



Supreme Court misses opportunity to bring Canadian law in line with international obligations to victims of torture

9 October 2014 - In a disappointing decision released this morning, the Supreme Court of Canada has barred civil claims for torture committed by a foreign state, even where the victim is a Canadian citizen.

In July 2003, Zahra Kazemi, a Canadian citizen and journalist, died in Iran. She had been arrested for taking photographs of protestors in front of Evin prison in Tehran and, while in detention, was beaten, raped and tortured by Iranian government officials. She died as a result of injuries sustained.

In 2006, Ms. Kazemi's son, Stephan Hashemi, instituted proceedings in Canada against the Islamic Republic of Iran; the Ayatollah Ali Khamenei, Supreme Leader of Iran; Saeed Mortazavi, the Chief Public Prosecutor of Tehran; and Mohammad Bakhshi, former Deputy Chief of Intelligence of Evin Prison. The lawsuit sought damages on behalf of Ms. Kazemi's estate and the psychological harm to Mr. Hashemi.

The main question at the Supreme Court of Canada was whether Canada's *State Immunity Act* (SIA) was a complete bar to claims for damages related to the torture of a Canadian citizen abroad and whether the provision was therefore contrary to section 7 of the Charter. The SIA is a procedural bar to civil lawsuits against foreign countries in Canadian courts except in exceptional circumstances. The SIA is meant to promote "comity" between nations and preserve national sovereignty.

LeBel J., writing for a majority of the Court, found that the SIA was a complete bar to Hashemi Kazemi's claim for redress:

Canada has given priority to a foreign state's immunity over civil redress for citizens who have been tortured abroad. This policy choice is not a comment about the evils of torture, but rather an indication of what principles Parliament has chosen to promote given Canada's role and that of its government in the international community.

The IHRP and the David Asper Centre for Constitutional Rights were interveners before the Supreme Court and argued that the right to a remedy is protected under international law, and is a principle of fundamental justice under s. 7 of the *Charter* (which protects life, liberty and security of the person).

The Supreme Court rejected that argument and instead found that:

While rights would be illusory if there was never a way to remedy their violation, the reality is that certain rights do exist even though remedies for their violation may be limited by procedural bars. Remedies are by no means automatic or unlimited; there is no societal consensus that an effective remedy is always guaranteed to compensate for every rights violation.

Speaking to the *Globe and Mail* earlier today, IHRP director Renu Mandhane said: "There's something totally perverse that the *State Immunity Act* privileges the right of Iran to torture Canadian citizens over the right of Canadians to seek redress – and the court says that's okay."

The Court did state clearly that the prohibition against torture is a preemptory international norm from which Canada cannot derogate and as such is likely a principle of fundamental justice in Canadian law. While the Supreme Court suggested that Parliament could enact legislation to create an exemption to allow civil claims for torture, the government has been previously declined to do so despite intense advocacy and a private member's bill proposing just that.

According to Carmen Cheung, counsel for the IHRP and the Asper Centre, "This case illustrates that despite the Court's clear condemnation of torture, Canada has provided no real or effective remedy for victims. Parliament is free and open to change that law as they did for victims of terrorism."

In a lone dissent, Abella J. found that torture should not be included in the category of official state conduct that attracts individual immunity.

The IHRP and Asper Centre were represented by John Norris and Carmen Cheung, then-Acting Director of the IHRP. IHRP clinic student Megan Pierce provided invaluable research assistance.

Read the [Globe and Mail article](#) on the ruling

Read the [SCC's decision](#)

Read the [IHRP and the Asper Centre's factum](#)

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