Peiris vs. Sri Lanka

Facts

The author submitted this claim on behalf of his deceased husband, on her own and her two minor children as well.

On 24 May 2003 the author and her husband purchased a lorry from a police officer. Later, they found out that the lorry was a stolen vehicle and filed a complaint against the officer. Later in the same year, when the author went to the police station to register a complaint against three local assailants, the officer in charge, M.D, did not register it but instead allegedly accused him for reporting a false crime. The author reported this fact to the national Human Rights Commission, but no action followed. The police officer then reportedly demanded a bribe, but the author refused to pay and reported the case to the National Police Commission, which did not take any action, and the Bribery Commission, which only initiated proceedings against MD two years later. This incident allegedly rallied several police officers close to M.D. against the author.

From the filing of the complaint against M.D. to September 2008, the family reportedly continued suffering insults from numerous police officers, and received several life threats to withdraw their complaint, including by high-ranking police officials. The family was also allegedly arrested on false grounds and released on bail. Although the family reported all these incidents and requested protection, no action was taken. The couple's lawyer and the local NGO assisting them with the complaints were also allegedly threatened. The family started living in hiding.

On 12 November 2007 police officers broke into their residence, beat the author's husband until he fell to the ground and lost consciousness, hit the author with a pistol, punched her 10-year-old son against the wall, hit her daughter with a motorcycle, knocking her to the ground, and later sought to undress her. The family filed a complaint for torture before the Supreme Court of Sri Lanka, but the case is still pending. The author and her daughter were hospitalized. The police charged the entire family with obstruction to police duties.

On 20 September 2008, three months after two individuals had threatened the family on the grounds that they had been instructed by the Negombo police to kill them, two masked men shot dead the author's husband while he and their son were inside their lorry. After this event, the author filed two complaints before one regional court and one police station, but no action was taken. The lawyer and the local NGO assisting the family also filed complaints respectively for having been threatened, but no proper investigation was carried out regarding these incidents. The office and the house of the two lawyers helping the family were set on fire.

The author claims that the lack of affirmative action by the State party to safeguard her life and that of her family, in particular her husband's, violates their rights under Art. 6, read in conjunction with Art. 2 §3. In addition, the lack of redress for acts of
torture suffered, despite having reported the ill-treatment and threats they suffered, amounts to a violation of Art. 7, read in conjunction with Art. 2 §3. In addition, for failing to protect the security of her family the state violated Art. 9 §1 in conjunction with Art. 2 §3; Also the State violated Art. 17 and Art. 23 §1, because the family were forced to live a hidden life while suffering emotional and financial uncertainty. The author alleged that she has filed numerous complaints before various national authorities, but no investigation was carried out. The complainant argued that it is highly unlikely that any credible proceedings will be initiated, in light of the lack of effectiveness and delays in the proceedings, and the fact that the alleged perpetrators have pursued their functions as police officers. Therefore, domestic remedies have been demonstrated to be ineffective.

No response or comment was received from the State party.

Consideration of admissibility

In the absence of any submission by the State party on the admissibility and bearing the contention that domestic remedies have proven to be ineffective, the Committee declared the communication admissible.

Consideration of merits

Article 6: The Committee recalls that the right to life is the supreme right; no derogation is permitted (General Comment No.6 §1). In addition, State parties have a positive obligation to ensure the protection of individuals not only from violation committed by its agents, but also that committed by private actors (General Comment No.31). In light of the uncontested material, the Committee concluded that the author’s family received numerous threats from the State’s police, seeking to unlawfully coerce them into withdrawing complaints filed by them against police officers. The husband was subsequently shot dead by two masked men, three months after two individuals had told the family that they had been instructed by the Negombo police to kill them. No action was undertaken to protect the family after this threat, despite numerous complaints. Taking into account also the State’s lack of cooperation, the Committee concluded that the State was in violation of Art. 6 of the Covenant for being responsible for the arbitrary deprivation of the husband’s life.

Article 7: The Committee recalls that the State party has not challenged the evidence submitted regarding the violent attacks conducted by police on 12 November 2007 against the family. The Committee therefore concluded that those facts disclosed a violation of Art. 7 of the Covenant.

Article 2 §3. Besides, the Committee emphasized again that criminal investigation and consequential prosecution are necessary remedies for violations under Art. 6 and Art. 7 (General Comment No.31). In this respect, the State was also in a violation of Art. 2 §3 in conjunction with Art. 6 and Art. 7. For failing to properly investigate and take appropriate remedial action regarding the death of the author’s husband, and the ill-treatment suffered by the author and her family.

Article 9 §1: The Committee recalls its jurisprudence that the Covenant also protects
the right to security of persons beyond the context of formal detention (No.195/1985 Delgado Paez v. Colombia §5.5; No.711/1996 Dias v. Angola §8.3; No.821/1998 Chongwe v. Zambia §5.3). In the present case, persons acting in an official capacity threatened on several occasions the author and her family with death. In the absence of any action from the State party to take reasonable and appropriate measures to protect them, the Committee found a violation of this art.

**Article 17:** The Committee took note of the author’s claims that police officers harassed her family either by phone or forced visits. These made the author’s family unable to live a normal life and forced to hide themselves. The Committee also noted the continuing harm resulting from the State party’s failure to take any action in response to the Committee’s request to adopt interim measures to protect the author and her family. In the absence of any rebuttal by the State, the Committee concluded that the State party’s interference with the privacy of the family home of the author was arbitrary, contrary to Art.17 of the Covenant.

**Article 23 §1:** The Committee found that the facts, which constituted a violation of Art.6, Art.7 and Art.17, also constitute a violation of those articles reading in conjunction of Art.23 §1.

**Conclusions**

The Committee found that the State party is in violation of Art.6 read alone and in conjunction of Art.23 §1; Art.2 §3 read in conjunction with Art.6 and Art.7; Art.7 read alone and in conjunction with Art.23 §1; Art.9 §1 and Art.17 read alone and in conjunction with Art.23 §1. The State party is in an obligation to provide the author with an effective remedy, including ensuring the perpetrators are brought to justice, ensuring the safety of the author’s family when they return back to their domicile; providing both apology and adequate compensation to the family. The State party should also take measures to prevent such violation from happening in the future. The Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is requested to translate and publish the Views as well.

**Dissent/Concurrence**

N/A