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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2489/2014[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*,[[3]](#footnote-4)\*\*\*

*Submitted by:* Jamshed Hashemi and Maryam Hashemi (represented by counsel, W.G. Fisher)

*Alleged victim:* The authors

*State Party:* The Netherlands

*Date of communication:* 19 July 2013 (initial submission)

*Document references:* Special Rapporteur’s rule 97 decision, transmitted to the State party on 4 December 2014 (not issued in document form)

*Date of adoption of Views:* 26 March 2019

*Subject matter:* Denial of child benefit without residence permit: rights of the child: rights of the family

*Procedural issues*: None

*Substantive issues:* Discrimination on the ground of other status (social security benefits); family and children’s right to social security

*Articles of the Covenant:* 23, 24 (1) and 26

*Articles of the Optional Protocol:* 2

1.1 The authors of the communication are Mr. Jamshed Hashemi, born on 13 May 1977, and Ms. Maryam Hashemi, born on 25 October 1980, nationals of Afghanistan. They submit the communication on their own behalf and on behalf of their two children born in the Netherlands, Rozita Hashemi, born on 23 May 2002, and Roman Hashemi, born on 19 December 2008. The authors claim that the denial of their application for a General Child Benefit by the Social Security Bank constitutes a violation by the Netherlands of articles 23, 24 (1) and 26 of the International Covenant on Civil and Political Rights (the Covenant). The Optional Protocol to the Covenant entered into force for the Netherlands, on 11 March 1979.

 Factual background

2.1 The authors submit that they fled Afghanistan because of the Taliban and arrived in the Netherlands on 14 August 2001. They filed an initial request for asylum on 15 August 2001, which was denied on 24 February 2003. On 21 March 2003, the authors appealed this decision to the Regional Court of the Hague, which rejected the appeal on an unknown date. On 8 February 2005, the Administrative Jurisdiction Division of the Council of State confirmed the Regional Court’s decision.

2.2 The authors indicate that on 21 December 2005, they applied for a residence permit on Rozita’s behalf, due to her medical situation[[4]](#footnote-5). As they did not receive a response, they submitted an objection on 17 August 2006. The objection was declared well-founded on 7 September 2007, but without any legal consequences as the authors had since submitted a second request for a residence permit on Rozita’s behalf, on 19 September 2006. The second application was rejected on 23 November 2006, and the rejection decision was confirmed by the Administrative Jurisdiction Division of the Council of State on 9 October 2008.

2.3 On 13 October 2008, the authors submitted an application to postpone the order requiring them to leave the Netherlands due to Ms. Hashemi’s pregnancy with the authors’ second child, Roman, who was born on 19 December 2008. On 3 November 2008, the Secretary of Justice (Immigration and Naturalisation Service) postponed the order, which allowed the authors to remain in the Netherlands from 11 November 2008 until six weeks after the delivery of the child.

2.4 The authors indicate that they filed a second request for asylum on 22 January 2009. The Secretary of Justice denied the request on 29 May 2009, and the authors appealed on 17 July 2009. On 17 December 2009, the District Court at The Hague quashed the decision of the Secretary of Justice, requiring it to make a new decision. On 7 January 2010, the Secretary of Justice granted the authors a temporary asylum residence permit with retrospective effect from 22 January 2009 until 22 January 2014, taking into account that they could not return to Afghanistan. The authors applied to become Dutch citizens through naturalisation on 5 June 2014, and they were granted Dutch citizenship on 26 November 2014.

2.5 From their arrival in the Netherlands on 14 August 2001, the authors lived in an asylum-seekers’ centre operated by the Central Agency for the Reception of Asylum Seekers (COA) but they were required to leave the centre on 17 March 2005, following the Council of State’s decision of 8 February 2005, rejecting their asylum request. On 4 November 2005[[5]](#footnote-6), they moved into an emergency shelter provided by a charity, ‘Voice in the City’ in Haarlem[[6]](#footnote-7), and they received 62 Euros per week from the charity. From December 2007, they lived in a property provided by ‘Voice in the City’, the charity paid the electricity and water bills[[7]](#footnote-8) and provided them with a weekly assistance payment of €80.

2.6 In different moments, the authors received financial assistance from government agencies. Between 1 January and 4 September 2007, and again from 11 November 2008[[8]](#footnote-9), they had access to reception facilities and received a monthly assistance payment from the COA of approximately €213.72, addressed to Rozita, in accordance with the Regulation of Payments to Certain Categories of Aliens (RVRVB)[[9]](#footnote-10). The authors indicate that RVB payments are made available to persons whose applications for residence permits are pending, and that an application for an RVB payment has to be made every month. Further, they indicate that their applications for other forms of government assistance were denied. The authors also indicate that they received support from various charity organisations[[10]](#footnote-11). In February 2010, the authors moved to “regular housing” in the municipality of Haarlem.

2.7 The authors’ daughter Rozita experiences health issues. A representative from a children’s day care centre which she attended provided a letter on her situation dated 1st February 2008, stating that she suffered from “chronic stress disorder” as a result of the “traumatic experiences” of her past, and that deportation would have “disastrous consequences” for her development. The Bureau of Child Services also prepared a report on Rozita’s situation dated 1st August 2008, which confirmed that she suffered from “chronic stress disorder”. Further, it stated that she experienced “stagnating speech development”, “stagnating social-emotional development”, detachment from her parents, and “regression because of the traumatic situation” of the family. The authors inform that as of 23 July 2007, five health care organisations were assisting with Rozita’s health issues.[[11]](#footnote-12)

2.8 The authors indicate that they have submitted three applications for a General Child Benefit (GCB), which is granted to all parents with young children to assist with upbringing costs, to the Social Security Bank (SSB), on 6 November 2007[[12]](#footnote-13), 27 February 2009[[13]](#footnote-14), and 8 March 2010[[14]](#footnote-15), respectively. The communication only concerns the denial by the State party of the authors’ first application on behalf of Rozita for the GCB, submitted on 6 November 2007, covering the period from the fourth quarter of 2006 until the first quarter of 2008. A condition to receive the GCB is that the person must be insured. Article 6 (1) of the General Child Benefit Act of 1963 (GCBA) sets out who may be considered an insured person, and article 6 (2), introduced by the Linkage Act of 1998[[15]](#footnote-16), provides that an alien who does not reside lawfully in the Netherlands, within the meaning of article 8 (a)-(e) and (l) of the Aliens Act, cannot be considered an insured person.[[16]](#footnote-17)

2.9 On 22 January 2008, the SSB denied the authors’ first application because they did not have a valid residence permit. On 29 January 2008, the authors submitted an objection against the decision. On 30 May 2008, the SSB denied the authors’ objection. The SSB indicated that the authors did not possess a valid residence permit[[17]](#footnote-18). On 31 May 2008, the authors appealed against the decision, claiming that they had a right to the GCB under various international conventions. On 25 November 2008, the Regional Court of Amsterdam rejected the authors’ appeal, reasoning that the State party, when weighing the aims of the Linkage Act with the applicant’s interest in deciding whether or not to grant the GCB, it may reasonably restrict the GCB to those who have a valid residence permit. The authors appealed the decision to the Central Administrative Court (CAC).[[18]](#footnote-19)

2.10 On 11 March 2011, the authors’ appeal against the decision of the Regional Court of Amsterdam of 25 November 2008, was heard before the CAC, together with ten other similar appeals. On 15 July 2011, the CAC quashed the decision of the SBB, requiring it to make a new decision on the authors’ application for the GCB. The CAC considered that the distinction made between lawful residents and unlawful residents for the purposes of granting the GCBA was justified, if it pursued a legitimate aim and if the means used to pursue that aim were reasonably proportionate[[19]](#footnote-20). Furthermore, referring to the European Convention of Human Rights, the CAC reasoned that a distinction based primarily on nationality must be justified by “very weighty reasons”. It considered article 6 (2) of the GCBA to be reasonable in principle, but not in the authors’ case, as they had lived in the Netherlands for a long time, a period of which was lawful, and had developed such a bond with the Netherlands that they could be considered “part of the Dutch community”. The CAC also took into account that the authorities were aware that the authors were living in the State party during such extended period of time. The SSB appealed the decision to the Supreme Court, and on 16 May 2012, the Attorney-General advised the Supreme Court that the appeal should be allowed.

2.11 On 23 November 2012, the Supreme Court overturned the decision of the CAC.The Court considered that the exclusion of the authors from receiving the GCB was not primarily based on nationality, but on both nationality and residence status; therefore, there was no requirement to apply the “very weighty reasons” test[[20]](#footnote-21). Furthermore, referring to article 14 of the European Convention of Human Rights and to article 26 of the Covenant, the Court indicated that discrimination occurs when “the dispute in the proceedings does not serve a legitimate aim or when the means used to pursue that aim are not proportionate and reasonable”. The Court considered that an objective and reasonable justification exists for the distinction made in the Linkage Act on nationality and residence status. It also considered that the distinction in cases similar to those of the authors serves a legitimate aim. The Court further considered that the exclusion from GCB in the authors’ case was reasonable and proportionate having regard to the aim pursued, as States are allowed to make distinctions on the ground of nationality, when taking immigration measures[[21]](#footnote-22). In addition, it considered that States can take measures that aim at protecting their economic interests[[22]](#footnote-23), and that they are entitled to a broad margin of appreciation when regulating social security. The Court further indicated that factors such as the authors’ long-term residence in their Netherlands and their bond with the country did not change that conclusion. Further, it noted that the authors’ long-term residence in the Netherlands without a valid residence title was not “an inherent or immutable characteristic of the person, but contain[ed] an element of choice”.[[23]](#footnote-24)

2.12 The authors indicate that they have exhausted domestic remedies. They indicate that the matter is not being examined under another procedure of international investigation or settlement.

 The complaint

3.1 The authors claim that the denial of their application for the GCB by the SSB on the basis of their residence status is discriminatory and constitutes a violation by the State party of articles 23, 24 (1) and 26 of the Covenant.

3.2. The authors submit that given that the GCB is paid to the parents in the child’s interest, it constitutes a means of fulfilment of the State party’s obligation under articles 23 and 24 of the Covenant. In this regard, they indicate that given that the Netherlands has made a reservation to article 26 of the Convention on the Rights of the Child, which excludes the possibility of a child having his or her own right to social security benefits, the GCB is paid to the parents in the child’s interest. They therefore argue that the payment of the GCB should be considered as a measure to protect the family aimed at complying with article 23(1) of the Covenant. They refer to the ECHR’s decision in the case of *Niedzwiecki v Germany*[[24]](#footnote-25), which held that “by granting child benefits, States are able to demonstrate their respect for family life” under article 8 of the European Convention on Human Rights. In addition, the authors indicate that the GCB can be considered as a measure of protection required by the child’s status as a minor, “on the part of his family, society and the State” as provided by article 24 of the Covenant.

3.3 The authors further affirm that given that the right to equal protection of the law under article 26 of the Covenant is not limited to discrimination concerning rights under the Covenant[[25]](#footnote-26), such provision should be applied to their case, in particular with regard to the discrimination they have suffered with respect to their right of social security, their right of the family to protection and assistance, and their right to adequate standard of living, as enshrined in articles 9, 10(1) and 11(1) of the International Covenant on Economic, Social and Cultural Rights, respectively.

3.4 The authors also claim that the State party should have taken into account the authors’ particular circumstances, such as their reasons for seeking asylum, health issues, their bonds and roots with the Netherlands, and their long-term residence there, due to the fact that the authorities took years to decide on their asylum application “to be admitted”[[26]](#footnote-27). They submit that this claim is supported by the Views adopted by the Committee in the case of *Winata v. Australia*, which determined that a State party is entitled to implement a restrictive immigration policy, but cannot apply such a policy arbitrarily and without regard to the individual’s “particular circumstances”[[27]](#footnote-28). The authors argue that the State party therefore cannot apply the Linkage Act inflexibly to deny all benefits to all unlawful residents[[28]](#footnote-29), especially those whose applications for a residence permit are pending[[29]](#footnote-30). They claim that the inflexible exclusion of the authors from receiving the GCB because they did not have a valid residence permit is contrary to the principle established in *Winata v. Australia*. Further, the authors argue that they were not “illegals” as contemplated by the Linkage Act; rather, they presented themselves to authorities on arrival, filed a request for asylum, and had a residence permit for most of their time in the Netherlands. They add that taking into account the aims of the Linkage Act[[30]](#footnote-31), the exclusion from social benefits would be only effective if the concerned persons had the possibility to leave the State party, and that given that they were unable to return to Afghanistan, such exclusion should not have been applied to them.

3.5 The authors also claim that the denial of their application for the GCB compelled them to survive on “sub-subsistence levels”, contravening articles 23, 24 and 26 of the Covenant. They argue that they lived in absolute poverty[[31]](#footnote-32), and that while the GCB is not ordinarily considered a subsistence benefit, in the authors’ case it acquired such character, as it was necessary to prevent them from living under the poverty line. The authors also recall that after they were requested to leave OCA’s shelter in 2005, they only received a weekly assistance of 62 Euros provided by Voice in the City, and that as from the end of 2007, they moved into an apartment payed by the same charity and received a weekly assistance of 80 Euros, also from Voice in the City. They affirm that their degree of poverty could be demonstrated when comparing the assistance they received during these periods and the monthly amount of social security benefits established for couples with children by the National Institute for Budget Advice: 1256 Euros. The authors further indicate that Rozita’s medical condition was mainly caused by the family’s situation of “acute poverty” which had been tremendously stressful.

3.6 The authors also refer to a 2012 decision by the German Federal Constitutional Court, which held that the State’s failure to take realistic account of the actual needs of asylum-seekers when granting benefits amounted to a violation of the principle of humanity contained in the German Basic Law. The Court stated that article 1(1) of the German Basic Law guaranteed a right to a “basic subsistence minimum,” which, the authors argue, derives from articles 23 and 26 of the Covenant. The authors request that the Committee interpret the Covenant so as to “acknowledge the presence of a right similar to that found in German Basic Law”. They submit that such a right should, on the basis of article 26 of the Covenant, require the State party to provide a minimum subsistence level to persons lawfully residing in the country but without a valid residence permit.

3.7 Furthermore, the authors claim that the State party’s failure to take into account the children’s interests constitutes a violation of article 24 of the Covenant[[32]](#footnote-33). They argue that children’s interests in receiving the GCB should be considered separately from their parents’ interests[[33]](#footnote-34). They therefore reject the Supreme Court’s reasoning that the authors’ residence status contained an “element of choice”, arguing that Rozita was clearly not in a position to make choices about her residence status. The authors also reject the decisions of the SBB and the courts’ underlying reasoning according to which, children’s rights, including those under the Convention on the Rights of the Child, are irrelevant to the authors’ case[[34]](#footnote-35). They also point to inconsistencies in the decisions of the Supreme Court, indicating that in a judgment dated 21 September 2012[[35]](#footnote-36), the Court considered that the State party is obliged by international law to provide for the subsistence needs of children whose parents are unable to provide for them.[[36]](#footnote-37)

3.8 Referring to a report by the Commissioner for Human Rights of the Council of Europe regarding his visit to the Netherlands from 20 to 22 May 2014[[37]](#footnote-38), the authors maintain that when determining whether to grant a residence permit to children of illegal immigrants, the State party should have primary consideration to the children’s best interests. They also affirm that the State party should consider the children’s long-term residence as a factor in favour of granting a residence permit. While the mentioned report concerns the issue of granting a residence permit, the authors submit that the principles are equally applicable to the issue of granting a GCB. Further, the authors refer to a 2014 decision by the European Committee of Social Rights, which determined that the Netherlands was in breach of its international obligations to offer food, clothing and housing to its residents, including those without a valid residence permit[[38]](#footnote-39). From this decision, the authors infer that they are entitled to a minimum subsistence standard in accordance with European and International law.

 State party’s observations

4.1 On 10 July 2015, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party describes the relevant law and policy, including the GCBA, the Aliens Act, and the Social Entitlements (Residence Status) Act, also known as the Linkage Act. Regarding the GCBA, the State party indicates that the GCB has been established to help parents who are raising children, and that therefore it is a benefit given to the parents, not to the children. In addition, it affirms that the GCB does not intend to be an “income support scheme”. The State party further states that it is a basic principle under the GCBA that everyone who is resident in the Netherlands is insured. However, aliens who have not, or have not yet been “admitted” to the country are not insured[[39]](#footnote-40). This exception stems from the principle of “linking social entitlements to residence status”, as provided for in the Linkage Act. This Act’s aim was to put an end of a situation in which many aliens who were residing illegally in the Netherlands, managed to prolong their *de facto* residence partly because they were able to claim social benefits. The Act establish a basic principle according to which an alien without an “unconditional residence permit” cannot claim entitlement to public provisions. Therefore, an alien who has been admitted for a temporary stay in the State party cannot claim public provisions.

4.3 The State party indicates that the system established in the Linkage Act is not rigid, denying aliens who have not been admitted to the country benefits, regardless of their circumstances. It states that there are exceptions to the principle of linking social entitlements to residence status. First it refers to the general exceptions in the fields of education, health care and legal aid. Everyone under 18 years-old are admitted to education regardless of their residence status; health care is provided to everyone in life-threatening situations, risk to third parties, pregnancy and childbirth; and everyone has the right to legal aid. Second, it refers to specific exceptions: i) certain categories of aliens are entitled to social assistance, for example victims of trafficking, aliens engaged in family reunification, etc; ii) aliens who are awaiting the decision on their residence application despite of not being entitled to receive any social assistance under the regular social security system, can obtain certain benefits under specific provisions, such as the Asylum seekers and other categories of aliens Order or the Certain categories of aliens Order. The first establishes reception facilities, a weekly financial allowance and other financial provisions, while the second, provides aliens who are not asylum seekers with the necessary means of subsistence, including financial allowance and medical expenses. Furthermore, the State party indicates that asylum seekers who are lawfully living in the Netherlands on the basis that they are awaiting the outcome of the asylum proceedings, are provided with: accommodation; a weekly financial allowance for food, clothing and other personal expenditure; public transport tickets related to their asylum proceedings; recreational activities; medical expenses; third part liability insurance and exceptional expenses.

4.4 The State party recalls the key facts of the authors’ communication. It indicates that while their first asylum request was considered[[40]](#footnote-41), the authors had access to accommodation, educational activities, a weekly allowance, a medical expenses scheme and a third part liability insurance. It also refers to their applications for residence permits and the GCB.

4.5 The State party submits that the authors have failed to establish that the denial of their application for the GCBA constitutes a violation of articles 23, 24 (1) and 26 of the Covenant. Regarding the authors’ claim under article 23, the State party considers that such provision does not give rise to a positive obligation to provide any financial assistance to families, including child benefits[[41]](#footnote-42), and that the issue of government interference or failure to act with respect to the authors’ life as a family therefore does not arise. The State party reiterates that a child benefit is not a general income support scheme and is not paid as a way of providing families with children with a minimum level of subsistence. Further, it submits that in so far as article 23 may give rise to positive obligations, such obligations concern measures to protect family unity and family reunification[[42]](#footnote-43). It further indicates that the authors’ analogy with the case of *Winata v. Australia* is therefore invalid[[43]](#footnote-44), and rejects their argument that a positive obligation to provide financial assistance to families may be derived from that decision.

4.6 Regarding the authors’ claim under article 24 of the Covenant, the State party observes that in accordance with the Committee’ General Comment No. 17[[44]](#footnote-45), article 24 (1) aims at protecting children against harm to their physical or psychological wellbeing and gives rise to an obligation to provide children with a greater protection than adults. Furthermore, General Comment No. 17 indicates that primary responsibility for protecting children lies with the parents, and the State is obliged to step in where the parents fail to do so. It reiterates that the GCB is not aimed at providing families with a minimum level of subsistence, and that basic provisions are available to all unlawful residents in the Netherlands. It adds that the obligation under article 24 of the Covenant does not extend to providing a child benefit, even considering the need and interests of the child. Further, the State party disagrees that the cases referred to by the authors offer any basis for the notion that indirect consequences of government decisions regarding the parents give rise to specific rights for children under article 24 of the Covenant. It reiterates that a child benefit is a financial contribution to the costs incurred by the parents, to which the child is not entitled. The State party affirms that for this reason it made a reservation to article 26 of the Convention on the Rights of the Child, as it considers that such provision does not imply that a child has an independent entitlement to social security, including social insurance such as a child benefit.

4.7 Regarding the author’s claim under article 26 of the Covenant, the State party observes that it is not unusual for human rights treaties to make distinctions on the basis of residence status[[45]](#footnote-46). It indicates that the European Convention on Human Rights makes such a distinction[[46]](#footnote-47), and that the scope and content of article 26 of the Covenant are similar to the relevant provisions of the European Convention[[47]](#footnote-48). The State party further submits that such treaties do not prohibit all forms of unequal treatment, but only the discriminatory ones[[48]](#footnote-49). It observes that in accordance with the ECHR’s case law, there must be ‘very weighty reasons’ to justify a distinction based only on nationality[[49]](#footnote-50). The State party submits that the distinction in the authors’ case is based primarily on residence status and that there is sufficient justification for making such a distinction[[50]](#footnote-51). It refers to a number of elements in assessing this justification[[51]](#footnote-52). First, the State party recalls that the Linkage Act links the granting of social entitlements to residence status to prevent aliens who are unlawful residents or those who are lawfully residents but only because they are waiting the decision on their residence applications[[52]](#footnote-53), from acquiring the appearance of having lawful residence or from establishing a so strong legal position that once the proceedings are concluded, it becomes impossible to expel them. Second, it observes that aliens who are lawful residents under the Aliens Act are entitled to certain provisions, benefits and payments, and that the authors benefitted from these entitlements. Third, the State party informs that in relation to social security, the national legislator generally exercises discretion in determining the question of whether or not there is an objective and reasonable justification for making a distinction.

4.8 Furthermore, the State party submits that an unqualified obligation to treat aliens without lawful residence status as equal to nationals and those who have been admitted to the country would deprive it of the ability to pursue an immigration policy to protect the country’s economic well-being[[53]](#footnote-54). Following the ECHR’s case law, it observes that States have the right under international law to control the entry, residence and expulsion of aliens[[54]](#footnote-55). The State party also informs that none of the United Nations Human Rights treaties protect an entitlement to a child benefit[[55]](#footnote-56). It further indicates that excluding the authors from receiving the GCB is reasonable and proportionate in relation to its legitimate aim, and therefore sufficiently justified, and that the fact that the authors have resided in the Netherlands for a long time with the authorities’ knowledge does not change this conclusion. In addition, the State party rejects the authors’ argument that the Supreme Court applied the incorrect test by not assessing whether their differential treatment was justified by “very weighty reasons”[[56]](#footnote-57), and argues that the authors’ interests were weighed sufficiently against the public interest[[57]](#footnote-58). It recalls that the fact that an alien has resided in the Netherlands for a long time without obtaining a valid residence permit is not an inherent and immutable personal characteristic, but contains an element of choice. Given this element of choice, the State party claims that the justification required should not be as weighty as in the case of a distinction based on nationality[[58]](#footnote-59). In this context, the State party rejects the authors’ analogy with the Committee’s Views in *Cecilia Derksen v. The Netherlands*, asthe authors’ case merely refers to a distinction based on residence status.

4.9 The State party also indicates that the authors’ reference to the decision by the European Committee on Social Rights in the case *C.E.C. v. the Netherlands* is irrelevant to the authors’ case, as it has nothing to do with the granting of social security benefits.

 Authors’ comments on the State party’s observations

5.1 On 18 November 2015, the authors submitted their comments on the State party’s observations. They claim that the State party, by denying their application for the GCB on the sole basis of their residence status, disregarded that at the time of the application, Rozita was a four-year-old vulnerable child with special needs and living in conditions of extreme poverty and destitution, which was not contested by the State party. They also submit that Rozita’s circumstances warranted a more flexible application of the Linkage Act and government policy, and observe that the State party’s observations did not consider these circumstances, in particular her interests as a child.

5.2 Responding to the State party’s argument that aliens without a residence permit have access to education for minors, health-care in life-threatening situations, and legal aid services, the authors submit that the State party failed to demonstrate how providing these benefits fulfils the State party’s obligations to protect the interests of children. They further reiterate that Rozita’s medical condition was caused by the situation of the family, who lived on an income far below a “minimum threshold”, and that requesting the GCB was aimed at reaching such threshold. Responding to the State party’s argument that Rozita’s migratory status involved an element of choice, the authors indicate that Rozita did not have a choice in determining her migratory status, and was born in the Netherlands.

5.3 The authors indicate that the European Commission recognises the importance of the State’s obligation to protect the interests of children[[59]](#footnote-60). They therefore submit that the State party’s reasoning cannot be upheld, as neglecting the independent interests of children is not in accordance with its obligations under international law.

 Further submissions by the State party

6.1 On 12 January and 24 March 2016, the State party provided further submissions to the Committee. It submits that the authors’ comments appear to be submitted from Rozita’s perspective, who is not one of the authors of the communication. The State party states that it is aware of the relevance of Rozita’s interests to the present proceedings; however, it submits that her interests cannot be considered the sole or primary point of reference under the Covenant. In addition, it highlights that the authors had the obligation to leave the Netherlands following the denial of their asylum request.

6.2 Regarding the authors’ claim that Rozita was forced to live and grow up in a destitute situation, the State party informs that the authors were provided with necessary assistance in the relevant period between 1 October 2006 and 31 March 2008. It recalls that between January and September 2007, they received a monthly allowance in the form of a RVB payment[[60]](#footnote-61) while waiting for a decision on their second application for a residence permit. Further, it states that juvenile care was provided for Rozita, she attended medical day care four days per week, and the authors lived in a house rented by a foundation-Voice in the City- which was subsidised by the Municipality of Haarlem.

6.3 The State party further recalls that in the relevant period, Rozita and her family were waiting for a decision to be made on their application for a residence permit. It submits that this situation cannot be considered a state of destitution, nor can the denial of a child benefit lead to such a state.

6.4 The State party agrees with the authors that the communication is about the GCB. It reiterates, however, that the child benefit is not intended as a general income support scheme and is not paid to families with children as a way of providing them with a minimum level of subsistence. It also reiterates that the GCB’s purpose is to contribute to the costs of caring and raising children, and that need is not a criterion for granting it.

6.5 Regarding the authors’ comments regarding Voice in the City[[61]](#footnote-62), the State party affirms that, in indicating that Voice in the City receives government support, it merely intended to point out that the authors were provided with shelter, housing costs, and living expenses during the relevant period between 1 October 2006 and 31 March 2008.

 Further comments by the author

7.1 On 15 February 2016, the author provided comments on the State party’s further submissions to the Committee. They welcome the State party’s recognition of their need for a minimum standard of subsistence; however, they maintain that families, in particular vulnerable children cannot be left in a destitution state, as was the case with Rozita. They recall that this state of destitution was created by the State party and that the Voice in the City intervened by renting a “slum listed for demolition” to provide shelter for the family. The authors submit that the State party is falsely portraying Voice in the City as government support, and indicate that the charity was not directed by the Municipality of Haarlem to assist the family and is primarily funded by local churches and individual donations.[[62]](#footnote-63)

7.2 Regarding the State party’s submission that the family were provided with enough money to cover their basic needs because they received RVB payments from 1 January 2007 until 4 September 2007, they indicate that the periods from their arrival in the State party in 2005 until 1 January 2007, and after 4 September 2007, are not covered by the State party’s submission. The authors also reject the State party’s argument that the family was “in the habitual situation for asylum seekers” in the relevant period, as they did not receive a RVB payment for the majority of the time between “being put on the streets”- 17 March 2005- and receiving a residence permit- 22 January 2009-. They further indicate that this right entitled them to a monthly allowance of approximately 215 euros for Rozita, which is only a “fraction” of the minimal living standards for a family in the Netherlands.

7.3 The authors recall that their communication relates only to child benefits. They submit that such benefits are important to reach the minimum standard of subsistence, of which the family was deprived. They consider that the quarterly allowance of 186 euros would have been a significant step towards the minimum threshold.

7.4 The authors further reiterate that the child benefit can only be requested by the parent, is payable to the parent, and can only be litigated by the parent. Therefore, while Rozita is not the formal author, her position and human rights have always been the focal point of the court proceedings. The authors affirm that as her parents, they are obliged by law to provide for Rozita; however, the family as a single entity was affected by the lack of a minimum standard and cannot be separated. They submit that the fact that Rozita could not apply for benefits herself does not change this conclusion.

7.5 Responding to the State party’s comments on their claims under articles 23 and 24 of the Covenant, the authors submit that such claims cannot be assessed without considering Rozita’s perspective. They indicate that the State party’s actions have violated Rozita’s rights as a child. They further submit that the State party’s obligations under the Covenant are not affected by their obligation to leave the Netherlands, and that the State party cannot in pursuit of its immigration policy, disregard its human rights obligations under articles 23 and 24 of the Covenant.

 **Issues and proceedings before the Committee**

 *Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

8.3 The Committee takes note of the author’s claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

8.4 The Committee finds the authors’ claims under articles 23, 24(1) and 26 of the Covenant sufficiently substantiated for the purpose of admissibility and proceeds to consider them on the merits.

 Consideration of the merits

9.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the authors’ claim that the GCB can be considered as a measure of protection required by the child’s status as a minor, “on the part of his family, society and the State” as provided by article 24 of the Covenant, and that by rejecting their application for the GCB, the State party failed to provide measures of protection required by Rozita on account of her status as a minor under article 24 (1) of the Covenant. The Committee further notes the authors’ affirmation that when determining whether to grant a child benefit, the State party should have primary consideration to the children’s best interests. In this matter, the Committee is not called upon to decide generally on the obligations of States parties to the Covenant to provide child benefits, nor does it decide the extent to which it is justified to limit entitlement to such benefits based on residency status. Rather, the Committee limits itself to the question of whether, in the particular circumstances of this case, the denial of the authors’ application for the GCB violated Rozita’s rights under article 24 (1) of the Covenant.

9.3 The Committee recalls that under article 24, every child has a right to special measures of protection due to her or his status as a minor.[[63]](#footnote-64) It further recalls that the principle that in all decisions affecting a child, the child’s best interests shall be a primary consideration, forms an integral part of every child’s right to measures of protection required by article 24 (1) of the Covenant.[[64]](#footnote-65) The States parties to the Covenant have a positive obligation to protect children from physical and psychological harm which may include guaranteeing minimum subsistence, in order to comply with the requirements of article 24 (1) of the Covenant.

9.4 The Committee notes that the authors filed an initial request for asylum on 15 August 2001, which was denied on 24 February 2003, and that such decision became final by the Council of State’s decision of 8 February 2005. The Committee notes that the authors lived in a shelter operated by the COA from their arrival in 2001 until 17 March 2005, when they were requested to leave, following the rejection of their asylum request. The Committee further notes that during that period, the authors were entitled to a weekly financial allowance for food, clothing and other personal expenditure, recreational activities and medical expenses, under the Asylum seekers and other categories of aliens Order. The Committee also notes that the authors submitted two applications for a residence permit on 21 December 2005 and 19 September 2006, respectively; and that on 13 October 2008, they submitted an application to postpone the order requiring them to leave the country due to Ms. Hashemi’s second pregnancy. The Committee takes note of the Secretary of Justice’s decision of 2 November 2008, which postponed the order, allowing the authors to stay from 11 November 2008 until the end of January 2009, entitling them to lawful residence during that period.

9.5 The Committee considers that under article 24 (1) of the Covenant, the State party has a positive obligation to ensure that children’s physical and psychological well-being is protected, including through guarantee of subsistence under circumstances where their parents have no other income or assistance. The Committee further takes note of the affirmation by the State party, which is not contested by the authors, that between January and September 2007, the authors received a monthly allowance (RVB) and that Rozita was provided with medical care four days per week. The Committee also notes that the authors benefited of the RVB again as from 11 November 2008, and that Rozita had access to medical care in life threatening situations, as well as to education regardless of her residence status.

9.6 The Committee also notes the authors’ allegation that the State party should have taken into account their specific circumstances, in particular Rozita’s, situation as a vulnerable child with special needs, their extreme poverty and destitution that they consider as the main cause of Rozita’s medical condition. However, in the specific circumstances of the case, the Committee considers that the authors have not established a link between Rozita’s health condition and the authors’ exclusion from receiving the GBC, as they have not demonstrated that the alternative financial assistance available to them materially disadvantaged Rozita’s health, in comparison to the general child benefit scheme.

9.7 In light of the totality of the aforementioned circumstances, the Committee concludes that the facts before it do not constitute a violation of Rozita’s rights under article 24 (1) of the Covenant.

9.8 In view of the foregoing, the Committee does not deem it necessary to further examine the author’s claims, concerning the same matter, under articles 23 and 26 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it does not disclose a violation by the State party of the authors and their daughter’s rights under articles 23, 24 and 26 of the Covenant.

Annex: 1

 Individual Opinion of Mr. José Santos Pais (dissenting)

1. I regret not being able to share the Committee’s conclusion in the present communication.

2. The authors are Jamshed Hashemi and Maryam Hashemi, nationals of Afghanistan, submitting the communication on their own behalf and on behalf of their two children born in the Netherlands, Rozita Hashemi, born in 2002, and Roman Hashemi, born in 2008.

3. The authors arrived in the Netherlands in 2001, fleeing the Taliban. They filed an initial request for asylum in 2001, denied in 2003. They appealed this decision to the Regional Court of the Hague, also rejected. In 2005, the Council of State confirmed the Regional Court’s decision (par 2.1).

4. Following this decision, the authors were required to leave the asylum-seeker’s centre they were living in, in March 2005. In November 2005, they moved into an emergency shelter provided by a charity, ‘Voice in the City’ in Haarlem, since they had no income and they received 62 Euros per week from the charity.

5. In December 2005, the authors, on her daughter Rozita’s behalf, due to her medical condition, applied for a residence permit, which was denied and finally rejected in 2008 by the Council of State (par 2.2). Rozita suffered from “chronic stress disorder”, as a result of the “traumatic experiences” of her past, “stagnating speech development”, “stagnating social-emotional development”, detachment from her parents, and “regression because of the traumatic situation” of the family. As of July 2007, several health care organisations were assisting with Rozita’s health issues (par 2.7).

6. Between January and September 2007, the authors had access to reception facilities and received a monthly assistance payment from the Central Agency for the Reception of Asylum Seekers (COA) of approximately €213.72, addressed to Rozita, in accordance with the Regulation of Payments to Certain Categories of Aliens (RVRVB) (par 2.6). From December 2007, the authors lived in a property provided by ‘Voice in the City’, which paid electricity and water bills and provided them with a weekly assistance payment of €80 (par 2.5).

7. The present communication concerns the denial by the State party of the application submitted in November 2007,by the authors, on behalf of Rozita, to the Social Security Bank (SSB), for a General Child Benefit (GCB), granted to all parents with young children to assist with upbringing costs, covering the period from fourth quarter of 2006 until first quarter of 2008. To receive GCB, a person must be insured and an alien, not residing lawfully in the Netherlands, cannot be considered an insured person (par 2.8). Accordingly, SSB denied the authors’ application because they did not have a valid residence permit (par 2.9). The authors appealed the decision, but the Council of State confirmed it (pars. 2.10-2.11).

8. The first issue in the present communication is whether denial of the authors’ application for GCB compelled them and their children to survive on “sub-subsistence levels”, obliging them to live in absolute poverty. While GCB is not ordinarily considered a subsistence benefit, in the authors’ case it acquired such character, as it was necessary to prevent them from living under poverty line and ensuring a minimum subsistence standard for their children. At the concerned period, the authors only received a monthly assistance payment from COA of approximately €213.72, addressed to Rozita (for just 9 months) and a weekly assistance of 62 Euros provided by Voice in the City. Later, they received a weekly assistance of 80 Euros, also from Voice in the City (par 3.5), primarily funded by local churches and individual donations, the State party only contributing to 9-13% of the charity’s budget (par 7.1). Such financial conditions hardly meet a minimum subsistence threshold standard for children, let alone for the whole family. In such destitution, to receive a quarterly allowance of € 186 would indeed be a significant step towards the minimum threshold (par 7.3).

9. Another issue is whether Rozita’s medical condition was worsened by the family’s situation of “acute poverty”, tremendously stressful (par 3.5). In this regard, the dire legal and financial situation of the family had significant impact in the child’s medical condition (pars 5.1-5.2), albeit she was able to receive some medical care (par 6.2).

10. Finally, the State party’s denial of GCB, intended to be a child benefit scheme and to contribute to the costs of caring and raising children (par 6.4), did not take duly into account the protection of the children’s best interests. In this respect, a State party should be obliged to provide for minimum subsistence needs of children whose parents are unable to provide for them (par 3.7), helping them to reach a minimum subsistence threshold level. Particularly in the case of the authors, living in the Netherlands since 2001 and who could not return to Afghanistan.

11. Unlike the Committee, I would therefore have concluded the State party, by denying the authors’ application for GCB, violated Rozita’s rights under article 24 (1) of the Covenant, according to which every child has a right to special measures of protection due to her or his status as a minor. Indeed, the State party did not, in the present case, respect the principle that in all decisions affecting a child, the child’s best interests shall be a primary consideration. As the Committee rightly points out (pars 9.3, 9.5), States parties to the Covenant have a positive obligation to protect children from physical and psychological harm, including by guaranteeing minimum subsistence, under circumstances where their parents have no other income or assistance, which in the present case, in my view, did not happen.[[65]](#footnote-66)

1. \* Adopted by the Committee at its 125th session (4 – 29 March 2019). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pzartzis, Hernán Quezada, Jose Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. [↑](#footnote-ref-3)
3. \*\*\* An individual opinion (dissenting) by Committee member José Manuel Santos Pais is annexed to the present Views. [↑](#footnote-ref-4)
4. See para. 2.7. [↑](#footnote-ref-5)
5. The authors do not indicate where they lived between 17 March and 4 November 2005. [↑](#footnote-ref-6)
6. The authors provide a copy of a letter dated 7 December 2007, from Voice in the City’s Coordinator confirming this. In the letter, it is also indicated that the authors had no income. [↑](#footnote-ref-7)
7. The authors provide a copy of a rental agreement dated 14 December 2007 between Living Cooperation (it is not clear whether this is a private or public body) and Voice in the City. They also provide invoices (March 2006, June and December 2007), for water and energy which were directed to Voice in the City. [↑](#footnote-ref-8)
8. See para. 6.2. [↑](#footnote-ref-9)
9. RVB is a ministerial order based on the Act on the Central Agency for the Reception of Asylum Seekers (COA Act), providing certain categories of aliens with basic subsistence.[Information provided by the State party in its observations.] [↑](#footnote-ref-10)
10. The authors provide a copy of a list of charity organisations assisting the family. However it does not indicate what type of assistance such organisations provided or for how long. [↑](#footnote-ref-11)
11. See footnote 25. [↑](#footnote-ref-12)
12. Covering the period from the fourth quarter of 2006 until the first quarter of 2008, on behalf of Rozita. [↑](#footnote-ref-13)
13. Covering the period from the second quarter of 2008 until the first quarter of 2009, on behalf of both Rozita and Roman. [↑](#footnote-ref-14)
14. Covering the period from the first quarter of 2009 until the first quarter of 2010, on behalf of both Rozita and Roman. After a residence permit has been issued on 7 January 2010 to the authors with retroactive effect to 22 January 2009; on an unknown date, the SBB granted the GCB to the authors with a retroactive effect, i.e. as from the second quarter of 2009 [Information provided by the State party]. [↑](#footnote-ref-15)
15. The Linkage Act seeks to prevent aliens who are illegally residing in the Netherlands from accessing government assistance. [↑](#footnote-ref-16)
16. Section 8 (a) – (e) of the Act refer to residents with a permanent or temporary residence permit or are citizens of the “European Community or the European Economic Area”. [↑](#footnote-ref-17)
17. The SSB indicated that “only a person who is ensured on the first day of a calendar quarter is entitled to GCB in that quarter”. [↑](#footnote-ref-18)
18. In their appeal, the authors referred to European Court of Human Rights (ECHR), Application 58453/00, *Niedzwiecki v Germany*, Decision adopted on 15 February 2006. [↑](#footnote-ref-19)
19. See para. 4.9. [↑](#footnote-ref-20)
20. The Court refers to ECHR, Application 58453/00, *Niedzwiecki v Germany*, 15 February 2006, para.33. It also generally refers to ECHR, Application 17371/90, *Gaygusuz vs. Austria*, 16 September 1996, and ECHR, Application 55707/00, *Andrejeva vs. Latvia*, 18 February 2009. [↑](#footnote-ref-21)
21. The Court refers to ECHR, Application 3455/05, *A and Others vs. United Kingdom*, 19 February 2009. [↑](#footnote-ref-22)
22. The Court refers to ECHR, Application16567/10, *Nacic vs. Sweden*, 15 may 2012. [↑](#footnote-ref-23)
23. The Court refers to ECHR, Application 56328/07, *Bah vs. United Kingdom*, 27 September 2011, para. 47. [↑](#footnote-ref-24)
24. ECHR, Application 58453/00, *Niedzwiecki v Germany*, 15 February 2006. [↑](#footnote-ref-25)
25. The authors refer to *S. W. M. Broeks v. The Netherlands*, Communication No. 172/1984, paras. 12.2 – 12.5 and *F. H. Zwaan-de Vries v. the Netherlands*, Communication No. 182/1984, paras. 12.2 – 12.5. [↑](#footnote-ref-26)
26. See footnote 52. [↑](#footnote-ref-27)
27. *Hendrick Winata and So Lan Li v. Australia* (CCPR/C/72/D/930/2000), para. 7.3. The authors inform that the following cases have followed a similar reasoning: ECHR, Application 22689/07, *De Souza Ribeiro v. France*, 13 December 2012; ECHR, Application 55597/09, *Nunez v. Norway*, 28 June 2011; and ECHR, Application 31465/96, *Sen v. The Netherlands*, 21 December 2001. [↑](#footnote-ref-28)
28. The authors indicate that the State party has acknowledged this “flexibility” in its discussions when adopting the Linkage Act. They refer to Kamerstukken (‘Parliamentary Documents’) II 1994-1995, which states that the Linkage Act must be “applied with some nuances. It certainly cannot mean that ‘non-admitted’ aliens are inflexibly denied all provisions, services, benefits and permits”. [↑](#footnote-ref-29)
29. The authors affirm that the State party has recognised the difficulty of applying the Linkage Act to unlawful residents whose applications for a residence permit are pending. They refer to Kamerstukken (‘Parliamentary Documents’) II 1994-1995, which states that there are aliens present in the Netherlands with the “knowledge and approval of the Dutch authorities, even though they are not yet ‘admitted’ to the country by the immigration law authorities. They are even provided with accommodation by the State, as well as services and some benefits. This group is ‘in proceedings’ to establish whether or not they will be ‘admitted’”. [↑](#footnote-ref-30)
30. Referring to Kamerstukken (‘Parliamentary Documents’) II 1994-1995, the authors indicate that the Linkage Act pursues two aims: firstly, to prevent “illegal aliens” from continuing their unlawful residence by obtaining provisions and benefits without being required to present a valid resident permit; and secondly, to prevent “illegals” and unlawful residents from acquiring the appearance of lawful residents. [↑](#footnote-ref-31)
31. The authors refer to definition of “absolute poverty” provided by UNESCO according to which the absolute poverty is defined in relation to the amount of money necessary to meet such basic needs as food, clothing and shelter. [The authors quote as a source the 1997 UNDP Human Development Report. However, such reference has not been found in the report.] [↑](#footnote-ref-32)
32. The authors refer the following cases in which the Committee considered the rights of children under article 24 of the Covenant, in the context of immigration policies: Hendrick Winata and So Lan Li v. Australia; Madafferi v. Australia, (CCPR/C/81/D/1011/2001); Bakhtiyari v. Australia, (CCPR/C/79/D/1069/2002); and X.H.L. v. The Netherlands, (CCPR/C/102/D/1564/2007). [↑](#footnote-ref-33)
33. The authors submit that this principle is supported by the Committee in Cecilia Derksen v. The Netherlands, (CCPR/C/80/D/976/2001), paras. 9.2 and 9.3. The authors also refer to ECHR, Application 55597/09, Nunez v. Norway, 28 June 2011, paras. 79 -85. [↑](#footnote-ref-34)
34. The authors refer to the Committee’s General Comment No. 17on the Rights of the Child, paras. 2 – 5. They also refer to ECHR, Application 12643/02, Moser v. Austria, 21 September 2006, paras 68 - 69. They indicate that in this decision, the ECHR held that the State has a duty to assist parents who are unable to provide for their children, without derogation from the parents’ obligation to care for their children. [↑](#footnote-ref-35)
35. The authors quote as the source, Dutch Supreme Court, Judgement of 21 September 2012, ECLI: BW 5328. [↑](#footnote-ref-36)
36. The authors indicate that the Supreme Court based its decision on Directive 2003/9/EG of the Executive Council of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum-seekers and the Directive 2008/115/EG of the European Parliament and the Executive Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, as well as on the ECHR’s case law. [↑](#footnote-ref-37)
37. NILS MUIŽNIEKS, Commissioner for Human Rights of the Council of Europe, Report following his visit to the Netherlands from 20 to 22 May 2014. Available at https://rm.coe.int/16806db830. [↑](#footnote-ref-38)
38. European Committee of Social Rights, Report to the Committee of Ministers, Conference of European Churches vs. the Netherlands, Complaint 90/2013, 1st July 2014. Available at https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:[%22cc-90-2013-dmerits-en%22]}. [↑](#footnote-ref-39)
39. See footnote 52. [↑](#footnote-ref-40)
40. See para. 2.5. [↑](#footnote-ref-41)
41. It refers to Oulajin and Kaiss v. The Netherlands, Communications Nos. 406/1990 and 426/1990. [↑](#footnote-ref-42)
42. It refers to Winata v. Australia and Sahid v. New Zealand (CCPR/C/77/D/893/1999). [↑](#footnote-ref-43)
43. The State party recalls that that case concerned a decision to deport the child’s parents, resulting in the child being also forced to leave the country in the interests of maintaining family ties, even though there was no need for the child to leave. [↑](#footnote-ref-44)
44. General comment No. 17: Article 24 (Rights of the child), adopted at its 35th session (1989). [↑](#footnote-ref-45)
45. It refers to article 1 of the European Convention on Social and Medial Assistance and article 1 (1) of the Appendix to the revised European Social Charter, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/014> and <https://rm.coe.int/168007cde4>, respectively. [↑](#footnote-ref-46)
46. The State party indicates that under article 1 (1) of Protocol No. 7 to the Convention, an alien is not considered a lawful resident if he or she is awaiting admission to the relevant country. [↑](#footnote-ref-47)
47. It cites as relevant provisions article 14 of the European Convention of Human Rights and article 1 of Protocol No. 12 to the Convention, and informs that this was confirmed by the decision of the Supreme Court of 23 November 2013 regarding the authors’ case. [↑](#footnote-ref-48)
48. It submits that discrimination arises in the absence of a sufficiently objective and reasonably justification; that is, the unequal treatment must service a legitimate aim and the means for achieving that aim must be reasonable and proportionate in relation to the aim. [↑](#footnote-ref-49)
49. It refers to ECHR, Application 17371/90, Gaygusuz v. Austria, 16 September1996, and Application 55707/00, Andrejeva v. Latvia, 18 February 2009. [↑](#footnote-ref-50)
50. It recalls that the Supreme Court referred to the ECHRs’ decision on Niedzwiecki v Germany, para. 33 in its decision of 23 November 2013. [↑](#footnote-ref-51)
51. It refers ECHR, Application 44399/05, Weller v. Hungary, 31 March 2009, para. 28. [↑](#footnote-ref-52)
52. It refers to Section 8(f), (g) and (h) of the Aliens Act. [↑](#footnote-ref-53)
53. It refers to ECHR, Application 26565/05, N. v. The United Kingdom, 27 May 2008. [↑](#footnote-ref-54)
54. It refers to ECHR, Application 16567/10, Nacic and others vs. Sweden, 24 September 2012, para. 79. [↑](#footnote-ref-55)
55. The State party submits that the authors’ reference to the cases De Souza Ribeiro v. France and Nunez v. Norway are irrelevant. [↑](#footnote-ref-56)
56. The State party considers that it is not its role to assess the merits of a Supreme Court judgment. [↑](#footnote-ref-57)
57. The State party defines the public interest as eliminating the possibility of claiming benefits in the absence of a valid residence permit, which may create an opportunity to prolong unlawful residence. [↑](#footnote-ref-58)
58. It refers to ECHR, Application 56328/07, Bah v. the United Kingdom, 27 September 2011, para. 47. [↑](#footnote-ref-59)
59. The authors refer to case C-133/15 in which the CAC requested prejudicial opinion from the European Commission. The Commission stated that, “the deployment of the applicable rules concerning family law and welfare by the national authorities is bound by national and international law, with inclusion of the European Convention on Human Rights and the UN Convention on the Rights of the Child, and on this ground offer a fitting protection to the right to respect of family life and the interests of the child”.[This case has been the object of a decision by the European Union Court of Justice on 10 May 2017. The Court considered that when deciding on the residence status of a parent of a child with an EU citizenship-Dutch-, authorities must take into account the right to respect for family life and the best interests of the child, as such decision could have an impact on the child’s rights as an EU citizen. See https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170048en.pdf]. [↑](#footnote-ref-60)
60. See para. 2.6. [↑](#footnote-ref-61)
61. See para. 7.1. [↑](#footnote-ref-62)
62. The authors inform that in recent years, government subsidies have amounted to 9-13% of Voice in the City’s budget. [↑](#footnote-ref-63)
63. See general comment No. 17 (1989), para. 4; see also communication No. 400/1990, *Mónaco de Gallicchio v. Argentina*, Views adopted on 3 April 1995, para. 10.5. [↑](#footnote-ref-64)
64. Communication No. 1069/2002, *Bakhtiyari et al. v. Australia*, Views adopted on 29 October 2003, para. 9.7 [↑](#footnote-ref-65)
65. See also Communication No. 2498/2014, Ekaterina Abdoellaevna v the Netherlands, para 7.3, particularly when the Committee observes “*that the absence of social protection for children may in certain circumstances adversely affect their physical and psychological well-being”.* [↑](#footnote-ref-66)