

ICCPR Case Digest

CCPR/C/113/D/2087/2011

Communication
No. 2087/2011

Submission: 20.07.11
Adoption: 30.03.15

Guneththige V Sri Lanka

Assault by government authorities and illegal and unlawful detention

Substantive Issues

- Arbitrary detention
- Torture and ill-treatment
- Lack of proper investigation
- Right to remedy
- Right to liberty and security
- Respect for the inherent dignity of the human person

Relevant Articles

- Art. 2
- Art. 6
- art. 7
- Art. 9
- Art. 10

Violations

- Art. 2
- Art. 6
- Art. 7
- Art. 9

Facts

The authors are Sri lankan nationals - two sisters - Misilin Nona Guneththige and Piyawathie Guneththige. They stand before the Committee on behalf of the victim, Sunil Hemachandra (here after: Sunil), their son and nephew, respectively.

On 29 June 2003, Sunil earned more than three million rupees (USD25,000) by winning the lottery. Since he has no national identity card, he used the name of his aunt to claim the money against the winning ticket.

On 22 July 2003, police officers from Moragahahena Police Station came to Sunil house, beat him (on his head and abdomen) and arrested him and Chanaka (his driver). On the morning, Sunil was in a severe pain (bleeding and vomiting). Chanaka and his aunt tried to alert the police officer about the critical health condition of Sunil. He was finally taken to Horana Base Hospital at 10 a.m. On 24 July 2003, the authors learned that Sunil had been transferred to the national hospital in Colombo, where he was being treated in intensive care. On 26 July 2003, Sunil passed away. The report of the post-mortem examination concluded that "it was 'possible' that the cause of the death was a fall following alcohol withdrawal".

With the support of a human rights NGO, the authors lodged a complain to the Human Rights Commission of Sri Lanka and a fundamental rights petition before the Supreme Court on 8 September 2003. The Human Rights Commission suspended the procedure as the same matter was pending before the Supreme Court. On 6 August 2010, the Supreme Court dismissed the application, endorsing the conclusion of the forensic report, and discarded the possibility of assault, for lack of conclusive evidence. This was a final decision.

The authors claim that the Sri Lanka has failed to carry out a proper investigation into the unlawful and arbitrary arrest and detention, torture and cruel, inhuman and degrading

treatment of Sunil, in violation of articles 6 §1, 7, 9 §1 §2 §4 and 10, read alone and in conjunction of article 2§ 3 of the ICCPR.

Committee's View

Consideration of admissibility

The Committee notes that the State party failed to provide information to the Committee on the admissibility and merits of the communication despite several requests.

The Committee declares the communication admissible, in as far as it appears to raise issues under articles 6 §1, 7, 9 §1 §2 §4 and 10, read alone and in conjunction of article 2§ 3 of the ICCPR.

Consideration of merits

Regarding the authors' claim under article 6 in relation to the arbitrary deprivation of Sunil's life, the Committee recalls its jurisprudence (*Zhumbaeva v. Kyrgyzstan*). According to this case, the State party is responsible for the life of any person that has been arrested or detained, and a death in custody should be regarded prima facie as a summary or arbitrary execution. The Committee also recalls its jurisprudence (*Pestano v. Philippines*), according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant. In this case, the Committee concludes that the State did not take adequate measures to properly investigate Sunil's death and take appropriate action against those found responsible, in breach of article 6 § 1, read alone and in conjunction of article 2 § 3 of the Covenant.

Regarding the allegations under article 7 with respect to Sunil, namely that he was severely beaten during his arrest and transfer to the Police Station and taking into account the failure of seeking medical assistance during several hours, the Committee finds a violation of article 7 of the Covenant with respect to Sunil.

With regards to the alleged violation of article 10, the Committee decides not to examine the claim under article 10 separately since it already stated a violation of articles 6 and 7 of the Covenant.

The Committee concludes a violation of article 2 § 3, read in conjunction with article 7, with respect to the authors due to the State's failure of launching appropriate investigations into Sunil's death, which has left them in continuous mental suffering. Indeed, 12 years since the death of Sunil, his mother and his aunt still do not know the exact circumstances of his death and the perpetrators have not been brought into justice.

At last, the Committee took note of the author's claim - under article 9 - that the victim was arrested without any information on the reasons for his arrest, and he was then arbitrarily detained without any possibility of challenging his detention and without legal representation. The Committee concludes that the rights of Sunil under article 9 were violated.

Recommendations

The Human Rights Committee therefore decided:

- a. In accordance with article 2 § 3 (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which includes a prompt, thorough and independent investigation into the facts; ensuring that the perpetrators are brought to justice; and ensuring reparation, including the payment of adequate compensation and a public apology to the family.

- b. The State party should also take measures to ensure that such violations do not recur in the future.

Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: 30 September 2015.