Shakeel v Canada

Facts

The author, Masih Shakeel, is a Christian pastor, born in 1970 in Karachi, Punjab, Pakistan, who faced an imminent deportation to Pakistan at the time of the submission of the communication. As asked by the Committee according to rule 92 of its rules of procedure, the State party accepted not to deport the author while the communication was under consideration.

The author claims to be an evangelist and that as such he was often discriminated against and harassed in Pakistan. His problems however really started in 2003 when a businessman, named A. M., became close to his family and started to threaten the author, accusing him of working “against the Muslims”. As a consequence, the author had to move to Sri Lanka for safety reasons.

While in Sri Lanka, a Mullah launched a Fatwa against the author and filed a First Information Report stating that the author had been engaged in an attack against a Mosque. Such acts are prohibited by the blasphemy law and are considered criminal acts which can lead to the death penalty. The author then decided to leave for Canada where he asked for refugee protection. It was denied on the ground that there were several contradictions in the author’s allegations. During this time, the author’s brother was beaten to death.

The author consequently complained that his deportation to Pakistan would expose him to “almost certain death and a real risk of arbitrary detention, torture and extrajudicial execution”. Furthermore, the author submitted several reports stating that his mental health would be at risk if he returned to Pakistan. Thus it would lead to a breach of article 6 §1, 7 and 9 §1 of the Covenant. Moreover, he contends that Canada breached both article 2, by failing to secure him an effective remedy, and article 14, since the immigration agents lacked competence and impartiality.

Consideration of admissibility

Art. 5 of the Optional Protocol: The Committee ascertained that the same matter was not being examined by any other international investigation as required by article 5 §2(a). In regards to article 5 §2(b), admissibility for exhaustion of domestic remedies, the Committee notes that four years after he filed the H&C application, the author has still not received any news. Furthermore, this pending application does not shield the author from being deported. Consequently, the Committee considered that this application could not be considered as an effective remedy and that the communication is thus admissible.

Inadmissibility for lack of substantiation: The Committee declared article 14 inadmissible for lack of substantiation under article 2 of the Optional Protocol since the author failed to demonstrate that the decision taken in his asylum case did not emanate from competent, independent and impartial tribunals.

Key words

- Right to life
- Torture
- Ill-treatment
- Arbitrary detention

Relevant Provisions

- Art. 6 § 1
- Art. 7
- Art. 9

Violated Provisions

- Art. 6 § 1
- Art. 7
Consideration of merits

**Article 6 §1 & 7:** The Committee recalled its General Comment 31 and the obligation of the States to not deport an individual who faces a real risk of irreparable harm such as violations of Art. 6 & 7. On this point, the Committee finds that the State party did not give enough attention to the author’s allegations. In fact, the State party did not undertake sufficient examination of the proofs presented by the authors. It should have made a more thorough investigation of the Fatwa before declaring it not credible. More thorough investigations should have also take place in the case of the First Information Report since the author could potentially face the death penalty under the blasphemy law. Finally, the State party failed to take into account the medical reports indicating a risk for the author’s mental health. Consequently, the Committee found that the deportation of the author would amount to a breach of article 6 §1 and 7.

**Article 9:** The Committee did not deem it necessary to examine article 9 and refer to its conclusions under article 6 and 7.

Conclusions

The Committee, acting under Art. 5 §4 of the Optional Protocol of the ICCPR, found violations of article 6 §1 and 7. Consequently, in accordance with article 2 of the Covenant, the Committee asked the State party to offer an effective remedy to the author. In this case, it should reconsider the author’s claim regarding the risk of cruel treatment would face should he be returned to Pakistan, contrary to article 6 §1 and 7. Furthermore, the State party was asked to take the necessary steps to prevent such violations in the future. Finally, the Committee wishes to receive news of the implementation of the Committee’s Views within 180 days.

Dissent/Concurrence

The Committee member, Yuval Shany, joined by Committee members, Cornelis Flinterman, Walter Kälin, Sir Nidge Rodley, Anja Seibert-Fohr and Konstantine Vardzelashvili, do not agree with the conclusion of the majority. They recalled that “it is generally for the instances of the States parties to the Covenant to evaluate facts in such cases”. The underlying idea of such approach is that domestic authorities have a comparative advantage in making factual findings due to their direct access to the materials presented in legal proceedings at the national level. “It is also based on the view that the Committee is not a court of fourth instance that should re-evaluate facts and evidence de novo”. As a consequence, in the opinion of those dissenting members, the Committee should have only reviewed the decision of the national authorities when the decision-making procedures entailed serious irregularities or when the decision was manifestly unreasonable or arbitrary. In this case, they consider that the Canadian Immigration Refugee Board and the Pre-Removal Risk Assessment office duly considered the information presented to them. They are consequently not persuaded by the majority view that the Canadian authorities decision was unreasonable, arbitrary or omitted important elements. They share the view that the author failed to substantiate his claim.

The Committee member, Yuji Iwasawa, also disagrees with the majority. While sharing the dissent opinion of Yuval et al., he emphasizes that, in his opinion, the decision made by the national authorities was not unreasonable.