), the Committee noted that (i) even if these and other substantive restrictions were precise and predictable and were indeed prescribed by law, the State party did not explain why it was *necessary* to condition the registration of an association on the limitation of the scope of its human rights activities to undefined issues not covered by state organs or on the existence of regional branches; and (ii) the refusal decision triggered by some of the technical mistakes was *disproportionate*. Taking into account the severe consequences of the denial of state registration of the NGO for the exercise of the author's right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Uzbekistan, the Committee confirmed that the State party violated Art.22§1 of the Covenant.

Art. 19 §2 of the Covenant: The Committee recalled its jurisprudence that 'the freedom of expression rights of individuals are implicated in their efforts to communicate through associations and thus protected by Art. 19' (No. 1249/2004, [Sister Immaculate Joseph and 80 teaching sisters v. Sri Lanka](#), 2005, §7.2); and any restriction to Art. 19 can only be strictly justified (No.574/1994 [Kim v. the Republic of Korea](#); 1998). The Committee noted that the State party had not made any efforts to justify the compatibility of its legal requirements with the criteria of Art.19 §3. Therefore the Committee found a violation of Art.19 §2.

Conclusions

The Committee therefore found a violation of Art.22 §1, read alone and in conjunction with Art.19 §2 of the Covenant. The State party is under an obligation to provide the author with an effective remedy, including compensation amounting to a sum not less than the present value of the expenses of the author in relation to the registration application and legal costs, reconsideration of the author's application, as well as ensuring the compatibility of relevant domestic laws with the Covenant. The State party was also under an obligation to prevent similar violations in the future. The Committee wished to receive information about measures taken for implementation within 180 days, and to see the publication of its Views by the State party.

Dissent/Concurrence

Individual Opinion from Mr. Fabián Salvioli: The Committee member agrees with the above finding of the Committee, meanwhile considers that the State party is also in

violation of Art.2 §2 of the Covenant and as a part of reparation it is under an obligation to amend its legislation. Mr. Salvioli considers that a violation of Art.2 §2 can be found in individual complaints, especially in this case where the State party's legislation constitutes a violation of the Covenant and the victim claimed about the violation of Art.19 and Art.22 *read in conjunction with Art.2*. A violation of Art.2 has the practical consequence of urging State parties to amend their legislation to ensure their compatibility with the Covenant and for preventing similar violation in the future. A lack of such finding will make the reparation recommended by the Committee insufficient.