



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3587/2019*, **

<i>Communication submitted by:</i>	A.Y.O.AQ (represented by counsel, Davide Galimberti)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Italy
<i>Date of communication:</i>	2 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 (2) of the Committee's rules of procedure, transmitted to the State party on 10 April 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2022
<i>Subject matter:</i>	Denial of application for citizenship due to family relations
<i>Procedural issues:</i>	Inadmissibility - non-exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Right to privacy; equal protection before the law (non-discrimination)
<i>Articles of the Covenant:</i>	17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication, submitted on 2 May 2018 and supplemented on 21 November 2018, is A.Y.O.AQ,¹ born on 25 July 1976, a national of Jordan. She claims that the denial of her application for Italian citizenship by the Ministry of the Interior constitutes a violation by Italy of her rights under articles 17 and 26 of the Covenant. Italy has ratified the first Optional Protocol to the Covenant, which entered into force on 23 March 1976. The author is represented by counsel (Davide Galimberti).

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cebrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

¹ On 15 April 2019, the author requested anonymity.



1.2 On 17 December 2020, on the basis of rule 92 (7) of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accept the additional round of comments submitted by the author.

Facts as submitted by the author

2.1 The author has lived in Italy with her husband, H.E., since 1999. Their two children, born in 2001 and 2005, live and study in Italy. The author currently teaches at the Ca' Foscari University of Venice and has previously taught in Milan.

2.2 The author applied for Italian citizenship on 7 January 2014. She submits that she applied for the citizenship on her own behalf as she satisfies the requirements relating to social and economic integration, including sufficient income, lack of criminal convictions and an uninterrupted period of at least ten years of residence in Italy. On 26 October 2016, she received a letter from the Ministry of the Interior, dated 22 September 2016, stating that her application was denied because her husband's activities had "purposes not compatible with the security of the Republic" and because the stability and duration of her marriage to her husband could facilitate "dangerous" behaviour. The refusal of her application did not refer to any facts relating to the author personally. The author submits that she was not consulted or interviewed at any stage of the procedure.

2.3 On 30 December 2016, the author appealed the negative decision of the Ministry of the Interior on her application to the Regional Administrative Tribunal of Lazio-Rome, claiming that the denial of her application on the basis of her husband's circumstances was arbitrary and discriminatory. She claims that she has not received a response or a decision on her appeal.

2.4 On 12 January 2018, the author sent a letter to the Regional Administrative Tribunal in support of her appeal, stating that the denial was arbitrary and discriminatory. In the letter, she argued that the Ministry of the Interior had judged her for her husband's activities and denied her application because she was married. On 22 October 2018, the author sent a further letter to the Administrative Tribunal reiterating the same arguments.

2.5 The author indicates that there is a two-instance process for appealing the Ministry's decision, first to the Regional Administrative Tribunal and second to the Council of State, and that it may take four years for the appeal to proceed to the next step of the procedure. Therefore, should her appeal before the Administrative Tribunal be unsuccessful, a total of eight years may elapse between the Ministry's initial decision and the Council of State's final decision, which means that she may not receive a final decision until 2024.

2.6 The author submitted her application for Italian citizenship on 7 January 2014 and has been waiting for the Regional Administrative Tribunal to determine her appeal since 30 December 2016. The author claims that such a delay is "unreasonably prolonged", within the meaning of article 5 (2) (b) of the Optional Protocol and that no other effective domestic remedies are available.

2.7 The author claims that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

Complaint

3.1 The author claims that the denial of her application for Italian citizenship is contrary to the right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation under article 17 of the Covenant.

3.2 Furthermore, the author claims that the fact that she was denied Italian citizenship based on facts not relating to her but to her husband amounts to gender-based discrimination and constitutes a violation by Italy of article 26 of the Covenant. She submits that the principle of equality contained in article 26 does not allow a State party to deny her citizenship on the sole basis of her marital status and the profile of her husband. The author argues that, had not she been married to her husband, the Ministry would have granted her Italian citizenship as she complies with all other requirements.

3.3 The author also complains of the duration of the appeal's proceeding, claiming undue delays in violation of article 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 9 October 2019, the State party submitted its observations on the admissibility and merits of the author's communication, recalling the constitutional framework of Italy, including respect for the rule of law and human rights and fundamental freedoms.

4.2 The Italian constitutional system of guarantees and safeguards is also expressed by the "principle of the double level of adjudication", which is implemented through a system of appeals, characterized by three possible levels of judicial proceedings. Each stage represents a further level of judgment. While offering an extensive range of guarantees, the system of appeals and the three possible levels of judgment may delay the resolution of the dispute at hand. In addition to the principle of due process of law, the State party's Constitution defines the role of the Council of State and the Constitutional Court.²

4.3 As regards the facts, the State party states that in December 2016, the author submitted an appeal to the Regional Administrative Tribunal concerning the rejection of her application for citizenship. The State party admits that her appeal had not been decided by the date of submission of its observations to the Committee (9 October 2019).³

4.4 Following the appeal to the Regional Administrative Tribunal, the author submitted a complaint to the Committee concerning the length of the trial and the alleged discriminatory treatment she had suffered.

4.5 As regards the length of the administrative proceeding, a reference is made to the normative framework of Italy, by which a reasonable duration is considered to have been respected when (a) the trial does not exceed a duration of three years in the first instance⁴; (b) a duration of two years in the second instance; and (c) a duration of one year in the judgment of legitimacy. For the purposes of calculating its duration, the trial is considered to have been initiated with the filing of the complaint, or with the notification of the writ of summons.⁴

4.6 In the case at hand, given that the duration of the appeal against the denial of application for citizenship before the Regional Administrative Tribunal has not yet reached the minimum threshold of three years, there has been no violation of the legitimate expectations of the complainant.

4.7 Concerning the author's claims under articles 17 and 26 of the Covenant, the State party submits that Italian citizenship can be granted to a foreigner who has resided legally for at least 10 years in the territory of the Republic. In the author's case, the denial of her application for citizenship is based essentially on considerations relating to her husband, as he has been considered "contiguous" to movements deemed socially dangerous, as having purposes incompatible with the security of the country. The author's husband had his application for Italian citizenship previously denied. He also appealed the negative decision to the Regional Administrative Tribunal, which rejected his appeal in decision No. 5577/13, dated 4 June 2013. The appeal by the author's husband was pending before the Council of State at the time of submission of the State party's observations.

4.8 In its decision of 26 September 2016, the Ministry of the Interior rejected the author's application for citizenship, "taking into account the emergence of contiguity of her husband (Mr. H.Q.) to movements incompatible with the security of the Republic, which hinders the granting of citizenship. The family relationship indicates the existence of a stable and lasting bond over time as it has its roots in the family and in its connective affective aspects, with the consequence that parental and affective stability could induce the party concerned to facilitate, also only for emotional reasons, behaviour considered dangerous for the security of the Republic".⁵

² Constitution of Italy, arts. 103, 111 and 134.

³ Act No. 89/01, art. 2 bis.

⁴ Ibid.

⁵ Judgment of the Regional Administrative Tribunal of Lazio-Rome No. 600/2013, dated 12 May 2015.

4.9 As regards the claims of violations of articles 17 and 26, as the denial of the author's application for citizenship is allegedly based on facts and conduct that can be assigned exclusively to her husband, the State party argues that the granting of Italian citizenship presupposes that elements or circumstances that can endanger the values of free and peaceful civil coexistence have been ascertained not to exist. The security of the Italian Republic is, in fact, a higher interest than the individual interest in obtaining or recognizing Italian citizenship. Given its irrevocable nature, it is required that "no doubt, no shadow of unreliability of the applicant exists, also with a prospective evaluation for the future, about the full adherence to the constitutional values on which the Italian Republic is founded".⁶ In that context, the Italian Constitutional Court affirmed that the relevance of the interest of the security of the State as to its integrity and independence was reflected in article 52 of the Constitution. The State party adds that the current alarming upsurge in terrorism and extremism justifies particular prudence and caution in the administrative practice of granting citizenship.⁷

4.10 The marriage and the situation of material and spiritual communion that naturally follows from it can be therefore evaluated by the administration in the exercise of its discretionary powers in order to protect the superior interest of public order and security, in order to deny Italian citizenship to the wife of a person considered near and "contiguous" to movements and groups "having incompatible purposes" with the peaceful and free civil coexistence in Italy. On the other hand, particular caution in the exercise of the preventive and precautionary function that must inspire the evaluation of an application for granting citizenship is balanced by the possibility of reapplying when the objective conditions underlying the original negative outcome have changed or, more generally, in order to obtain re-evaluation by the administration, five years after the initial assessment.⁸ Finally, the State party submits that effective domestic remedies against the decision rejecting her application are available to the author and that there has been no denial of justice in her case.

4.11 Based on the explanation above, the State party requests the Committee to declare the author's complaint inadmissible, due to non-exhaustion of available domestic remedies and lack of sufficient substantiation, or alternatively without merit.

Author's comments on the State party's observations

5.1 On 13 November 2019, the author submitted comments on the State party's observations of 9 October 2019, arguing that no new information in regard to her complaint had been provided by the State party. Instead, the observations could be considered as conceding that the violations she alleged had taken place.

5.2 The author's initial communication of 2 May 2018 demonstrates violations of article 5 (2) (b) of the Optional Protocol and article 17 of the Covenant, complemented by the briefs, dated 9 June 2018 and 21 November 2018, which support the allegations by the author of a violation of her rights under articles 17 and 26 of the Covenant.

5.3 Firstly, the author reiterates that the proceedings in her appeal against the rejection of her application for citizenship have been unreasonably prolonged and that following three reminders for an urgent decision, the Regional Administrative Tribunal responded that it could not accelerate the proceedings since cases were considered in chronological order. The author holds that the Administrative Tribunal would not be able to observe a statutory limit of three years for its decision at first instance (expiring on 30 December 2019). The author recalls that she has suffered discrimination, as the right to have her matter adjudicated in a reasonable time has not been respected.

5.4 As regards her claims under articles 17 and 26 of the Covenant, the author reiterates that she was judged for circumstances concerning her husband, which is discriminatory. Not

⁶ Constant jurisprudence in administrative matters of the Council of State, Section III, 14 February 2017, No. 657.

⁷ Council of State, Section III, 4 March 2015, decision No. 1084, and Regional Administrative Tribunal of Lazio-Rome, Section II quarter, 11 November 2015, decision No. 12752.

⁸ Act No. 92/1991, art. 8 (1).

considering her own circumstances has also amounted to a violation of the right to a respect for private and family life.

5.5 The author objects to false assumptions made about her husband, with negative consequences for the author, who argues that such a “false link” between the married couple was disproved by the Constitutional Court, which ruled in its judgment No. 78/2019 that wife and husband are not related as they are not linked as relatives. This principle disproves the “false and unfounded” assertion by which the Administration judged the author by her husband’s alleged activities. On 29 October 2019, the author requested the Administration for a new evaluation of the denial of her application for citizenship, but no answer has been provided. Lastly, the author denounces the State party’s references to the upsurge in terrorism, which she finds offensive, and requests an apology.

State party’s additional observations

6.1 On 9 November 2020, the State party recalled its previous observations, dated 9 October 2019, reiterating that the author was able to apply for domestic remedies, which were both available and effective.

6.2 From a judicial standpoint, the author submitted an appeal (NRG 15655/2016) on 30 December 2016 to the Regional Administrative Tribunal, which was assigned to its section prima-ter on 16 January 2017. The author requested the annulment of the decision of the Ministry of the Interior (K10/458855/R), dated 22 September 2016, by which the author’s application for Italian citizenship was rejected. The author’s appeal, classified as ordinary at the time of filing, did not contain a request for precautionary measures. Nonetheless, the appeal challenged the Ministry’s refusal of access to confidential information, pursuant to article 116 of the Code of Administrative Justice.

6.3 As regards in particular the request for access to information, a specific session of the appeals collegium was scheduled for 7 March 2017, which adopted collegium order No. 3894/2017, published on 24 March 2017, by which the above request was accepted only in relation to any documentation not classified as confidential or declassified, while rejecting access to documents with a confidential or secret character. At the same time, a new session was scheduled for 28 April 2017. Collegium order No. 3894/2017 was challenged before the Council of State (section three), which accepted the precautionary appeal by order No. 2574/2017, published on 22 June 2017.

6.4 At the session held on 28 April 2017, at the request of the author’s lawyer, the case was postponed to the following session, scheduled for 9 May 2017, in order that the documentation submitted by the Administration on 27 April 2017, in accordance with a preliminary order by the judicial authorities, could be examined. The session of the collegium held on 9 May 2017, in the presence of other parties concerned, was postponed again at the request of the author’s counsel, to a date to be determined. It can be inferred from the statement of the author’s defence of 3 May 2017, that the reason for the request for postponement was the pending appeal before the Council of State against the above-mentioned collegium order No. 3894/2017, concerning the part excluding access to confidential information by the Ministry.

6.5 On 24 January 2020, the author filed for the first time a request for collegium precautionary measures, pursuant to article 55 of the Code of Administrative Justice, besides requesting a preliminary ruling by the European Court of Justice. On 21 April 2020, the collegium of judges, based on the application for precautionary measures, adopted precautionary order No. 3060/2020, which set a public hearing for 11 January 2021, in order to deal with the merits of the appeal, also taking into account the request by the author, dated 24 January 2020, to match it with the merits of the suspension.

6.6 In the case file, there are four requests for urgent consideration, submitted on 13 January and 31 October 2017 and 10 January 2019, as rejected by the President of the Regional Administrative Tribunal for lack of capacity, and on 31 October 2019. In that context, the following facts should be noted: (a) appeals are dealt with in chronological

order,⁹ while observing the limits of the workload of magistrates, as established by the Council of Presidents of Administrative Justice; (b) For the type of litigation at hand, the Administrative Tribunal does not provide for abbreviated or accelerated proceedings and a preferential path for accelerated determination of the merits is excluded; and (c) the pending appeal in the present case takes into account the time required for the preliminary assessments as requested by the author and deemed necessary by the judicial authorities, as well as the time required for the conclusion of the precautionary phase of the appeal proceedings, again requested by the author. There has been a minimum delay in the proceedings, which is in the process of being concluded with a public hearing scheduled for 11 January 2021.

6.7 Furthermore, the State party refers to the substantial standpoint with regard to the author's request for re-evaluation of the Ministry's decision, dated 22 September 2016, rejecting the author's application for citizenship, since it emerged during the examination that the author's husband was contiguous to movements with purposes not compatible with the security of Italy, which constitutes grounds for not granting Italian citizenship. The author requested a review of the negative decision on two grounds: first, the assumption of the existence of a blood relationship between the author and her husband, on the basis of which the person concerned would have been judged, is erroneous. Second, the author complains that the conduct of the Administration resulted in her being discriminated against, in violation of article 3 of the Constitution, articles 8 and 14 of the European Convention on Human Rights, article 1 of Protocol No. 12 to the European Convention and article 17 of the Covenant.

6.8 The State party also recalls the constant jurisprudence of national courts, according to which Italian citizenship is not automatically granted, even if requirements are met and there are no impeding factors. There is no right as such to be granted citizenship. This process is the result of a meticulous weighing of every useful element, to assess the existence of a concrete public interest in receiving permanently a new member within the State community. From that perspective, in considering applications for granting Italian citizenship by residence, the Regional Administrative Tribunal is granted a largely discretionary power of assessment, within the general normative framework, in accordance with Act No. 91/1992. The assessment cannot be based exclusively on the fulfilment of the requirements provided for by law, such as the presence of the foreigner in the territory for the number of years prescribed by law or verification that the foreigner has a permanent occupation and sufficient income. It must take into consideration a number of further elements, on the basis of which it can be deduced whether or not a foreigner should be permanently included in the community of nationals.

6.9 The degree of assimilation and integration that a foreigner aspiring to *status civitatis* of Italy must demonstrate can be inferred from compliance with the rules of criminal law and, a fortiori, from respect for the principles of State security. The complex procedure for the evaluation of applications for the granting of citizenship considers as an essential step the acquisition of information from security organs and bodies, institutionally competent to verify the existence of elements pertaining to the security of the country. The need to guarantee the primary good of the security of the country, which is certainly a higher interest than that of a foreigner in obtaining Italian citizenship, presupposes that "no doubt, no shadow of the applicant's unreliability exists, including even its prospects in the future, regarding full adherence to the constitutional values on which the Italian Republic is based".¹⁰ The sensitivity of the issues under examination, including the possibility of repercussions in international relations, due to acts committed by a person holding Italian citizenship, fully justifies the use of strict parameters in ascertaining the absence of dangerousness of the applicant for citizenship. In that regard, the ruling of the Council of State spelled out that "it can be argued that a situation of doubt is sufficient to justify the denial". The administrative jurisprudence has constantly recognized that the concept of security of the country may concern even specific relations of a foreigner and belonging to movements that, due to extremist positions, may affect order and public security or the sharing of values that may endanger the national community.

⁹ Article 8, annex 2, title III of the Code of Administrative Justice.

¹⁰ Council of State, Section III, verdict no. 657 of 14 February 2017.

6.10 As for the claim that the author was judged through her husband, it should be noted that the jurisprudence, by confirming the legitimacy of the administrative action, has on several occasions recognized that a marital relationship indicates the existence of a much more stable bond than those considered adequate to support the denial of granting the status of citizen, as it is rooted in the family and its related emotional relationships. Because of such ties, it cannot be excluded that a family member may be induced to behave in a way that is potentially dangerous from the point of view of the security of the country. The relevance attributed to family ties, shared by the administrative judge also in the case of criminal convictions reported by relatives of the applicant for citizenship, is even more justified when possible risks for the security of the State are to be considered.

6.11 Regarding the reference in the denial of the author's application to a family relationship, it should be noted that the inadequate qualification due to the use of a standardized formula does not detract from the legitimacy of the assessment made by the Administration, which has taken into account the possible facilitation, in light of the effective stable relationship, of behaviour considered dangerous for the security of the country. The reference to the verdict of the Constitutional Court, which distinguishes between marital and family relationships, is therefore irrelevant. It is the widely understood family relationship that is used to assess, as in the present case, conduct considered dangerous for the security of the country.

6.12 Finally, it is pointed out that the investigations carried out were not based on measures restricting freedom or other constitutionally guaranteed rights, but gave rise to the formulation of an assessment relating to the sovereign power of the State to increase the number of its citizens. In the light of the above, the accusations of discriminatory treatment by the Administration are completely unfounded, as it instead acted in respect of the prerogatives granted and in full compliance with the principles affirmed by the administrative judge. In fact, the Administration assesses applications for Italian citizenship without making any distinctions on the grounds of sex or any violation of the private life of the persons concerned, but with regard to the degree of integration of a foreigner: this is an assessment that necessarily involves family ties, which constitute the identity or reference context of that foreigner. The State party reiterates that the author's claims are manifestly unfounded, or without merits.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.¹¹ The Committee notes that the author's claims that her rights were violated under articles 17 and 26 of the Covenant, since her application for citizenship was denied on the basis of circumstances relating to her husband without hearing her in person and the appeals proceeding suffered from undue delays, have been raised before the domestic courts. In that context, the Committee observes that the author has mainly contested the facts and evidence, and objected to the use of confidential information by the Ministry of the Interior to assess her application for citizenship by residence, whereby the State is granted by law a largely discretionary power of assessment. The Committee also

¹¹ See, for example, *Pereira v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein and Scholtz v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.3; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4.

notes that the State party has contested the admissibility of the present communication due to non-exhaustion of available domestic remedies, as the appeals proceeding before the Regional Administrative Tribunal were pending at the time of the initial submission, and for lack of substantiation by the author.

7.4 The Committee notes the State party's argument that following the author's appeal to the Regional Administrative Tribunal, dated 30 December 2016, against the denial of her application, the case was scheduled for hearing and the author submitted several motions for suspension of the appeals proceeding, pending a determination of her requests for access to confidential information used by the Administration when assessing her application. The author subsequently submitted an appeal to the Council of State against the collegium order excluding access to the confidential information by the Ministry (para. 6.4 above). The Committee notes that the author in parallel repeatedly urged that a decision be taken on her appeal by the Administrative Tribunal. In that context, the Committee notes the State party's argument that the author submitted the collegium precautionary request for access to all information on file on 24 January 2020 and that a public hearing was scheduled for 11 January 2021 to deal with the merits of the appeal (para. 6.5 above). The Committee observes the State party's argument that the appeals procedure is based on the chronological order of submissions and cannot be accelerated, and that the duration of the author's procedure was partly attributable to the processing of the author's precautionary requests and other preliminary assessments (para. 6.6 above). The Committee further observes that the author's communication to the Committee was submitted on 2 May 2018, while the domestic appeals procedure was still pending, within the statutory period for its duration. It also observes the author's argument that the first instance appeals proceeding would not be concluded within the statutory period of three years. However, in the view of the State party the author has enjoyed access to domestic remedies which were both available and effective. In that context, the State party has argued that there were minimal delays in the author's appeal procedure and that she could still submit a second instance appeal to the Council of State against the decision by the Administrative Tribunal.

7.5 In the light of the above, the Committee considers that the author does not convincingly explain why the judicial remedies that the State party has identified as available for appealing a denial of her application for citizenship would not have been effective in her case, since she presented several procedural motions that were acted on; the final decision on her first instance appeal was adopted; and the author could still submit an additional appeal to the Council of State. The Committee recalls its jurisprudence that mere doubts about the effectiveness of domestic remedies do not absolve authors of the requirement to exhaust them.¹² Accordingly, the Committee considers that it is precluded from examining the author's claims under articles 17 and 26 of the Covenant by the requirements of articles 2 and 5 (2) (b) of the Optional Protocol, due to non-exhaustion of available domestic remedies.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the author.

¹² See, for example, *Kaaber v. Iceland* (CCPR/C/58/D/674/1995), para. 6.2, and *D.G. et al. v. the Philippines* (CCPR/C/128/D/2568/2015), para. 6.3. See also *A.M. v. Italy* communication No. 266/1987, para. 7.3.