

[Kazakhstan required to investigate torture of accused](#)

24.02.2014

The Committee Against Torture was asked to consider whether Kazakhstan had violated its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with respect to the alleged torture of an individual accused of murder.



Evloev v. Kazhakstan (441/2010)

Summary

In November 2013, the Committee Against Torture was asked to consider whether Kazakhstan had violated its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with respect to the alleged torture of an individual accused of murder.

The communication was submitted by a Kazakh national under article 22 of the Convention.

Background

In October 2008, a mother and her three children were murdered in their home in Astana. The next day, a witness, D.T., was questioned by the Internal Affairs Department of Astana. After being arrested as a suspect on 24 October 2008, D.T. confessed to having committed the murders together with the author of the communication, Oleg Evloev. D.T. subsequently claimed that he gave these statements due to torture and psychological pressure inflicted by police officers. On 2 November 2008, D.T. retracted his confession.

On 29 October 2008, the author was arrested in the Chechen Republic after an international arrest warrant had been issued against him on the basis of D.T.'s confession. Both during his extradition and upon arrival in Kazakhstan, the author alleges that he was subjected to various forms of physical violence as well as threats of sexual violence. On 9 December 2008, a forensic medical expert examined the author and confirmed the existence of several injuries that were consistent with his allegations of ill-treatment. On 10 December 2009, the author gave two written confessions.

Despite having been shown the injuries on the author's body, the prosecutor supervising the criminal case did not take any measures to investigate the author's allegations of torture. Following the prosecutor's inspection of the author's injuries, the police officers detaining the author allegedly altered their methods of torture to reduce the appearance of physical injury. The author alleges that his ill-treatment by these police officers lasted until 17 February 2009, when he was transferred to another detention facility.

The author's ill-treatment was brought to the attention of the Prosecutor's Office and the courts on numerous occasions by the author, his parents and his lawyer. These complaints were, however, never examined on their merits during his trial and appeal proceedings, and were never investigated by the relevant authorities.

In June 2009, the author was declared guilty of the four murders and sentenced to life imprisonment. In the course of his trial, the author was also only allowed restricted access to his defence lawyer and his family. In November 2009, the author lost his appeal to the Supreme Court.

On 20 December 2010, the author submitted this communication to the Committee claiming that Kazakhstan had failed to meet its obligations under the Convention to: (i) take effective measures to prevent acts of torture; (ii) investigate allegations promptly and impartially; (iii) provide victims of torture with adequate redress; and (iv) prohibit the use of evidence obtained through torture (under articles 2, 12, 13, 14 and 15 of the Convention respectively).

The Committee's decision

In considering the complaint's admissibility, the Committee rejected Kazakhstan's argument that the author had failed to exhaust available domestic remedies, noting that this rule did not apply if the application of domestic remedies had been, or would have been, unreasonably prolonged, or would have been unlikely to provide the author with effective relief. The Committee found that the author had made reasonable, albeit unsuccessful, efforts to exhaust the available domestic remedies and therefore declared the complaint to be admissible.

On the merits, the Committee observed that the treatment alleged by the author constituted torture within the meaning of article 1 of the Convention. Given that the author was under investigation at the premises of the Ministry of Internal Affairs in Astana, the Committee considered that Kazakhstan should be presumed liable for any harm caused to the author. In the absence of any credible evidence to the contrary, the Committee therefore found that the investigating officers were responsible for the ill-treatment and injuries sustained by the author. On this basis, the Committee found Kazakhstan to be in breach of its obligation to take effective measures to prevent acts of torture under article 2 of the Convention.

The Committee reiterated that, under article 12 of the Convention, the conduct of an investigation is not in itself sufficient to satisfy a State party's obligations unless such investigation is carried out promptly and impartially. The Committee considered that the preliminary investigation, commenced only six months after the reported acts of torture, neglected to address the author's allegations and the uncontested medical evidence adequately. In addition, the Committee observed that the author had not been informed promptly of the existence of the investigation or of its status. Accordingly, the Committee found Kazakhstan to be in breach of its obligation to investigate allegations promptly and impartially under articles 12 and 13 of the Convention.

The Committee observed that article 14 of the Convention recognised the right to fair and adequate compensation, and that a victim of torture should be provided with redress with respect to all of the harm suffered. The author had not been given the opportunity to file a civil suit for compensation because the right to compensation would only arise under Kazakh domestic law after the perpetrator's conviction by a criminal court. The Committee concluded that a victim's compensation claim should not depend on the conclusion of a criminal proceeding and that Kazakhstan was therefore also in breach of the author's right to adequate redress under article 14.

The Committee further observed that Kazakhstan was in breach of article 15 as it had failed to ascertain whether statements admitted as evidence in the court had been obtained through torture.

In the light of the above, the Committee concluded that Kazakhstan was under an obligation to conduct a proper, impartial and independent investigation with the aim of identifying those responsible for the author's torture, and to provide the author with adequate redress, including compensation and full rehabilitation. Kazakhstan was also under an obligation to prevent similar violations in the future.

Kazakhstan must now submit its written response within three months of the Committee's decision, including information on the action taken in light of the Committee's recommendations.

Maria Fanou is an international lawyer, based in Paris.