ICCPR Case Digest

CCPR/C/112/D/1970/2010
Communication No. 1970/2010
14 April 2010 (date of communication)
28 October 2014 (date of adoption of decision)

Kožljak v. Bosnia and Herzegovina

Violations as families of disappeared continue to wait for information and effective remedy

Substantive Issues
- Right to life
- Prohibition of torture and other ill-treatment
- Liberty and security of person
- Right to be treated with humanity and dignity
- Recognition of legal personality
- Effective remedy

Relevant Articles
- Art. 2(3)
- Art. 6
- Art. 7
- Art. 9
- Art. 16

Violation

Facts

The authors of the communication are Emina Kožljak and Sinan Kožljak, who submitted the communication on their behalf and on behalf of their disappeared husband and father, Ramiz Kožljak. The authors claim a violation of their rights by Bosnia and Herzegovina under Article 7, read alone and in conjunction with Article 2(3). They further claim on behalf of Ramiz Kožljak, a violation of his rights under articles 6, 7, 9 and 16, read in conjunction with article 2(3).

Ramiz Kožljak disappeared on 4 July 1992 during the armed conflict surrounding the independence of Bosnia Herzegovina, when the Yugoslav National Army (JNA) seized the village of Tihovići and arrested male civilians. Upon hearing of the possible execution of those men, Ramiz Kožljak decided to escape Tihovići with two others, to the nearby village of Vrapče. While approaching Vrapče, Ramiz Kožljak separated from the others. The authors consider it likely that Ramiz Kožljak was captured and arbitrarily executed by the JNA. Upon hearing of his father’s disappearance, Sinan Kožljak notified the Bosnian Army in Breza and at a later date managed to obtain from them a list of names of those allegedly captured and arbitrarily executed in Tihovići on 4 July 1992. Sinan Kožljak also notified the Red Cross and local police. Despite this, the circumstances of Ramiz Kožljak’s disappearance and whereabouts remain unknown. Following the conclusion of the armed conflict attempts have been made to determine the whereabouts of those disappeared during the conflict. The authors allege that in relation to their husband and father these attempts have been unsatisfactory.

The authors submitted that enforced disappearance is a form of torture and consequently the State party has failed in its obligation to provide them with appropriate information regarding the causes and circumstances of the disappearance, to conduct a prompt, impartial and thorough investigation, to prosecute and sanction those responsible, or provide the family with an effective remedy. The authors further claim that national legislation requiring relatives of disappeared persons to obtain a declaration from a local court of their relative’s death in order to obtain a pension, despite having no certainty or official confirmation of death, has caused additional pain and anguish. The author’s have therefore refused to apply for such a declaration. They submit that these failures and procedures represent continuing violations of the Covenant since the entry into force of the Optional Protocol.
Committee’s View

On admissibility the Committee found the allegation under Article 7, read alone and in conjunction with Article 2(3), in relation to the process to declare the victim dead in order to obtain a pension, inadmissible on the basis of insufficient substantiation as a pension had in fact been granted in absence of such a declaration. The Committee considered the remainder of the alleged violations of Articles 6, 7, 9, 16 and 24 read in conjunction with Article 2(3) and Article 7 read alone were sufficiently substantiated for the purposes of admissibility and domestic remedies had been exhausted.

In consideration of the merits the Committee recalled General Comment No. 31 that failure by the State party to investigate allegations of violations or to bring to justice perpetrators of certain violations, including enforced disappearances could in and of itself give rise to a breach of the Covenant. The Committee noted that the obligation to investigate allegations of enforced disappearance is an obligation of means, rather than result, and must be interpreted in a way that does not impose a disproportionate burden on the authorities, particularly where such disappearances are not attributable to the State party (see Bizvanović v. Bosnia Herzegovina, communication no. 1997/2010). In light of this, the Committee nonetheless found that the failure of the State party to provide timely information to the authors or to provide them with an opportunity to assist the investigation, coupled with the anguish and distress caused by the continuing uncertainty as to the whereabouts of their husband and father, reveals a violation of Articles 6, 7 and 9 read in conjunction with Article 2(3) with regard to the victim, and Article 7 read in conjunction with Article 2(3) with regard to the authors. The Committee further noted that obliging the authors to have their husband and father declared dead, in order to obtain a pension while an investigation is ongoing, represented a harmful process amounting to inhuman and degrading treatment in violation of Article 7 read alone and in conjunction with Article 2(3). The Committee did not separately examine the authors’ allegations under Articles 16 read in conjunction with Article 2(3).

Recommendation

The Human Rights Committee therefore decided:

a. That the State party has violated Articles 6, 7 and 9, read in conjunction with Article 2(3) of the Covenant, with regard to Ramiz Kožljak;

b. That the State party has violated Article 7, read alone and in conjunction with Article 2(3), with regard to the authors.

In accordance with Article 2(3) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including:

a. Continuing efforts to establish the fate or whereabouts of Ramiz Kožljak;

b. Continuing effort to bring those responsible for his disappearance to justice;

c. Provide adequate compensation to the authors.

Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: 27/03/2015