



RIGHTS watch



YOUR Advocate



LAW week



Turkish officials convicted over activist's death

Amnesty International has welcomed the conviction of 19 Turkish officials found guilty of causing the death of a human rights activist in a landmark torture case.

The 19 officials, including police officers and prison guards, were sentenced on Tuesday, June 1, 2010 for their part in the torture that led to the death of Engin Çeber in October 2008.

Engin Çeber, who was arrested after taking part in a protest against a police shooting of another activist, died after being beaten in police custody and in prison.

The verdict is the first time in Turkish legal history that state officials have been jailed for life for causing death through torture.

"This is an important step in the struggle against impunity in Turkey," said Halya Gowan, director of the Europe and Central Asia Programme at Amnesty International.

"However, it must be the rule, not the exception that state officials are brought to justice for torture and other ill-treatment."

The officials, who also included prison managers and a doctor, were convicted of offences ranging from causing death through torture to dereliction of duty. Three prison guards and a prison manager were sentenced to life imprisonment.

Engin Çeber's father, Ali Tekin, told Amnesty International: "Although we are not completely satisfied with the judgment and nothing can bring Engin back, this is a first in Turkey. Maybe it will be important for the future. Let there be no more deaths like Engin's, let there be no more torture."

The prosecution was conducted quickly by Turkish legal standards, where cases of this kind have been known to take over 10 years to conclude. However, it is expected that the judgment will be appealed, leading to further delay before the sentences are confirmed.

Amnesty International issued an urgent appeal for action on the day of Engin Çeber's death and has been campaigning ever since for those responsible to be brought to justice.

He was arrested along with three others, Özgür Karakaya, Cihan Gün and Aysu Baykal, on 28 September 2008 in the Saryyer area of Istanbul. They had assembled with others to call for police officers to be brought to justice for the 2007 shooting of Ferhat Gerçek, of the Rights and Freedoms Association, a group of which they were also members.

The court heard that Engin Çeber had trouble speaking as a result of the beatings he had suffered in police custody in Ystinye police station. A lawyer who was present at the police station also testified to seeing Aysu Baykal lying unconscious on the floor after being beaten by police officers.

The court also heard evidence that Engin Çeber, Özgür Karakaya and Cihan Gün were beaten with a metal pitcher, wooden truncheon, iron bar and a chair in addition to being doused with cold water while in Metris Prison in Istanbul.

On 7 October 2008, Engin Çeber was transferred to Bayrampaşa State Hospital and then to 101 Etilal Hospital in Istanbul, where he was pronounced dead three days later.

The autopsy report concluded that Engin Çeber's death was due to cerebral bleeding as a result of blunt trauma injuries consistent with being caused by blows to the head.

Ill-treatment by state officials continues to be reported across Turkey. In many cases, effective investigations are not conducted and criminal cases are not opened. Even when prosecutions are brought, state officials are rarely convicted.

Source: Amnesty International.

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Reader's query

I would like to know about the newly formed institution of tax ombudsman in Bangladesh and how does he/his office work. How may a citizen of this country benefit from this institution or apply to him/his office? I mean, under what conditions can a person seek remedy from it? Does the ombudsman provide any remedy? I shall be looking forward to your response.

Tutum, Banani

Response

Thank you very much for inviting me to write on the Tax Ombudsman issue. I truly believe that your query will benefit a lot of people.

'Ombudsman' is a Scandinavian concept by origin. Scandinavia is reportedly the least corrupted region in the world and hence many of their governance models have been adopted in many parts of the Globe. Ombudsman is one of such widely adopted concepts.

Ombudsman serves as an alternative to the adversarial system for resolving dispute between citizen and government. Tax Ombudsman deals with the dispute arising between the citizen or taxpayers and the tax authority. In Bangladesh, it was established on 12th July, 2005 under the Tax Ombudsman Act, 2005. The reason behind establishing the office of the Tax Ombudsman is to ensure transparency and accountability in the Tax Administration. It provides redress to the taxpayers from harassment from maladministration, abuse of power, negligence, and corruption of the Tax Officials. Tax Ombudsman only deals with those disputes, which are connected with the Tax Authority, National Board of Revenue and not related to any other Governmental authority. It is expected that in due course Ombudsman for other governmental areas will be established.

The Tax Ombudsman is appointed by the President of Bangladesh. His office is in Dhaka. But, any branch can be established in any other place, if the Ombudsman thinks it necessary. Mr. Md. Khairuzzaman Chowdhury is the first Tax Ombudsman of Bangladesh and is still holding the post. Tax Ombudsman enjoys full freedom in performing his duties.

The procedure of filing complaint is not at all complicated. Any aggrieved person can easily lodge a complaint with the Tax Ombudsman without any fee against the maladministration done by the functionaries of the National Board of Revenue administering tax laws. Examples of maladministration include dishonesty, autocracy, biasness, discrimination, recklessness, incompetency, intentional error etc. Complaint has to be lodged in writing and submitted to the office of Ombudsman. The person making the complaint shall have an access to check the progress of his complaint. There is also a facility for the citizen to get the complaint form through the official website of the Tax Ombudsman. The complainant can keep him updated on the actions being taken with regard to the complaint by tracking through the website. But, the Ombudsman will not accept any such complaint which is made by using false name or reaches the Ombudsman from an anonymous (benami) person. The aggrieved person must file the complaint within 6 months from the date of the occurrence of the maladministration by the Tax Authority. Any complaint made after 6 months from the date of the occurrence will not be accepted by the Tax Ombudsman, unless the person can convince the Tax Ombudsman that there were reasonable grounds for such delay.

After receiving the complaint the Ombudsman may initiate to investigate the complaint by serving a notice to the person against whom complaint is submitted and order the person and authority to submit a statement. If after receiving the notice the person or authority does not submit the statement within 30 days then the Ombudsman will have the authority to start investiga-



tion immediately. But if the person or authority fails to submit the statement because of any valid ground then the Ombudsman may allow more 30 days for submitting the statement.

The investigations will be made secretly. The Ombudsman has the power to call any person by giving notice for the purpose of investigation and can also compel the person to attend. But, after the investigation, the Ombudsman will not take any decision or provide any direct remedy to the aggrieved person; rather it will provide advice to the National Board of Revenue. The appropriate decision will be taken by the National Board of Revenue. In case an action is taken by the NBR against the Ombudsman's finding of maladministration, the Ombudsman may refer the matter to the Finance Minister and he may then direct the NBR to take necessary action.

The Ombudsman will inform the aggrieved person if it decides not to go for further investigation. He will also inform the reasons behind such decision to the aggrieved person. If it is proved that any citizen or tax payer suffers any losses or damages due to maladministration by the Tax Authority or officer then the Tax Ombudsman may ask the official to give compensation. But if it proves that the complaint was made just to harass the officer then Tax Ombudsman will order the complainant to pay the compensation to the officer. If the dispute can be solved through any method of alternative dispute resolution then the Tax Ombudsman will try to solve the matter through the alternative way.

If any person is aggrieved with the opinion given by the Tax Ombudsman then he can apply against it to the Finance Minister within 60 days from the date of submission of the opinion to the National Board of Revenue by the Ombudsman.

By filing a valid complaint the citizen can help the Government and Tax Ombudsman with the purpose behind establishing the Tax Ombudsman and Bangladesh. It will also help to stop the maladministration and harassment done by the administrator towards the tax payers and the other citizens. In the year of 2009, 355 complaints were submitted to the Tax Ombudsman. 10 complaints were submitted in the year of 2007 and 241 complaints were submitted in the year of 2008. It shows that the people are gradually becoming aware about Tax Ombudsman.

For detailed query contact omar@legalcounselbd.com.

LAW event

Addressing Rohingya crisis

SAMAH M KARIM WITH JULHAS ALAM

FOOD and Disaster Management Minister Abdul Razzaque has said the government will take the Rohingya issue to international forum if the crisis is not resolved through bilateral negotiation with Myanmar.

"We are trying to resolve the issue bilaterally, but we won't hesitate to move to international bodies for a solution," Razzaque told a discussion at National Press Club recently.

"We have done a lot for the Rohingya people over the years despite being a poor country, but we cannot afford it for an unlimited period," he said.

The discussion on "Rohingya Crisis: Way Out for Bangladesh" was organised by the Centre for Education, Research and Advocacy (CERA), a Dhaka-based research and advocacy group, to highlight various aspects of decades-old crisis.

The academic nature of the discussion was focused on the origin of the crisis, its legal and humanitarian aspects, the possible role of local and international NGOs and the United Nations, options for diplomatic efforts in dealing with the crisis.

Less than 28,000 Rohingya Muslims live in two official camps run by the Food Ministry and UNHCR at Teknaf and Ukhiya in Cox's Bazar, but there are 200, 000 others, some even say not less than 400,000, who are not recognised by Bangladesh as refugee. Some term them "economic migrants", as they argue that many of the Rohingyas cross the border for better economic opportunities here in Bangladesh.

The documented Rohingya people in the camps get housing, food and healthcare in the official camps but the undocumented ones do not.

who are not recognised as citizen by Myanmar, are causing many social obstacles in the coastal region.

On the other hand, human rights activists and international campaign groups demand the Bangladesh create bigger scopes for these persecuted people.

Referring to this complex context, the Food Minister said the government has no problem to document the rest, but it fears further influx from across the border where they allegedly face persecution by Myanmar's military junta.

The Food Minister also warned international NGOs for negative campaign against Bangladesh that they should be careful in the future

before making any false and fabricated reports on so-called maltreatment of Rohingya people in Bangladesh.

Razzaque made the observation in the backdrop of recent campaigns by some groups that Bangladesh is cracking down on the Rohingya refugees.

"We want their support, but not any move that maligns our image abroad for something not actually happening here," he said.

The minister argued that Bangladesh has done a lot since the 1970s when Rohingyas started coming here to flee the wraths of the Myanmar's government.

Muhammad Zamir, former

Ambassador and Chief Information Commissioner, came down hard on the UNHCR for not making enough effort inside Myanmar to prevent Rohingya from crossing over to Bangladesh.

As a solution to the Rohingya setback he strongly insisted on a more proactive approach to be applied by the UNHCR and international organizations in supporting and rehabilitating Rohingyas.

Zamir said camps for Rohingyas could be set up by the UNHCR inside Myanmar territory and not in Bangladesh. He said the UNHCR should take the issue to the UNGA since Myanmar is a member state of the United Nations while there are scopes to raise the issue before ASEAN and OIC too since Myanmar is a member of ASEAN and Rohingyas are Muslims.

The former ambassador also said Bangladesh should put stricter measures in place along its border with Myanmar to prevent any further influx of Rohingyas, while repatriation could be one of the major areas to deal with seriously.

"A more effective and meaningful border control mechanism should be enforced so that Rohingyas are stopped to cross over. Although it is a question of human rights, many countries have enforced a limit to the entrance of refugees," Zamir said.

He said a proper registration system which would provide their identity with pictures and encrypted bar code could be introduced so that a more accurate number of the Rohingyas dispersed all over Bangladesh could be depicted.

Abu Murshed Chowdhury, a human rights activist from Cox's Bazar, said a huge presence of Rohingya people in Cox's Bazar and other parts of the Chittagong Hill Tract are putting extreme pressure on

the resources.

"Local people are suffering a lot for their presence in huge number in the region," he said. "They are causing deterioration of law and order in the region."

Abu Naser Khan, Chairman of Paribesh Bachao Andolon, said Rohingyas are destroying hills and forests in Cox's Bazar and other nearby areas. "We need to deal with this very seriously to protect the special character of the region," he said.

Dr Abu Jafar Shafiqul Alam Bhuiyan of Mass Communication and Journalism at Dhaka University said the UN should work more vigorously for democratisation of Myanmar, otherwise, the situation may not remain under control regarding Rohingya crisis in Bangladesh.

He said the UN should take a proactive role shunning its current laid-back approach to resolve the issue.

CPB's Ruhin Hossain Prince said the government should look seriously into the allegations that a certain corner is using the Rohingyas for their political benefit.

He said extreme political elements are allegedly being injected to the Rohingyas taking the chance of frustration and desperation among them.

The participants suggested that a political resolution is also required and UN, International Organizations and NGOs vested in this issue should all unite to resolve this crisis upholding Bangladesh's security and sovereignty.

Representatives from some international agencies like Muslim Aid, UNHCR, IOM and the US Embassy also attended the occasion.

Julhas Alam is Correspondent of Associated Press and Samaha M Karim works with Law Desk.

HC records fatwa victim's statement

A 17-year-old girl stated before the High Court that she was tortured physically during a village arbitration in Brahmanbaria for having an affair. The girl's mother also backed her statement at the court. However, they both denied any instance of a fatwa (religious edict) against the girl. She was reportedly given 101 lashes as a punishment for having an affair.

The HC bench of justices Syed Mahmud Hossain and Gobinda Chandra Tagore recorded their statements separately in a chamber attached to the courtroom. - *The Daily Star*, June 3, 2010.

Tough law on cards to punish offenders

The government has moved to make a law styled as Road Transport & Traffic Act ensuring provision for stringent punishment to those responsible for a road accident, Communications Minister Syed Abul Hossain told the House. He said the Motor Vehicle Ordinance 1983 and the penal codes do not award major punishment to the people behind fatal road accidents. "Therefore, the government has taken measures to make a new law by updating the motor vehicle ordinance," the minister added while replying to lawmakers' queries. He said the government has reconstituted the 32-member national road safety council and taken various initiatives to reduce road crashes. Short films would be shown on different television channels to create awareness on road safety and traffic rules. - *The Daily Star*, June 3, 2010.

No tolerance for custodial death

The High Court directed the government to put a stop to custodial deaths, saying the court will not tolerate such incidents. An HC bench of Justice AHM Shamsuddin Chowdhury Manik, and Justice Md Delwar Hossain sounded the warning during a public interest litigation hearing in connection with the May 11 death of Md Manik Mia in custody of Chittagong police. Manik was a security guard of Anjuman Market at Reazuddin Bazar in Chittagong; he was also an accused in a theft case. - *The Daily Star*, June 2, 2010.

Shah Alam denied bail

The High Court (HC) rejected seven petitions filed by Bashundhara Group chairman Ahmed Akbar Sobhan alias Shah Alam seeking anticipatory bail in seven criminal cases against him. And it ordered Shah Alam to surrender before a trial court within eight weeks in connection with the cases. The HC also ordered the law enforcement agencies not to harass or arrest him during this period in these cases. An HC bench comprised of Justice Shamsul Huda and Justice Abu Bakar Siddiquee passed the orders after hearing the bail petitions. - *The Daily Star*, June 2, 2010.

HC asks for all records

The High Court asked for all records related to the alleged sexual harassment of a Dhaka University female student by a psychology department teacher. The court also stayed operations of a new enquiry committee formed by the DU authorities for three weeks. The committee was looking into sexual harassment allegations against Md Kamaluddin, an associate professor of the university. He allegedly harassed the student of the same department at his office room on March 3, 2003. On April 7 this year, the DU authorities formed the new enquiry committee headed by Prof Harunur Rashid, pro-vice-chancellor of DU, dissolving the first enquiry committee, which was headed by then vice chancellor Prof AFM Yusuf Haider. - *The Daily Star*, June 1, 2010.

Govt waits for content removal

The government submitted an appeal to the Facebook authority using its automatic 'abuse reporting' tool to remove the offensive contents from its site. After a discussion with 26 information technology (IT) experts, BTRC officials signed in the social networking site for a while and submitted the appeal. If any user submits a request using the option in the Facebook tool bar, it gives reply within 24 hours from submitting the appeal. Facebook users use 'abuse reporting' option massively when they found anything offensive in the social network site. All reports on abuse in the site are considered confidential. - *The Daily Star*, June 1, 2010.

Tac clemency under scanner

The Anti-corruption Commission, in a rather controversial move, has decided to reopen proceedings against 297 graft suspects, the majority of whom were pardoned by the now defunct Truth and Accountability Commission (Tac) in exchange for voluntary disclosure and surrender of ill-gotten wealth. ACC made the decision last week, after the High Court in November 2008 had declared that the Voluntary Disclosure of Information Ordinance 2008 is illegal and unconstitutional. The immediate past caretaker government promulgated the ordinance and formed Tac under it, to ease the state's including the judiciary's burden of dealing with graft cases that were piling up fast. - *The Daily Star*, May 31, 2010.

Bepza case against Hasina quashed

The High Court quashed all the proceedings of a graft case filed against Prime Minister Sheikh Hasina during BNP-Jamaat government for appointment of lobbyists for Bangladesh Export Processing Zones Authority (Bepza). An HC bench of Justice Md Shamsul Huda and Justice Abu Bakar Siddiquee passed the verdict following a petition filed by Hasina for quashing the proceedings against her. With this HC verdict, Sheikh Hasina has been cleared of 13 cases out of 15 filed against her. - *The Daily Star*, May 31, 2010.

Law minister ignores JS body prescription

Law Minister Shafique Ahmed has not yet met President Zillur Rahman to resolve the swearing-in crisis of two High Court judges ignoring a proposition of a parliamentary body. At a meeting on May 24, the parliamentary standing committee on Ministry of Law, Justice and Parliamentary Affairs asked the law minister to meet the president within three days to resolve the matter. Shafique Ahmed, however, left for Kampala -- capital of Uganda -- for a week to join a seminar. The crisis over swearing-in of Ruhul Quddus Babu and M Khasruzzaman has not been resolved in 48 days since their appointment as High Court judges on April 11 by the president. - *The Daily Star*, May 30, 2010.

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