Khakdar v. Russian Federation

A potential deportation order of the author to Afghanistan constitutes a violation of art. 7 of the ICCPR

Substantive Issues
- Torture
- Right to protection from unlawful interference with privacy and family

Facts

The author of the communication is an Afghan national and formerly a refugee in the Russian Federation who submits that a forcible return to Afghanistan would constitute a violation of his rights under articles 7 and 17.

From 1981 to 1985, the author served in the pro-Soviet Afghan army fighting the mujahideen and was a member of the then ruling People’s Democratic Party of Afghanistan, which was supported by the Soviet Union. On an unspecified date, he left Afghanistan to start university studies in the Soviet Union. In 1990, he married a Russian national and together they have one daughter who is also a Russian national. After completing his journalism degree in 1997, the author studied a postgraduate degree in international relations until 2002. During that period, he resided in the country on a student visa. In 2003, the Russian court found the author guilty of violating the registration rules for foreigners, sentenced him to a fine and ordered him to leave the country. The author subsequently requested asylum in the Russian Federation, claiming that he would be at risk of persecution owing to his army and political background and citing his established family ties in the country. However, the Supreme Court rejected his request. The author continues to reside with his family in St. Petersburg but he has no valid residence permit and is liable to deportation at any time.

Committee’s View

Centre for Civil and Political Rights • Research by Daniel K. • Khakdar v. Russian Federation
**Consideration of admissibility**
The Committee ascertained as required under article 5(2)(a) of the Optional Protocol that the same matter was not being examined under another procedure of international investigation or settlement.

Concerning the State party’s contention that there was no decision regarding the deportation of the author to Afghanistan and that therefore the communication should be declared inadmissible. This submission raises the issue of whether the author of the communication can be regarded as a “victim” for the purposes of articles 1 and 2 of the Optional Protocol. The Committee notes that on the basis of Russian law, the Migration Services can at any time take a decision to deport the author and there is no procedure for judicial review of such a decision. Moreover, the author has alleged that he would face a real and personal risk of torture if he was deported to Afghanistan, which raises issues under article 7 of the Covenant. As a result, the Committee is not precluded from examining the communication.

Concerning the exhaustion of local remedies, the Committee notes that the author has failed to provide an explanation as to why he did not apply for a residence permit on the ground of being married to a Russian Federation citizen and having a child who is also a Russian Federation citizen. For this reason the author’s claim under article 17 of the convention is inadmissible.

As a result, the Committee considered the Communication admissible solely in relation to article 7 and proceeded to the examination of the merits.

**Consideration of merits**
The Committee considered the author’s submission that he would be at serious risk of a Taliban attack if he was deported to Afghanistan, being a former combatant of the pro-Soviet regime. Moreover, the Committee took into account the fact that the author, having spent 20 years outside the country, had no connections left there and he would be in a situation of total absence of social support.

Recalling its General Comment No 31., in which it refers to the obligation of State Parties not to extradite, deport or remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, the Committee considers that the author’s allegations suggest that he is at real and personal risk of being subjected to treatment contrary to article 7 of the Covenant. In the absence of a submission from the State Party demonstrating that a thorough assessment would be conducted of the author’s claims, the Committee considers that a deportation order issued and enforced against the author would constitute a violation of article 7 of the Covenant.
Recommendation

In accordance with article 2(3)(a) of the Covenant, the State Party is under an obligation to

- provide the author with an effective remedy (including a full reconsideration of his allegations of the risk of torture taking into account the State party’s obligations under the Covenant)
- avoid exposing others to similar risks of a violation

Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: March 17, 2015

Joint dissenting opinion of Committee members Christine Chanet, Yuval Shany and Konstantine Vardzelashvili

The Committee members question the “ripeness” of the communication and believe it should have been declared inadmissible for the following reasons:

- no decision had been taken by the State party to deport the author
- no evidence that the State party has decided to deport the author
- the author is eligible to regularise his legal status in the Russian Federation on account of his family relations by applying for temporary or permanent residence in Russia

Individual dissenting opinion of Committee member Yuji Iwasawa

The Committee member is of the view that in the absence of any deportation order, the author is not a “victim” of a violation of article 7 of the Covenant and the communication should have been found inadmissible. Moreover, the granting of interim measures by the Committee does not turn an inadmissible communication into an admissible one.