Facts

The author of the communication is Ramona Rosa González, an Argentine national. The author submits the communication on her own behalf as well as on behalf of her deceased son, Roberto Castaneda González.

Mr Castaneda was last seen on 10 September 1989 in Mendoza. His personal effects were found in his van along with a charred body on that same day. Forensic tests failed to determine if the body was that of Mr Castaneda but did confirm that death was caused prior to carbonization. Police carried out a preliminary investigation and reported the facts to the Fifth Examining Court of the province of Mendoza. That judicial investigation concluded that the fire was set intentionally.

The author claims that she told the Court that two months prior to her son’s disappearance, a lawyer told her that her son should leave Mendoza as his name was on a list of people which the police were going to cause to disappear. In May 1989, Mr Castaneda was detained for illicit car racing. The author claims that the police told Mr Castaneda, in her presence, that “next time we’ll kill you”. At the judicial investigation, the judge heard testimony from a police officer who claimed that the perpetrators of the offence against Mr Castaneda were three members of a criminal gang. The judge initiated proceedings against those individuals but the case was closed on 5 August 2002 pending apprehension of those responsible and/or the expiration of the statute of limitations for criminal proceedings.

The author claims a number of irregularities occurred during the trial. Alleged irregularities include that the evidence was not protected, the judge decided not to pursue the investigation, opting instead to close the case and await the expiration of the statute of limitations, and the police presented false witnesses.

The author claims she has exhausted all domestic remedies. She claims she had claimed damages in the criminal proceedings and had appealed against the decision to dismiss the case. The appeal was rejected on the basis that she lacked the legal capacity to appeal the criminal aspects of the case. On 14 August 2001, the author also submitted an application for habeas corpus to the Third Examining Court on the grounds of enforced disappearance. That application was rejected on the basis that it did not meet the requirements of the remedy provided for by law.

The author claims that the State has violated articles 2, 3, 6, 7, 9, 9(5), 14(1), and 26 of the Covenant. The author argues that her son’s right to life had been violated and that her right of access to justice has been violated following the judicial proceedings which, after 17 years, have not reached a conclusion.

The State submitted in a note verbale on 5 September 2006 that the author and the State should establish a dialogue to attempt to find a solution.

On 19 September 2007, the author submitted a copy of a memorandum on negotiations for a friendly settlement signed by her legal counsel and the Ministry of the Interior of the province of Mendoza, in which both parties agreed to a procedure to reach an amicable settlement. In the memorandum, the Government of the Province of Mendoza agreed that there was sufficient evidence to engage the
objective responsibility of the Province and accordingly accepted responsibility for the acts. The Government of Mendoza further agreed to compensate the author and her family.

On 30 December 2008, the author informed the Committee that the Government of Mendoza had taken no active steps to bring the amicable procedure to conclusion since its commencement on 28 August 2006. The author had therefore decided to withdraw from the procedure.

On 6 March 2009, the State informed the Committee that discussions had resumed with the author to reach a friendly settlement.

On 24 June 2009, the author requested the Committee to proceed to a decision on the admissibility and merits of the communication. The author advised that during her discussions with the State she did not suggest she would suspend or abandon the case before the Committee. The author reiterated her request to the Committee on 27 October 2010. She also claimed that the judicial investigations had halted.

Consideration of admissibility

Art 6 §1: The Committee concluded that the author’s claim that her son’s right to life had been sufficiently substantiated for the purposes of admissibility and that domestic remedies had been exhausted.

Art 2 §3: The Committee concluded that the author’s claim that her right of access to justice had been sufficiently substantiated for the purposes of admissibility and that domestic remedies had been exhausted.

Art 3: The Committee concluded that the author had not sufficiently substantiated her claim as to a violation of Art 3 and hence it was deemed inadmissible.

Art 7: The Committee concluded that the author had not sufficiently substantiated her claim as to a violation of Art 7 and hence it was deemed inadmissible.

Art 9: The Committee concluded that the author had not sufficiently substantiated her claim as to a violation of Art 9 and hence it was deemed inadmissible.

Art 14 §1: The Committee concluded that the author had not sufficiently substantiated her claim as to a violation of Art 14 §1 and hence it was deemed inadmissible.

Art 26: The Committee concluded that the author had not sufficiently substantiated her claim as to a violation of Art 14 §1 and hence it was deemed inadmissible.

Consideration of merits

The Committee noted that the State party did not address any of the author’s allegations but simply informed the Committee of the negotiations with the author for an amicable solution, which in any event were never concluded. Accordingly, the Committee considered that due weight must be given to the author’s claims to the extent that they have been properly substantiated.

The Committee noted that the information confirmed the existence of a corpse of someone who had died a violent death, with evidence to suggest it may be Mr
It further noted that the State had not refuted the author’s version of facts.

The Committee recalled its General Comment No. 31 which provides that States must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations. Further, a failure by a State to investigate alleged violations may give rise to a separate violation of the Covenant (No 1295/2004 El Awani v. Libyan Arab Jamahiriya 2007). The Committee concluded that the information before it did not suggest the author nor her son had access to such remedies. Further, the friendly settlement procedure was not concluded. Accordingly, the Committee concluded that there had been a violation of the right under Art 2 §3 read in conjunction with Art 6 §1 with respect to the author and her son and a violation of Art 6 §1 with respect to the author’s son.

Conclusions

The Committee concludes that the State has violated the author and her son’s rights under Art 2 §3 read in conjunction with Art 6 §1, and the author’s son’s right under Art 6 §1. The Committee further concluded that the State is under an obligation to provide the author with an effective remedy, including a thorough investigation of the facts and the prosecution of the offenders. Further, the State had 180 days to provide information to the Committee regarding the measures taken to give effect to the Committee’s views. The State party was also requested to publish the Committee’s views.

Dissent/Concurrence

N/A