
Turdukan Zhumbaeva vs Kyrgyzstan

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Facts

On 24 October 2004, Mr. Tashkenbaj Moidunov (son of the author, Ms. Turdukan Zhumbaeva) and his wife were requested to follow the police officers to the Bazarkorgon police station after a quarrel that was qualified as a public disturbance. Mr. Moidunov was kept in custody, while his wife was released. He died in custody on the same day.

In the first statement dated 24 October 2004, the head inspector of the police station, Mr. Mantybaev, stated that the victim's wife wished to file a complaint against her husband and requested that her husband be kept in custody to avoid further contact. The victim, who was sitting in the corridor, suddenly fell on the floor after holding his chest in pain. The first sergeant, Mr. Abdukaimov, made the same statement, except that he said that the victim's wife had witnessed the author's death and thereafter lost consciousness.

On 9 November 2004, a criminal investigation was opened. On 17 November 2004, the head inspector of the police station, Mr. Mantybaev, was interrogated and provided a different account of the facts, stating that when he came out of the room after taking the victim's wife's complaint, the victim was no longer sitting in the corridor. After some searching, they found him in the administrative detention cell having hanged himself with his sport trousers. An ambulance was called. Both the head inspector and the first sergeant had conspired to say that the victim had died of a heart attack and only decided to reveal the truth in the investigation, as they were afraid of the consequences. On 21 December 2004, the victim's wife testified that her husband never wore sport trousers and did not possess any.

The ambulance doctor concluded that the victim did not have any strangulation marks but red finger marks on his neck. The forensic expert observed other wounds on the victim's body. The histological examination of body tissues led to the conclusion that the victim died of mechanical asphyxiation. When asked if manual strangulation could have been the cause of the victim's death, the forensic expert mentioned that no scratches on the cervical fabrics or skin were found but that the fracture of the horn of the thyroid could result from pressure by hands.

On 21 September 2005, the Suzak District Court found Mr. Mantybaev guilty of negligent performance of duties, which resulted inadvertently in the death of a person. According to the court, Mr. Mantybaev failed to organize a medical examination of the victim and to take measures to prevent the victim, who was under the influence of alcohol, from committing suicide.

Due to the reconciliation between Mr. Mantybaev and the family of the victim, the defendant was exempted from criminal liability. During the court hearing the brother of the victim confirmed having received compensation (30,000 Kyrgyz som,

Key words

- Custody
- Right to Life
- Torture and ill-treatment
- Effective Remedy

Relevant Provisions

- Article 2
- Article 6
- Article 7
- Article 5 of OP

Violated Provisions

- Article 2
- Article 6
- Article 7

approximately 860 US\$) from the head inspector of the police station, however he insisted that the case be sent for additional investigation, as he believed that the victim was killed by the police officers.

The author filed an appeal to the Zhalalabad Regional Court. The Zhalalabad Court reversed the decision of the Suzak District Court and ordered a retrial of the case. This decision was appealed to the Supreme Court by Mr. Mantybaev.

On 27 December 2006, the Supreme Court quashed the decision of the Zhalalabad Regional Court and upheld the decision of the Suzak District Court. It held that the guilt of the defendant Mr. Mantybaev was established by the first instance court and that his actions were lawfully characterized as negligence. It considered that the author's arguments regarding the deficiencies of the investigation and the existence of evidence indicating a homicide were speculations.

Consideration of admissibility

Article 5 of the Optional Protocol: The same matter is not being examined under another procedure of international investigation or settlement. All available domestic remedies, including the Supreme Court, have been exhausted. The author has sufficiently substantiated, for purposes of admissibility, her claims under articles 6, paragraph 1 and 7 read alone and in conjunction with article 2, paragraph 3, of the Covenant. The case is therefore admissible.

Consideration of merits

Article 6, paragraph 1: The State party and its judicial authorities have not explained on which basis the conclusion was drawn that the victim had committed suicide in police custody, this in particular considering the testimony by the forensic expert.

The State party's first instance court and the Supreme Court appear not to have evaluated the discrepancies in Mr. Mantybaev's different statements. The Committee further observes that the State party's judicial authorities did not consider any testimony from the first sergeant, Mr. Abdukaimov. In the absence of persuasive arguments by the State party rebutting the suggestion by the author that her son was killed in custody and in light of the information in the forensic expertise inconsistent with the State party's arguments, the State party is responsible for arbitrary deprivation of the victim's life, in breach of article 6, paragraph 1, of the Covenant.

Article 7: A State party is responsible for the security of any person in custody and, when an individual is injured while in detention, it is incumbent on the State party to produce evidence refuting the author's allegations. The State party did not provide any information as to whether any inquiry was undertaken by its authorities to address the specific allegations advanced by the author in a substantiated way. In these circumstances, the Committee concludes that the author's claims are substantiated and have been corroborated by the official autopsy report and finds, therefore, that there has been a violation of article 7, of the Covenant with regard to the author's son.

Article 2, paragraph 3 read in conjunction with article 6, paragraph 1, and article 7:

In the absence of any explanation by the State party on discrepancies in the criminal investigation (failure of the authorities to obtain a detailed description of the position of the victim's body, no mock hanging was conducted, no medical records to establish if the victim had any suicidal tendencies were requested, no forensic expertise of the sport trousers was ordered, no investigation to establish if the victim's death was a result of torture or ill-treatment was conducted) and due to the fact that police sergeant, Mr. Abdukaimov was never charged or prosecuted, the Committee concludes that the State party failed to properly investigate the circumstances of the author's son's death and the allegations of torture and ill-treatment and thus effectively denied the author a remedy.

Conclusions

The Committee finds violations by the State party of articles 2, paragraph 3, read in conjunction with article 6, paragraph 1, and article 7; article 6, paragraph 1; and article 7 of the Covenant.

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The remedy should include an impartial, effective and thorough investigation into the circumstances of the author's son's death, prosecution of those responsible and full reparation including appropriate compensation. The State party is 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

N/A