The United Nations Human Rights Committee's Jurisprudence:

A YEAR IN REVIEW 2023

CCPR
Centre for Civil and Political Rights

Design and layout : Gabriel Hernández (gabo.hernandez@gmail.com)

Centre for Civil and Political Rights (CCPR Centre)

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01 - FOREWORD

The Centre for Civil and Political Rights is pleased to present the analysis of the 2023 findings of the United Nations Human Rights Committee. This analysis, conducted annually since 2014, highlights the latest developments in the Committee's jurisprudence and provides deeper insights into the Committee's work. The purpose is to make the jurisprudence of the Committee more visible and accessible to all individuals involved in the promotion and protection of civil and political rights. We are confident that this publication will be useful to both litigators and human rights defenders.

The research has been carried out in collaboration with the Law Clinic of the LL.M. in International Law of the Graduate Institute of Geneva. The students prepared the related research materials and produced the articles included in this Yearbook under the supervision of the Head of the Law Clinic and previous Committee member, Prof. Yuval Shany, along with Ms. Liline Steyn and the Centre. Moreover, for the second time, the students had the opportunity to present their research to Human Rights Committee members during the 141st session in Palais Wilson, Geneva.

During the year 2023, the Committee held the 137th, 138th, and 139th sessions. According to the official information given by the UN Secretariat, the Committee enlarged its jurisprudence by issuing 165 communications (82 decided on merits, 32 inadmissible, and 51 discontinued). This is a decrease compared to the year 2022, when 175 communications were adopted. Still, the Human Rights Committee continues to receive the highest number of communications among all UN treaty bodies. Regarding the follow-up procedure for Views, the Committee graded 14 communications in 2023, the same as in 2022. Although the most frequent grade was C (not satisfactory), there was an increase in A (satisfactory) and B (partially satisfactory) grades, and a decrease in E (contrary measures) grades. Surprisingly, no D (no cooperation) grades were awarded.

Along with the backlog of submissions, the Committee is now also facing the liquidity crisis of the UN Secretariat and its impact on the Petitions Section. Due to the worrying repercussions this can have on victims of human rights violations globally, the Centre will continue to advocate for the Views as a key avenue to develop international human rights jurisprudence and promote the recognition, redress, and reparation of victims. Additionally, the Centre will persist in urging States parties to fully support the Petitions Section's work, including through adequate funding.

We would like to thank the students who participated in the project, namely Laura P. Shaw, Poorna Poovamma KM, Medha Patil, and Diego Enrique Uribe Bustamante. Coordination, research, and editing were carried out by Irene Aparicio, Human Rights Officer at the Centre. We are also grateful to Ms. Liline Steyn for the coordination work and to Prof. Yuval Shany for his fantastic support and commitment.

Patrick Mutzenberg
Director

Irene Aparicio
Human Rights Officer

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02 - OVERVIEW OF THE JURISPRUDENCE OF THE HUMAN RIGHTS COMMITTEE

In 2023 (137th, 138th and 139th sessions), the Human Rights Committee (the Committee) adopted 143 communications. In total, 54 communications were discontinued for reasons such as loss of contact with the author of the communication or requests by the author to discontinue, among others. Moreover, 30 communications were declared inadmissible. The Committee found violations on merits in 49 communications and in 10 communications no merits were found.

Note: This research has only considered those communications made available on the Human Rights Committee website as of February 2024, those being 94 decisions. This is lower than the official numbers given by the Committee, according to which there should be 114 decisions.

Geographical Trends

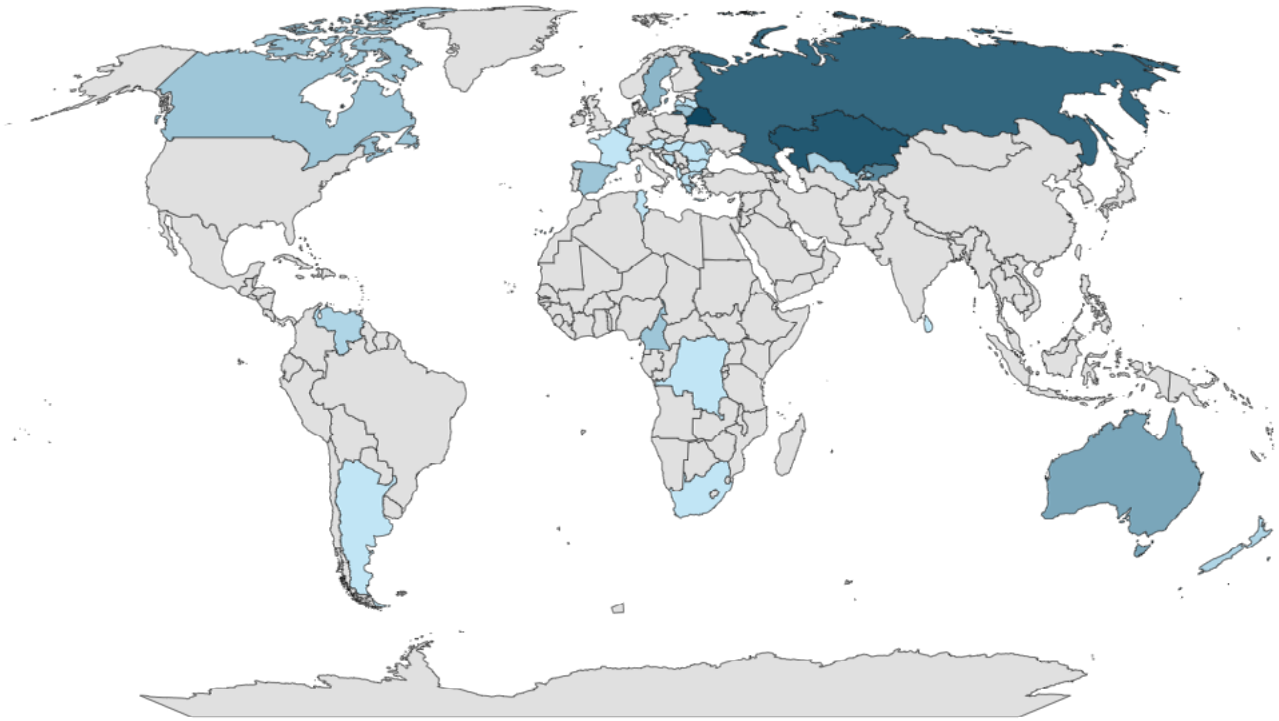
The geographical spread of the Committee's communications in 2023 shows that Belarus (11) generated the largest number of Views once again, following a similar trend as seen in the years 2022, 2021, and 2019. Even though Belarus has withdrawn from the First Optional Protocol of the International Covenant on Civil and Political Rights, effective from 8 February 2023, the communications received by the Committee up until that date will continue to be processed. The Human Rights Committee has expressed concerns about this withdrawal and the effects it would have on the victims of human rights violations.

The Views adopted against Kazakhstan (10) and Kyrgyzstan (7) also follow past trends of a high number of communications adopted, showcasing little to no deviation from previous years.

The geographical spread can be classified into three groups of States. The first group consists of Belarus and Kazakhstan, with 11 and 10 Views respectively. The second group is composed of States with 3 to 7 Views each, amounting to 8 States in total. The last group consists of the remaining 22 States with 1 or 2 Views each.

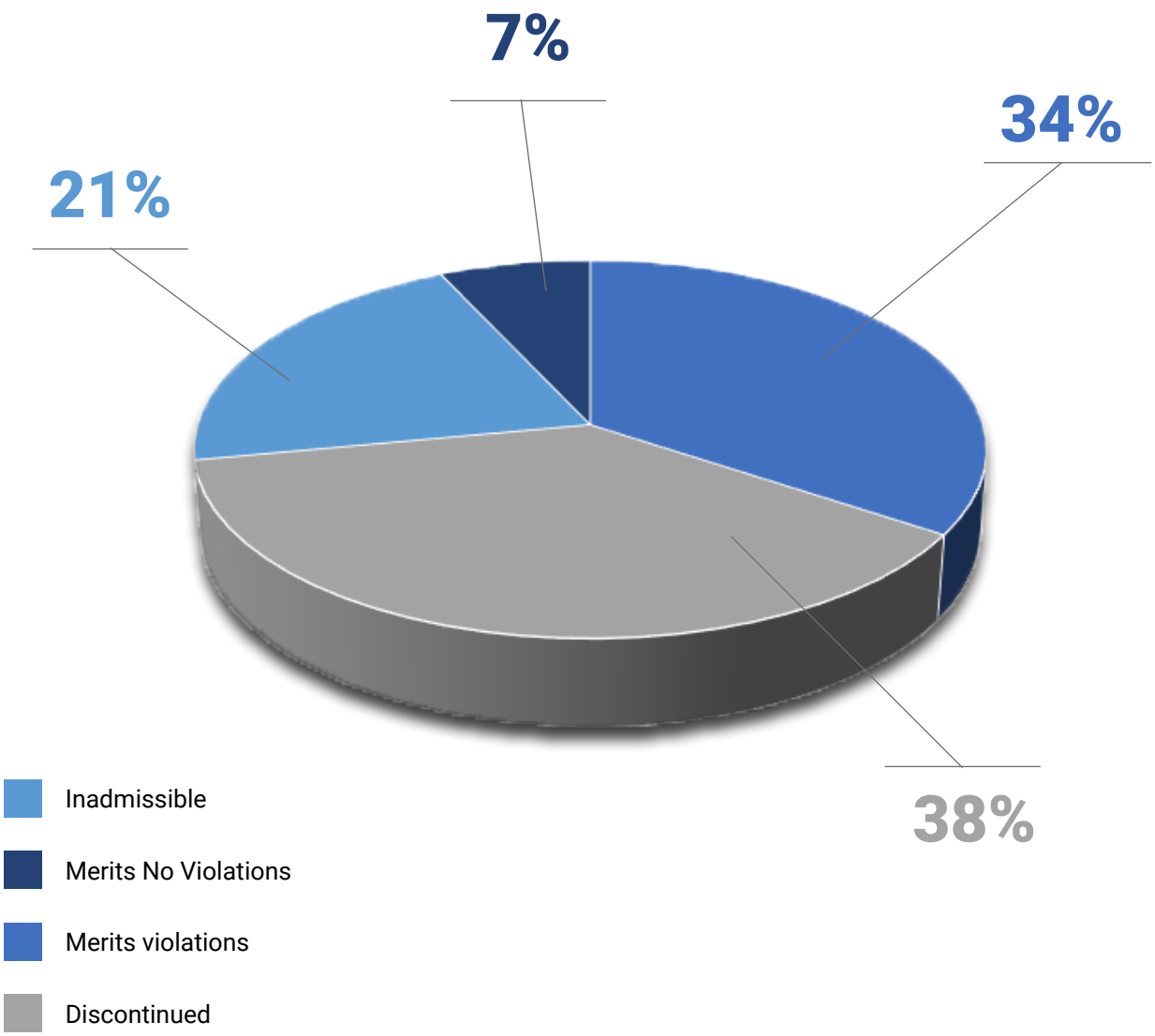
One may note the sharp disparity between the country with the maximum number of Views, that is, Belarus, and other European countries with merely 1 or 2 Views. Moreover, similar to the year 2022, only 3 Latin American States have generated Views in 2023, even though most of the States in Latin America have ratified the Optional Protocol to the Covenant.

Geographical Trends



Country	Quantity
Belarus	11
Kazakhstan	10
Russia Federation	9
Kyrgyzstan	7
Australia	5
Denmark	5
Kingdom of the Netherlands	4
Sweden	4
Cameroon	3
Canada	3
Lithuania	3
Spain	3
Democratic Republic of Congo	2
Moldova	2
New Zealand	2
Uzbekistan	2
Venezuela	2
Albania	1
Argentina	1
Austria	1
Azerbaijan	1
Belgium	1
Bolivia	1
Bosnia and Herzegovina	1
Bulgaria	1
Congo	1
France	1
Greece	1
Hungary	1
Latvia	1
Romania	1
South Africa	1
Sri Lanka	1
Tunisia	1
Grand Total	**94**

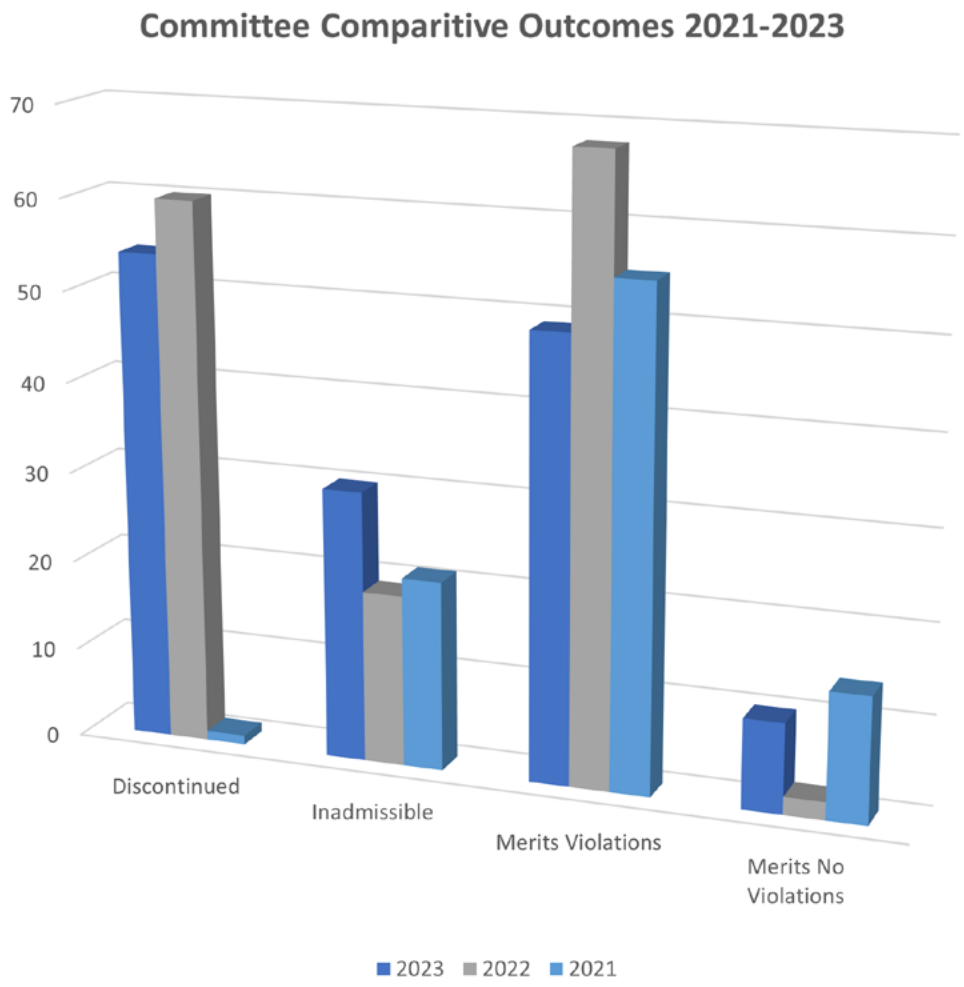
Outcomes of the Communications



Out of **143** communications received by the Committee in 2023, **54** were discontinued (38%), and out of the remaining 89 communications adopted, **49** involved the violation of the Covenant (34%). In **10** communications the Committee did not find any violation (7%). Moreover, **30** communications were declared inadmissible due to the different criteria stated in the Optional Protocol to the Covenant (21%).

Comparative Analysis of Outcomes from 2021-2023

Comparing the outcomes of communications from 2022 and 2021 with those of 2023 is crucial for understanding and identifying the trends in the jurisprudence of the Committee.

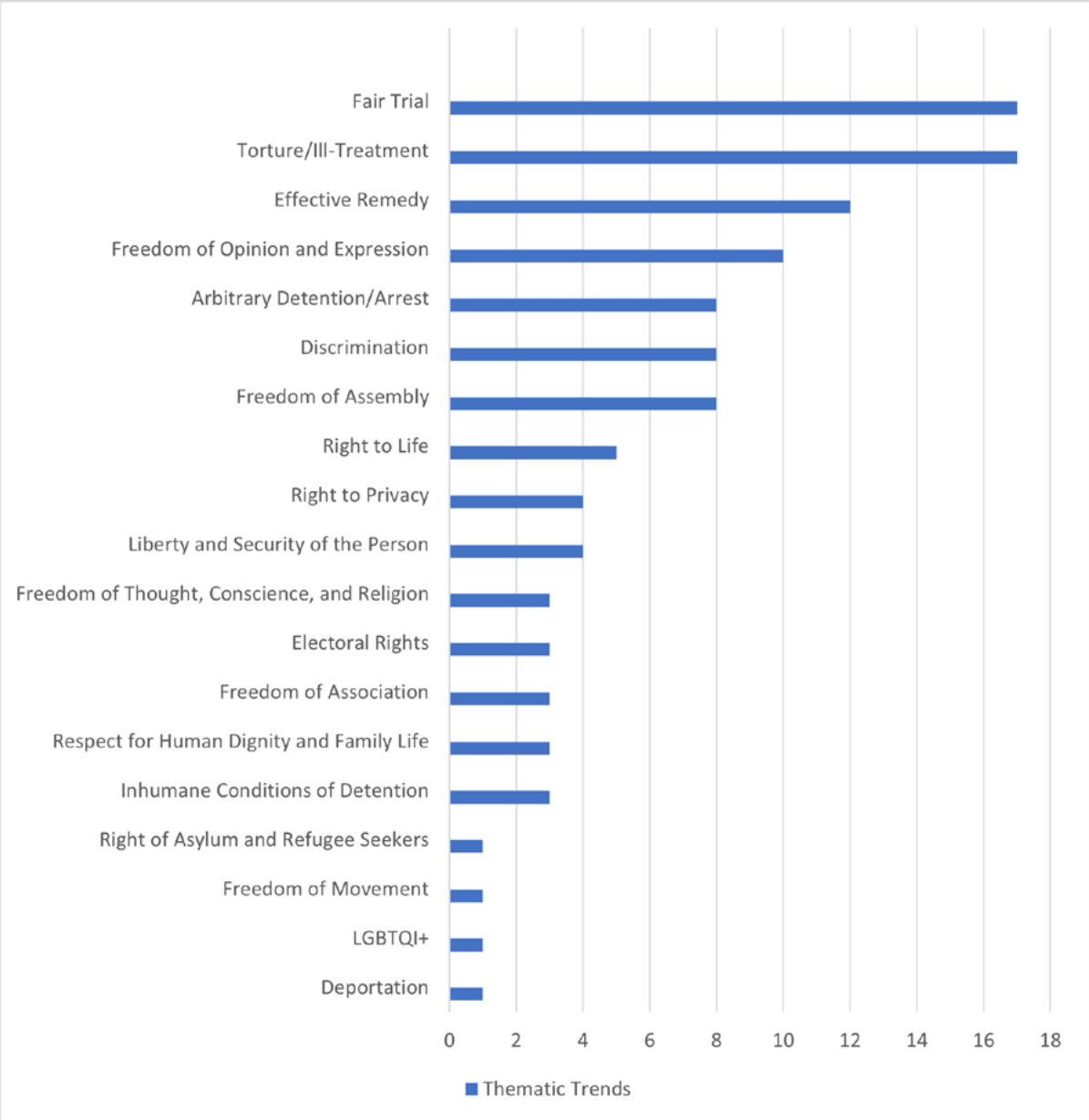


The discontinued communications have significantly increased over the three years (54 in 2023 and 60 in 2022, as opposed to just 1 in 2021). A fairly consistent pattern can be seen with respect to inadmissible communications, apart from a slight dip in 2022 (30 violations in 2023, 19 in 2022, and 21 in 2021). The merits violations have remained somewhat consistent, with a marginal spike in 2022 (68 violations in 2022, 49 in 2023, and 55 in 2021). With respect to communications resulting in no violation on merits, there has been a slight decline in the results in the year 2022 as compared to the years 2023 and 2021 (10 in 2023, 2 in 2022, and 14 in 2021).

Thematic Trends within the Violations

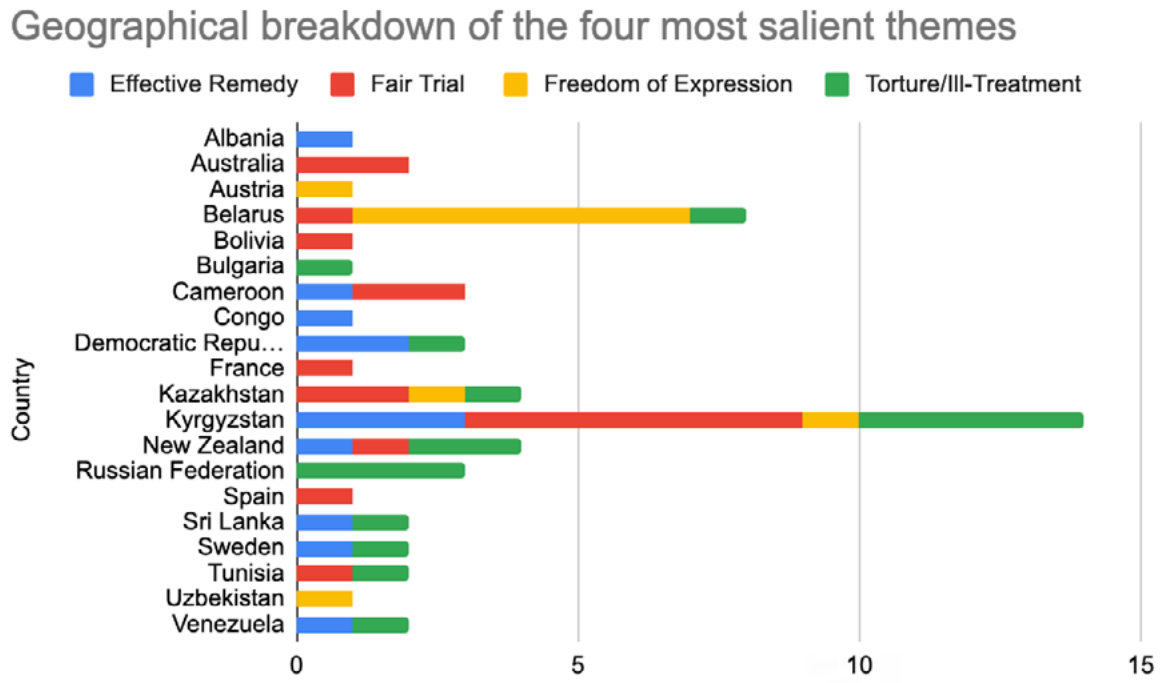
Qualitative thematic breakdown of trends identified in the Views on Individual Communications

Note: For the purposes of this research, the taglines under 'Substantive issues' in communications with findings of violations were considered. Individual communications may contain more than one theme, and this research takes into account the number of times each theme was mentioned in the 'Substantive issues' section of the reviewed communications. Moreover, some themes were merged hereby under one category for simplification purposes, for example, 'Torture' and 'Cruel and human or degrading treatment' were merged into 'Torture/ ill-treatment'.



Country-wise Quantitative Representation of the Thematic Violations

Geographical breakdown of the four most salient themes identified within the violations on the individual communications



Out of the four most salient themes, those being Effective Remedy, Fair Trial, Freedom of Expression, and Torture/Ill-Treatment, this chart shows the geographical distribution. It can be drawn that most cases on Freedom of Expression concerned Belarus, or that most cases on Fair Trial and on Torture concerned Kyrgyzstan.

Top Salient Themes

Out of the 49 individual communications adopted by the Committee with a finding of violation, 17 involved cases on the **right to fair trial** (34.69%) provided under article 14 of the Covenant. There were also 17 cases on **torture** (also 34.69%) provided under article 7. In the year 2022, torture and ill-treatment of individuals was already a salient theme since it was placed the third of the list.

The countries with the highest number of violations under these two themes were Kyrgyzstan (4 cases on torture and 6 cases on fair trial), followed by the Russian Federation (3 cases on torture). In the case of Kyrgyzstan, these trends can be seen due to extremely narrow and restricted legislative and investigative freedoms given to the parliament and anti-democratic activities of the authorities.[1] With respect to the Russian Federation, issues of compromised oversight and

1 Human Rights Watch, 'Kyrgyzstan: Events of 2022', World Report 2023 (2023) <https://www.hrw.org/world-report/2023/country-chapters/kyrgyzstan> accessed 27 May 2024.

investigative mechanisms have led to increased cases of torture and other coercive practices, a notable case being that of the torture and subsequent death of Anatoly Berezikov in 2023.[2]

The third most salient theme in 2023 concerned the right to an **effective remedy**, provided in article 2 (3) of the Covenant, and taking up 12 communications (24.48%). Kyrgyzstan (3) was the country with the largest number of communications on this theme, followed by the Democratic Republic of Congo (2).

The fourth most common theme, featured in 10 communications (20.40%), dealt with **freedom of opinion and expression** enshrined under article 19 of the Covenant. Belarus (6) was the country with the most violations found belonging to this category, followed by several other countries with 1 communication each. According to the report of the Special Rapporteur on the situation of human rights in Belarus, there is a systemic violation of these rights owing to overly broad State control on ideological narratives and repressive disciplinary measures.[3]

Other Emblematic Themes

LGBTQI+ Rights

An important discussion that the Committee took this year was while deciding the case on the issue of the LGBTQI+ community, especially in a communication involving the right to family life of a same-sex couple in Albania.

The Committee addressed this theme in one communication, namely V.W.G. and E.H. v. Albania (CCPR/C/138/D/3031/2017). The Committee deemed the communication inadmissible, citing the authors' failure to exhaust domestic remedies and held that such remedies would be ineffective due to the need for legislative change. This decision sparked dissent within the Committee, where several members highlighted that the existing legal framework violates their rights under articles 17 and 23 concerning family and private life, compounded by issues of non-discrimination under article 26. This internal division underscores the contentious nature of legal recognition for same-sex relationships and the broader implications for human rights and non-discrimination standards globally.

Rights of Indigenous Peoples

Another significant communication adopted by the Committee dealt with the right to a fair trial of the indigenous peoples in Australia, in particular the consideration of legal claims relating to their native lands.

In the case of Members of the Wunna Nyiyaparli indigenous people v. Australia (CCPR/C/137/D/3585/2019), the Committee found significant procedural violations in the handling of their native title claim under article 27 of the Covenant. It was recommended that the State reassess the native title claim with substantial participation from the Wunna Nyiyaparli and revise mining concessions. The decision emphasizes the need for active involvement of indigenous peoples in legal decisions impacting their cultural and ancestral lands.

2 HRC, Report of the Special Rapporteur Mariana Katzarova on the 'Situation of human rights in the Russian Federation', (15 September 2023), A/HRC/54/54 <https://www.ohchr.org/en/documents/country-reports/ahrc5454-situation-human-rights-russian-federation-report-special> accessed on 27 May 2024.

3 HRC, Report of the Special Rapporteur Anaïs Marin on the 'Situation of human rights in Belarus', (03 May 2023), A/HRC/ 53/53 <https://www.ohchr.org/en/documents/country-reports/ahrc5353-report-special-rapporteur-situation-human-rights-belarus-anais> accessed 27 May 2024.

Electoral Rights

Two out of all the Views adopted by the Committee in 2023 dealt with the issue of electoral rights, concerning Spain and the Democratic Republic of Congo. This adds to the Committee's jurisprudence on the electoral rights of high-profile individuals, like that of L.I. Lula da Silva v. Brazil in 2022.

In the case of Carles Puigdemont i Casamajó v. Spain (CCPR/C/137/D/3165/2018), the President of the regional Government of Catalonia argued that Spain violated his rights under article 25 of the Covenant. After leading Catalonia's 2017 independence referendum, which was ruled unconstitutional, Puigdemont was charged with serious offenses and went into exile. Despite being re-elected, legal restrictions prevented him from resuming his presidential role, infringing his rights to political participation and expression as specified in articles 21, 22, and 25 of the Covenant. The Committee deemed his suspension from the Catalan Parliament, before any conviction and without proportional assessment, as a violation of these rights, recommending Spain provide remedies and prevent future such violations.

In the case of Moïse Katumbi v. Democratic Republic of Congo (CCPR/C/137/D/2990/2017), a Presidential candidate from the Democratic Republic of Congo, the Committee found violations of articles 14 and 25 owing to multiple forms of persecutions faced by Katumbi. The Committee ruled that these disruptions were deliberate barriers to his candidacy, urging the DRC to compensate him.

Research by:

Poorna Poovamma KM

Medha Patil

03 - FOLLOW-UP PROGRESS REPORT ON INDIVIDUAL COMMUNICATIONS

At its 137th (March 2023) and 139th sessions (October 2023), the Committee assessed the follow-up information received with regard to fourteen Views.

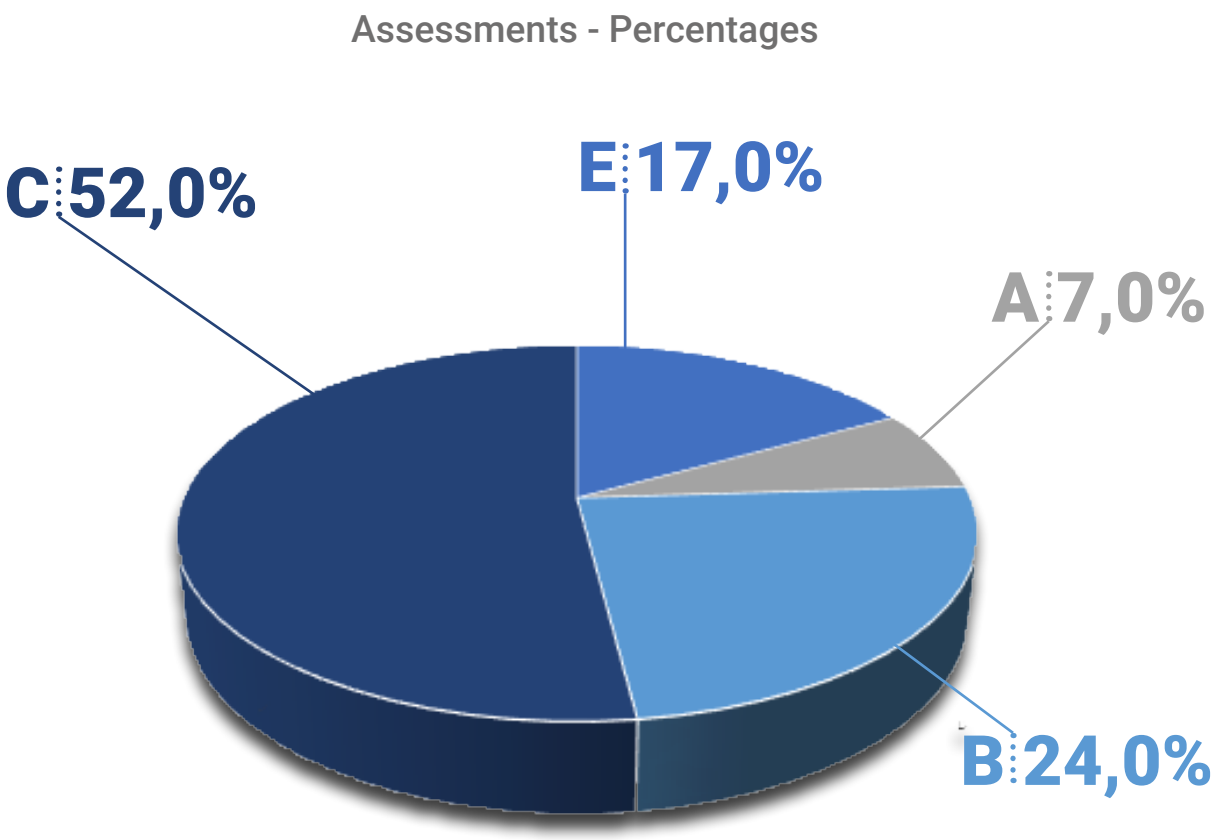
Figures

1. Assessments for each State party

State party	Committee's assessments	Average of assessments (A=5; E=1)
Angola	B; A; B	4.3
Colombia	C; C; B	3.3
Czechia	E; E	1
Kazakhstan	B/C; C; B; C	3.25
Kyrgyzstan 1	C; C	3
Kyrgyzstan 2	E; C; C;	2.33
Total Kyrgyzstan	C; C; E; C; C	2.65
Lithuania 1	B; B	4
Lithuania 2	A; A	5
Total Lithuania	B; B; A; A	4.5
Paraguay	B; B; C; C	3.5
Spain	C; C; E	2.3
Tajikistan	C; C; C; C	3
Turkmenistan	C; C; C; C; C	3
Ukraine	C; B; C; B	3.5
Uzbekistan	E; E; E; E	1

The State parties with the **best** assessments in 2023 were Lithuania (4.5/5), Angola (4.3/5), and Ukraine/Paraguay (3.5). The State parties with the **worst** assessments were Czechia (1/5), Uzbekistan (1/5), and Spain (2.3/5). During the Committee's assessments of follow-up information during the 2022 sessions, Czechia also received one of the worst assessments (1/5), and Lithuania again received the best assessment (4.5/5). Countries with scores that **improved** during the 2023 sessions from the 2022 sessions include Colombia, Tajikistan, and Lithuania. There were no countries with scores that **worsened** during the 2023 sessions from the 2022 sessions. Eight countries that had follow-up communications assessed during the 2023 sessions did not have follow-up communications assessed during the 2022 sessions.

2. 2. Assessments - Percentage of Each Grade



Progress on a total of 45 recommendations was reviewed during the 2023 follow-up procedures. As shown, **most** of the States' replies concerning the Committee's recommendations (24/45), were awarded a C grade (Reply/action not satisfactory), for a total of 52%, followed by grade B (11/45) in 24% of the cases. The grade D (no cooperation with the Committee) is the **least** awarded grade, appearing in 0% of the cases.

3. Assessments by recommendation type

Recommendations made by the Committee in 2023 can be broken down into the following categories: (1) investigate claims, review claims, or initiate proceedings; prosecute those responsible; and/or punish those responsible; (2) non-repetition; (3) quash verdict, expunge criminal records, provide author opportunity to file new claim, or revise prohibition of author's right to be candidate; (4) provide compensation or reparations; (5) provide medical care or disability assistance; (6) repair environmental damage; (7) refrain from expelling author; (8) review state party's legislation/administrative practices. With regard to the recommendation to provide compensation or reparations, 82% of the time (9/11) the grade given was a C.

Recommendation Category	A	B	C	D	E	Total
Investigate, prosecute, punish	0	4	6	0	2	12*
Non-repetition	1	4	5	0	2	12
Provide compensation or reparations	0	1	9	0	1	11
Quash verdict, expunge, allow new claim, revise legal prohibition	1	0	3	0	2	6
Provide medical care/disability assistance	0	1	0	0	0	1
Repair environmental damage	0	0	1	0	0	1
Refrain from expelling author	1	0	0	0	0	1
Review State legislation or practices	0	0	0	0	1	1
Total	**3**	**10**	**24**	**0**	**8**	**45***

* One recommendation was awarded a B/C. This is one recommendation but has been included in both the B and C categories, which accounts for the discrepancy in the total recommendations to investigate, prosecute or punish.

4. Comparison with previous year

In 2023, the Committee graded 14 communications, so the same as in 2022. Once again, the most frequent grade was C (not satisfactory), awarded in 52% of the cases. There has been an increase though, given that last year it was awarded in 37,5% of the cases.

Moreover, there was an increase in A (satisfactory) grades, from just 2,5% of the cases last year to 7% in 2023. The B (partially satisfactory) grades also increased, from 17,5% of the cases last year to 24% in 2023. Lastly, there was a decrease in the E (contrary measures) grades, from 35% o to just 17% in 2023.

137th Session

1. Angola, Communication No. 3106/2018-3122/2018, *A.G. et al.* (21 July 2020)

Subject matter: Deportation to Türkiye

Follow-up information received: The case is about followers of Fethullah Gülen, who taught in Angola from 2011 to 2016 at *Colégio Esperança Internacional*. Following the 2016 coup attempt in Türkiye, the Turkish government pressured Angola to close Gülen-affiliated schools and expel Turkish nationals. On October 3, 2016, Angola's President ordered the school's closure and the expulsion of its Turkish staff without notifying them or the United Nations High Commissioner for Refugees (UNHCR). On February 10, 2017, the school was forcibly closed, and the teachers were given five days to leave. Despite receiving UNHCR protection letters, they faced ongoing pressure to leave. Angola's delayed implementation of Law No. 10/15 has left asylum seekers without essential services and documentation, increasing their risk of refoulement. The Committee found that Angola failed to provide effective remedies for the authors to contest their expulsion and did not assess the individual risks they faced, violating articles 7 and 13 of the Covenant. The authors, fearing unfair trials and mistreatment if returned to Türkiye due to their Gülen movement association, were not given reasons or time to seek remedies or appeal. The Committee concluded that deporting them without proper risk assessment violated their rights. Angola must review their cases, refrain from expelling them until asylum requests are considered, and implement fair asylum procedures. Deadline: 21 January 2021.

In the follow-up procedure, the State party acknowledges the Committee's Views and explains that on March 21, 2017, the Criminal Chamber of Luanda sentenced I.G.K., a Turkish national, to 15 years in prison for terrorism-related crimes. This led to the closure of *Colégio Esperança Internacional* and the expulsion of 17 teachers and their families. Angola allowed the authors to seek protection from UNHCR, and they have appealed against their expulsion. The State party decided not to expel them due to the risks they would face if returned to Türkiye. Some authors have left Angola voluntarily, while others remain and are integrating. The National Refugee Council is reviewing their asylum applications. The authors refute claims about I.G.K. owning the school and note his Supreme Court acquittal in November 2017. They face ongoing issues without passports and appreciate Angola's respect for non-refoulement obligations. They hope for refugee status to continue their work in Angola. Nine families remain in Angola, and seven families have left.

Committee's assessment:

a) Proceeding to a review of the authors' cases: B;
b) Refraining from expelling the authors and their families until their request for asylum is properly considered: A;
c) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing concerning the authors of nine communications who continue to reside in Angola and are awaiting a decision on their asylum applications.

2. Czechia, Communication No. 757/1997, *Pezoldova*
(25 October 2002)

Subject matter: Confiscation of property; discrimination

Follow-up information received: The case involves State confiscation of property owned by the author's family before the Second World War without compensation, which the Committee determined violated the author's rights under article 26 in conjunction with article 2 by denying her access to an effective remedy in a discriminatory manner. The State party submitted that the Committee's assessment of the implementation of the Views was brought to the attention of the national committee responsible for implementation. The Views were translated into Czech and published on the website of the Ministry of Justice.

The author reported that the State party has failed to explain why, 20 years after the adoption of the Committee's Views, it had failed to take any steps towards its implementation and has failed to set up any procedures. The State party had previously justified its failure to implement the Views based on a lack of political will, which the author submits cannot justify ongoing violations. Moreover, the State party failed to review its legislative or administrative practices, so its political will has never been put to the test. The author is not aware of any steps that are being taken on the matter of potential *ex gratia* compensation. The author had initiated court proceedings seeking implementation of the Committee's recommendations without success.

Committee's assessment:

a) Providing the author with an opportunity to file a new claim for restitution or compensation: E;
b) Reviewing the State party's legislation and administrative practices: E.

Committee's decision: Follow-up dialogue ongoing. The Committee will also continue the follow-up dialogue with the State party in the framework of the State party's periodic reporting to the Committee on the measures adopted to give effect to the rights recognized in the Covenant.

3. Kyrgyzstan, Communication No. 2500/2014; *Eliseev*
(21 October 2020)

Subject matter: Author's trial *in absentia* and other procedural violations

Follow-up information received: In 2021, the Committee found that the State party had violated the author's rights under articles 14 (1) and (3) by holding criminal trials against the author without making efforts to inform him of the charges or requesting his presence at the trials, and stated that the State party was obligated to provide adequate compensation. The State reiterated its earlier arguments that were made at the merits stage of the communication. Further, the State party explained that compensation for damages must be determined through court proceedings, which entail specific procedures and standards.

The author indicated that the State party had not taken any action to restore his violated rights or provide an effective remedy, such as reparation. The Views had not been published or disseminated by the State party. The State party had not taken any steps to prevent similar violations from occurring, such as prosecuting those responsible for the violation of the author's rights. The author requested that steps be taken to enforce the State party's obligations under the Views and sought

measures of reparation. The author expressed disapproval that the State party had amended its Constitution and removed its constitutional obligation to provide reparations when the Committee finds a violation of rights guaranteed by the Covenant, and expressed his belief that this change was made in order to not comply with the Views in the present communication.

Committee's assessment:

a) Providing adequate compensation: C;
b) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing. The Committee will request a meeting with a representative of the State party during one of the future sessions of the Committee.

4. Lithuania, Communication No. 2670/2015, *Jagminas*
(24 July 2019)

Subject matter: Arbitrary dismissal of civil servant

Follow-up information received: The case is about Gintaras Jagminas, a Lithuanian national dismissed from his civil service position due to revoked authorization for handling confidential information, a decision initially unexplained. His dismissal was contested in Lithuanian courts, with varied rulings, ultimately revealing he was under surveillance for suspected criminal activity. Jagminas argued this violated his rights regarding fair trial and access to public service. His counsel asserted that the State party has consistently disregarded the binding nature of the Committee's Views, citing statements from State officials and a refusal to compensate the author. Despite the Supreme Administrative Court's decision not to reopen the author's case, the counsel highlighted the lack of explanation for dismissing the case and the failure to reassess classified data. The counsel requested specific compensation for the author and urged measures to address the State party's refusal to acknowledge the Committee's Views. The Committee found that the State party violated the author's right to equal public service access by allowing arbitrary secret surveillance and unjustified removal of officials.

The State party noted that it enacted legislation to prevent misuse of criminal investigations against civil servants and has fulfilled its obligations. While the Supreme Administrative Court did not reopen the case due to existing laws, it directed the author to seek compensation through the Ministry of Justice. As of the latest submission, the author had not pursued compensation. The counsel reiterated the State party's denial of the binding nature of the Committee's Views and submitted the desired reparations list, adjusting the bitcoin amount.

Committee's assessment:

a) Full reparation and adequate compensation: B;
b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

5. Spain, Communication No. 2844/2016, *Garzón*
(13 July 2021)

Subject matter: Prosecution of a judge for willful abuse of power

Follow-up information received: The case is about a Spanish national and former judge, investigated in relation to politically significant cases involving Francisco Franco's dictatorship and Partido Popular's corruption. He claimed he faced persecution and biased legal repercussions, with tribunals denying him a fair trial, excluding crucial defense evidence, and offering no appeal. He argued his trial deviated from Supreme Court precedent, his suspension violated his rights, and he was denied an effective remedy.

The State party noted that the author has not sought to expunge his criminal record or requested compensation. The Committee acknowledged the author's correct interpretation of procedural legislation on intercepting lawyer-client communications. The European Court of Human Rights considers prosecution by the highest judicial authority as a fair trial guarantee, so the State party believed no further action is needed. It requested the closure of the follow-up procedure for this case. The author's counsel refuted this, stating requests were made to the Ministry of Justice, and criticized the State's reliance on legislation, arguing it doesn't adequately address the violation. The counsel urged for broader dissemination of the Views and condemned the State's lack of action in implementing them.

Committee's assessment:

a) Expunging the author's criminal records: C;
b) Providing adequate compensation: C;
c) Non-repetition: E.

Committee's decision: Follow-up dialogue ongoing. The Committee will continue the follow-up dialogue with the State party in the framework of the State party's periodic reporting to the Committee on the measures adopted to give effect to the rights recognized in the Covenant.

6. Turkmenistan, Communication No. 2227/2012, *Yegendurdyyew*
(14 July 2016)

Subject matter: Conscientious objection to compulsory military service; inhuman and degrading treatment; conditions of detention

Follow-up information received: In 2016, the Committee found that the State party violated article 7 (prohibition against torture); article 10 (1) (right to be treated with humanity and respect for dignity); and article 18 (1) (right to freedom of thought, conscience, and religion) resulting from the author's arrest and detention after he conscientiously objected to mandatory military service based on his religious beliefs as a Jehovah's witness. The State party recalled that military service is compulsory for male citizens of Turkmenistan and that the law does not provide for an exemption based on religious beliefs or any alternative civilian service. The State party continued to refute the author's claims regarding poor detention conditions, the allegation that he shared a cell with a convict with an active form of tuberculosis, and his claim that he was subjected to torture or any other form of ill-treatment.

The author's counsel submitted that the State party had not implemented any of the recommendations. Since the decision, at least 32 more Jehovah's Witnesses had been convicted

and imprisoned for their conscientious objection. Sixteen of these individuals have since been granted presidential amnesty, but their criminal records were not expunged and the threat of repeat prosecution still exists for those who had been called up and prosecuted only once. Although no criminal proceedings have been initiated against any other Jehovah's Witnesses since the presidential amnesty, the State party has not amended its legislation to bring it into line with its obligation under the Covenant despite the Committee's repeated requests. Therefore, each male citizen of Turkmenistan of military service age who wants to exercise his right to conscientious objection to military service remains at risk.

Committee's assessment:

a) Investigating the author's claims of violations of article 7: C;
b) Prosecuting persons responsible for committing those violations: C;
c) Expunging the author's criminal record: C;
d) Providing him with adequate compensation: C;
e) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

7. Ukraine, Communication No. 2368/2014, *Taran*
(12 March 2020)

Subject matter: Unlawful detention, torture and mistreatment

Follow-up information received: The case is about the detention and torture of the author by the Ukrainian police, resulting in severe injuries and a forced confession, which he retracted when he saw his lawyer. Despite this, his coerced confession was used in court. He faced inadequate time to prepare his defense and was absent during his appeal. The Committee found violations of the Covenant, including torture, arbitrary detention, and lack of fair trial rights. They recommended quashing his conviction, potentially retrying him fairly, investigating the torture claims, providing compensation, and preventing future violations.

The State party asserted that the Committee's Views were translated into Ukrainian, published and sent to relevant authorities. It mentioned ongoing legal proceedings related to the author's case and outlined measures taken to prevent similar violations, including the establishment of investigative bodies and legal reforms. The author's counsel disputed the State's claims, stating they haven't received the Views or been contacted about their implementation by the State. They argued that ongoing legal proceedings are unrelated to the Views and the authorities had taken no action to implement the recommendations. They also mentioned the author's voluntary participation in defending Ukraine amid the conflict with Russia.

Committee's assessment:

a) Quash the author's conviction and, if necessary, conduct a new trial: C;
b) Conduct a thorough, prompt and impartial investigation into the author's
c) allegations of torture: B;
d) Provide adequate compensation and other measures of satisfaction: C;
e) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

8. Uzbekistan, Communication No. 2577/2015, *Yakubova*
(6 April 2018)

Subject matter: Arbitrary detention; torture; unfair trial of a human rights activist

Follow-up information received: In 2014, the Committee found that the State party had violated: (a) article 7, alone and in conjunction with article 2 (3), relating to torture and a State's duty to provide an effective remedy, because the State failed to investigate and adequately refute the author's allegations relating to torture; (b) articles 9 (1) and 19, relating to arbitrary arrest and freedom of expression, because the State failed to rebut the author's claim that he was arrested because of his human rights activities; and (c) article 14, based on several fair trial allegations. In its follow-up, the State party expressed its disagreement with the Committee's findings in its Views. It claimed that its domestic authorities had thoroughly examined the arguments set forth in the Views, but were unable to corroborate the alleged violations. The State party continued to argue that the Committee should change its Views to find that the author's rights had not been violated and/or find his claims inadmissible.

The author's counsel pointed out that the State's response reiterates arguments that were already rejected by the Committee at the merits stage of the communication and failed to address the author's specific allegations. Although the author had been released from prison on 3 October 2017, the State party was still required to comply with the Committee's Views. The State party has not initiated any investigation into the author's allegations of torture. The author has requested that the trial court verdicts be quashed five times and all requests have been refused. Neither the author nor his wife have been provided with any compensation. The State party is currently drawing up a new Criminal Code, but the suggested legislative amendments do not significantly change any of the laws that the Committee or other treaty bodies have identified as violating international human rights law.

Committee's assessment:

a) Conducting an investigation and prosecuting those responsible: E;
b) Quashing the trial court verdicts: E;
c) Providing adequate compensation: E;
d) Non-repetition: E.

Committee's decision: Follow-up dialogue ongoing.

139th Session

1. Colombia, Communication No. 2134/2012, *Molina Arias et al.*
(9 July 2015)

Subject matter: Enforced disappearance by paramilitary groups

Follow-up information received: Colombian nationals claimed their relatives were victims of enforced disappearances linked to paramilitary actions, with authorities failing to investigate properly. The Committee found Colombia violated articles 6, 7, 9, 16, and 2 (3) of the Covenant by not providing thorough investigations or effective remedies. The State must investigate, prosecute those responsible, compensate the families, and prevent future violations.

The State party has been working to strengthen its institutional mechanisms to address and locate victims of enforced disappearances and their families. Legislation such as Law 1408 of 2010 and Law 589 of 2009 has been enacted to aid in the search and identification of disappeared persons, while also supporting their families with resources for funeral expenses and psychosocial care. Nonetheless, there are criticisms regarding the implementation and effectiveness of the measures. The State has incorporated tools to enhance the search for missing persons and has acknowledged international commitments by creating units like the Missing Persons Search Unit (*UBPD* for its acronym in Spanish) to improve outcomes in locating missing individuals. However, ongoing disputes regarding compensation and the effectiveness of the legislative measures suggest a gap between policy intentions and real-world impact on preventing and addressing enforced disappearances in Colombia.

Committee's assessment:

a) Performing an investigation, prosecuting and punishing those responsible: C;
b) The release of Mr. Anzola and Mr. Molina should they still be alive: N/A;
c) The handover of Mr. Anzola and Mr. Molina's remains, if dead: N/A;
d) The effective reparation: C;
e) Non-repetition and ensuring that any enforced disappearances give rise to a prompt, impartial and effective investigation: B.

Committee's decision: Follow-up dialogue ongoing.

2. Kazakhstan, Communication No. 2146/2012, *Suleimenov*
(21 March 2017)

Subject matter: Torture and ill-treatment of the author in detention

Follow-up information received: The Committee found that the State party violated articles 7 (prohibition against torture), alone and in conjunction with article 2 (3), and article 10 (1) (treatment with humanity and respect for dignity) in relation to the author's allegations of torture, the State party's failure to investigate and inability to refute the allegations, and the State party's failure to meet certain minimum standard of detention based on the author's disability. The State asserted

that a criminal case regarding the author's allegation of torture was reopened and transferred to a new office for further investigation. The State party submitted that only courts have the competency to provide the author with compensation. To date, the author's claims have been denied, but he has the opportunity for further review. The State party claimed that any required medical services and assistance have been offered to the author, that at times he has declined them, and that he receives a disability allowance. The State party is working to amend practices and the law.

In response, the author stated that the State party had closed the investigation into his torture allegations with no results and no punishment of any perpetrators. Moreover, the author's claims for compensation were rejected on the grounds that he could not confirm his torture allegations by evidence, and the Prosecutor's Office could have intervened and challenged the decision. The State party has not made the process to give testimony accessible to persons with disabilities and has rejected numerous requests made by the author, including requests for an electric wheelchair, an allowance, and assistance receiving aid offered to him by NGOs. The State party is failing to adequately address torture complaints made by others.

Committee's assessment:

a) Conducting a prompt and impartial investigation into the authors' allegations of torture and ill-treatment: C;
b) Providing the author with adequate compensation: C;
c) Providing the author with appropriate medical care and assistance considering his disability and medical condition: B;
d) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

3. Kyrgyzstan, Communication No. 2405/2014, *Yuldashev*
(29 October 2020)

Subject matter: Torture; arbitrary detention

Follow-up information received: The Committee found that the State party violated articles 7 (prohibition against torture), alone and in conjunction with article 2 (3) (providing an effective remedy), and article 9 (1) (arbitrary arrest) in relation to the author's allegations of torture, the State party's failure to investigate and inability to refute the allegations, and the State party's failure to give a plausible explanation concerning the circumstances of his arrest. The State party continued to contest the author's torture allegations and claimed that, if they are confirmed, any compensation for damage would be determined by the courts. The State party did conduct an unannounced inspection of the temporary detention center of Osh city, but no torture complaints were received from the accused. The State party concludes that the author's allegations are attempts to avoid criminal liability for the commission of violent crimes. The author pointed out that the State party failed to state whether an investigation into the author's allegations was conducted, what the findings were, and in what way were the Views published and disseminated in the official language of the State party. The author's attempts to enforce the Views at the national level have been unsuccessful. This is consistent with the State party's failure to enforce Views in other cases involving interethnic clashes.

Committee's assessment:

a) Conducting a prompt and impartial investigation into the author's allegations of torture, and have those responsible prosecuted and adequately punished: E;
b) Providing the author with adequate compensation: C;
c) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

4. Lithuania, Communication No. 2155/2012, *Paksas*
(25 March 2014)

Subject matter: Restrictions to the right to participate in public life

Follow-up information received: In the case, the author was elected President of Lithuania. He granted citizenship to Russian businessman Jurij Borisov, leading to accusations from Parliament that he did so in exchange for campaign support. Other charges included leaking investigation details to Borisov and improperly influencing a private company. On 31 March 2004, the Constitutional Court found he had breached the Constitution, and he was impeached on 6 April 2004. Parliament then barred him from holding office. The European Court of Human Rights ruled in 2011 that this lifetime ban was disproportionate. The Committee agreed, finding the ban violated the author's rights under article 25 of the Covenant, and recommended revising the prohibition and preventing similar future violations.

In March 2012, the Lithuanian Parliament attempted to amend the Seimas Elections Act to lift a permanent ban on the participation of former President Rolandas Paksas in parliamentary elections, following a judgment by the European Court of Human Rights. However, the Constitutional Court found the amendment unconstitutional in September 2012. Subsequently, in response to the Committee's Views, an *ad hoc* Investigation Commission was formed in May 2014 to explore the reasons behind the failure to implement these Views, concluding its findings in September 2014. The Constitutional Court in December 2016 reiterated the need to amend the Constitution to restore civil and political rights to Paksas, yet a draft law intended to amend these rights failed to pass in June 2018. The ongoing efforts, including a draft law rejected in September 2019 and further legislative attempts up to 2021, underscore the challenges and legislative processes involved in aligning national law with international human rights obligations, despite repeated efforts to amend the Constitution and ensure compliance with the European Convention and the Committee's directives.

Committee's assessment:

a) Revision of the lifelong prohibition of the author's right to be a candidate in presidential elections or to be a prime minister or minister: A;
b) Non-repetition: A.

Committee's decision: Close the follow-up dialogue with the State party, with a note of satisfactory implementation of the Committee's Views.

5. Paraguay, Communication No. 2552/2015, *Oliveira Pereira et al.*
(22 September 2022)

Subject matter: Crop fumigation with agrochemicals and its effects on an indigenous community

Follow-up information received: The case is about the Campo Agua'ẽ indigenous community in Paraguay, part of the Ava Guarani people, who faced severe environmental and health issues due to illegal fumigation with toxic agrochemicals by neighboring farms. Despite legal recognition of their territory and repeated complaints since 2009, the State failed to enforce laws or provide effective remedies, leading to contamination of their land, water, and resources. The Committee found Paraguay in violation of articles 17 and 27 of the Covenant for failing to protect the community's home and culture and article 2 (3) for lack of effective judicial remedies, urging investigation, prosecution, compensation, and preventive measures.

Before the Committee's Views were adopted, the State party initiated inspections and interventions in 2019 at agricultural and livestock operations. These inspections revealed environmental non-compliance, prompting the Human Rights Directorate of the Public Prosecutor's Office to recommend a new criminal case, while administrative sanctions were levied against the company for violating environmental laws. Moreover, health protection measures like medical consultations and vaccination campaigns were implemented for the community in 2022, along with discussions on compensation. The State party also engaged in activities aimed at preventing future violations, such as agreements with the National Forestry Institute and the development of the III Plan of Action of the Human Rights Network. Despite these measures, the author's counsel criticized the effectiveness and sufficiency of these actions, noting a lack of progress in fundamental reparations and a disconnect between State actions and community involvement.

Committee's assessment:

a) Conducting an effective and exhaustive investigation of the facts, keeping the authors appropriately informed: B;

b) Initiating criminal and administrative proceedings against the alleged perpetrators and, if they are found guilty, imposing appropriate penalties: B;

c) Making full reparation to the authors and other members of the community for the harm caused, including compensation and reimbursement of legal costs: C;

d) Taking all necessary measures, in close consultation with the community, to repair the environmental damage: C (no contacts with members of the community).

Committee's decision: Follow-up dialogue ongoing.

6. Tajikistan, Communication No. 2707/2015, *Kulieva*
(10 March 2020)

Subject matter: Torture and death of the author's son in police custody

Follow-up information received: The Committee found that the State party violated the rights of the author's son, Mr. Bobokalanov, with regard to the right to life, the prohibition against torture, and the obligation to provide an effective remedy, and the author's rights regarding inhuman treatment and the obligation to provide an effective remedy, after it failed to investigate and rebut the author's claims regarding the torture of her son and circumstances of his death in detention.

The State party submitted that it had instituted criminal proceedings and carried out a forensic medical examination which showed that Mr. Bobokalonov died of heart failure due to a pre-existing heart condition. It claimed that a comprehensive, complete, and objective investigation showed that Mr. Bobokalonov was not subjected to torture or ill-treatment and had a non-violent death. The criminal proceedings were discontinued for lack of *corpus delicti*. The State party claimed there were no grounds for reopening the case.

The author sought to reopen the investigation into the torture of Mr. Bobokalonov, but received no response. The author sought judicial review, but all requests were denied. She also filed a lawsuit against several State party government bodies seeking damages for the ineffective investigation into the torture claims, but the court denied the claim for lack of substantiation. Then, in September 2022, the author was killed by unknown perpetrators in her apartment in Dushanbe. Her counsel has lost the authority to submit further applications or appeals on her behalf and asked the Committee to close the follow-up dialogue with the State party.

Committee's assessment:

a) Conducting an investigation, and prosecuting and punishing the perpetrators: C;
b) Keeping the author informed about the progress of the investigation: C;
c) Providing the author with adequate compensation: C;
d) Non-repetition: C.

Committee's decision: Close the follow-up dialogue with the State party (due to the author's death), with a note of unsatisfactory implementation of the Committee's Views.

Research by:

Laura Pauline Shaw

Diego Enrique Uribe Bustamante

04 - JURISPRUDENCE OF THE HUMAN RIGHTS COMMITTEE IN 2023

Eight of the 2023 cases were highlighted as the most significant and thus include a longer summary and an explanation of their relevance for the Committee's jurisprudence. Such cases are the following:

Arthur William Taylor, Sandra Hinemanu Ngaronoa and Sandra Wilde v. New Zealand; Carles Puigdemont i Casamajó v.Spain; Moïse Katumbi v. Democratic Republic of Congo; Omaira del Carmen Ramírez v. Venezuela; Mangouras v. Spain; The members of the Wunna Nyiyaparli indigenous people v. Australia; Viktar Babaryka v. Belarus; and V.W.G. and E.H. v. Albania.

ALBANIA

CCPR/C/138/D/3031/2017

V.W.G. and E.H. v. Albania

Failure to recognize same-sex partnership by Albania

While the Committee's View in this case rendered the case inadmissible, the dissenting Joint Opinion marks a significant step in recognition of same-sex marriage under the right to enjoyment of family life and the right to privacy under the Covenant. While the majority decided the communication as inadmissible citing non-exhaustion of domestic remedies, the dissenting members were of the opinion that the State party had not shown how it was positioned to give the authors an effective remedy.

The views of the dissenting members that existing legislative framework in the State party did not extend protection to the authors to enjoy their family life and its failure in implementing the national action plan for LGBTQI+ people are particularly interesting. Though the communication was rendered inadmissible, the Joint Opinion is noteworthy for in terms of protecting inclusivity and equal protection of rights of members of the LGBTQI+ community.

Substantive issues: Right to privacy and family life; non-discrimination; right to an effective remedy

Facts: The authors are V.W.G. a Dutch national, and E.H. an Albanian national who claim violation of their enjoyment of their right to family life by the State party. The authors met in Albania and were married in the Netherlands in June 2016. Post their marriage, the authors decided to relocate to Albania, where V.W.G. was living and working as a journalist. The authors' marriage cannot be recognized neither as a marriage nor as a civil union under the domestic laws of Albania, since they only provide for recognition of marriage or civil partnership between a man and a woman. The authors' claim that their right to family life is within the meaning of articles 17 and 23 read in conjunction with articles 2 (1) - (3) of the Covenant have been violated. While the authors do not claim in their complaint the non-recognition of same-sex marriages in general by the State party, they claim that their rights have been violated because the State party failed to take necessary measures to enable them to have their relationship recognized in a form that would accord them with the same set of rights that a recognized marriage would provide, including raising issues such as the right to inheritance. Furthermore, the authors' claim that being denied the opportunity to contract marriage or enter into cohabitation solely on the basis of their sexual orientation under the laws of the State party amounts to discrimination prohibited by article 26 read alone and in conjunction with articles 17 and 23 of the Covenant. The authors argue that their present situation is similar to *Oliari and others v. Italy* and *Vallianatos and others v. Greece,* where the European Court of Human Rights had held that the only effective remedy available to the applicants under the Italian and Greek legal orders, which did not provide for same-sex partnerships, was through adoption of declaratory judgments by national courts, grant compensation to the applicants, or to recommend the Parliament to adopt appropriate legislations. The authors seek for legislative amendments to the domestic laws of the State party to have their family life recognized.

Admissibility: The Committee considered the State party's submission that the authors had failed to exhaust possible domestic remedies, as well as the authors' submission that, as the violation of their rights under the Covenant stems from existing domestic legislation. There is no information provided by the State party as to how domestic remedies mentioned by them would constitute an effective remedy in as much as they do not include legislative amendments to the Family Code of the State party. The Committee noted that the authors did not dispute the State party's argument that Constitutional Court had the authority to examine the constitutionality of the Family Code, and the Committee placed reliance on its previous jurisprudence[1] that with respect to challenges to national legislations, it has consistently required authors to avail themselves of domestic remedies before administrative agencies or national courts. As the authors in the present communication had not made any attempts to obtain such domestic remedies, the Committee found that their claims under articles 17, 23 (1) and 26 read alone and in conjunction with article 2 (1) - (3) of the Covenant as inadmissible in accordance with article 5 (2) (b) of the Optional Protocol.

Separate opinion: Committee members Carlos Gómez Martínez, Laurence R. Helfer, Hernán Quezada Cabrera, José Manuel Santos Pais and Soh Changrok issued a dissenting opinion. They were of the view that, contrary to the majority opinion, in the present communication the requirements for admissibility had been met. With respect to administrative challenges, the dissenting members held that the State party had not provided any information as to how an effective remedy could be provided for such challenges. With respect to judicial challenges, the Committee was of the opinion that the State party had not provided any information to counter the authors' claims that they lack the standing to challenge legislative omissions before the Constitutional Court, and that the Constitutional Court did not have the authority to order the Parliament on changes to domestic legislations. On these bases, the dissenting members were of the view that the communication was admissible.

In furtherance of having found the communication as admissible, the dissenting members also found a violation of articles 17, 23 (1) and 26 read alone and in conjunction with article 2 (3) of the Covenant. The dissenting members noted that the existing legislative framework in the State party did not extend protection to the authors to enjoy their family life as opposed to heterosexual couples, thus creating a legal vacuum that violated the authors' family life and privacy, and led to discrimination on the basis of their sexual orientation. The dissenting members noted that in its recent concluding observations, it had voiced concerns about LGBTQI+ persons not being allowed to enter into marriage and civil partnerships, and had recommended the review of relevant legislations to ensure their equal treatment,[2] and that such review applies to all spheres, including marriage and family arrangements.[3] The dissenting members also referred to the jurisprudence[4] of the Inter-American Court of Human Rights and the European Court on Human Rights which have held that the relationship of same-sex couples fall within the scope of family and private life like that of heterosexual couples, and required States subject to their jurisdiction to provide recognition and protection of their relationship to same-sex couples. On the basis of this reasoning, the dissenting members considered that the relationship of the authors in the present communication falls under the notions of family and private life as under articles 17 and 23 of the Covenant.

1 *Dafnis v. Greece* (CCPR/C/135/D/3740/2020), para. 7.7; *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4.

2 Concluding observations on the fourth periodic report of Czechia, 01 November 2019(CCPR/C/CZE/CO/4), para. 13; and Concluding observations on the fourth periodic report of Panama, 21 March 2023 (CCPR/C/PAN/CO/4), para. 14 (c).

3 Concluding observations on the fourth periodic report of Bulgaria, 29 October 2018 (CCPR/C/BGR/CO/4), para. 12 (a).

4 European Court of Human Rights, Fedotova and others v. Russia (applications No. 40792/10, No. 30538/14 and No. 43439/14), Grand Chamber, judgment of 17 January 2023, paras. 140–143; and Inter-American Court of Human Rights, Advisory Opinion OC-24/17, 24 November 2017, paras. 191 and 192.

The dissenting members held that the failure of the State party to give recognition and to protect the authors' relationship amounts to an interference with their right to enjoy family life and their right to privacy. Noting that the State party's national action plan for LGBTQI+ people contains a revision to the Family Code to extend marriage and cohabitation rights for same-sex couple in line with the rights accorded to heterosexual couple, the dissenting members were of the view that the State party has not explained why this failure of extending rights in the present situation pursues a legitimate aim or is necessary or proportionate, thus finding a violation of the authors' rights to family life and privacy under articles 17 and 23 (1) read alone and in conjunction with article 2 (3) of the Covenant.

It was noted that, contrary to the Committee's previous findings that differences in entitlements to public benefits between married and unmarried heterosexual couples are reasonable and objective so far as such couples have the choice to marry or not, same-sex couples have no such choice in countries that do not recognize same-sex marriages, civil unions or partnerships and are unable to benefit from such similar provisions. It was also noted that the State party in the present situation has not contested the authors' claims that failure of the State party to recognize their relationship has affected their legal rights and obligations such as access to social security benefits, pension, or inheritance rights. The dissenting members thus were of the view that the differential treatment of the authors was not based on objective and reasonable basis and thus constitutes discrimination on the basis of sexual orientation under article 26 read alone and in conjunction with articles 17 and 23 (1) of the Covenant.

More information on the case:

- **Reuters -** Patriarchal Albania offers little compassion for same-sex relationships

ARGENTINA

CCPR/C/138/D/2972/2017

M.C.Z v. Argentina

Argentine national's claim of unfair trial and excessive sentencing deemed inadmissible

Substantive issues: Right to be tried by a competent, independent and impartial tribunal; right to due process; right to a defence, adequate time and facilities; right of appeal; equality before the law

Facts: M.C.Z., an Argentine national, was convicted in 2005 for the aggravated homicide of her husband and sentenced to 12 years in prison, exceeding the prosecution's recommendation. The author claims violations of her rights under article 14 of the Covenant, arguing the court exceeded its authority by imposing a harsher sentence than requested by the prosecution, thereby acting inquisitorially contrary to the adversarial system prescribed by the Code of Criminal Procedure of Buenos Aires. Her appeals, including to the Supreme Court of the Province of Buenos Aires and ultimately to the Supreme Court of Argentina, were dismissed. M.C.Z. contends her constitutional rights to due process, impartial trial, and defence were violated, along with the *pro homine* principle, which advocates for the most favourable interpretation of the law for the individual.

M.C.Z. claims Argentina violated her rights under article 14 of the Covenant during her homicide trial. She argues the court was biased, as shown by sentencing her to a term longer than the prosecution recommended, without prior indication. This action, she asserts, breached her rights to an impartial trial, timely information on charges, and adequate defence preparation, as referred in articles 14 (1), 14 (3) (a), and (b). She also notes a legal inconsistency with Act No. 27.063, which restricts federal judges from exceeding the prosecution's sentencing request, a principle she believes should extend to her case. Finally, she contends the surprise sentence length violated her right to appellate review under article 14 (5), as it was not contested in the original trial or charges.

Admissibility: The Committee noted that the amendment concerning procedural law only took effect in 2014 when it was enacted. It further clarified that this amendment, which pertains to the Federal Code of Criminal Procedure and not to the Code of Criminal Procedure of the Province of Buenos Aires, is not applicable to the author's case. Therefore, the amendment does not demonstrate that the provisions of the local procedural code affecting the author's case are in violation of article 14 (1) of the Covenant and that her claims under articles 14 (3) (a) and (b) about being informed of charges and preparing a defence were not substantiated, given the indictment remained unchanged and she was aware of the charges. Regarding article 14 (5), the Committee found her right to appellate review was not violated, as the appellate court reviewed her conviction and sentence in detail. Consequently, the Committee declared M.C.Z.'s communication inadmissible under article 2 of the Optional Protocol, stating it does not re-evaluate national court decisions or interpret domestic law. The communication is therefore not admissible.

AUSTRALIA

CCPR/C/137/D/3585/2019

The members of the Wunna Nyiyaparli indigenous people v. Australia

Effective participation of indigenous peoples in the mechanism for the determination of their rights to traditional territory

The Committee's Views on this case mark a significant step toward ensuring the protection of the fair trial rights of indigenous peoples, particularly in the consideration of legal claims to native lands. In evaluating the claims of the Wunna Nyiyaparli, the Committee went beyond its prior jurisprudence by evaluating the authors' claims within the specific context of the barriers faced by indigenous peoples. The decision sets an important standard of procedural protection by providing guidance to State parties regarding the subtle nuances that must be considered to ensure that decisions involving indigenous people are taken with their effective participation, respect the principle of equality, and safeguard their fair trial rights.

Substantive issues: Determination of indigenous peoples' right to traditional territory; discrimination; fair trial

Facts: The authors are members of the Wunna Nyiyaparli, an indigenous community from Australia constituted by approximately 200 people. The Wunna Nyiyaparli are a local landholding group of the larger Nyiyaparli people which, in turn, comprise part of the Western Desert Aboriginal People. The Wunna Nyiyaparli holds rights under traditional laws to "speak for" their traditional territory, which holds the sacred burial sites of their ancestors and other sacred sites. The territory is rich in minerals, such as iron ore. Several mines have been developed or expanded on the territory without consultation with them, restricting their access to parts of the land. The authors assert that further development on the land would pose a danger to their culture, which is intimately and inextricably linked to their territory.

The authors filed an application to have a native title to their traditional territory recognized under the Native Title Act. They did not seek any claim to minerals, petroleum, or gas within the area, seeking only rights to "speak for" the territory, which is roughly equivalent to an English land law right to exclusive possession. The National Native Title Tribunal (NNTT) placed the claim on the Register of Native Title Claims. Although the application had been contested on the basis that the broader group of Nyiyaparli people did not consent to the filing, the NNTT did not give weight to that opposition and considered that the situation of the Wunna Nyiyaparli rendered the group able to seek rights without the permission of the broader group. Moreover, the NNTT made specific findings that supported the authors' native title claim. The registration was challenged by another Nyiyaparli clan who filed an application for judicial review of the NNTT's decision, *inter alia,* on the basis of the fact that, in 1998, it had previously filed a native title application before the Federal Court comprising a larger area that wholly encompassed the lands claimed by the authors (the title application has not been resolved to date).

The Court issued a procedural order deciding to consider jointly the 1998 native title application and the authors' registration. The Court also ordered that a "Separate Question", aimed to determine if the authors were actually descendants of the Nyiyaparli was to be decided separately. The authors objected to the "Separate Question," but the Court failed to respond to their objection. Thus, the authors submitted evidence to their claim and to their Nyiyaparli origin, including an anthropological report and statements by elders.

Thereafter, the authors' lawyers filed a notice that they were no longer representing the authors. The authors did not have funds to hire other lawyers, did not understand the implications of the case, and took no further steps after that date. They failed to appear at a scheduled hearing, believing that it was not necessary for them to attend. The authors expressed their confusion about the proceedings to the Registrar on multiple occasions. Ultimately, the Court scheduled a hearing on the Separate Question to take place without the authors. However, the authors attended, mistakenly believing it had to do with their native title application. The authors explained that they were unable to effectively participate in the proceedings due to a lack of stable internet connection and legal representation. They asked the Court to consider the evidence that they had previously submitted (and brought with them on that day) on the Separate Question.

The judge stated that the other party had not had a proper opportunity to prepare for the hearing, believing that the Wunna Nyiyaparli would not appear, and ruled that the hearing would go forward, but that the Wunna Nyiyaparli would not be permitted to have any of their evidence considered. As a result, the judge only listened to the other clan. Without considering any of the evidence submitted by the Wunna Nyiyaparli people, the judge answered the Separate Question in the negative, finding that "the Wunna Nyiyaparli Applicants did not adduce any evidence to support the contention that they are part of the wider Western Desert Society". The judge also dismissed their native title application.

The authors appealed, but it was dismissed and the authors were ordered to pay costs. The Court then made a consent determination of native title in favor of the other Nyiyaparli clan application over the authors' traditional territory. As a result, another indigenous people—with no traditional rights but with interest in mining exploitations—obtained legal control of the lands to the exclusion of the authors. The authors claimed violations of articles 2, 14, 26, and 27 of the Covenant, all read in light of article 1.

Admissibility: The Committee found that the article 1 claim was inadmissible because the right to self-determination cannot be the subject of a communication, but stated that it would be taken into account in interpreting other articles. The Committee found that the authors sufficiently substantiated their claims under articles 26 and 27 of the Covenant. The Committee found that it was not precluded from examining the uncontested article 14 claim.

Merits: The Committee noted that in the case of indigenous peoples, the survival of culture may be closely associated with the preservation of traditional lands, and this relationship should be respected and protected. As a result, it is of vital importance that any such measure of limitation of access to traditional lands allow for a process of effective participation and for the free, prior and informed consent of the community concerned. Here, the State party failed to ensure the effective participation of the clan in court proceedings before attributing their territory to another indigenous group in violation of their article 27 rights, read in light of article 1 of the Covenant and of the United Nations Declaration on the Rights of Indigenous Peoples.

With regard to article 26, the Committee stated that the authors' claim of discrimination in comparison with another indigenous group is based on fair trial considerations that are better considered under article 14. Regarding article 14, the Committee found that the facts of the present case constitute a triple violation of article 14 (1) of the Covenant, read alone and in conjunction with article 2 (3), due to: i) the State party's failure to provide them with legal aid to better understand the complexity of native titles proceedings; ii) the State party's failure to consider the relevant evidence filed for the Separate Question trial, and to allow an adjournment of the Separate Question proceeding to allow them to file the evidence; and iii) the State party's failure to allow them to appeal the consent determination of native title made by the Court in favor of another clan over their traditional territory. The State party's failures violate principles of equality before courts and fair trial. In cases involving indigenous peoples, it is indispensable to consider their particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions.

Moreover, the specific proceedings in question were created to provide a place for indigenous peoples to claim the their traditional territories, and these proceedings in particular must provide for judicial guarantees and effectiveness, be accessible and simple, be conducted with respect for the right to a fair trial, be free of unnecessary formalisms or requirements, be free of legal rigors or high costs, imply a substantial independent review of the historical or other evidence to allow for a decision in a substantive manner, and allow for judicial review. Considering the evolution of indigenous peoples' rights in combination with article 14 (1) of the Covenant, the State party is under an obligation to provide due process guarantees taking into account their particular circumstances. Here, the State party provided short timeframes to the authors, did not provide them with legal representation, communicated with the authors via email despite their limited internet access, and failed to clearly communicate with the authors. Moreover, knowing all of this, the State party held a hearing where it excluded all of their evidence and refused to adjourn the proceedings, both of which were arbitrary rulings which violated the principles of fair trial and equality of arms. As such, the State party violated the Wunna Nyiyaparli's article 14 rights under the Covenant.

Recommendations: The State party should, *inter alia*:

a) Reconsider the Wunna Nyiyaparli's native title claim and ensure their effective participation in the proceedings, in order to carry out the delimitation, demarcation, and titling of their claim traditional territory; and until then, abstain from acts which might lead to affect the existence, value, use or enjoyment of the area where the authors lived and carry out their traditional activities;

b) Review the mining concessions already granted within the claimed traditional territory without consulting the authors, in order to evaluate whether a modification of the rights of the concessionaires is necessary to preserve the survival of the Wunna Nyiyaparli;

c) Provide adequate compensation to the authors for the arm they have suffered.

The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

Deadline for implementation: 11 September 2023

Separate opinion: Committee Member Carlos Gómez Martínez issued a dissenting individual opinion. The dissenting member did not find that the principle of equality before courts had been

violated where both parties were indigenous groups and there was insufficient evidence to support the authors' claims. The authors had the means to hire a lawyer and did not provide any support for their other claims relating to alleged unequal treatment.

More information on the case:

- **Minority Rights Group** – Roy v. Australia: MRG Welcomes Win for Wunna Nyiyaparli Land Rights
- **Charles Stuart University** – Historic UN Human Rights Committee decision on native title and government procedures

CCPR/C/138/D/3088/2017

Charif Kazal v. Australia

Right to privacy and right to fair trial guarantees in the context of corruption inquiry

Substantive issues: Right to fair trial; right to be presumed innocent; right to appeal; right to privacy

Facts: The author of the communication is Mr. Charif Kazal, a national of Australia. An Independent Commission Against Corruption (ICAC) investigated an alleged conflict of interest and published findings that the author had sought to improperly influence the exercise of an executive officer's official functions with threats or bribes; that his conduct was corrupt; and that his conduct "could" constitute or involve two criminal offenses. There was insufficient evidence to prosecute the author criminally, and he was never charged with any crimes. The author challenged the jurisdictional validity of the ICAC findings in court, but his request was denied. Thereafter, it was recommended that the ICAC change its practices to conduct examinations in private and implement an exoneration protocol. The author followed up with the ICAC urging it to reform its practices, but the ICAC did not do so. The author made a formal complaint to the Australian Human Rights Commission which was denied due to lack of jurisdiction. The author argues that there is no way for him to challenge the findings or seek recourse, which has left him with a stain on his reputation. The author claims Covenant violations under articles 14 (1) – (2) regarding fair trial rights, 14 (5) regarding the right to an effective review, and article 17 regarding the right to be free from arbitrary or unlawful interference with his privacy, family, home or correspondence and unlawful attacks on honour and reputation.

Admissibility: The Committee stated that the author was not charged with or found guilty of a criminal offence and did not face a sanction that could be regarded as penal, and the ICAC could not be characterized as a judicial procedure, so his claim fell outside of the scope of article 14 (1) - (2) and (5). The author's claims under article 14 were thus inadmissible. The author sufficiently substantiated his claim that the public finding by ICAC was a violation of his right to privacy under article 17.

Merits: Any interference with the right to privacy must be lawful and not arbitrary, in accordance with the provisions, aims, and objectives of the Covenant and reasonable in the particular circumstances. Regarding the article 17 protection to personal honour and reputation, States parties must provide adequate legislation, provide for effective protection against unlawful attacks, and provide for effective remedies. The Committee found that the ICAC's procedure to hold a public hearing and make public highly sensitive findings that could not be challenged by the author, with no reasoning as to its decision to make the hearing and findings public, amounted to an arbitrary interference in the author's right to privacy. The ICAC's procedure was not proportionate and necessary to the objective pursued in the circumstances and violated the author's article 17 rights.

Recommendations: The State party should, *inter alia*, take appropriate steps to provide adequate compensation and reparation to the author for the violation suffered.

Deadline for implementation: 3 January 2024

Separate opinions: Committee member Carlos Gómez Martínez issued a partially dissenting opinion. The member wrote to express his discomfort with the reasoning expressed by the Committee's in finding that the State party violated article 17 of the Covenant relating to the right

to privacy. Although the Committee found a violation of article 17, it did so by referring to the author's inability to challenge the outcome of the investigation. According to the Member, this combines a substantive violation with a procedural violation and implies a violation of article 14 when the Committee had already found the author's article 14 claims inadmissible. Furthermore, the Committee's conclusions are based on arguments that were not made in the individual communication. Thus, the Member disagrees with rationale expressed by the Committee.

Committee members Laurence R. Helfer and Bacre W. Ndiaye issued a partially dissenting joint opinion. The two members disagreed that the author's claims under article 14 were incompatible with the Covenant. They pointed out that the Committee's conclusions are based on General Comment No. 32, which was adopted in 2007 before many countries began establishing anti-corruption agencies and therefore does not take the possibility of these agencies into account. They suggest that the Committee should consider to what extent article 14 could apply to these agencies, and points to a catchall provision in General Comment No. 32 relating to "other procedures" which could provide a legal basis.

More information on the case:

- **Daily Telegraph** - Sydney Businessman's Charif Kazal's Human Rights Violated By ICAC United Nations Declares

CCPR/C/138/D/3208/2018

John Isley v. Australia

Expulsion of the author from his country of residence where he lived since he was a child

Substantive issues: Arbitrary interference with the right to privacy, family and home

Facts: The author is John Isley, a national of the United Kingdom who arrived in Australia as a child with his family and has lived in Australia since 1971. All of his family members reside in Australia and have citizenship. He has always regarded himself as Australian. In 2007, he was granted a visa which permits him to reside permanently in Australia. He was convicted of "incest by a step-parent," an "indecent act with a child under 16," and an offense of "make/produce child pornography." As a result, his visa was canceled and he was subject to immigration detention. He applied for a revocation of the visa cancellation which was denied. He applied for judicial review of the decision, and the court dismissed his application finding the revocation decision lawful. He claims that the State party violated his rights under article 14 relating to fair trial protections and articles 17 (1), and 23 (1) relating to family rights.

Admissibility: The author's claims under article 14 of the Covenant are inadmissible because proceedings relating to deportation of aliens do not fall within the ambit of the determination of "rights and obligations in a suit of law" within the meaning of article 14 and are incompatible *ratione materiae* with the Covenant, and the author did not raise article 13 in his communication. His remaining claims were sufficiently substantiated and are admissible.

Merits: The Committee considered the State party's decision to deport the author to be an interference with his family life where he would leave behind all of his family for a country where he has no family ties whatsoever. The interference is lawful because it is provided for in the State party's Migration Act, but the Committee found that the deportation would be arbitrary because the deportation of a definite nature with serious family consequences is disproportionate to the legitimate aim of preventing further crimes, especially given the lapse of time between the commission of offenses and the author's deportation; the absence of reoffending while he was on bail; his good behavior since his convictions and rehabilitation efforts; and his placement on a register of sex offenders and monitoring of his conduct. Additionally, the State party failed to consider whether less detrimental means were available. Therefore, the State party violated the authors rights under articles 17 and 23 of the Covenant.

Recommendations: The State party should, *inter alia*, to take appropriate steps to provide the author with adequate compensation.

Deadline for implementation: 15 January 2024

Separate opinion: Committee members Carlos Goméz Martínez, Marcia V.J. Kran and Teraya Koji issued a joint dissenting opinion. The Committee's established jurisprudence requires that due weight be given to the assessment of the facts and evidence by the State party. Where the State party took into account the relevant circumstances of the case and concluded that any harm was likely to be limited based on the fact that the author had no minor children, establishing oneself in the UK would not be difficult, and the availability of medical treatment in the UK, the State party's decision was not clearly arbitrary or a denial of justice. Therefore, the dissenting members would not have found any violation of the Covenant.

CCPR/C/138/D/3685/2019

S.T. v. Australia

Australia did not violate Covenant when it deported author to Sri Lanka after assessment of claims

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; non-refoulement

Facts: The author of the communication is S.T., a Tamil national of Sri Lanka. Her father was killed for his reputed links to the Liberation Tigers of Tamil Eelam (LTTE), after which she and her family were held in custody of the Sri Lanka Army where she witnessed and experienced torture and sexual abuse and was interrogated about her father. Upon her release, she was told that the army would "come for her again," and she fled to India. Due to fear regarding her irregular visa status in India, she moved to Australia to join her brother and lodged an application for a protection visa. Her request was denied for lack of credibility. She appealed, sought judicial review, and sought ministerial intervention, but her requests were all denied. Thereafter, a warrant for her arrest was issued in Sri Lanka. Moreover, her brother was granted a protection visa in Australia for claims almost identical to hers. She sought additional ministerial intervention, which was denied. She claims that if the State party were to deport her to Sri Lanka, it would violate her Covenant rights under articles 7 relating to the prohibition against torture or cruel, inhuman or degrading treatment or punishment and article 9 (1) relating to the right to liberty and security of a person and the right to be free from arbitrary arrest or detention.

Admissibility: The Committee noted that the domestic courts found the author not to be credible based on inconsistencies in her accounts as well as the fact that her account of certain key events was vague and lacking in detail. Moreover, the author put forth new factual information in her communication which she had several opportunities to raise before the domestic authorities. As such, the information before the Committee demonstrated that the State party's authorities considered all elements available when evaluating the author's risk and found that she had not met her burden of proof. The Committee could not conclude that the State party's assessment was clearly arbitrary or amounted to a manifest error or denial of justice. Additionally, the author failed to articulate how her removal to Sri Lanka would violate the State party's non-refoulement obligations. Thus, the author failed to substantiate her claims and her communications were inadmissible.

More information on the case:

- **Human Rights Watch** - World Report 2007: Sri Lanka

CCPR/C/137/D/2999/2017

B v. Australia

Deportation to North Macedonia of a long-time non-citizen resident owing to criminal activity

Substantive issues: Arbitrary or unlawful interference with family life; freedom of movement; non-refoulement

Facts: The communication is submitted by S on behalf of her husband B, a national of North Macedonia. B arrived in Australia with his mother when he was 3 years old and was given permanent resident status. He never acquired Australian nationality. He has not left Australia since his arrival in 1968. He is married to an Australian national and has two sons of Australian nationality. He suffers from various health problems and has no connection to North Macedonia apart from his nationality. The Australian authorities canceled his permanent visa owing to his substantial criminal record including assault, property offences, serious traffic offences, drug offences, a weapons offence, and domestic violence offences. He filed a request for revocation of the cancellation, which was rejected. He requested judicial review, which was also rejected. The author claims that by removing B, the State party would violate his Covenant rights under articles 12 (4), prohibiting the arbitrary deprivation of the right to enter his own country, 17 relating to right to privacy, and 23 relating to family life protections.

Admissibility: The author initially only claimed violations of article 12 (4) of the Covenant. Because the author failed to provide an explanation for the late claims, the articles 17 and 23 claims were inadmissible. The article 12 claim was admissible.

Merits: A State party must not arbitrarily prevent individuals from returning to their own countries. The Committee found that even though B never applied for nationality, Australia is B's own country because B has no meaningful connections to North Macedonia and has close and enduring connections with Australia. There are few circumstances in which deprivation of the right to enter one's own country could be reasonable. Here, the State party did not respond to B's argument that he would be unable to re-enter Australia after his removal owing to his criminal record, and did not explain whether it considered less drastic measures. It is unlikely that B would be able to re-enter Australia after removal owing to his criminal record and the decision not to revoke the cancellation in his visa, leading to his removal to North Macedonia, was arbitrary and constituted a violation of his rights under article 12 (4).

Recommendations: The State party should, *inter alia*, ensure that B has the opportunity to re-enter Australia and to provide him with adequate compensation.

Deadline for implementation: 17 September 2023

Separate opinion: Committee members Farid Ahmadov, Carlos Goméz Martínez, Laurence R. Helfer, Marcia V.J. Kran, Kobauyah Tchamdja Kpatcha and Teraya Koji issued a joint dissenting opinion. The Committee's jurisprudence gives due weight to assessments by a State party's officials of the facts and evidence in deportation proceedings. Where the State party had authority to cancel the visa, B had an extensive criminal history, B did not seek to become a national of Australia, B had been warned of a possible visa cancellation on two occasions and continued to commit crimes, and the State party assessed the author's claims weighing all of these factors, the State party's assessment was not clearly arbitrary and did not amount to a manifest error or denial of justice. Accordingly, the dissent concluded that there had not been a violation.

AUSTRIA

CCPR/C/139/D/3317/2019

Markus Wilhelm v. Austria

The right to freedom of expression for journalists and public watchdogs is not absolute and subject to reasonable restrictions

Substantive issue: Restriction of freedom of expression

Facts: The author of the communication is a Tyrolean publicist, environmental activist and a mountain farmer. In 2018, he published an article on his website commenting on the State election campaign of the Tyrolean People's party and its venue which was a premises owned by a limited liability company named Area 47. In his comments, he pointed out that the taxpayers' money was used to sponsor the campaign at the venue. He also mentioned that Area 47 has a history of hosting concerts by rock bands which subscribed to neo-Nazi ideology. Further, he illustrated the article with the logo of Area 47 by transforming the number "47" into a swastika. Against this, Area 47 and the Tyrolean People's party brought a civil suit of defamation against the author. The Regional Court of Innsbruck decreed the suit in the favor of the plaintiffs by concluding that the author had overstepped the limits of permissible criticism by using an excessive value judgement. The author's appeals before the Innsbruck Court of Appeal as well as the Supreme Court were also dismissed. Even the European Court of Human Rights rejected and dismissed the author's application as inadmissible. The author filed his communication before the Committee alleging the violation of his Right to Freedom of Expression guaranteed under article 19 (2) on the grounds that as a blogger, the author is entitled to the same protection guaranteed to journalists and public watchdogs and that a greater importance is attached to his right to freedom of expression which was wrongly weighed against the plaintiffs' right to reputation and honor.

Admissibility: The Committee while noting the State Party's submission on article 5 (2) of the Optional Protocol in light of its reservation, observed that it would not consider any communication from an individual unless it is ascertained that the same case was not being examine by another procedure of international investigation or settlement. However, it observed that the European Court of Human Rights gave limited reasoning. As a result, the Committee was of the view that the examination by the European Court of Human Rights was insufficient with respect to the merits of the case. Accordingly, the Committee concluded that it is not precluded from considering the Communication as per article 5 (2) of the Optional Protocol.

Merits: The Committee while rejecting the author's claim, observed that the comparison of the plaintiffs with Nazis by the use of swastika and implying their affiliation with Nazism and neo-Nazi band was perceived as a harsh insult as the same is considered offensive and highly inappropriate in most contexts, particularly in the present State Party. It further observed that, the greater standard of tolerance that applied to the company as a legal entity and the party as a political actor was expressly acknowledged and taken into account by the domestic courts. Furthermore, it was also noted that even though journalists and public watchdogs enjoy an extensive right of freedom

of expression, it is not without its reasonable restrictions. Finally, the Committee concluded by noting that the courts did not order the removal of the article from the author's website and that he was not deprived of the right to express his opinions, only the illustration was ordered to be taken down and that the State party provided substantial and pertinent justifications, proving the necessity and proportionality of the particular restriction with the goal of preserving plaintiffs' rights or reputation.

AZERBAIJAN

CCPR/C/138/D/2832/2016

Irada Huseynova et al. v. Azerbaijan

Arbitrary arrest and detention, home search, and fine imposed on Jehovah's Witnesses for religious worship without official registration

Substantive issues: Arbitrary arrest and detention; discrimination; freedom of religion; freedom of peaceful assembly; freedom of expression

Facts: The authors of the communication are Jehovah's Witnesses. During a religious gathering at the home of author Huseynova, the police entered without permission, searched each person, and seized personal property including holy books. The religious group had applied for but had not received permission to. The authors were taken into custody and held for over seven hours. After a trial, they were convicted for having attended an unauthorized religious meeting and fined. Their appeals were dismissed. They claim that the State party violated their rights under articles 9 (1) (right to liberty/freedom from arbitrary arrest), 18 (1) and (3) (freedom of religion), 19 (2) and (3) (freedom of expression), 21 (right of peaceful assembly), 22 (1) and (2) (freedom of association), 26 (equal protection) and 27 (protection of minorities to practice their religion) and Ms. Huseynova's rights under article 17 (1) (prohibition against interference with privacy, family, home or correspondence).

Admissibility: The Committee found that there were no further effective domestic remedies available. However, the Committee found that the authors had not raised claims under article 22 before domestic courts and found those claims inadmissible. Moreover, the authors failed to substantiate that they experienced differential treatment and their claims under articles 26 and 27 were inadmissible.

Merits: The freedom to manifest religion may be exercised either individually or in community with others and in public or private. Article 18 (3) allowing for limitations on the freedom must be interpreted strictly. Here, the State had not provided a sufficient basis for the limitations and had not shown that they were necessary, proportionate measures, violating article 18. The Committee found that the authors were deprived their liberty in violation of article when they were coerced to the station, and the detention was arbitrary because it was punishment for the legitimate exercise of their religious beliefs. The Committee did not deem it necessary to consider whether the facts constituted violations of articles 19, 21, and 17.

Recommendations: The State party should, *inter alia*, provide the authors with adequate compensation, including for any legal expenses incurred by them and for the incarceration of Ms. Huseynova and Mr. Bakirov, with restitution for the administrative fines paid.

Deadline for implementation: 10 January 2024

Separate opinion: José Manuel Santos Pais issued a partially dissenting opinion. The member did not conclude that the communication disclosed a violation of article 9 (1) because, at the time of their arrest, the authors were violating a provision of the national code and the police therefore had a prima facie lawful motive for their arrest, and the police did not go beyond what was reasonably necessary under those circumstances.

BELARUS

CCPR/C/139/D/3788/2020

Viktar Babaryka v. Belarus

Arrest and placement in pretrial detention of a potential candidate for presidential elections without reasonable restrictions

The case of Viktar Babaryaka is noteworthy as it illustrates political suppression through legal tactics in Belarus. Arrested on charges of money-laundering and tax evasion as he was gaining momentum in the 2020 presidential election, Babaryaka's detention prevented his candidacy. Within Belarus, this was perceived as an overt government crackdown on dissent, igniting widespread protests and underscoring the importance of international oversight in protecting democratic processes and human rights.

Substantive issue: Arbitrary detention

Facts: The author of the communication, Mr. Viktar Babaryaka, is a national of Belarus, a known banker and a public figure who publicly expressed his intention to contest the presidential elections in 2020. The author's group collected over 400,000 signatures in his support, the highest number of signatures collected by any candidate. The author became the main challenger to the incumbent President, Alexander Lukashenko. Shortly after, Alexander Lukashenko publicly accused one of the presidential candidates—without naming anyone—of fraud concerning a company with which the author had collaborated in the past. Within a week, the Department of Financial Investigations of the State Control Committee announced that they had initiated criminal proceedings against the author on allegations of money laundering and tax evasion. Soon after, one day before the deadline for collecting signatures for candidates' nominations and before the Elections Commission began registration of the candidates, the author and his son, Eduard Babaryka, were arrested by the Department of Financial Investigations. Their arrest occurred suddenly, while the author was on his way to the Elections Commission to hand over sheets of paper with the signatures he had collected. He was not allowed to appear before the Department of Financial Investigations to defend himself, or to notify his lawyers and family about his arrest for 24 hours. Later, the author was placed in a pretrial detention facility and was not permitted to communicate confidentially with his lawyers, who were also made to sign non-disclosure agreements. The author stated that he was not brought before a judge or any other authority since his arrest.

As a result, the author claims that his arrest and placement in pretrial detention were arbitrary, within the meaning of article 9 (1) of the Covenant, because they were the result of his expression of his political opinions and the exercise of his rights and freedoms under articles 19, 25 and 26 of the Covenant. No suspicions or charges had been put forward against him by law enforcement authorities until the public announcement of his presidential ambitions and the sharp increase in his ratings as a potential candidate for the elections.

The author had also requested the Committee to adopt interim measures and ask the State party to not prevent him from standing in the elections and that he has access to the media, voters and his campaign team, but the request was denied.

Admissibility: Contrary to the State party's argument on the author's failure to exhaust domestic remedies, the Committee held that the party did not provide any information to demonstrate that the supervisory review appeals before the judicial and prosecutorial authorities would have constituted an effective remedy. Therefore, while considering the author's claims regarding violation of his rights of his freedom of expression, and by placing him in arbitrary detention and also noting that availing the domestic remedies would not be effective, the Committee concluded that the same were sufficiently substantiated.

Merits: The State party argued that the author's arrest and remand in custody were compliant with domestic legislation. While rejecting this argument, the Committee found that it was not necessary and proportionate to arrest the author as it noted that despite the announcements which pointed to the imminence of the author's prosecution, the author did not attempt to flee but, to the contrary, remained on the territory of the State party and continued to actively campaign for the presidential elections. As a result, it did not appear to the Committee that in the decisions of the national jurisdictions, the author's placement in pretrial detention was necessary to prevent him from fleeing, committing an offense or interfering with the investigation was justified. Furthermore, it also did not appear that the national authorities considered less restrictive alternatives to the author's pretrial detention. The Committee therefore held that the fact that the author was arrested one day before the opening of registration for candidates for the election, without any visible motives, presents elements of inappropriateness, injustice and lack of predictability incompatible with the prohibition of arbitrary detention violating his rights under article 9 (1) and (3) of the Covenant.

The Committee noted that the complaint against the author's remand in custody was submitted on 21 June 2020 but was only considered by judicial authorities nine days later. Not only did these delays significantly exceed 48 hours, which, according to the Committee, is the maximum time permissible under article 9 of the Covenant, but they also contradict the State party's affirmation that the author's arrest and pretrial detention were compliant with domestic legislation, which provides for judicial review within 24 and 72 hours following the submission of a complaint. The Committee further observed that the author was not allowed to attend the court hearings on his complaints and was not brought before a judge until his trial, eight months after his arrest. The Committee noted that the author's counsels were obliged to sign non-disclosure agreements, which prevented them from enclosing all relevant documents in the author's communication to the Committee, creating obstacles to the author's attempts to defend his rights under article 9. Therefore, on this claim, the Committee concluded that the State party has violated the author's rights under article 9 (1), (3) and (4) of the Covenant.

Recommendations: The State party is obligated to:

a) Provide the authors with adequate compensation for the violation suffered;
b) Prevent similar violations from occurring in the future.

Deadline for implementation: 10 April 2024

More information on the case:

- **OHCHR** – Rising trend of violating freedom of expression and political rights, UN Human Rights Committee finds
- **EEAS** – Belarus: Statement by the Spokesperson on the health of political prisoner Viktar Babaryka

CCPR/C/137/D/2693/2015-2898/2016-3002/2017-3084/20

Aleksandra Vasilevich et al. v. Belarus

Imposition of hefty fines for participating in unsanctioned peaceful meeting

Substantive issues: Freedom of assembly; freedom of expression

Facts: The authors of the communications are nationals of Belarus. All of them participated in separate peaceful rallies in parts of Belarus as a result they were charged with hefty administrative fines and detention for violating the provisions of the Law on Mass Events concerning the organization of a meeting. The authors filed separate complaints and appeals before the courts which were dismissed, and they claim that they have exhausted all the domestic remedies.

They have filed the present communications claiming a violation of their rights under articles 19 and 21, in conjunction with articles 2 (2) and (3) of the Covenant on the ground that the authorities failed to explain why the restrictions imposed on their rights for holding a peaceful protest were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others.

Admissibility: Contrary to the argument by the State party on the non-exhaustion of local remedies by the author, the Committee was of the view that there were no effective remedies left for the authors to avail and therefore they had exhausted their domestic remedies. However, the Committee found the authors' claims incompatible with article 2 of the Covenant and thus inadmissible. The Committee on the other hand found the parts of the communication claiming violation under articles 19 and 21 of the Covenant to be sufficiently substantiated for admissibility.

Merits: The Committee noted that according to the authors, the restrictions imposed on them were not justified by the State, as they were not necessary for national security, public safety, or other public interests as required by the Covenant. Despite the State's reference to domestic laws regulating public events, it did not adequately explain how the authors' actions posed a threat to these interests. It stressed that restrictions on assembly should aim to facilitate rather than unduly limit this right. Given the lack of sufficient justification from the State, the Committee concluded that the State had violated the authors' rights under articles 19 and 21 of the Covenant.

Recommendations: The State Party is obligated to:

a) Provide the authors with adequate compensation for the violation suffered;
b) Prevent similar violations from occurring in the future and revise its normative framework, in particular, its Public Events Act, consistent with its obligation under article 2 (2), to ensure that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

Deadline for implementation: 10 September 2023

CCPR/C/138/D/2579/2015-3234-2018

Andrey Strizhak et al. v. Belarus

Refusal of local authorities to organize peaceful authorities in Belarus

Substantive issues: Freedom of expression, right to peaceful assembly

Facts: The authors of the communications are nationals of Belarus who filed applications with their respective authorities for organizing peaceful assemblies in the cities of Rechisa and Gosmel. However, all their applications were rejected by the local authorities and the appeals before various courts were also unsuccessful. The reason for the rejection was cited to be non-adherence with the Public Events Act and previous decisions of the Executive Committee.

The authors have filed the present communication claiming the violation of their rights under articles 19 and 21 read in conjunction with articles 2 (2) and (3) of the Covenant. They submit that neither the local authorities nor the courts assessed whether the limitations imposed on their rights by the previous decisions of the Executive committee were justified on the grounds of national security, public safety, and public order. They also contend that those decisions which confine all mass events to a few remote locations in the two cities unduly restrict their exercise of rights under articles 19 and 21.

Admissibility: Contrary to the argument by the State party on the non-exhaustion of local remedies by the author, the Committee was of the view that there were no effective remedies left for the authors to avail and therefore they had exhausted their domestic remedies. However, the Committee found the authors' claims incompatible with article 2 of the Covenant and thus inadmissible. The Committee on the other hand found the parts of the communication claiming violation under articles 19 and 21 of the Covenant to be sufficiently substantiated for admissibility.

Merits: The Committee was of the view that the executive committee's previous decisions did not justify and demonstrate how peaceful events held in the locations proposed by the authors would jeopardize national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. It noted that the de facto prohibition imposed by those decisions of holding an assembly in any public location in the entire city, with the exception of two remote locations in Rechitsa and three remote locations in Gomel, unduly limits the right of assembly and the freedom of expression. In conclusion, the Committee held that the State party violated the authors' rights under articles 19 and 21.

Recommendations: The State party is obligated to:

a) Provide the authors with adequate compensation for the violation suffered;
b) Prevent similar violations from occurring in the future and revise its normative framework, in particular, its Public Events Act, consistent with its obligation under article 2 (2), to ensure that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

Deadline for implementation: 3 January 2024

CCPR/C/138/D/3074/2017

Tamara Ryzhova v. Belarus

Allegations of arbitrary detention and torture of an Belarusian opposition activist due to his political involvement

Substantive issues: Torture; arbitrary detention; conditions of detention; fair trial

Facts: The author of the communication is the mother of the victim (Sergei Ryzhov) who is a national of Belarus. The author's son is an opposition figure in Belarus who unsuccessfully tried to run as a candidate in the 2010 presidential elections. In 2013, he was detained by the police for being intoxicated in public and as a result, was taken to a sobering-up centre. The author claims that at the centre her son was subjected to torture by several police officers by restraining, punching kicking, strangulating him with a bed-sheet and also breaking his finger. Due to these injuries, the Vitebsk City Investigation Committee opened an inquiry into the matter. However, the committee refused to initiate a criminal investigation due to the absence of *corpus delicti* in the actions of the police. However, this refusal was quashed and the case was returned for further investigation by the deputy head of the committee. In 2013, the committee again refused to initiate a criminal investigation. On further inquiries, it was concluded that another detainee had punched and kicked the author's son and the police had to restrain the author due to his violent behaviour for which the author's son was sentenced to an administrative fine. In a separate case, in 2014, he was subjected to 15 days of administrative arrest for petty hooliganism. Again in 2015, Mr. Ryzhov was arrested on suspicion of hooliganism and committing acts of a sexual character. For these acts, Mr. Ryzhov was found guilty and sentenced to six and a half years in prison. This decision was upheld all the way up to the Supreme Court.

The author claims that Mr. Ryzhov's rights articles 2 (1) and (3) (a), 7, 8 (2), 9 (1), 10 (1), 12 (1), 14 (1), 17 (1), 19 (2), 25 and 26 of the Covenant on the grounds that Mr. Ryzhov's initial detention was politically motivated and hence he was also subjected to severe beatings. Further, it was claimed that other criminal charges were brought against him as he continued in his retaliation and that the trial was not impartial and was closed to the public.

Admissibility: The Committee was of the view that only the claim under article 7 of the Covenant was sufficiently substantiated for the purposes of admissibility. With respect to other claims, the Committee observed that the material before it did not allow it to conclude that the examination of the evidence and questioning of witnesses by the court reached the threshold for arbitrariness in the evaluation of the evidence or amounted to a denial of justice and hence finding them inadmissible.

Merits: The Committee noted that an inquiry into the alleged beatings of Mr. Ryzhov began shortly after he sought medical assistance following his release from a sobering-up centre in November 2013. Despite several inquiries conducted between 2013 and 2017, the Vitebsk City Investigation Committee concluded that there was no enough evidence to open a criminal investigation into the claim of torture. The author did not provide any documentation regarding the overturning of these refusals by senior officers or the prosecutor's office. Additionally, during an administrative trial in January 2014 related to the incident at the sobering-up centre, video footage showed Mr. Ryzhov exhibiting aggressive behaviour towards police officers. Consequently, the Committee concluded that based on the information provided, there was no evidence of a violation of Mr. Ryzhov's rights under article 7 of the Covenant.

CCPR/C/137/D/2911/2016-3081/201-3137/2018-3150/201

Larisa Shchiryakova et al. v. Belarus

Sanction of journalists for producing and distributing mass media products without appropriate accreditation

Substantive issue: Freedom of expression

Facts: All four authors are journalists and nationals of Belarus. On various dates between 2015 to 2017, they carried out interviews on different topics in Belarus and posted audio or video recordings thereof on Poland-based media websites Belsat and Radio Racja. As a result, they were all charged with the offence of unlawful production and distribution of mass media products for recording the interviews without being accredited by the Ministry of Foreign Affairs as journalists working for foreign mass media. They were all found guilty and sentenced to heavy fines. All their appeals before the regional courts were also unsuccessful. Having exhausted all the effective domestic remedies, the authors have filed the present communications invoking violations of article 19 on the grounds that by requiring them to have accreditation for performing their professional duties, the State party has unnecessarily limited their right to freedom of expression and has violated their rights. Two of the authors, namely Ms. Shchiryakova and Ms. Shchepyotkina, also claim that the State party violated their rights under article 19, in conjunction with articles 2 (2) and 2 (3) (b), of the Covenant.

Admissibility: Contrary to the argument by the State party on the non-exhaustion of local remedies by the author, the Committee was of the view that there were no effective remedies left for the authors to avail and therefore they had exhausted their domestic remedies. However, the Committee found the authors' claims incompatible with article 2 of the Covenant and thus inadmissible. The Committee on the other hand found the parts of the communication claiming violation under article 19 of the Covenant to be sufficiently substantiated for admissibility.

Merits: The Committee found that the authors' rights were violated due to restrictions imposed by the requirement to obtain accreditation from the Ministry of Foreign Affairs and sanctions for professional activities without such accreditation. Although these restrictions were based on domestic law, the State party and domestic courts failed to justify them according to the conditions of necessity and proportionality outlined in article 19 (3) of the Covenant. Additionally, the penalties imposed were not shown to be necessary, proportionate, or compliant with the legitimate purposes listed in the Covenant. Thus, the Committee concluded that the authors' rights under article 19 (2) of the Covenant were violated.

Recommendations: The State party is obligated to:

a) Take appropriate steps to reimburse the current value of the fine and any legal costs incurred by the authors in relation to the domestic proceedings;

b) Prevent similar violations in the future.

Deadline for implementation: 10 September 2023

CCPR/C/138/D/2525/2015

N.N. v. Belarus

Claims that do not relate to any private or administrative rights are not admissible under article 14

Substantive issues: Access to court; freedom of expression; voting and elections; discrimination based on political or other opinion; right to an effective remedy

Facts: The author is a citizen of Belarus and a member of the United Civic Party (an opposition political party in Belarus). In 2014, he stood as a candidate for election to the Regional Council of Deputies for which he had to produce campaign leaflets. The leaflet contained information about his political strategy, criticism of the State party's authorities and calls to disrupt and cancel the elections. As a result, the printing shop refused to print the leaflet as it contradicted the relevant provisions of the Electoral Code. The author filed a complaint to the Regional Executive Committee which responded by indicating that the content on the leaflet was against the Electoral Code and that this decision could be challenged. The author challenged this decision before the District Court which dismissed the complaint for lack of jurisdiction and found that article 49 – 1 (1) of the Electoral Code was applicable in the author's case and that there exists a separate complaints procedure for such violations. On appeal to the Regional Court, the decision of the District Court was upheld. Finally, the author's complaint before the Chair of the Regional Court and the supervisory review were also rejected.

In the present communication, the author is claiming the violation of his rights under articles 14 (1), 19(2), 25 and 26 read in conjunction with articles 2 (2) and (3) of the Covenant as the State party failed in its obligation to provide him with access to a competent court.

Admissibility: The Committee was of the view that the claims under article 14 (1) is inadmissible *ratione materaie*, while referring to its General Comment No. 32, it held that the same cannot be considered as constituting a "suit of law" since they relate to an electoral process and not any private or administrative rights or obligations of the author. Further, while also rejecting the admissibility under articles 19, 25 and 26, the Committee held that the author failed to indicate the complaints procedure established by the Electoral Code was ineffective. Therefore, it was decided that the communication was inadmissible under articles 2 and 3 of the Optional Protocol.

CCPR/C/139/D/2730/2016

Mikhail Matskevich v. Belarus

Broad restrictions on the right to freedom of peaceful assembly

Substantive issues: Freedom of assembly; freedom of expression

Facts: The author of the communication is a national of Belarus. In December 2010, the author participated in a peaceful demonstration of solidarity with fellow citizens who had earlier been arrested during the protest action in Minsk against the results of the 2010 presidential election. According to the author, he and the other participants were taken to a detention center by police officers where they were charged with holding an unauthorized mass event in violation of the domestic Code of Administrative Offences. The author was presented before the District Court 69 hours after his detention, where he was sentenced to 10-day administrative detention. Thereafter, the author lodged a request for a supervisory review with the Supreme Court of Belarus, which annulled the lower court's decision and remanded the case back to the District Court. The District Court once again found the author in violation of the Code and sentenced him to another 10-day detention.

The author submitted the present communication claiming violation of his rights under articles 9 (3), 10, 14 (1), 19 and 21 of the Covenant the grounds that the conditions that he was kept in were inhumane, the authorities failed to justify such excessive period of detention and the domestic court was impartial in reviewing his case.

Admissibility: The Committee found the author's claims under articles 9 (3), 19 and 21 were duly substantiated. It observed the State party did not provide any information on the effectiveness of the domestic remedy available and that the 10-day detention penalty was aimed at sanctioning the author for his actions and serving as a deterrent for future similar offences – objectives analogous to the general goal of criminal law.

Merits: The Committee found that the domestic courts did not provide any justification as to how the author's participation in the peaceful assembly had violated the interests of national security or public safety, and public order. Neither did the State provide information to show that the sanction imposed was the least intrusive one or proportionate, hence violating article 21 on the right to peaceful assembly. Regarding article 19 on the limitation on the freedom of expression and freedom of assembly being broad and disproportionate, the Committee observed that the State party failed to contest the author's assertion that his actions did not harm the rights or reputations of others, disclose State secrets or infringe upon public order or health. Finally, concerning article 9 (3) violations, the Committee held that 48 hours is ordinarily sufficient to prepare an individual for the judicial hearing and any delay must remain exceptional and be justified under the circumstances. The Committee further noted that the State party also did not even provide any information on the existence of exceptional circumstances in the present case to justify a delay. In conclusion, the Committee found the State party in violation of articles 9 (3), 19 and 21.

Recommendations:

The State party was directed to:

a) Provide the author with adequate compensation including reimbursement of any legal costs incurred by the author;
b) To prevent any further similar violations from occurring in the future.

Deadline for implementation: 21 April 2024

CCPR/C/139/D/2792/2016

Sergey Khmelevsky (deceased) v. Belarus

Imposition of the death penalty after an unfair trial

Substantive issues: Right to life; prohibition of torture and other forms of ill-treatment; right to fair trial; presumption of innocence; adequate time to prepare a defense; right to obtain the attendance and examination of witnesses

Facts: The author was a national of Belarus. In November 2014, the author was arrested on charges of murder. However, the author stated that he was subjected to physical and psychological ill-treatment by the police officers who coerced him to confess to the murder. After the trial concluded, the author was convicted and sentenced to life imprisonment, but this decision was overturned by the Supreme Court, which ordered a fresh trial on the grounds of excessive leniency of punishment. In the new trial, the author was again convicted but this time he was awarded the death penalty on the charges of murder, large-scale destruction of property and endangering the public to destroy evidence of murders. The author lodged a supervisory review appeal, but filed the present communication noting the fact that he would not be notified of the domestic decisions until the moment before his execution. In the end, The State committed a serious violation of its obligations under the Optional Protocol by executing the alleged victim before the Committee had concluded its consideration of the present communication, as it had been requested by the Special Rapporteurs on new communications and interim measures.

The author claimed the present violation of his rights under articles 6 (1) and (2), 7,9 (1) - (4) and 14 (1), (2), (3) (a), (b), (d), (e) and (g) and (5) of the Covenant on the ground that he was convicted and sentenced to death penalty following an unfair trial, violation of his right to be presumed innocent and violation of his right to examine witnesses.

Admissibility: The Committee was of the view that the author failed to substantiate his claim of mental suffering after being sentenced to the death penalty and therefore this part of the claim claiming violation of article 7 was found inadmissible. Additionally, regarding the exhaustion of domestic remedies, the Committee noted the author did not challenge the findings of the Investigation Committee when it established that his confession did not happen under torture. The same was the case concerning the claim of arbitrary detention, and denial of prompt access to a judge and to a lawyer under articles 9 (1) - (4) and 14 (3) (a), (b) and (d). The claim of the author's second trial of not being impartial was also not sufficiently substantiated. Finally, the Committee only found the claims under articles 6 and 14 (2), (3) (b) and (e) to be sufficiently substantiated for admissibility.

Merits: The Committee found that the author's right to be presumed innocent, as guaranteed by article 14 (2) of the Covenant, was infringed due to various factors including being handcuffed, kept in a cage during court proceedings, and presented in a manner suggestive of guilt before the sentence was finalized. Secondly, the Committee concluded that the Supreme Court's failure to address the author's claims of inadequate time for defense preparation amounted to a breach of the right to a fair trial under article 14 (3) (b), particularly concerning cases involving capital punishment. Furthermore, the imposition and execution of the death penalty following these fair

trial violations were deemed a violation of the right to life [article 6 (2)]. Lastly, the State's disregard for the Committee's request for interim measures constituted an additional violation under article 1 of the Optional Protocol.

Recommendations: The State party is obligated to:

a) Provide adequate monetary compensation to the author's family for the loss of his life and, if applicable, reimbursement of legal costs incurred;
b) Prevent similar violations in the future.

Deadline for implementation: 9 April 2024

CCPR/C/139/D/2929/2017

Leonid Sudalenko v. Belarus

Violation of the right to privacy due to unexplained surveillance and unlawful data modifications in the electronic frontier patrol system

Substantive issues: Arbitrary detention; liberty and security of person; fair trial – examination of evidence; right to privacy

Facts: The author is a human rights defender from Belarus. The author has based his claims following several incidents of arbitrary detention as well as violation of his privacy by the State authorities by collecting information about his private life and movements across the State border. During one such incident in August 2015, the author was crossing the State border when the Regional Customs Officer conducted a customs and frontier control of the passengers, during which the author's passport was taken and he was ordered to get off the train for an in-depth personal customs control. He was violently grabbed and carried off the train as well even though he had been already subjected to a customs check previously on the journey.

The author later filed a civil suit against the Regional Customs Office claiming compensation for damage to his health, material and moral damage, and that the authorities were tracking his movements across the State border and that modifications had been made to his personal data in the electronic frontier system allowing for his repeated illegal detention. However, this claim along with all the appeals (including the supervisory review appeals) was rejected.

The author filed the present communication alleging the violation of his rights under articles 9 (1), 14 (1) and 17 of the Covenant on the grounds of arbitrary detention for two hours and violation of his privacy for tracking his movements across the State border.

Admissibility: Contrary to the submissions made by the author on violation of his rights under articles 9 (1) and 14 (1) of the Covenant, the Committee believed that the author failed to sufficiently substantiate his claims for admissibility. The Committee only accepted the author's claim under article 17 as sufficiently substantiated for further examination on merits.

Merits: The Committee recognized the author's claims of surveillance and unlawful data modifications in the electronic frontier patrol system, leading to extensive personal customs checks without cause, despite the author's clean record. It also observed that the State party did not refute these claims or provide any evidence of legal remedies for the author. Without clarification on legal frameworks and safeguards against data misuse by frontier patrol, the Committee found that the State party violated the author's right under article 17 of the Covenant.

Recommendations: The State party is obligated to;

a) Provide the author with an effective remedy and make full compensation to the author for moral and material damage;
b) Prevent similar violations from occurring in the future.

Deadline for implementation: 17 April 2024

Separate opinion: Committee member Rodrigo A. Carazo issued a partially dissenting opinion. For him, despite clear violations of personal security and procedural guarantees, the Committee overlooked these issues. Additionally, he observed that the Committee failed to acknowledge the author's extensive history of defending human rights and the lack of due procedural guarantees during detention, disregarding the UN Declaration on Human Rights Defenders. In his opinion, the Committee should have considered that the procedural safeguards of article 14 were violated.

CCPR/C/139/D/3056-3134/2018

Olga Nikolaichik et al. v. Belarus

Disproportionate punishments for participation in peaceful demonstrations

Substantive issue: Freedom of assembly; freedom of expression

Facts: The four authors of the communications are nationals of Belarus. All the authors participated in peaceful demonstrations for different causes, for which they were subjected to hefty fines under the Code of Administrative Offenses or to arbitrary detention by the District Court. All their appeals were rejected. The authors did not attempt to lodge supervisory reviews with the judicial or prosecutorial authorities due to its ineffectiveness. The authors claim violations of their rights under articles 19 and 21 of the Covenant taken in conjunction with articles 2 (2) and (3) because the restrictions imposed to express their opinion in peaceful rallies were not necessary.

Admissibility: The Committee agreed with the authors' submission on the admissibility of their claims for violations under articles 19 and 21. However, it noted that provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.

Merits: The Committee observed that the domestic courts did not provide any justification or explanation as to how the authors' participation in such peaceful assemblies had violated the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, as set out in article 21 of the Covenant. Neither has the State party provided any justification for restricting the authors' rights under article 21 in its submissions before the Committee, particularly in light of the chilling effect of the imposed sanctions. With respect to article 19, the Committee was of the view that the State party failed to invoke and justify any specific grounds to support the necessity of such restrictions. Additionally, the State party also failed to demonstrate that the measures taken were the least intrusive ones. Therefore, it was concluded that the State party had violated the authors' rights under articles 19 as well as 21 of the Covenant.

Recommendations: The State party is obligated to:

a) Provide the authors with adequate compensation, including reimbursement of the fines and any legal costs incurred by them;

b) Prevent similar violations from occurring in the future and revise its normative framework on public events, consistent with its obligation under article 2 (2), to ensure that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

Deadline for implementation: 9 April 2024

CCPR/C/139/D/3095/2018

Pavel Katorzhevsky v. Belarus

Extremism charges considered a violation of freedom of expression

Substantive issue: Freedom of expression

Facts: The author of the communication is a national of Belarus who shared a link on his social media network profile to an article entitled "Idiocy and fake honor to the victims of war in a capital city gymnasium". This article caught the attention of the authorities who summoned the author to the police station and charged him with dissemination of informational products included in the State List of Extremist Materials. As a result, the Central District Court found the author guilty and fined him with 230 rubles. The author requested an individual assessment of his case and how it is a potential threat to national security, however, this appeal was rejected. The author has filed the present communication without applying for the supervisory review or the Supreme Court stating that they are not effective remedies.

The author has filed the present communication claiming violation of his rights under articles 2 (2) and 3 read in conjunction with articles 19 (2) and (3) of the Covenant on the grounds that the State party failed to show how in his case the sanction imposed were necessary and in line with the legitimate aims set out as per article 19 (3).

Admissibility: Contrary to the submissions of the State, the Committee was of the opinion that an application for the supervisory review of the Court's decision depends on the discretion of the judge, which is not an effective remedy and therefore considered the communication admissible. However, the claim under article 2 (2) was rendered inadmissible as a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. On the other hand, the Committee found the claims under article 19 to be sufficiently substantiated for the purpose of admissibility.

Merits: The Committee noted that the court decisions made no individualized assessment of the author's case and did not provide any explanation as to why the conviction and fine imposed on him were necessary and the least intrusive among the measures which might achieve the relevant protective function. It therefore considered the author's right to freedom of expression under article 19 (2) of the Covenant has been violated.

Recommendations:

a) State party to reimburse the fine and any legal costs incurred by the author;
b) To prevent any further similar violations from occurring in the future.

Deadline for implementation: 10 April 2024

BELGIUM

CCPR/C/137/D/2806/2016

Abdelkader Mahjouba v. Belgium

Right to obtain translation of rulings and second expert opinion on evidence

Substantive issues: Right to fair trial; disproportionate and discriminatory nature of sentence; lack of translations of court decisions

Facts: The author is a French national who was handed over to the Belgian police by the French authorities under a European arrest warrant in connection with a series of thefts that had occurred in Belgium, after finding the author's DNA in evidence. The author, on questioning, denied his involvement in the thefts. The author was sentenced by the Ypres *Tribunal de Grande Instance* to 11 years imprisonment. The author highlights that the judgment was in Dutch, a language he was unfamiliar with. The author appealed to the Ghent Court of Appeal claiming that the European arrest warrant was inapplicable to some of the offences for which he had been charged, and that his right to fair trial had been violated as some of the evidence which led to his DNA identification had not been deposited with the court registry and that, in addition, he did not have access to it. The Court of Appeal ordered the Belgian authorities to obtain a second expert opinion of the contested evidence. The opinion came back with the information that the evidence had been deposited with the court registry. The author submitted a request to a Federal Judge asking for another review of the evidence, which was refused. Subsequently, the Federal Judge *suo moto* requested a new expert opinion on the evidence without informing the author. Thereafter, the Ghent Court of Appeal stated that the author had been unable to obtain a genuine second expert opinion. The Court held that the author's fair trial rights had not been violated and sentenced the author to 13 years of imprisonment. A cassation appeal to the Court of Cassation was dismissed. The author claims that all these judgments were rendered in Dutch. The author in the communication, claims the violation of the principle of equality of arms under articles 2 (1) and (3), 9, 10, 14 and 26 of the Covenant.

Admissibility: Noting that the provisions of article 2 lay down general obligations for States parties and by themselves cannot give rise to separate claims under the Optional Protocol unless invoked in conjunction with other substantive articles of the Covenant, the Committee held that the author's claims under articles 2 (1) and (3) as inadmissible under article 3 of the Optional Protocol. With respect to the author's claims that the State party violated the principle of equality of arms under article 14 as it had been impossible for the author to obtain a second expert opinion on the only evidence incriminating him, the Committee observed that article 14 is aimed at the proper administration of justice and it is not for the Committee to review facts and evidence in cases before domestic courts. The Committee held that it was not in a position to conclude that the Belgian Courts had acted arbitrarily or that their conduct amounted to a denial of justice, and hence the claims under article 14 were inadmissible under article 2 of the Optional Protocol.

Regarding the author's claims that the arbitrarily long and disproportionate nature of his sentencing (11 and 13 years) amounted to a violation of article 26, the Committee noted the State party's

claims about the seriousness of the crimes, and observed that the claims of the author under article 26 were similar to those raised under article 14 above. The Committee again held that it is unable to establish that the domestic courts acted in an arbitrary and discriminatory manner and hence the claims under article 26 was inadmissible under article 2 of the Optional Protocol. Furthermore, the Committee held that as the author did not explain how his rights under articles 9 and 10 of the Covenant were violated, these claims are inadmissible. However, the Committee considered the author's claims regarding the failure of translation of the judgments as violations under article 14 (3) read alone and in conjunction with article 26 as sufficiently substantiated and hence admissible.

Merits: With respect to the author's claims regarding the lack of translation of judgments violating his rights under article 14 (3), the Committee noted that the author was assisted by a Dutch-speaking interpreter and lawyer at all hearings, and hence had the opportunity to put forth arguments and defend himself at all stages of his trial in accordance with article 14 (3) (f). The Committee observed that the author had failed to explain how he had been subject to discrimination under article 26. The Committee was of the opinion that neither the author nor his family could have been unaware of the reasons for his conviction as he was provided with a translator as well as lawyer. Just because the ruling had not been translated did not prevent the author from filing an appeal. The Committee held that there was no reason to conclude that the State party violated the author's rights under article 14 (3) read alone and in conjunction with article 26 of the Covenant.

BOLIVIA

CCPR/C/137/D/3211/2018

Madeleine Alicia Rodriguez v. Bolivia

Unreasonable delay in criminal proceedings

Substantive issues: Undue delay in trial

Facts: Madeleine Alicia Rodriguez, a Norwegian national, was arrested in Bolivia in 2008 for alleged drug trafficking with her daughter and others, after cocaine was found in their luggage. Initially sentenced in 2010 to over 13 years in prison for trafficking and related charges, she challenged the conviction, arguing for a lesser charge and disputing evidence of her involvement in criminal activities. On appeal, Bolivia's Supreme Court adjusted her sentence to 10 years and 8 months but later reinstated the original sentence. Rodriguez sought to mitigate her situation, including bail reduction due to financial constraints and her responsibilities for two minors, and she was released in 2016. She continued to appeal against the prolonged legal process, but her motions were rejected. The case's complexity was further compounded by motions from co-defendants, impacting the proceedings' duration.

Madeleine Alicia Rodriguez claims her rights under article 14 (3) (c) of the Covenant were violated due to the nearly decade-long delay in her criminal proceedings in Bolivia, starting from her 2008 arrest. She emphasizes that the right to a speedy trial is crucial for both the accused's peace of mind and the interests of justice, covering all stages from arrest through to the final appeal. Rodriguez attributes the delay to the State's failure to adequately resource its judiciary and to the actions of the co-accused in her case. She highlights the personal toll of the delays, including being unable to leave Bolivia or see her daughter in Norway, and living in difficult conditions without a work permit. Rodriguez urgently seeks a resolution to return to Norway and care for her daughters.

Admissibility: The Committee assessed the communication's admissibility, noting the author attempted to exhaust domestic remedies and countered the State's arguments regarding the effectiveness of such remedies. It highlighted issues with the late availability of certain remedies, such as constitutional amparo, and found no obstacles to admissibility.

Merits: The Committee reviewed the case against the backdrop of all submitted information, focusing on the claim of unreasonable delay in criminal proceedings against the author. Despite the State attributing delays to various factors like the case's complexity and judicial reforms, the Committee found these reasons insufficient to justify the prolonged duration of the delay. It highlighted the author's efforts to expedite the process and noted the personal hardships she faced due to the delay. Concluding that the lengthy proceedings violated her right to a trial within a reasonable time under the Covenant, the Committee ruled in favor of the author.

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide the author with an effective remedy;
b) Make full reparation to individuals whose Covenant rights have been violated;
c) Take the necessary steps to provide compensation to the author in respect of the damage caused by the unwarranted delay in the resolution of the judicial proceedings against her;
d) Take steps to prevent similar violations from occurring in the future.

Deadline for implementation: 15 September 2023

Separate opinion: Committee member Carlos Gómez Martínez issued a dissenting opinion. This opinion challenges the conclusion of a violation of article 14 (3) (c) of the Covenant, asserting that the timeline from the author's arrest to the final judgment does not demonstrate "undue delay" in the criminal proceedings. It emphasizes that the case's duration was appropriate for its complexity and had no adverse effect on the author's right to a fair trial. He also noted that the legal process relevant to the author concluded before the final judgment, with only an unrelated appeal pending, arguing this does not constitute undue delay in the context of ensuring justice.

More information on the case:

- **Los Tiempos** - Joven noruega presa pide atención a su país

Deadline for implementation: 19 November 2023

BOSNIA AND HERZEGOVINA

CCPR/C/139/D/3257/2018

A. A. v. Bosnia and Herzegovina

Extradition to the Russian Federation

Substantive issues: Non-refoulement; risk of torture and other forms of ill-treatment

Facts: The author of the communication is A. A., a Sunni Muslim and national of the Russian Federation of Chechen origin. He left Chechnya due to alleged persecution and threats received from authorities. In 2015, a criminal case was opened against the author in the Russian Federation. At the time, the author resided in Türkiye. He traveled to Bosnia and Herzegovina, but upon his arrival, he was arrested based on the charges pending in the Russian Federation and detained. The Russian Federation requested his extradition. He applied for asylum, but the court concluded that because he applied for asylum after the extradition request, it was not an obstacle to his extradition. The author appealed but his appeal was denied. Thereafter, the Ministry of Security examined the author's asylum claim and found that there was no real risk for the author to be subjected to persecution or disproportionate or discriminatory punishment and that parts of the author's argument were not credible. The extradition request was granted. He claims that, in the event of his extradition, the State party would violate his Covenant rights under article 6 regarding the right to life, and article 7 prohibiting torture or cruel, inhuman or degrading treatment or punishment.

Admissibility: After receiving the present communication, the Committee requested the State party not to extradite the author to the Russian Federation pending consideration of his communication. The State party nonetheless extradited the author shortly thereafter. The Committee found that by failing to respect the request for interim measures the State party failed in its obligations under article 1 of the Optional Protocol. Although the author filed a request for interim measures before the European Court of Human Rights, that was not an impediment to admissibility before the Committee because he did not pursue those claims on the merits. Similarly, his decision not to challenge the Ministry of Justice rejection of his asylum claim did not constitute a failure to exhaust domestic remedies because any such appeal would not have suspended the extradition. In short, the author failed to substantiate that he would be exposed to a real and personal risk of death or torture in the event of his extradition to the Russian Federation. Although the author also mentioned a fear that his right to a fair trial would not be respected in the event of extradition, that claim was not substantiated. As a result, the Committee found the communication inadmissible.

BULGARIA

CCPR/C/137/D/3171/2018

Ivan Yordanov Lazarov and Yordan Ivanov Lazarov v. Bulgaria

Inhumane treatment at a State-owned psychiatric facility amounts to abuse by the State party

Substantive issues: Right to life; torture and other cruel, inhuman or degrading treatment or punishment; conditions of detention

Facts: The authors of the communication are two Bulgarian citizens acting on their behalf and on behalf of their deceased sister and daughter, Valya Yordanova Lazorova. Ms. Lazorova was diagnosed with schizophrenia and as a result, on 6th June 1998 she was placed in a Social Care Facility which was controlled and financed by the State party. During an inspection in 2006, it was found that the facility was in a dilapidated condition and the patients were locked under appalling inhumane conditions where they were kept barefoot, unwashed and soaked in urine and excrement. On 3rd January 2007, Ms. Lazorova was administered a sedative to moderate her agitation however, it was afterwards discovered that she had disappeared from the institution. The institution contacted the police later and she was declared missing. On 22nd January 2007, Ms. Lazorova was found dead in a forest 20 kilometers away from the institution, the cause of death was found to be hypothermia and physical exhaustion.

The authors of the communication submitted a complaint to start a criminal investigation for manslaughter, however, this complaint was rejected. Later, the authors initiated administrative proceedings before the Ministry of Labour and Social Policy, however, they were informed that the Ministry had taken adequate and timely measures without responding to the specific allegations they made. In 2007, the authors initiated civil proceedings against the Municipality, the Ministry of Labour and Social Policy and the Council of Ministers however, the Administrative Court refused to open a civil case, stating that, in their claims, the authors had failed to respond to the court's instructions to identify the officials and specific activities concerned. The appeal to the Supreme Administrative Court was also dismissed. Finally, the authors submitted an application before the European Court of Human Rights which was deemed inadmissible.

The authors have claimed the inadequate and negligent care of Ms. Lazarova in the Radovtsi Home, her disappearance and subsequent death constitute a violation of her rights under articles 6, 7 and 10 (1) of the Covenant.

Admissibility: Contrary to the submissions of the State party, the Committee considered that the author's claims were admissible *ratione personae* since they submitted their communication as family members of the victim, a person with a severe intellectual disability, who died while residing in a social care institution, under the authority of the State. The latter was expected to ensure an effective investigation and accountability of the personnel concerned.

Merits: The Committee noted that the medical personnel within the Radovtsi Home knew or should have known about the medical and psychosocial needs of Ms. Lazarova, and found that the State party failed to take appropriate measures to protect Ms. Lazarova's life during the period she resided at the Radovtsi Home. This violated her right under article 6 (1). Additionally, The State party has admitted that the authorities were aware of the failures in care and treatment at the Radovtsi Home, which exposed Ms. Lazarova to inhumane and degrading treatment violating article 7 of the Covenant. Further, the Committee was also of the view that the regular isolation and locking of Ms. Lazarova in inhumane and unsanitary conditions violated her rights under article 10 (1) of the Covenant.

Recommendations: The State party is obligated to:

a) Make full reparations to the authors;
b) Take appropriate steps to ensure that conditions in psychiatric care facilities are compatible with the State party's obligations under articles 6, 7 and 10 of the Covenant.

Deadline for implementation: 11 September 2023

CAMEROON

CCPR/C/138/D/3214/2018

Dieudonné Télesphore Ambassa Zang v. Cameroon

Criminal trial held over 10 years after alleged conduct without participation of the accused

Substantive issues: Right to an effective remedy; fair trial

Facts: The author of the communication is Dieudonné Télesphore Ambassa Zang, a national of Cameroon, who served as Minister of Public Works and in the National Assembly of Cameroon. In 2009, a prosecutor asked the National Assembly to waive his parliamentary immunity so that he could be prosecuted for embezzlement, which was granted. The author fled and obtained refugee status in France. In 2013, proceedings were initiated in a Special Criminal Court. The investigation was conducted without the author's presence. In 2015, the author transmitted additional arguments on his own behalf, but without examining them the court sentenced him *in abstentia* to life imprisonment and payment of approximately 7.6 million euros in damages and an additional amount with another defendant. He appealed and had not received a decision six months after. He claims a violation by the State party of article 14 (1), (2), (3), and (5), read in conjunction with article 2 (3) of the Covenant based on *inter alia* the court's failure to consider evidence and argument presented by his lawyer, the delay during the course of the proceedings, and the lack of meaningful review of the conviction.

Admissibility: The Committee concluded that the author had not failed to exhaust domestic remedies. The author failed to substantiate his claim that his right to be presumed innocent was violated based solely on the media campaign against the author during the debate on the waiver of his immunity. The absence of a domestic remedy regarding the decision to waive parliamentary immunity did not constitute a violation of article 14 (5) because that article refers to rights and obligations in a suit at law, and that claim was therefore inadmissible.

Merits: The Committee concluded that the State party's decision to initiate proceedings in a Special Criminal Court with numerous irregularities violated the author's rights under article 14 (1). The Committee concluded that the State party's failure to consider the evidence and argument provided by the defense and the court's decision to base its conviction solely on the prosecution's allegations violated the author's rights under article 14 (1). Moreover, in the absence of any explanation from the State party, the proceedings violated the right under article 14 (3) (c) to be tried without unreasonable delay. The refusal of the author's request to be represented by counsel and to have his written submissions taken into account constituted a violation of his right to be assisted by counsel and a violation of the principle of equality of arms under article 14 (3) (d) and

(e) of the Covenant. Moreover, the State party violated the author's right to have his case reviewed by a higher tribunal enshrined in article 14 (5).

Recommendations: The State party should, *inter alia*:

a) Grant the author adequate reparation for the violation of his right to a fair trial;
b) Review the conviction and sentence imposed on the author in accordance with the procedural guarantees contained in the Covenant.

Deadline for implementation: 10 January 2024

CCPR/C/138/D/3838/2020

Achille Benoit Zogo Andela v. Cameroon

Cameroonian denied fair trial after being charged with misappropriation of public funds and unlawful withholding of property

Substantive issues: Right to a fair trial

Facts: The author is Achille Benoit Zogo Andela, a national of Cameroon. He was charged with misappropriation of public funds and unlawful withholding of property and placed in custody. He submitted an earlier communication to the Committee and the Committee requested that the State party release the author pending his trial and compensate him, but the State party failed to comply. The remaining proceedings contained numerous procedural defects including lack of access to the case file, inability to question or call witnesses, and the use of racial slurs during proceedings. The author filed complaints, appeals, and sought disqualification of judges to no avail. He was found guilty after a trial eight years after being remanded in custody and sentenced to 42 years' imprisonment. He appealed. He also submitted two communications under international procedures in relation to rights that are not raised in the present communication. He claims that the State party violated his rights under article 2, article 14 (1) by proceeding despite the lack of impartiality, article 14 (3) (b), (c) and (e) due to lack of access to the file, unreasonable delay, and infringement on his right to call and question witnesses, and article 14 (5) by failing to provide him appellate review.

Admissibility: The fact that the author submitted communications under other international procedures did not affect admissibility because those communications raised different issues and the State party did not argue otherwise. The fact that the author's appeal was still pending was not a barrier because the author had demonstrated that domestic remedies would not be effective, and the State party did not argue otherwise. Any claim under article 2 was not admissible on its own as article 2 cannot give rise to individual claims; therefore, the claims are inadmissible.

Merits: The Committee considered that the acts of hostility directed towards the accused and racist remarks made at the hearing which went unpunished by the Court and the groundless rejection of the author's defense strategy cast doubt on the Court's impartiality and violated the author's article 14 rights. The author was prevented from properly preparing his defence because his attorneys were restricted from access to the case file in violation of article 14 (3) (b). The eight-year delay in prosecuting the case was unreasonable and violated the author's rights under article 14 (3) (c). The author's right to examine witnesses and obtain the attendance and examination of witnesses under article 14 (3) (e) was violated. Finally, as there was no process for the author to have his conviction reviewed by an appellate court on points of fact, his right to have his conviction reviewed under article 14 (5) was violated.

Recommendations: The State party should, *inter alia*:

a) Provide the author with adequate reparation for the harm caused;
b) Allow a higher tribunal to review the proceedings brought against the author in their entirety, providing for all the procedural guarantees set out in article 14 of the Covenant;
c) Ensure that the author is released immediately, pending a ruling on his case by a higher tribunal.

Deadline for implementation: 10 January 2024

CCPR/C/137/D/2886/2016

François Martin Zibil v. Cameroon

Cameroon's failure to give effect to Compensation Commission to compensate wrongly convicted man violated Covenant rights

Substantive issues: Right to an effective remedy

Facts: The author is François Martin Zibi, a Cameroonian national who was arrested as part of an anti-corruption police operation and charged with misappropriation of public funds. The author was sentenced to 15 years' imprisonment and ordered to pay a fine. The author appealed and, after five years in detention, was acquitted by a Supreme Court ruling on the grounds of lack of evidence. The author alleges that the State party's Code of Criminal Procedure provides for a compensation commission in such circumstances, but it had not been formally established within the author's applicable time frame for filing a claim, so there was no available mechanism to seek compensation from the State party. As such he claims a violation of his rights under articles 2 (3) and 14 (1).

Admissibility: The Committee considered that domestic remedies were fully exhausted as the State party could not reasonably expect the author to lodge a claim with the compensation commission when it was not operational. The author's claims under article 2 are inadmissible on their own because article 2 provisions do not give rise to independent claims. The author sufficiently substantiated claims raised under article 14 (1) read alone and in conjunction with article 2 (3).

Merits: The Committee observed that the claim before it was whether the author had access to a remedy that would allow him to establish and assert his right to compensation. The Committee noted that the author could not make use of the compensation commission because it had not been formally established within the applicable time frame after his acquittal, and he had still not been paid his due salary payments. The Committee thus considered that the State party's failure to give effect to the compensation commission as a means to obtain compensation for damages constituted a violation of article 14 (1), read alone and in conjunction with article 2 (3).

Recommendations: The State party should, *inter alia*:

a) Provide the author with adequate compensation for the violation of article 14 (1) of the Covenant;
b) Provide the author with access, as quickly as possible, to a mechanism through which he can claim compensation for his wrongful detention.

Deadline for implementation: 13 September 2023

CANADA

CCPR/C/139/D/2817/2016

A.G v. Canada

Insufficiency of evidence of a substantial risk of irreparable harm, despite organizational affiliations of a person in Ethiopia in the framework of a deportation process

Substantive issues: Right to life; torture, cruel, inhuman or degrading treatment or punishment; non-refoulement

Facts: The author is A.G., an Ethiopian man. He argues that his deportation from Canada to Ethiopia would violate his rights under the Covenant, exposing him to serious risks like arbitrary detention, torture, and possibly death. He challenges the pre-removal risk assessment for dismissing his links to political organizations at risk in Ethiopia, citing inconsistencies with prior decisions recognizing his activism. The assessment's demand for objective evidence from events over 15 years ago is criticized as unrealistic, especially since his family can't provide such evidence due to their death or lack of contact. The author critiques the assessment's lack of independence and highlights reports on Ethiopia's treatment of activists and the government's monitoring of the diaspora to underscore his risk upon return.

The author contends that his deportation from Canada to Ethiopia would violate his rights under articles 6 (1), 7, and 9 (1) of the Covenant, exposing him to arbitrary detention, torture, and possible death. He disputes the pre-removal risk assessment officer's findings, citing contradictions with decisions from the Immigration and Refugee Board and the Federal Court. The author questions the assessment process, criticizing its reliance on civil servants rather than an independent tribunal. He also highlights reports on Ethiopia's political climate and government surveillance of diaspora activities to support his claim of potential harm upon return.

Admissibility: Despite the State party's contention that the author hadn't exhausted all remedies, the Committee noted he had pursued a second pre-removal risk assessment, deeming further assessments ineffective. The claim under article 9 (1) was found inadmissible as the author didn't demonstrate how his deportation would pose a significant risk of harm under this article. However, claims under articles 6 (1) and 7 were considered sufficiently substantiated, showing a plausible risk of irreparable harm if deported to Ethiopia, and thus were admitted for further examination.

Merits: The Committee reviewed the case, considering claims that deportation to Ethiopia would violate the author's rights due to his political affiliations and the country's human rights situation. However, it found the author failed to demonstrate a personal, substantial risk of irreparable harm, as required. Despite acknowledging his affiliations with certain organizations and the general human rights issues in Ethiopia, the Committee agreed with domestic authorities that there was insufficient evidence of a specific threat to him. Consequently, the Committee concluded that deporting the author would not breach his rights under the Covenant, affirming the decisions made by domestic authorities.

CCPR/C/138/D/2653/2015

Ekens Azubuike v. Canada

No rights violation in deporting a person to Nigeria due to his unproven claims and accessible HIV treatment there

Substantive issues: Non-refoulement; torture; cruel, inhuman or degrading treatment or punishment; personal liberty; and right to privacy

Facts: Ekens Azubuike, a Nigerian affiliated with the Biafran movement living with HIV, faced challenges in Canada concerning his asylum status due to allegations of document forgery, resulting in the revocation of his asylum and deportation to Nigeria. Despite his claims of facing potential torture or death in Nigeria, as well as concerns over lack of medical care for his HIV status, his efforts to remain in Canada through legal avenues were unsuccessful due to credibility concerns. Upon deportation and later return to Canada, Azubuike faced criminal charges unrelated to his asylum case. He criticized the Canadian pre-removal risk assessment process for not adequately considering his evidence or respecting his previously granted refugee status and contended that he did report abuse post-deportation to Canadian authorities, claiming denial of proper medical care.

The author claims that deporting him to Nigeria would violate his rights under articles 6, 7, and 9 (1) of the Covenant, as he faces a real risk of torture or death due to his involvement with the Movement for the Actualization of the Sovereign State of Biafra, especially since the Nigerian authorities have been informed of his life sentence there. He argues that the State party improperly informed Nigerian authorities about him, contrary to guidelines recommending reliance on independent sources for refugee status determinations. Moreover, he underscores additional risks due to being HIV-positive, which could expose him to severe discrimination and inadequate medical care in Nigeria. He also expresses concerns about the ineffective pre-removal risk assessments and the lack of consideration for his ongoing health needs and the persecution he could face both from the authorities and anti-gay groups in Nigeria. Further complicating his situation, he accuses the Canada Border Services Agency of conspiring against him, exacerbating his plight with legal and health challenges exacerbated by his time in Canadian custody. The author argues that the State party violate international and domestic laws by revoking his refugee status and compromising the confidentiality of asylum proceedings by contacting his persecutors in Nigeria. He also contends that their method of verifying the court judgment against him violated his rights under article 17 of the Covenant.

Admissibility: Although the State argued the author hadn't exhausted domestic remedies since an appeal was pending, it was later rejected, satisfying the Committee's requirements. The author's claim of a privacy rights violation under article 17 was inadmissible due to insufficient substantiation. Similarly, the author's claim that deportation to Nigeria would violate his rights under article 9 (1) of the Covenant was deemed inadmissible, as he failed to provide substantial evidence or demonstrate a real risk of severe violation. However, the Committee found the claims under articles 6 and 7 sufficiently substantiated for admissibility.

Merits: The Committee concluded that the author's deportation to Nigeria would not violate his rights under articles 6 and 7 of the Covenant. Despite the author's claims of political persecution and health-related discrimination, the Committee found his allegations unsubstantiated and noted contradictions in his evidence. It also considered the availability of HIV treatment in Nigeria and the comprehensive examination of his case by domestic authorities, determining that there was no credible risk of irreparable harm.

CCPR/C/138/D/3073/2017

Nadeem Khan v. Canada

Lack of any link of causality between residency status and the right to family life

Substantive issues: Cruel, inhuman or degrading treatment or punishment; right to respect for family life and home

Facts: Nadem Khan, who sought refugee status in Canada in 1997, was granted this status in 1999, and later applied for permanent residence. However, due to alleged past affiliations with organizations involved in terrorism (MQM and MQM-H), Canadian authorities deemed him inadmissible for permanent residence. Despite multiple interviews, a deportation order was issued in 2007 after a series of legal challenges and appeals. Concurrently, he sought ministerial relief to overcome his inadmissibility, which was ultimately denied in 2015 after a lengthy process, including a Supreme Court ruling and redetermination. The Federal Court dismissed his final appeal, upholding the decision that, despite his refugee status, his inadmissibility on grounds of terrorism precluded him from obtaining permanent residence, aligning with Canadian immigration law that allows for refugees to be denied permanent residency on serious grounds.

The author's complaint centres around the emotional and psychological distress he has endured due to living in Canada under temporary status for 20 years, arguing this constitutes cruel treatment under article 7 of the Covenant. He highlights the constant fear of deportation to Pakistan as a significant source of this distress. Additionally, he contends that Canada's refusal to grant him permanent residence interferes with his right to respect for his home under article 17 (1) of the Covenant. He interprets "home" as not only a physical place but also the network of personal, social, and economic relationships that constitute private life. The author describes how his uncertain status has prevented him from establishing long-term relationships, starting a family, and experiencing significant personal milestones, such as being with his dying father. He also mentions the challenges of securing long-term employment and feeling excluded from Canadian society. The complaint suggests that the State's actions are arbitrary and disproportionate, failing to balance national security concerns with the right to respect for his home, thus violating article 17 of the Covenant.

Admissibility: Despite the State's argument that the author's claims didn't fall under the Covenant's provisions for residency rights and emotional suffering, the Committee found the claim about mental suffering admissible under article 7, emphasizing the broad scope of protection for individual dignity and integrity. However, it deemed the claim related to the right to a "home" under article 17 inadmissible, interpreting "home" more narrowly and not as implying a right to a particular immigration status. This interpretation can be found in General Comment No. 16 (1988) and in the case Naidenova et al. v. Bulgaria.

Recalling its General Comment No. 20, the Committee noted that article 7 aims to protect an individual's dignity and physical and mental integrity against harm, intended or not. The Committee addressed the State party's contention that the term "home" in article 17 (1) does not extend to imply a right to a specific immigration status or residency in the country. The Committee clarified that "home" refers to a place of residence or usual occupation, leading to the conclusion that claims about interference with the right to a "home country" as a country of residence are outside the scope of article 17 (1), rendering these claims inadmissible under article 3 of the Optional Protocol.

In another claim, the author argued that the State party's refusal to grant permanent residency constituted cruel treatment under article 7 due to the mental anguish caused by his temporary status. The Committee noted that while the Covenant does not specify acts constituting cruel treatment, the assessment depends on the treatment's nature, purpose, severity, and the victim's characteristics. Despite acknowledging the author's stress and anguish from his uncertain status, the Committee found that the mental suffering did not meet the severity threshold required under article 7. Thus, this claim was also deemed inadmissible due to insufficient substantiation under article 2 of the Optional Protocol. However, the Committee found the author's claim regarding arbitrary interference with his family life under article 17 (1) to be sufficiently substantiated for admissibility and decided to proceed with an examination of its merits.

Merits: The Committee reviewed the case to decide if denying the author permanent residence interfered with his right to family life under article 17 of the Covenant. The State argued that the author could work, engage in romantic relationships, and maintain family ties in Canada, asserting that the denial of permanent residence was lawful, not arbitrary, and didn't violate article 17. The Committee highlighted that while the Covenant doesn't guarantee aliens the right to enter or reside in a State, protections may apply in cases affecting non-discrimination, inhuman treatment, and family life. Noting the author's established life in Canada since 1997 and his strong family and social ties within the country, the Committee found that the author didn't provide sufficient evidence to show that his residency status directly impeded his family life or that the State prevented him from maintaining family ties, including with his mother. Therefore, the Committee concluded that the denial of permanent residence did not constitute an arbitrary interference with his family life as defined by article 17, finding no violation of the Covenant by the State.

DEMOCRATIC REPUBLIC OF CONGO

CCPR/C/137/D/2990/2017

Moïse Katumbi v. Democratic Republic of Congo

Misuse of legal proceedings to dismantle democratic process in DRC violated Covenant

The case is noteworthy as it concerns a high-profile presidential candidate, Mr. Moïse Katumbi, who was excluded from challenging the incumbent President Joseph Kabila during scheduled elections in the Democratic Republic of Congo in 2016. After Mr. Katumbi announced his candidacy for presidency, State officials persecuted his supporters, subjected him to various human rights abuses, and used judicial proceedings to prevent his ability to maintain his candidacy. As a result of the events, no presidential election took place as scheduled in 2016 and Joseph Kabila remained in power until 2019.

The Committee reiterated its interpretation of article 25 as set out in General Comment No. 25 which specifically discusses, *inter alia*, (1) that any limitations on an individual's candidacy should be based on objective and reasonable criteria and established by law, and (2) that genuine, periodic elections are essential to the democratic process. The decision rejects the initiation of legal proceedings for the purpose of preventing participation in the electoral process, adding valuable contribution to a growing body of jurisprudence addressing impermissible interference with political candidacy. Finally, the case is notable because the DRC failed to comply with interim measures that would have allowed the author to return to the DRC and participate in the elections.

Substantive issues: Fair trial, effective remedy, participation in public life

Facts: The author is Moïse Katumbi, a business owner, politician and a national of the Democratic Republic of Congo. In September 2015, President Joseph Kabila attempted to amend the DRC Constitution in order to remain in power beyond his second term as President. In protest, the author left the President's political party. Several Congolese parties who had also left the presidential majority coalition requested Mr. Katumbi to be their candidate in the upcoming 2016 presidential election.

Thereafter, the headquarters of one of these associations was vandalized and shut down by the police. Also, the author's former Chef de Cabinet and adviser was arrested by officials without a warrant for "calling to insurrection", and he was imprisoned for three years after being convicted for illegal possession of firearms. About a month later, the police used violence to prevent a peaceful protest organized by the author's supporters. Many of those present at the protest were arrested, including a national of the United States of America who was a security advisor to the author. In contrast, cities where other opposition movements were gathering were not subject to police interference, suggesting that the author's supporters had been specifically targeted. Shortly thereafter, the headquarters of another association represented by the author was set ablaze.

Despite all of the intimidation, the author announced his candidacy for presidency. On that same day, an investigation was initiated against him for allegedly recruiting mercenaries from the United States, including his security advisor. The Embassy of the United States immediately denied the allegations as groundless. The next day, the authorities surrounded the author's home with the obvious intention of arresting him. Congolese human rights defenders observing the events were arrested and the author's property was searched without a warrant.

Shortly thereafter, the author was interviewed by a public prosecutor regarding the acts of which he was suspected. On his way to the courthouse for a hearing, he was gassed and intentionally injured in the ribs by the police, requiring his urgent hospitalization. While he was still in the hospital, a warrant for his arrest was issued for "undermining the security of the State." The next day, he was authorized by the Attorney General to leave the DRC aboard a medical plane owing to serious health problems.

The next month, he learned that he had been accused by a Greek national of signing a false deed of sale for a property located in the DRC. The author states that he had never signed a single document relating to the property. Nonetheless, he was sentenced *in absentia* to three years' imprisonment and a payment of the equivalent of $1 million USD in damages. The Ministry of Justice announced that Mr. Katumbi would be arrested and imprisoned upon his return to the DRC. Afterwards, the presiding judge in his *in absentia* trial stated that the decision had been rendered under threat of removal from the bench, imprisonment and physical and emotional coercion. Moreover, the presiding judge survived an assassination attempt in her home which was tied to threats aimed at the forced adoption of the pre-established verdict. Additionally, the main registrar of the court and the registrar for one of the author's cases fled the country following threats made by the judicial authorities and the National Intelligence Agency with regard to the case.

The author challenged the decision, but his challenge was declared null and void due to his failure to appear in person at the proceedings. The presidential election scheduled for 27 November 2016 did not take place, and Joseph Kabila remained in power beyond the end date of his second term in breach of the Constitution. Under the aegis of the Episcopal Conference of the Democratic Republic of Congo, the presidential majority and the opposition signed an agreement on 31 December 2016 governing the transition period until new elections could be held by the end of 2017. The conference conducted an inquiry to gather more information and uncovered numerous irregularities in the proceedings brought against the author, as well as in proceedings brought against Jean-Claude Muyambo, another opponent of President Kabila who had been sentenced to 26 months' imprisonment.

The author claimed that the State party violated his rights under articles 9 (right to security), 14 (fair trial), 17 (right to privacy and reputation and honour), 19 (right to freedom of expression), and 25 (right to participate in political affairs) of the Covenant.

Admissibility: The Committee granted the author's request for interim measures and requested the national authorities to permit his return to the DRC and his free and safe participation as a candidate in the presidential election scheduled for the end of 2017. The Committee noted that article 25 claims are not limited to political candidates and would be admissible even if, as the State argued, Mr. Katumbi did not qualify as a presidential candidate in the DRC. The State party's allegation that domestic remedies were not exhausted because cases brought against the author were ongoing did not preclude consideration because the very existence of these cases related to the merits of the communication. The author himself was not arrested or detained, and the Committee determined that he failed to sufficiently substantiate his claims under article 9 of the

Covenant. With regard to the author's claim that the surrounding and search of his home violated article 17, he failed to raise this claim in the DRC and therefore failed to exhaust domestic remedies. The author also failed to substantiate his article 19 claims regarding freedom of expression as he failed to specify in what manner he was a victim of an article 19 violation. The Committee determined that the author's article 14 and 25 claims were admissible.

Merits: The Committee reiterated that the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception. This has both a subjective and objective component; judges must not allow their judgment to be influenced improperly and must also appear to a reasonable observer to be impartial. The Committee found that the judge who was supposed to preside over the case brought by the Greek national against the author survived an assassination attempt at her home and the registrars who were involved fled the country due to pressure exerted by authorities with regard to the case. Moreover, during the proceedings brought by the Greek national, the author's lawyers were prevented from representing him and he was convicted *in abstentia*, even though he had been permitted to leave the country by the Attorney General due to health reasons. The Committee stated that the State party failed to demonstrate how the author could have enjoyed a fair trial in that context and that justice was not administered in a way as to guarantee the author independence or impartiality. Thus, the Committee found article 14 violations.

Concerning article 25, the Committee recalled that that article recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. The Committee concluded that violations took place because the period after the author left the majority party and declared his presidential candidacy was strewn with incidents pointing towards persecution of the author by the authorities. A series of acts of intimidation were committed against parties allied with the author, an investigation was initiated against the author just after he announced his candidacy, and his home was surrounded with the aim of arresting him. The State party failed to explain how these facts did not demonstrate intentional barriers to the exercise of article 25 rights. Thus, the Committee found that article 25 violations had taken place.

Recommendations: The State party should take the necessary steps to provide the author with adequate compensation for its violations of articles 14 and 25. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

Deadline for implementation: 12 September 2023

More information on the case:

- **Le Monde Afrique** - Moïse Katumbi - Je Demande à Joseph Kabila de Démissionner
- **Radio France Internationale** – RDC : une juge dénonce des pressions lors d'un jugement contre Katumbi
- **Afrik.com** – RDC, Juge Chantal Ramazani : "Sous la menace, nous avons violé la loi pour condamner Moïse Katumbi"
- **Human Rights Watch** – DR Congo: Crackdown on Presidential Aspirant
- **Le Monde Afrique** – En RDC, la grande marche de Moïse Katumbi trébuche sur la répression policière

CCPR/C/139/D/3658/2019

Louis d'Or Balekelayi Nyengele et al. v. Democratic Republic of Congo

Courts overturn election results regarding 16 DRC political candidates; violate Covenant in relation to one candidate only

Substantive issues: Right to an effective remedy

Facts: The authors of the communication are sixteen nationals of the Democratic Republic of Congo (DRC). In 2018, the authors ran for political office. The authors challenged before the Constitutional Court the results showing that they had not been elected. The authors won their cases and were validated as elected deputies. Constitutional Court judgments are not subject to appeal, but the Court can correct factual errors. Various political parties filed claims requesting the correction of factual errors contained in the judgments validating the authors. With respect to one author, Banze, the request to correct the judgment validating her was not made correctly. Apart from Banze, the Constitutional Court invalidated the authors' election and validated the election of other candidates. Those authors appealed to the Constitutional Court, but the Court summarily declined jurisdiction. In August 2019, the other candidates were validated. The judgment validating Banze was never superimposed yet has not been implemented. She claims violations of articles 2 and 14 (1).

Admissibility: The Committee considered that domestic remedies were fully exhausted as Constitutional Court judgments are not subject to appeal and the State party did not participate in the matter and therefore did not argue otherwise. The separate claims under article 2 are inadmissible because article 2 provisions do not give rise to independent claims. The authors' claim alleging a denial of access to the courts was not substantiated because that right only refers to access to first instance court procedures. The authors' remaining claim alleged a violation of their right to a fair trial under article 14 (1). However, although the Court initially validated the authors' elections, during the procedure used to invalidate the elections—a procedure provided for by law which the authors participated in with counsel—apart from author Banze, the authors had the opportunity to demonstrate that they won but failed to do so, and unlike Banze, the requests to amend their judgments had been made correctly. Therefore, those authors' claims were inadmissible. As the judgment validating Banze was never amended, that author sufficiently substantiated her claim on account of non-execution of the judgment validating her election win.

Merits: The record showed that the original decision proclaiming Banze to have been elected remained unchanged yet had not been implemented. The Committee noted that the right of access to a court pursuant to article 14 (1) of the Covenant would be illusory if a final and binding judicial decision remained inoperative. The Committee concluded that the State party violated the rights guaranteed to Banze under article 14 (1) of the Covenant.

Recommendations: The State party should, *inter alia*:

a) Fully implement Constitutional Court judgment No. RCE 979/DN of 14 June, 2019, if that is materially possible;
b) Provide the author Josiane Maloba Banze with adequate compensation for the material and non-material damage she has suffered.

Deadline for implementation: 22 April 2024

CCPR/C/137/D/2790/2016

Furaha Lugumire et al. v. Democratic Republic of Congo

Failure to protect against gender-based discrimination and violence violated Covenant

Substantive issues: Right to an effective remedy; right to life; cruel, inhuman or degrading treatment or punishment; right to security of person; arbitrary interference with family life; discrimination on the basis of sex.

Facts: The authors are Furaha Lugumire and her husband Blaise Barhatulirwa, both nationals of the DRC. Ms. Lugumire was a nurse at a hospital caring for victims of sexual violence. She was harassed and threatened, which she reported with no effect. She was attacked, kidnapped, and sexually assaulted. A complaint was filed and she was interviewed, but the complaint was not investigated. She was prosecuted for spreading "false rumours" and "inciting rebellion." A group of youths attacked the authors, necessitating them to seek medical treatment. The authorities did not follow up. The family suffered stigma and sought asylum in Uganda. The authors claim violations of their rights under articles 6 (1) (right to life), 7 (prohibition of torture; cruel, inhuman or degrading treatment), 9 (1) (right to security), read alone and in conjunction with articles 2 (1) and (3), 3 (prohibition of gender discrimination) and 26 (non-discrimination). They claim violations of the rights of Ms. Lugumire under article 17 (prohibition of interference with family/home; honour or reputation) and 23 (right to family life) and the rights of Mr. Barhatulirwa under article 7, alone and in conjunction with article 2.

Admissibility: The State party did not contest the claims' admissibility. As almost 10 years had passed since the authors' first complaint filed with the State party, and since unreasonably prolonged domestic remedies that are not efficient do not preclude the Committee from considering a communication, the claims were admissible.

Merits: The State party failed to protect Ms. Lugumire from threats in violation of articles 6 and 9, alone and in conjunction with article 2 (3). The State party violated article 7 by failing to provide Ms. Lugumire with protection based on the threats she reported before she was kidnapped, although the State party was aware of the high risk to her of sexual and general violence. The State party violated article 7, alone and in conjunction with article 2 (3), by failing to investigate the claims to obtain redress for the harm suffered. These State party omissions demonstrated a failure to discharge the obligation to protect Ms. Lugumire from gender-based discrimination in violation of articles 2 (1), 3 and 26 read in conjunction with articles 6, 7, and 9. Ms. Lugumire suffered an arbitrary and unlawful invasion of her privacy and family life in violation of article 17, alone and in conjunction with article 23. The facts disclosed a violation of article 7, alone and in conjunction with article 2 (3), with respect to Mr. Barhatulirwa.

Recommendations: The State party should*, inter alia*:

a) Continue in a prompt, effective, thorough, independent, impartial and transparent manner the investigation of the facts alleged by the authors in their three criminal complaints;
b) Prosecute and try those responsible for the alleged violations and punish them in a manner that is commensurate with the gravity of the violations;
c) Provide the authors with detailed information about the results of the investigations;
d) Provide the authors with adequate compensation, including the means necessary to cover the cost of medical care and psychological rehabilitation, and social and economic reintegration measures.

Deadline for implementation: 6 September 2023

DENMARK

CCPR/C/138/D/2342/2014

B.R. and M.G. v. Denmark

Deportation to Pakistan on charges of proselytism

Substantive issues: Right to life; torture and other cruel, inhuman or degrading treatment or punishment; right to a fair trial; freedom of religion

Facts: The authors are a married couple of Pakistani nationality who submitted the communication on their own behalf as well as on the behalf of their three minor children. The authors are Christians and M.G. and played an active role, including that of a President, of a few minority foundations in Pakistan. M.G. was warned against proselytising which he refused and was subsequently reported to the police for carrying out missionary work and for allegedly speaking disparagingly of Prophet Mohammad. Criminal charges were brought against M.G. and the author escaped a shooting directed at him. Post this, the authors and their children fled Pakistan to Denmark in 2012. In 2013, the Danish Immigration Service refused to grant residence permits to the authors and their children and in 2014 the Refugee Appeals Board refused the authors' claim for refugee status stating that their lack of credibility of key events as the reason for refusal.

The authors' claim that they would be at risk of persecution in violation of articles 6 and 7, as well as article 18 of the Covenant as they would have to hide their religious beliefs if returned to Pakistan. Furthermore, the authors also claim that they were unable to appeal the decision of the Refugee Appeals Board to the ordinary Danish courts which amounts to a violation of their fair trial rights under article 14 of the Covenant. In 2014, the Committee decided to register the communication and request interim measures concerning the authors and their children, and in 2018 decided to suspend the same owing to the domestic proceedings that were being conducted. In 2022, the State party requested the Committee to be reopened with respect to claims of MG. In 2022, B.R. withdrew the communication that she had submitted on behalf herself and her three children as they had been granted residence permits in Denmark in 2021.

Admissibility: Given that B.G. withdrew the communication in relation to her and the authors' children, the Committee decided to consider the complaints of M.G. only. The Committee observed that the decision of the Refugee Appeals Board was not based on the inconsistencies of the accounts of persecution claimed by M.G. in Pakistan, but also on the lack of genuine and authentic nature of the documents submitted by M.G. in support of his arguments. The Committee also noted M.G. had not mentioned about being subject to persecution or abuse arising due to religious beliefs in his statements to the Danish Immigration Service. The Committee observed that with respect to M.G. 's claims that he suffered from a serious physical disease for which he would be unable to receive treatment in Pakistan, the Refugee Appeals Board had held that the author had failed to establish that he would be cut off from receiving the necessary treatment in Pakistan.

The Committee considered that the Refugee Appeals Board had conducted a comprehensive examination to conclude that the M.G. had no conflict with the Pakistani authorities. Contrary to M.G.'s claims, the Committee held that he had not sufficiently substantiated his claims that the State

party's authorities failed to assess the risk posed to him if he returned to Pakistan. The Committee also held that there was no *prima facie* evidence before it to show that the author would be at a real risk of persecution in violation of his rights under articles 6 and 7 on his return to Pakistan. The Committee noted the State party's argument that M.G. replaced a claim for violation of article 14 to a violation of article 13 as it was incompatible *ratione materiae* as asylum proceedings fall outside the scope of article 14. The Committee found that M.G. had not sufficiently substantiated his claims under article 13 and hence held that it was inadmissible under article 2 of the Optional Protocol. The Committee held that M.G. failed to establish a real risk of persecution on his return to Pakistan and that he has been or would be deprived of his rights under article 18 in Denmark. The Committee held that this led to incompatibility *ratione materiae* as it falls outside the jurisdiction of the State party. With respect to M.G.'s claims under article 26, the Committee held that they had been insufficiently substantiated. For these reasons, the Committee held that the communication of M.G. was inadmissible under articles 2 and 3 of the Optional Protocol.

CCPR/C/137/D/2858/2016

Elezjana Elezaj v. Denmark

Legality of deportation in instance of trafficking and threat by family members on return to Albania

Substantive issues: Non-refoulement; right to life; torture and ill-treatment

Facts: The author is an Albanian national who was forced to marry a Serbian national and relocate to Serbia where she was physically abused and subject to forced labour. The author's husband's family had paid 7000 euros for the author. While on a visit to Albania, the author filed a complaint about the assault she was subject to, which did not succeed due to lack of evidence. The author decided to not return to Serbia and filed for divorce, which was rejected by her husband's family who also asked for a reimbursement of the amount that they had paid for her. Fearing for her life based on previous instances where she had been attacked by her family members for humiliating the family, the author fled to Denmark and applied for asylum in 2015.

The Danish Immigration Service decided that the author did not fall under the definition of a trafficked person, and that it was outside the competence of the Refugee Appeals Board to decide whether to grant her a residence permit for humanitarian reasons. The Immigration Service held that her case fell within the competence of the Ministry of Immigration and Integration. The Refugee Appeals Board held that there were no grounds to process the author's appeal for an oral board meeting, and while accepting the author's factual claims, it did not consider the author's situation to be of such a severity so as to grant a residence permit. The author requested her case be reopened and the Refugee Appeals Board agreed to this request but upheld its previous decision. The author claims that if she were to be deported to Albania, then her right to life, right to not be subject to cruel and inhuman treatment, and fair trial rights under articles 6, 7 and 14 of the Covenant would be violated.

Admissibility: While noting that the author raised claims under article 8 which provides for rights against servitude and slavery, the Committee held that the author did not develop those allegations and failed to sufficiently substantiate them for the purposes of admissibility, and hence that part of the communication under article 8 was declared inadmissible under article 2 of the Optional Protocol.

The Committee observed that to the extent that the author's allegation of article 14 relies on violations that she will suffer after her return to Albania, such a claim would be incompatible *ratione loci* with the provisions of the Covenant and hence would be inadmissible under article 3 of the Optional Protocol. With respect to the author's claims under articles 6 and 7, the Committee held that they were sufficiently substantiated for the purposes of admissibility.

Merits: With respect to the author's claims under articles 6 and 7 and threat to her life by her family members on her return to Albania, the Committee stated that it was tasked with assessing whether the Danish domestic authorities had properly assessed whether the author would face a violation of rights under articles 6 and 7 on her return to Albania. The Committee observed, keeping in mind that the author's uncle had already been once incarcerated for attacking her, that the State party had not considered the gap between law and practice when arguing that Albania had taken legislative steps to protect women victims of family and gender-based violence. The Committee also expressed concern about blood feud-related crimes, and ineffective investigations of such cases prevalent in Albania.

The Committee held that the State party did not give due regard to the author's allegations of corruption in the Albanian judiciary. Regarding the author's claims that she would be at a risk of being re-trafficked on her return to Albania, the Court noted that despite the Danish Centre against Trafficking assessing that the author was a victim of trafficking, the Danish Immigration service had rejected this claim and found that the author had not been subject to trafficking. The Committee held that the State party was arbitrary in failing to adequately consider the evidence according to which the author would be at a real risk of irreparable harm if deported to Albania and would violate the author's rights under articles 6 and 7.

Recommendations: State party is under an obligation to review the author's claims and refrain from expelling her to Albania while her request is under consideration.

Deadline for implementation: 12 September 2023

Separate opinion: Committee members Carlos Goméz Martínez, Laurence R. Helfer and Marcia V.J. Kran issued a joint dissenting opinion. They considered that decisions at the domestic level had been reached by competent national authorities. The author did not provide information to demonstrate that the State party's assessment was arbitrary or manifestly erroneous. Hence it cannot be considered that there is a violation of author's rights under articles 6 and 7.

CCPR/C/137/D/2795/2016

Z v. Denmark

Deportation of a single woman and her minor daughter to Morocco

Substantive issues: Cruel, inhuman or degrading treatment or punishment; fair trial; non-refoulement; right to life; refugee status

Facts: The author is a Moroccan national and submits the communication for herself and on behalf of her minor daughter C. In 2010, the author travelled from Morocco to Denmark to work as a childcare provider. Hailing from a very traditional and conservative family, the author had been engaged to a cousin before moving to Denmark. However, on the expiry of her residence permit in 2011 in Denmark, the author was fearful of returning to Morocco as the author's sexual relationships while in Denmark would not be accepted in Islamic Moroccan culture and hence she remained in Denmark. The author became pregnant with C in 2014, and she kept the pregnancy a secret from her family, fearing disapproval and even kept the birth of C a secret from her family. The author applied for asylum in Denmark in 2014 and thereafter the author informed her family about the birth of C. The author claims that her brothers threatened to kill her and her family expressed that she had brought shame and dishonour on her family. The Danish Immigration Service interviewed the author in 2015 and rejected her application for asylum. On appeal, the Refugee Appeals Board upheld the decision of the Immigration Service.

The author submits that by removing her and her daughter to Morocco would result in them being subject to torture, or to cruel, inhuman or degrading treatment or punishment in violation of their rights under articles 6, 7 and 14 of the Covenant. The author also alleges a violation of articles 2, 3, 6 and 27 of the Convention on the Rights of the Child (CRC), regarding C's rights to life, survival and development, and an adequate standard of living. The author also alleges unspecified violations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Admissibility: As there was no contention regarding the lack of exhaustion of local remedies by the author and owing to the finality of the decision of the Refugee Appeals Board, the Committee noted that article 5 (2) (b) of the Optional Protocol would not impediment the admissibility of the communication. With respect to the authors claims under the CRC and the CEDAW, the Committee recalled that its competence is only limited to the examination of communications claiming violation of rights under the Covenant. The alleged violations under other treaties and agreements were considered as falling outside the scope of the Committee's competence and were inadmissible *ratione materiae* under article 3 of the Optional Protocol.

The Committee noted, considering factors such as the long duration of time since threats by her family members had been made and that she could no longer contact her family members, that the author had not provided any information that could indicate that the disapproval of her family members was of such a magnitude that she would be at a risk of persecution if she returned to Morocco. The Committee considered the claims of the author under article 7 as being insufficiently substantiated. Further, considering the author's independent life for the past several years, the Committee considered the claim of the author that she would not be supported by her family and would be at a risk of being disowned as insufficiently substantiated for the purposes of establishing risk of social or economic hardship in violation of articles 6 and 7 of the Covenant. The Committee also noted that the author had not provided sufficient substantiation of her claims that the assessment of the Refugee Appeals Board against certain factual matters was erroneous

and irregular. The Committee also considered the finding of the Refugee Appeals Board that there was an absence of instances of honour killing in Morocco and that there were crisis shelters and organisations which provided assistance with respect to registration and documentation for children born out of wedlock.

For these reasons the Committee held that the author had not sufficiently substantiated her claims as well as claims for her child under articles 6 and 7, and hence they were inadmissible under article 2 of the Optional Protocol. Contrary to the author's claim that her removal to Morocco would violate her rights under article 14 as she would not benefit from a fair trial, the Committee held that the author had not substantiated her rights under article 14 would be violated in a manner that would pose a substantial risk of irreparable harm under articles 6 and 7, and hence the claim is inadmissible under article 2 of the Optional Protocol. For these reasons, the Committee held that the communication is inadmissible under articles 2 and 3 of the Optional Protocol.

CCPR/C/137/D/2748/2016

A.B. v. Denmark

Deportation from Denmark to Pakistan on the basis of inconsistencies in statement of persecution

Substantive issues: Non- refoulement; right to life; torture and ill-treatment

Facts: The author is a Pakistani national and a Christian who ran an internet café in Pakistan. He received threatening letters accusing his internet café of being against sharia and hence illegal. Subsequently, there was a bomb explosion near the café and thereafter the author along with his family moved to Peshawar. At Peshawar, the author was assigned to maintain and operate a Church. There were two suicide bomb attacks in front of the Church after a service, which the author survived. After these incidents, the author actively planned to guard the Church premises, which he claims led to several anonymous threats against him and to him being attacked while guarding the Church. The author claims to have received more threats to his life. In 2014, the author fled Pakistan and sought asylum in Denmark. In 2015, the Danish Immigration Service rejected his asylum application, and an appeal was rejected by the Refugee Board in 2016. The Refugee Appeals Board re-examined the author's refugee claim once again and refused it, citing inconsistencies in the author's statements regarding his persecution. The author in the present communication claims that removing him to Pakistan would violate his right to life and right against cruel and inhuman treatment under articles 6 and 7 of the Covenant.

Admissibility: The Committee gave due consideration to the State party's argument that the author had not exhausted domestic remedies with respect to his claims under articles 6 and 7 of the Covenant and that he failed to make use of the remedy of challenging the legality of administrative decisions before domestic courts. Recalling its jurisprudence that authors must exercise due diligence in the pursuit of available remedies, the Committee was of the opinion that this part of the communication was inadmissible under article 5 (2) (b) of the Optional Protocol. While noting the author's claims of being subject to cruel and inhuman treatment on his return to Pakistan on grounds of his religious beliefs, and that the Refugee Appeals Board's interpretation of asylum rules is erroneous and in violation of articles 6 and 7, the Committee also noted the State party's argument that the author had insufficiently substantiated that he would be at a real risk of personal harm if returned to Pakistan.

On the basis of the evidence before it, the Committee held that the State party had taken into account all aspects of the author's allegations including the general situation of Christians in Pakistan, and that author's claims regarding his real and personal risk of persecution under articles 6 and 7 were insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol. With respect to the author's claims under article 13, the Committee observed that the author had been provided with the opportunity to submit and challenge evidence concerning his asylum claim, and that in his comments to the State party's observations he had decided not to pursue his claims under article 13 and had agreed that no violation of his rights had taken place. The Committee hence considered his claims under article 13 to have been insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

FRANCE

CCPR/C/138/D/3213/2018

Thierry Ehrmann v. France

France's violation of author's rights under domestic law did not affect the author's rights under the Covenant

Substantive issues: Right to a fair trial

Facts: The author of the communication is Thierry Ehrmann, a national of France. He is a sculptor diagnosed with an incurable genetic disorder who was placed under a guardianship. He opened a museum on his property and did some work to the outside which are part of his oeuvre. Local authorities claimed that the works were not registered and failed to comply with town planning regulations. He was ordered to remove the works and sentenced to a coercive fine. Suit was filed seeking compliance. The author requested that the court set aside the proceedings, arguing that his right to a fair trial had been violated because his administrator had not been informed of the proceedings against him and he had not undergone psychiatric evaluation. The court dismissed the author's arguments. The author appealed unsuccessfully. The author submitted an application to the European Court of Human Rights but it was dismissed. The author claims the State party violated his fair trial rights under article 14 (1).

Admissibility: Despite the fact that the author brought the same claim to the European Court of Human Rights, the Committee concluded the claim is admissible because the European Court of Human Rights' letter to the author was of such a summary nature that it could not be determined whether their decision was based in part on the merits. Statements made by the domestic court suggested that the author had raised the claims in lower proceedings.

Merits: The Committee noted that the author's arguments were duly considered by national courts, and it is not in a position to determine the appropriateness of a psychiatric evaluation in place of judicial authorities. Here, the author did not demonstrate how the failure to order a psychiatric evaluation placed him at a disadvantage or hindered his exercise of the right to a fair trial in violation of article 14 (1). Moreover, the author was assisted by a lawyer throughout the proceedings and did not demonstrate how the absence of his administrator had an adverse effect on his right to a fair trial. Thus, while the State party failed to inform the author's administrator, the Committee could not conclude that this failure constituted arbitrary conduct or a denial of justice or that the judges violated their obligation or independence or impartiality and did not find a violation of article 14 (1).

Separate opinion: Committee Member Bacre Waly Ndiaye issued a dissenting opinion. For him, it is undisputed that rules governing the notification of administrators, intended to offset the inequality experienced by persons with disabilities, were violated in this case. Once a violation is found to have occurred, a violation of article 14 of the Covenant should also be found, especially since a psychiatric evaluation which would have demonstrated the author's capacity was rejected. Strict protection should have been applied which would have resulted in a violation.

More information on the case:

- **La Croix** - Vingt ans après, la Demeure du Chaos continue de fasciner et d'irriter

GREECE

CCPR/C/139/D/3795/2020

E.Z. et al. v. Greece

Forced and unjustified evictions in Greece of people belonging to Roma ethnicity

Substantive issues: Right to an effective remedy; right to life; cruel, inhuman or degrading treatment or punishment; unlawful interference with family rights; unlawful attacks on family or reputation; discrimination on the grounds of national, ethnic or social origin

Facts: The authors of the communication are nationals of Greece and Albania, are of Roma ethnicity, and claim being subjected to forced and unjustified evictions. The authors live in Greece and claim to have been living in a Roma settlement for 15 years in inhuman conditions near a landfill where they sorted and collected recyclable materials to sell. They were under the belief that they had to stay in the settlement until they were relocated upon central and local policies adopted by Greece in favour of Roma, which had to be sanctioned by the EU. The authors' dwellings were demolished by personnel of the municipality, and the authors claim that no judicial or administrative decision had authorised such demolitions. Following the demolitions, the authors claim to have been harassed by the Deputy Mayor of the municipality and that they were forced to reside in the countryside in the sunlight and unsanitary living conditions during COVID-19, which have continued till date. On not receiving any official information about the legal basis for demolitions undertaken by the municipality, a criminal lawsuit against the municipality was filed on behalf of the victims, including the authors.

The authors claim that conviction of the perpetrators would not alleviate their situation and illegal occupants on private land should be sued before their expulsion or demolition, which the municipality did not follow. The authors claim that in the absence of a judicial or administrative order for their eviction, they have no opportunity to challenge any action before domestic courts and as the dwellings were built in violation of town planning regulations, the domestic authorities were, in principle, entitled to remove them as it was an unlawful occupation. As there is no civil remedy available and other criminal proceedings would be ineffective, the authors in the communication claim unlawful interference with their homes and unlawful attack on their honour and reputation and accordingly a violation of their rights under articles 2 (3), 6 read alone and with article 2; 7 read alone and with articles 2 (1) and (3); 9; 14 (1); 16 read alone and with articles 14, 17 and 26; 17 read alone and with article 2 (3) and 14; 23 read alone and with article 2 (3); 26 read alone and with article 2 (2); and 27 of the Covenant.

Admissibility: The State party argued that domestic remedies have not been exhausted by the authors and that the authors could have requested the civil courts for protection and also applied for interim measures. The Committee observed that the criminal lawsuit filed on behalf of the authors is still pending with the Public Prosecutor, and that in the absence of the authors not explaining how the pending criminal procedure was unreasonably delayed, this procedure cannot be considered as being exhausted. The Committee also recalled that authors of communications

should exercise due diligence in pursuing available domestic remedies and mere doubts about their effectiveness do not absolve the authors from exhausting them. The Committee noted that in the present communication, both the parties provide a different version of the facts and that the authors have not substantiated as to why they cannot submit claims to the domestic authorities and why administrative and judicial appeals would be manifestly ineffective. The Committee decided that the authors have not exhausted domestic remedies in relation to their claims and hence held the communication as inadmissible under article 5 (2) (b) of the Optional Protocol.

HUNGARY

CCPR/C/138/D/2963/2017

Safi Rehman v. Hungary

No Covenant violation resulting from deportation to Bulgaria based on "first country asylum"

Substantive issues: Risk of torture or other cruel, inhuman or degrading treatment

Facts: The author of the communication is Safi Rehman, a national of Afghanistan. He left Afghanistan in fear of persecution. He spent two years in Türkiye and then moved to Bulgaria where he was detained. His psychological state during his detention was poor and conditions were harsh and included physical abuse by police. He left Bulgaria for Serbia and illegally entered Hungary. He was apprehended and stated his wish to apply for asylum. The immigration authorities issued a decision that Bulgaria was responsible for his asylum application based on the principle of "first country asylum" and ordered his transfer there. His challenges of that decision were denied. A foundation for the rehabilitation of torture victims issued an expert psychological opinion indicating that the author was repeatedly a victim of serious inhuman treatment and torture in Bulgaria and suffers from PTSD. The foundation stated that he should be placed in an open reception center and needed psychological therapy, but these recommendations were not implemented. He claims that the State party violated Covenant article 2 (3) (a) regarding the right to an effective remedy and article 7 regarding the prohibition against torture or cruel, inhuman or degrading treatment or punishment.

Interim measures: The Committee adopted interim measures pursuant to rule 94 of its rules of procedure requesting the State party to refrain from removing the author to Bulgaria while the communication was under consideration. Nonetheless, the author was deported. The failure to respect the interim measures violated article 1 of the Optional Protocol.

Admissibility: The Committee found that domestic remedies have been exhausted. The author raised several risk factors and potential errors during the domestic asylum and court proceedings that, cumulatively, sufficiently substantiate his claims under article 7 and article 2 (3) (a) read in conjunction with article 7.

Merits: First, the author did not substantiate his claim of a real and personal risk of inhuman or degrading treatment of returned to Bulgaria. The fact that he may be confronted with severe difficult circumstances does not mean he would be in a situation significantly different from others deported on the basis of "first country asylum." During the proceedings, the author failed to provide domestic authorities with sufficient personal information as to why he should not be returned to Bulgaria despite being informed and given the opportunity. The content of the psychological report was prepared after the decision to expel the author was final and was not part of the decision to deport him. Thus, the Committee concluded that the author failed to explain why the decision to expel him was manifestly unreasonable or arbitrary or amounted to a denial of justice. Accordingly, the Committee did not find any Covenant violation. However, the extradition of the author pending consideration of the communication in contradiction to the interim measures constituted a Covenant violation of the State party's obligations.

KAZAKHSTAN

CCPR/C/139/D/2914/2016; CCPR/C/139/D/3040/2017; CCPR/C/139/D/3051/2017

Fatima Dzhandosova et al. v. Kazakhstan

Denial of the right to participate in public elections

Substantive issues: Voting and election; discrimination on the ground of political or other opinion

Facts: The authors of the combined communications are three nationals of Kazakhstan. The State party held local elections and all authors submitted applications for candidacy. The authors were later disqualified for submitting false information in their income declarations. All three authors contested the disqualifications, but the court denied the claims. Their subsequent appeals were rejected or dismissed. The authors allege the disqualifications led to violations of their right to take part in conduct of public affairs and to be elected under article 25. They also allege that they were disqualified based on their political views which violated their rights under article 26 prohibiting discrimination.

Admissibility: The Committee noted that the authors did not raise the issue of discrimination based on their political views in their complaints before the domestic authorities, and the claims brought pursuant to article 26 of the Covenant are inadmissible for failure to exhaust domestic remedies. The article 25 claim was admissible.

Merits: The Committee noted that the financial discrepancies used to disqualify the authors from running for office were small and were caused by incorrect statements from bank and pension funds. It also noted that the authors were not allowed to correct their income declarations after the discrepancies were identified. The Committee concluded that the decisions to disqualify the authors on this basis coupled with the lack of access to an effective judicial review incorporated unfair procedures and led to an unreasonable restriction of the authors' rights under article 25 of the Covenant.

Recommendations: The State party should provide the authors with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future, including by ensuring that election regulations and their application are consistent with article 25 of the Covenant.

Deadline for implementation: 17 April 2024

CCPR/C/139/D/2983/2017

A.S.V. v. Kazakhstan

Criminal conviction based on forced confession and lack of effective investigation into torture claims

Substantive issues: Torture; forced confession; fair trial – legal assistance; effective remedy

Facts: The author of the communication is A.S.V., a national of Kazakhstan. He claims that he was arrested in connection with a murder, beaten and threatened with violence by the police if he did not confess. He claims that under duress, he confessed to the murder. Two forensic doctors evaluated A.S.V. but failed to corroborate A.S.V.'s claims regarding the beatings, apart from one small abrasion. A pre-investigation check also did not corroborate his claims. He also claims that he was denied legal assistance when he was arrested, but he was appointed a lawyer the same day as his arrest. Finally, he claims that the police falsified evidence to support his guilt. A jury found him guilty of murder. The author appealed, but the conviction was upheld. The author requested supervisory review of the case, but his request was denied. He claims that the State party has violated his rights guaranteed under article 2 regarding a right to an effective remedy, article 7 regarding a prohibition against torture or cruel inhuman or degrading treatment, article 9 regarding a right to liberty and security of person, and article 14 relating to fair trial protections.

Admissibility: The Committee noted the author's claims under article 2 do not give rise to individual claims and those claims are inadmissible. The Committee observed that with regard to the author's article 7 and 14 claims, the forensic medical examinations did not indicate beatings or any other form of ill-treatment or torture and the pre-investigation check did not corroborate his claims. Therefore, he failed to substantiate his claims based on an alleged coerced confession. Moreover, his claim that he was denied legal counsel was not substantiated. He provided insufficient details regarding his remaining due process claims and those claims were also not sufficiently substantiated. Finally, with regard to his coerced confession-related claims, he also failed to exhaust domestic remedies because he failed to raise this argument during pretrial hearings. The Committee decided that the case is inadmissible under articles 2 and 3 of the Optional Protocol.

CCPR/C/138/D/3006/2017

Aleksandr Povstyuk v. Kazakhstan

Transport of disabled person for 15 hours with food, water, or consideration of condition violates Covenant

Substantive issues: Arbitrary arrest; arrest, transportation and pretrial detention of persons with disabilities; criminal conviction based on perjury

Facts: The author is Aleksandr Povstyuk, a national of Ukraine who is disabled. The author was arrested under the pretext of a noise complaint and interrogated in connection with various allegations. He was transported for 15 hours without a break and was placed in pretrial detention. He claims that he received inadequate medical treatment, inadequate food, and was placed in uncomfortable conditions. The authorities claimed that the author had been given adequate medical treatment but thereafter had refused medical treatment. The author claims that the investigative authorities falsified evidence, pointing out inconsistencies in the victim and witness statements. He was convicted by the court and his appeals were denied. He claims that Kazakhstan violated his rights under article 7 relating to the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment, read alone and in conjunction with articles 2 (3), and articles 9 (1), (3) and (4) and 14 (1) and (3) (d) and (e) of the Covenant.

Admissibility: The author failed to substantiate claims under article (9) (1) regarding pressure to plead guilty. The author's article (9) (4) claim regarding placement in pretrial detention is inadmissible because the author does not claim that its review was unduly delayed. The author failed to substantiate claims under articles 14 (3) (d) and (e).

Merits: The Committee found the State party's decision to transport the author for fifteen hours without a break, food or water, or consideration of his medical condition constituted a violation of article 7 of the Covenant. The State party did not fail to conform to minimum standards with regard to the medical treatment provided to the author during his pretrial detention. The State party's hasty arrest of the author unjustifiably created conditions that prevented him from accessing counsel of his choice, violating article 9 (1). The State party failed to adequately weigh the necessity of the author's pretrial detention in violation of articles 9 (1) and (3) of the Covenant. The State party violated article 14 (1) by upholding his convictions without duly examining the case file or the author's allegations.

Recommendations: The State party should, *inter alia*, take appropriate steps to:

a) Consider immediately releasing the author, to quash the author's conviction and, if necessary, to conduct a new trial, in accordance with the principles of a fair hearing, the presumption of innocence and other procedural safeguards;

b) Conduct a prompt investigation that is effective, thorough, impartial, independent and transparent into the inhuman and cruel treatment of the author, his arbitrary arrest and pretrial detention as well as into the alleged falsification of evidence and pressuring of witnesses to testify falsely against him by the investigators;

c) Prosecute, try and punish those responsible for the violations committed; and

d) Award the author comprehensive compensation and to provide him with appropriate medical and psychological rehabilitation.

Deadline for implementation: 8 January 2024

CCPR/C/137/D/2538/2015-2539/2015; CCPR/C/137/D/2544/2015 and CCPR/C/137/D/2549/2015-2200/2015

Georgiy Arkhangelskiy et al. v. Kazakhstan

Sanctioning the authors for participating in a peaceful assembly

Substantive issues: Freedom of expression; freedom of assembly

Facts: The authors of the combined communications are nationals of Kazakhstan. The government of Kazakhstan unexpectedly announced that the national currency would be devalued by 30%. The authors joined a protest against the measure and were detained by the police. That day, an administrative court found them guilty of an administrative offense requiring government authorization prior to the holding of peaceful assemblies. They were sanctioned to various fines and appealed unsuccessfully. All authors claim that the State party violated their rights under article 14 relating to due process because the court refused to provide them with counsel and to allow journalists to attend the court hearings. They also allege violations of their article 21 right to freedom of assembly, and three authors additionally allege violations of article 19 relating to freedom of expression. One author additionally claims that the State party has violated her right to impart information as a journalist.

Admissibility: Contrary to the State's argument, the Committee reiterated that a failure to seek discretionary review from a prosecutor does not constitute a failure to exhaust domestic remedies, and that the authors did in fact seek discretionary review from other prosecutors' offices which were denied. Similarly, the failure to file a cassation appeal did not prohibit the Committee's review because that procedure did not become operative until after the submission of the present communications. Furthermore, although a communication should normally be submitted by an individual or their representative, the Committee was not precluded from examining the communications because the alleged victims duly issued powers of attorney to authorize an NGO to submit the claims. However, the authors failed to substantiate their due process claims, and the Committee found those claims inadmissible.

Merits: The State party failed to demonstrate that the statutory authorization regime pursuant to which the authors were arrested was least intrusive in nature or proportionate to the interest that it sought to protect. Moreover, the State party failed to provide adequate specific details as to a disturbance caused by the assembly in question. The Committee concluded that the State party failed to justify the restriction of the authors' right to peaceful assembly and violated article 21 of the Covenant. The Committee further concluded that similarly, the State party failed to justify the restrictions regarding article 19 and concluded that the authors who raised freedom of expression claims demonstrated violations. The Committee did not find a violation of the author's right to impart information as a journalist as the challenged restrictions appeared to be motivated by concern for public safety and public order.

Recommendations: The State party should, *inter alia*, take appropriate steps to provide the authors with adequate compensation and reimbursement of the imposed fines and any legal costs incurred by them.

Deadline for implementation: 6 September 2023

More information on the case:

- **New York Times** - Feeling Economic Pressure, Kazakhstan Takes Sudden Action

CCPR/C/137/D/2545/2015

Dina Baydildayeva. v. Kazakhstan

Sanction of the author for single-person picket

Substantive issues: Freedom of expression

Facts: The author of the communication is Dina Baydildayeva, a journalist and blogger and a national of Kazakhstan. She held a 15-minute, peaceful, single-person picket, holding a poster and demanding release of her colleagues who had been arrested for publishing criticism of the work of the mayor, who happened to be the nephew of the President of Kazakhstan. She also criticized the mayor. She was detained by the police and charged with violating a provision of the administrative code requiring that individuals obtain government authorization prior to holding pickets. A court found her guilty and served her a penalty in the form of a warning. She appealed, and her appeals were denied or dismissed. She claims that the State party violated her rights under articles 19 and 21 of the Covenant pertaining to freedom of assembly and freedom of expression.

Admissibility: Contrary to the State's argument that domestic remedies were not exhausted because the author failed to seek review with the Prosecutor General, the Committee reiterated that a failure to seek discretionary review from a prosecutor does not constitute a failure to exhaust domestic remedies. Moreover, the author did submit requests to initiate supervisory review with two prosecutors' offices and those requests were dismissed. The Committee observed that one-person pickets do not normally fall under article 21 freedom of assembly protection and that the author's claims instead fell under article 19. The Committee concluded that the author had not sufficiently substantiated her claim under article 21 of the Covenant and found her article 21 claim inadmissible.

Merits: The Committee found that the State party failed to justify the requirement that prior authorization be obtained prior to carrying out a single-person picket. Furthermore, the State party failed to demonstrate that the measures taken were least intrusive in nature or proportionate to the interest that it sought to protect. Thus, the restrictions imposed on the author were not justified and violated her article 19 rights.

Recommendations: The State party should, *inter alia*, take appropriate steps to provide the authors with adequate compensation and reimbursement of any legal costs incurred by her.

Deadline for implementation: 6 September 2023

More information on the case:

- **Association for Human Rights in Central Asia** - Over the Last Year, the Situation in the Kazhak Service of RFE/RL Has Not Improved

CCPR/C/137/D/2618/2015

Amir Abdiev. v. Kazakhstan

Denial of the right to cross-examine and refusal to reopen a criminal case based on false evidence

Substantive issues: Fair trial; impartial tribunal and investigation; right to examine witnesses

Facts: The author is Amir Abdiev, a national of Kazakhstan. He claims that he was wrongly identified, accused and charged for having stabbed two men during an incident at a recreation center. About a year after the incident, an investigator identified the author as an active participant in the fight. The author was indicted, tried and found guilty of the murder of T.A. and causing serious injuries to G.A. and sentenced to 17 years in prison. The author claims that there were many contradictions and inconsistencies in the witness testimony used to convict him. Additionally, investigators failed to order a forensic examination of material evidence. Finally, there is evidence that some witness statements were falsified and that investigative misconduct took place. The author appealed, but his appeals were denied. He claims Kazakhstan violated his due process and trial rights under article 14 (1), (2), (3) (e), and (5) of the Covenant.

Admissibility: The Committee found that the author's argument that his rights under article 14 (2) were violated because the court erred in sentencing the author for crimes he did not commit and failed to reopen the case on the basis of newly discovered evidence was not substantiated. The Committee also found that contrary to the author's argument, his conviction was reviewed by a higher tribunal when it was reviewed by the review panel of the Supreme Court, and his article 14 (5) claim is therefore inadmissible. The claims under articles 14 (1) and (3) (e) were sufficiently substantiated.

Merits: The Committee noted that in investigating the author's case, three investigators violated provisions of the national legislation for offenses including forged evidence. Moreover, important evidentiary materials were destroyed, and several witness statements were falsified. The trial court relied on the falsified witness statements in finding the author guilty. Despite being made aware of these infirmities, the court refused to set aside the conviction. By doing so, the court failed to draw relevant legal conclusions from the evidence of the irregularities brought before it, which led to a manifest error or denial of justice and a violation of the author's guarantees to a fair trial under article 14 (1) of the Covenant. Additionally, at the trial, the author did not have the possibility to cross-examine several key witnesses because they were not present at trial, but the court allowed their statements to be read out at the hearing, nonetheless. This violated the author's right to examine witnesses against him and guaranteed by article 14 (3) (e) of the Covenant.

Recommendations: The State party should, *inter alia*:

a) Take appropriate steps conduct a new trial, subject to the principles of fair hearings and other procedural safeguards;
b) Provide the author with adequate compensation.

Deadline for implementation: 17 September 2023

KYRGYZSTAN

CCPR/C/137/D/2723/2016

Kuluypa Tashtanova v. Kyrgyzstan

Failure of a State to investigate allegations of torture

Substantive issues: Prohibition of torture; right to an effective remedy; arbitrary arrest and detention; forced confession

Facts: Kuluypa Tashtanova from Kyrgyzstan filed a complaint on behalf of her imprisoned son, Belek Kurmanbekov, claiming his rights were violated under multiple articles of the Covenant. Kurmanbekov was arrested in 2012, subjected to severe beatings and torture by police to extract a confession for crimes he was accused of. Despite evidence of torture and legal appeals, medical and court reports failed to acknowledge the abuse. His trial was marred by procedural issues, including the rejection of requests to exclude evidence obtained through torture. Ultimately, Kurmanbekov was convicted based on the coerced confession, and his appeals were dismissed by the Supreme Court, leaving him without further legal recourse.

The author asserts her son was subjected to police torture aimed at coercing a confession, violating article 7 of the Covenant. She contends that the State party failed to initiate a thorough investigation into the torture allegations, breaching article 2 (3) in conjunction with article 7. Additionally, she argues that her son was detained unlawfully without proper legal basis or timely court appearance, contravening article 9 (1), (3), and (4). She also claims that the substandard conditions of her son's detention violated article 10 (1) and (2). Finally, she maintains that the State party infringed on article 14 (3) (g) by convicting her son based on a confession obtained under duress.

Admissibility: Despite the State's claim that the author's son hadn't sought to reopen his case with new evidence, the Committee found such remedies to be ineffective due to their discretionary nature. With no further objections to the exhaustion of domestic remedies, the Committee declared the claims under articles 7, 9, 10, and 14 of the Covenant admissible, deciding to proceed with a review of the case's merits.

Merits: The Committee emphasized the State's responsibility to ensure detainee safety and the necessity of disproving torture claims. The Committee found that the State failed to investigate the torture allegations effectively, violating the Covenant's articles related to torture, fair investigation, and fair trial rights due to reliance on the coerced confession.

Recommendations: The State party is obligated, *inter alia*, to:

a) Take appropriate steps to conduct a prompt and effective investigation into the torture of the author's son and, if confirmed, to prosecute and punish those responsible; if the allegations of torture are confirmed, take appropriate steps to immediately release the author's son, quash his conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings and other procedural safeguards;
b) Provide the author's son with adequate compensation for the violations of his rights;
c) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 15 November 2023

CCPR/C/137/D/2905/2016

Adil Turdukulov v. Kyrgyzstan

Sanction of an individual for not notifying about an assembly, based on an outdated law and without a current legal mandate, unjustified and unlawful

Substantive issues: Freedom of assembly; right to a fair trial

Facts: The author, a blogger, was arrested for participating in a peaceful assembly in Bishkek without notifying authorities, violating administrative laws. Despite arguing his constitutional right and citing a newer law (Law No. 64) that removed the notification requirement, all court levels, including the Supreme Court, upheld his conviction based on a perceived violation of the current notification requirement under Law No. 64.

The author argues that his rights under articles 14 (1) and 21 of the Covenant were violated when State authorities interfered with a peaceful assembly due to lack of notification. He contends that the courts wrongfully applied an outdated law to hold him administratively liable, ignoring the current Law No. 64 and the Constitution, which do not require prior notification for peaceful assemblies. He requests the Committee to recognize these violations and urge the State to prevent similar future infringements.

Admissibility: Despite the State's claim of inadmissibility due to the author not challenging the Code on Administrative Liability's constitutionality, the Committee found the author's complaint focused on Covenant rights violations related to his conviction for lacking notification for a peaceful assembly. Thus, it saw no reason to deem it inadmissible for not exhausting domestic remedies. For the claim under article 14 (1) about the right to a fair trial, the Committee noted the administrative fine imposed for violating assembly procedures had criminal law characteristics, making the charge effectively criminal within the Covenant's context. Consequently, the Committee found the claims under articles 14 (1) and 21 substantiated enough for admissibility.

Merits: The Committee highlighted the importance of peaceful assembly rights and stated that restrictions must be lawful and necessary. The Committee noted that while notifications for assemblies are allowed, failure to notify should not result in criminal charges or undue sanctions. It found the author was penalized under an outdated law, with no current legal requirement for assembly notification in domestic law or the Constitution. Concluding that the State failed to justify the restriction as lawful, the Committee determined a violation of the author's rights under article 21.

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide the author with an effective remedy;
b) Make full reparation to individuals whose Covenant rights have been violated;
c) Take appropriate steps to provide the author with adequate compensation, including reimbursement of the fine imposed on him and any legal costs incurred;
d) Take steps to prevent similar violations from occurring in the future.

Deadline for implementation: 15 November 2023

CCPR/C/138/D/2994/2017

Aleksandr Simekha v. Kyrgyzstan

Police torture and a coerced confession in a rape case, overlooked medical evidence and inadequate State investigation

Substantive issues: Torture and ill-treatment; forced confession; effective remedy.

Facts: The author was detained by Kyrgyz police under the pretext of bringing him to the police station, later arrested for public intoxication, and then coerced into confessing to rape through torture. Despite physical evidence of abuse and a coerced confession, courts upheld his 20-year rape conviction. Efforts to initiate an investigation against the police for torture were consistently dismissed by prosecutorial authorities and courts, even in the face of medical evidence of his injuries. Notably, the medical evidence suggests that he suffered significant injuries while in detention, which were not initially reported by the doctor who examined him shortly after the alleged torture. All domestic remedies were exhausted as the author's appeals were denied, leaving the allegations of torture and coerced confession unaddressed. The author alleges violation of articles 7 and 2 (3) of the Covenant.

Furthermore, the author claims his rights under article 14 (3) (g) were violated as he was forced to confess under torture, and this confession was used to convict him. His complaints were consistently ignored by the trial court and during appeals.

Admissibility: Noting the author's assertion of exhausting all domestic remedies, which the State did not dispute, the Committee found no obstacles to examining the case under article 5 (2) (b) of the Optional Protocol. The claims under articles 7 (regarding torture and ill-treatment), in conjunction with article 2 (3) (on the duty to investigate), and article 14 (3) (g) (concerning forced confessions), were deemed sufficiently substantiated for admissibility.

Merits: The Committee considered the author's claims of torture by police in 2009 and the subsequent forced confession used in his rape conviction. The Committee stressed the need for prompt and impartial investigations into human rights violations, specifically referencing the necessity for criminal investigation and prosecution under article 7 of the Covenant, which concerns freedom from torture. In the author's case, they found significant procedural flaws in how the author's torture allegations were handled by the Sokuluk District Prosecutor's Office. The investigations were deemed inadequate, lacking thorough interviews and explanations regarding the discrepancies in detention timelines and injury reports. Furthermore, the Committee identified a breach of article 14 (3) (g) of the Covenant, related to the right against forced confessions. The author's claim of a coerced confession was overlooked, and the confession was inappropriately used to convict him.

Recommendations: The State party is obligated, *inter alia*, to:

a) Conduct, if necessary, a new trial, in accordance with the principles of fair hearings and other procedural safeguards provided by the Covenant;
b) Conduct a prompt and impartial investigation into the author's allegations of torture and, if the allegations are confirmed, to have the persons responsible prosecuted;
c) Provide the author with adequate compensation;
d) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 9 January 2024

CCPR/C/138/D/2998/2017

Mikhail Kudryashov v. Kyrgyzstan

Violations of due process and torture committed on the grounds of LGBTQI+ identity

Substantive issues: Torture and lack of prompt and impartial investigation; right to an effective remedy; arbitrary detention and arrest; right not to testify against oneself; discrimination on the grounds of sexual orientation.

Facts: Mikhail Kudryashov, from Kyrgyzstan, claims violations of his rights under the Covenant following his 2010 encounter with undercover officers, leading to his coerced acceptance of money, false charges, and subsequent torture by the financial police. Despite enduring severe abuse aimed at extracting confessions and suffering significant health issues, attempts to initiate criminal proceedings against the officers were consistently denied, with his injuries deemed mild. Kudryashov's conviction for distributing pornography, claimed under duress, was upheld, ignoring his torture claims. His legal challenges were dismissed by Kyrgyz authorities, who failed to investigate his torture allegations adequately. Discriminatory media coverage further violated his rights. Having exhausted all domestic remedies without obtaining justice, Kudryashov highlights breaches of multiple Covenant articles, underscoring the State's failure to protect him from torture, unlawful detention, and discrimination.

Mikhail Kudryashov claimed Kyrgyzstan violated his rights under several Covenant articles due to torture tied to his LGBTQI+ identity, lack of a fair investigation into his abuse, illegal detention, coerced confession, and discrimination. Medical evidence supports his torture claims, yet authorities dismissed these, failing to pursue a comprehensive investigation, in violation of article 7.

Furthermore, the author contended that his trial was compromised due to the State party's failure to adequately investigate his claims of being tortured into signing a confession, a serious violation of article 14 (3) (g) of the Covenant. He asserts that the judicial authorities ignored his allegations of torture and improperly used his coerced confession as a basis for his conviction.

Additionally, the author claimed discrimination based on his sexual orientation, in violation of article 26 of the Covenant. He reports that his openness about his LGBTQI+ identity led to biased treatment by law enforcement and judicial bodies, incited prejudiced media coverage, and resulted in his loss of employment, social humiliation, and isolation.

Admissibility: The Committee deemed the claim under article 14 (3) (g) about a coerced confession and its use in conviction unsubstantiated, as court records didn't support this. Similarly, the claim of discrimination based on sexual orientation was inadmissible due to lack of evidence. However, claims under articles 2 (3), 7, 9(1), and 26, related to torture, illegal detention, and discrimination, were substantiated. With no State party objection, these claims were declared admissible for merit consideration.

The Committee addressed the author's claims under article 26, in conjunction with article 7, of the Covenant, emphasizing that article 26 guarantees equality before the law and prohibits discrimination on any grounds, including sexual orientation and gender identity. It noted that States

are responsible for investigating discriminatory motives behind acts of violence, especially when there is evident bias. The Committee criticized the domestic authorities for overlooking apparent discriminatory motives in the violence and mistreatment reported by the author, concluding a violation of article 26, in conjunction with article 7, due to the failure to acknowledge and investigate the discriminatory aspects of the case.

Merits: The Committee found Kyrgyzstan violated Mikhail Kudryashov's rights under articles 7, 9 (1), and 26 of the Covenant, due to torture, arbitrary detention, and discrimination based on sexual orientation by the financial police. It criticized the State for inadequate investigation and reliance on perpetrator statements, disregarding medical evidence and witness accounts.

Recommendations: The State party is obligated, *inter alia*, to:

a) Conduct a prompt investigation that is effective and thorough, impartial and independent, and transparent into the allegations of torture and arbitrary detention suffered by the author as well as into the alleged discrimination against the author based on his sexual orientation;
b) Prosecute, try and punish those responsible for the violations committed;
c) Award the author comprehensive compensation and provide him with appropriate medical and psychological rehabilitation.

Deadline for implementation: 10 July 2024

CCPR/C/138/D/3001/2017

Rakhilakhan Bizurukova v. Kyrgyzstan

Failure to provide necessary medical care in detention, leading to death

Substantive issues: Right to life, conditions of detention, fair trial

Facts: Rakhilakhan Bizurukova, on behalf of her late husband, Mamataziz Bizurukov, claims Kyrgyzstan violated his rights under the Covenant due to inadequate medical care during his detention in 2011, leading to his death. Despite diagnoses requiring surgery and family efforts to intervene, his condition was neglected by prison medical staff. Legal proceedings fluctuated, with initial acknowledgments of negligence later overturned by higher courts, ultimately acquitting the medical professional responsible. The case, represented by counsel, navigated through Kyrgyzstan's legal system, ending with the Supreme Court's dismissal of negligence charges, leaving all domestic remedies exhausted.

The author alleges that Kyrgyzstan breached her husband's rights under articles 6 (1) (right to life), in conjunction with article 2 (3) (right to an effective remedy), and article 10 (1) (rights of persons deprived of their liberty) of the Covenant. This violation stems from the failure of SIZO No. 5's medical staff to deliver adequate medical care, resulting in her husband's death. Additionally, she claims a violation of his rights under article 14 of the Covenant, concerning the right to a fair trial.

Admissibility: The Committee claimed that the State failed to promptly investigate Mr. Bizurukov's death and identify responsible parties under article 6 (1) combined with article 2 (3) was deemed unsubstantiated and inadmissible. Similarly, allegations under article 14 were found inadmissible due to insufficient substantiation. However, the Committee deemed claims under articles 6 (1) and 10 (1), concerning the right to life and the treatment of detainees, admissible, proceeding to consider their merits.

Merits: The Committee concluded that Kyrgyzstan violated articles 6 (1) and 10 (1) of the Covenant in Mr. Bizurukov's case, due to the inadequate medical care he received while detained, leading to his death. The Committee highlighted the State's responsibility to protect the lives and dignity of detainees, noting Mr. Bizurukov's lack of proper medical attention despite his serious health complaints.

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide the author with an effective remedy;
b) Provide adequate compensation;
c) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 6 January 2025

CCPR/C/139/D/3252/2018

Dina Maslova v. Kyrgyzstan

Violation of freedom of expression of a journalist that criticized the president

Substantive issues: Restriction of freedom of expression

Facts: The author, Dina Maslova, was a Kyrgyzstan national, who faced a civil suit initiated by the General Prosecutor, aimed at safeguarding the honor and dignity of the President due to a publication on the Zanoza internet news portal, where she serves as the editor-in-chief. The prosecution contends that the statements in the publication were offensive, portrayed the President negatively and contained defamatory content, allegedly violating his honor and dignity. This assessment was made by the Prosecutor Office without examining the article, solely relied on a transcript of the President's speech and video recording.

Following a court decision demanding the removal of the article from the Zanoza website and restricting the author's travel, the court emphasized the obligation of journalists, as per media legislation, to ensure the accuracy of disseminated information. In case of violations, responsibility extends to the media outlet's founder, editor, and information sharer, with additional defendants liable for non-pecuniary damages totaling 3 million soms each (approximately 38,000 euros on the judgment day). As the author of the article was unknown, the founders were held accountable for its publication on the Zanoza website.

Admissibility: The Committee acknowledges that the author has exhausted all effective domestic remedies available and deems it appropriate to proceed on the merits.

Merits: The Committee notes that domestic court decisions, including article removal, non-pecuniary damages, and a travel ban, constitute a restriction on the author's freedom of expression under article 19 (2). It emphasizes the legitimacy of criticizing public figures, including high-ranking officials. The author argues that the court's decision heavily relied on a linguistics expert's assessment of Ms. D.'s speech rather than evaluating the article's content.

Moreover, the judgments reveal that the courts assumed the article merely disseminated statements by Ms. D. deemed untrue and offensive, without assessing the context, nature, wording, and its contribution to the public debate. The Committee emphasizes that a head of State should tolerate higher levels of criticism than a private individual, and highlights that the substantial amount of non-pecuniary damages indicates the punitive nature of the measure. Consequently, the author faced legal actions for both defaming the then head of State and for engaging in professional journalistic activities while reporting on issues undoubtedly of public interest. In conclusion, the Committee finds that the restriction imposed on the author's freedom of expression was neither necessary nor proportionate in violation of article 19.

Recommendations: The State party is obligated, *inter alia*, to:

a) Refund the court expenses paid by the author and provide her with adequate compensation;
b) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 12 August 2024

More information on the case:

- **OMCT** - Judicial harassment of Ms. Cholpon Djakupova, Ms. Dina Maslova and Mr. Narynbek — Idinov aka Naryn Aiyp

CCPR/C/139/D/3261/2018

Rosa Gorbaeva v. Kyrgyzstan

Torture, undue process no poor detention conditions of a Kyrgyz woman

Substantive issues: Torture; unlawful detention; fair trial

Facts: The author is Rosa Gorbaeva, a national from Kyrgyzstan. She was apprehended on allegations of murdering her neighbor and subsequently subjected to police torture until she signed an inculpatory confession. Following this, she was deprived of her liberty and forced to live in precarious conditions in detention facilities. On March 4, 2015, the Nooken District Court found the author guilty, sentencing her to 12 years of imprisonment. However, on April 9, 2015, the Jalal-Abad Regional Court remanded the case to the Prosecutor General for further investigation. Eventually, she was granted early conditional release. The author claimed that police torture and due process violations infringed upon her rights under article 7 and article 9 (1), (2) and (3) of the Covenant. Additionally, she claimed that the living conditions in detention facilities violated her rights under article 10 (1) of the Covenant. Furthermore, she claimed to have been forced into confessing to a crime, contravening article 14 (3) (g) of the Covenant.

Admissibility: The Committee finds that the author has not provided sufficient details to support her claims under articles 14 (3) (b) and (e) and article 7 of the Covenant, particularly regarding her incommunicado detention, nor substantiated how her claims align with article 9(1) and (2) of the Covenant. Nevertheless, the Committee determines that the author has sufficiently substantiated the remaining claims under article 7, articles 2 (3) (a), 9 (3), 10 (1), and 14 (3) (c) and (g) of the Covenant. As a result, it deems these claims admissible.

Merits: The Committee considers that the Office of the Prosecutor refused to open a criminal investigation because the time of infliction of the injuries found on the author's left leg by medical report could not be established. Also, it notes that it failed to question the author's husband and relatives and the police officers and had not checked the police records to establish the date of the author's apprehension. Furthermore, the Committee notes that the author's allegations of incommunicado detention and her allegations of torture by the police were left without substantive investigation. Therefore, the Committee concludes that the State party is responsible for the security of any person that it holds in detention and, when an individual in detention shows signs of injury, it is incumbent upon the State party to produce evidence showing that is not responsible for such injury (the burden of proof rests in the State rather than the victim, but the State only provided u reconcile de information concerning the timing of the author's injuries and there's an absence of information about the possible origin of those injuries from the State party.

The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and they must be treated humanely in accordance with the Nelson Mandela Rules. Moreover, the Committee notes that the State party has the duty to protect detainees and investigate torture allegations. Additionally, the State's failure to thoroughly investigate the torture claims, including not questioning relevant witnesses, resulted in a violation of the detainee's rights, demonstrating a neglect in addressing and investigating the allegations properly. Finally, the Committee found the criminal proceedings, lasting 1,124 days, unduly prolonged, which demands immediate trials for detained accused.

Despite the case being returned for further investigation multiple times, the State party failed to justify the delays. Overlapping investigation gaps indicated repetitive investigative failures, contributing to the prolonged process. With no clarification from the State on these delays, the Committee concluded a violation of the author's right to a timely trial.

Recommendations: The State party is obligated, *inter alia*, to:

a) Conduct a prompt and impartial investigation into the author's allegations of torture and, if the allegations are confirmed, to have the persons responsible prosecuted and to provide the author with adequate compensation;

b) Take all steps necessary to prevent similar violations from occurring in the future.

Separate opinon: Committee members Rodrigo A. Carazo and Carlos Gómez Martínez issued a partially dissenting opinion**.** The members dissent with the fact that article 14 (3) (g) was considered admissible. Regarding that the author didn't clearly argue that the forced confession was considered incriminating evidence, as she didn't seek a retrial as a form of reparation.

More information on the case:

- **ACCA Media** - Kyrgyzstan: woman was held in inhuman conditions for more than three years
- **ACCA Media** - Kyrgyzstan: victim of abuse claims compensation from authorities

Deadline for implementation: 20 July 2024

LATVIA

CCPR/C/139/D/3244/2018

Edvards Kvasnevskis v. Latvia

Restrictions on the right to contest elections and legislative mandates

Substantive issue: Right to stand for election

Facts: The author of the communication is a Latvian national who wanted to contest elections to bring forward the concerns of homelessness caused by evictions as a part of the Latvia Tenants' Association. However, according to article 9 of the Latvian Parliamentary Elections Law, the prerequisites to contest in elections were twofold: (1) the need for inclusion in the list of candidates of a legally registered political party or (2) having a legally registered association of political parties. The author, however, was reluctant to join a political party fearing that such a membership would prevent him from raising the concerns faced by the tenants because he was previously expelled from a political party for engaging in acts without the permission of that party. As a result, the author applied to the Constitutional Courts of Latvia claiming that the party-list system prescribed in article 9 of the Latvian Parliamentary Elections Law was in contradiction with article 9 of the Constitution of Latvia, which stated that any citizen who enjoys full citizenship rights and is more than 21 years old could be elected to the parliament. His application was rejected because he had not first made any efforts to become a candidate for election to the parliament.

Later, the author applied to the Central Election Commission to be included in the list of candidates, however, this application was also rejected as only political parties could submit lists of candidates to the Commission. It was additionally stated by the author that it was impossible for him to form a political party given the deadline for registration was nearing. He therefore appealed his rejection by the election commission before the Regional Administrative Court. The Regional Court dismissed the author's appeal. As a result, he then submitted a constitutional complaint to review the decision of the Regional Court. The Constitutional Court held that there was no legal basis to the author's argument that the rights guaranteed by article 9 of the Constitution could not be restricted in any way. The European Court of Human Rights rendered the author's application inadmissible as the criteria under articles 34 and 35 of its convention were not fulfilled.

The author filed the present communication claiming violation of article 25 of the Covenant on the grounds that restrictions imposed to contest elections lack legitimacy and are disproportionate.

Admissibility: The Committee noted that the State party's claim that the author should have objected to his exclusion from the political party that he was a part of had nothing to do with the substance of his claims and therefore it was not an effective remedy. It also rejected the State party's argument that the author's claim was inadmissible *ratione materiae* and held that the communication was admissible.

Merits: The Committee observed that the author had not established that the restrictions imposed on him in seeking to stand as an independent candidate in parliamentary elections, through the

requirements of the electoral system in place at the time, were not in compliance with the provisions contained in article 25 of the Covenant. In particular, those requirements were established in pursuit of the legitimate aim of proportionate parliamentary representation based on the synergy and competition of political parties. The requirements also provided an option for independent non-party members to run through the lists of candidates proposed by the political parties or their associations, and any corresponding restrictions in the context of the electoral system were objective, proportionate and reasonable. Hence, in view of the Committee, there was no violation of article 25 of the Covenant by the State party.

Separate opinion: Committee Member Rodrigo A. Carazo issued a dissenting opinion. For him, the Committee should have concluded that the author's right under article 25 of the Covenant was violated. He cited Committee's General Comment No. 25 emphasizing that a candidate should not unreasonably require party membership and conditions should be based on objective criteria. However, the author was barred from running for election due to a legislative provision mandating all candidates to run for a political party, purportedly to strengthen democracy. The member notes that while the Committee acknowledges the aim of promoting parliamentary representation however in his opinion it is subjective and favors political parties, hence violating the individual's right to stand for election.

LITHUANIA

CCPR/C/139/D/3314/2019

A.G. v. Lithuania

Denial of the right to a fair trial due to claims of denial of cross-examination of witnesses

Substantive issues: Right to cross-examine witnesses; witness' declaration obtained under duress

Facts: The author is a Lithuanian national. He and three others were under suspicion for killing two individuals named R.A and Z.V. The author was interrogated several times by a police officer who, according to the author, was requesting a bribe; however, later the police officer made a declaration that it was the author who was trying to bribe him. One of the other suspects, named G.S., accused the author of killing R.A. and Z.V. during an interrogation, and thereafter he was released from detention. In 2008, the trial began and G.S. was cross-examined as a witness where he changed his previous declaration, and he clarified that the author walked away from the conflict on the evening of. He also stated that during his pre-trial investigation, he was subjected to psychological violence by the police officers to deliver false testimony. However, the Supreme Court found that the statement by the police officer accusing the author of bribery sufficiently demonstrated the author's culpability, so the author was eventually convicted of both charges and sentenced to 14 years imprisonment.

The author filed the present communication alleging the violation of his article 14 right to a fair trial claiming that his right to effective public cross-examination of witnesses, as protected by article 7 and article 14(3)(e) was violated due to the non-contradictory and non-public statement of the co-suspect G.S, who confessed under police pressure, threat of blackmail and ill-treatment. He also claimed that he was not allowed to consult his lawyer during the proceedings and was forced to undergo interrogation by the police officers without his lawyer. Finally, he claimed that the duration of the proceedings lasted for 19 years which violated his right to be tried without undue delay.

Admissibility: The Committee noted the information provided by the State party where it was stated that there are other effective domestic remedies in accordance with the national legislation available to the author which he has not availed. By way of this observation, it was held that the Committee is precluded from examining the author's claims under article 14 (1) and (3) (b) and (d) for lack of exhaustion of domestic remedies. Regarding the author's claim on article 14 (3) (c) about the length of the proceedings and the undue delay, the Committee noted that the reason for such delay was that the author absconded from the country twice during the proceedings. The Committee also recalled that it had already found a similar complaint against Lithuania to be inadmissible because the person at issue failed to pursue a civil claim for the length of criminal proceedings against him. Finally, the Committee found that the author's claim that the State party violated his rights under article 14 (1) and (3) (e) was inadmissible as he did not provide any information on this claim. In conclusion, the Committee found the author's claims to be inadmissible under articles 1 and 5 (2) (b) of the Optional Protocol.

CCPR/C/139/D/3225/2018

RJ v. Lithuania

Denial of right to legal aid

Substantive issues: Legal assistance; right to fair trial

Facts: The author is a Lithuanian national. She worked as a cloakroom attendant and a cleaner for a public library and her work consisted of picking up heavy clothes and bags. She has a physical disability in the form of spinal pathology. On 15 October 2012, she was dismissed from service due to her disability. According to the author, her spinal pathology predated her employment and that her employer did not conduct any medical assessment before employing her. She applied for legal aid services alleging that due to the heavy lifting, she acquired an occupational disease resulting in her to lose 55 percent of her working capacity. The Legal Aid Service rejected her application finding that no occupational disease could be established and that she lost 55 per cent of her working ability due to illegal acts by her employer on the basis of the documents supplied by her.

She appealed this decision to the Regional Administrative Authority which dismissed her appeal finding that her disability predated her employment and that she failed to prove that her employment caused her disability. It was also noted by the Regional Administrative Authority that the author first needed to challenge the non-recognition of her occupational disease by the competent authority to be eligible for legal aid. The author's appeal to the Supreme Administrative Court of Lithuania also failed where it was held that the author did not provide the Legal Aid Service the required evidence to prove that her health issues were caused due to her employment and as a result the primary legal requirements were not met. The author then submitted an application before the European Court of Human rights where it was held in 2015 that her application was manifestly ill-founded and was declared inadmissible. The author submitted the present communication to the Committee alleging violation of article 14 (1) of the Covenant.

Admissibility: The Committee agreed with the observations of the State party where it was submitted that the author failed to refute the State party's argument regarding the possibility of requesting for a primary aid (a means to receive legal information and advice). Instead, she requested for a secondary aid where her application was rejected owing to the fact that she had not been recognized as having an occupational disease by the competent authority, which is a prerequisite for instituting a claim for damages against an employer. Committee found that the author's claim had been insufficiently substantiated as it did not explain why primary legal aid would not have been available to her or whether she considered the primary legal aid scheme not to fulfil the requirements of article 14 (1) of the Covenant. Additionally, the Committee, while noting the author's allegation that domestic remedies available to her were presented vaguely, found that the author failed to indicate the same in her initial submissions before the State party was asked to provide its observations on admissibility and merits before the Committee. Therefore, the Committee found that the claim constituted an abuse of the right of submission and that it was insufficiently substantiated. In conclusion, the communication was declared inadmissible under articles 2 and 3 of the Optional Protocol.

CCPR/C/138/D/3198/2018

V.V. v. Lithuania

Non-exhaustion of domestic remedies in case of unlawful search and detention

Substantive issue: Right to fair trial

Facts: The author is a Lithuanian national who worked as a director of a company named UAB Tauvita. The company was suspected of buying stolen cars, and as a result, the authorities procured a search warrant for the premises of the author's property. During the search, the police officers mistakenly extended the search of the premises which was not covered by the warrant – specifically the outside kitchen from where they recovered a computer belonging to the author. Thereafter, the author was detained from the 18th to the 31st of October 2012. During his detention, the author was kept in a small cell which he shared with three other inmates in inhumane conditions and later he was shifted to another cell which was shared by eight other inmates, and he was also denied conjugal rights. He claimed that during an interrogation, he was forced to refuse legal representation by the authorities which he agreed to under duress and provided self-incriminating evidence. He also claimed that there were five other witnesses present during the search which the courts refused to consider. In 2015, the district court found the author not guilty and set aside all the charges however on appeal this decision was overturned, and the author was convicted and found guilty of buying a stolen car and selling the parts of Audi cars without entering the profit into the official records. The author's first and second cassation appeal to the Supreme Court of Lithuania was found inadmissible.

The author filed the present communication alleging the violation of his rights under articles 7, 10 (1), 14 (1) (3) (d), (e) and (g) and 17 (1) of the Covenant on the grounds that he was kept in inhumane conditions during his detention, the search was conducted in areas outside the scope of the warrant, he was forced to refuse legal representation, the courts refused to consider five additional witnesses and that he was lured into providing self-incriminating evidence.

Admissibility: The Committee while noting the extensive information provided by the State party, listing available domestic remedies in accordance with national legislations held that the author neither raised the conditions of his detention with the national authorities nor requested any conjugal visits and therefore it is precluded from examining the author's claims under articles 7 and 10 (1) for failure to exhaust domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. Further, the Committee also noted that the author did not complain about the location of the search before the domestic courts and also failed to explain how the State party acted unreasonably and arbitrarily. In light of this, the Committee found that the claim under articles 14 (1) and 17 (1) was inadmissible due to non-substantiation. With respect to the claim of the author being forced to refuse legal representation and inhumane treatment, the Committee noted that there were no circumstances to prove that the author was unable to defend himself without the assistance of counsel, nor that the investigating officers put pressure on him to reject the presence of his lawyer. In addition, the Committee also notes the author's claim that the purpose of his inhuman detention was to extract a self-accusation; however, as the State party notes, there is a protocol whereby the author confirmed that the waiver was of his initiative, and he never complained at the domestic level about the conditions of his detention. The Committee therefore considers the claims raised by the author under article 14 (3) (d) inadmissible, under

articles 2 and 5 (2) (b) of the Optional Protocol, for non-exhaustion of domestic remedies. Finally, regarding the claims concerning the evaluation of the facts and evidence by the domestic courts, the Committee was of the view that it does not review the same unless it can be ascertained that the evaluation was arbitrary or amounted to a denial of justice or the court failed in its duty to maintain independence and impartiality and hence declared the author's claims under article 14 (3) (e) as inadmissible due to non-substantiation. In conclusion, the communication was rendered inadmissible by the Committee.

REPUBLIC OF MOLDOVA

CCPR/C/139/D/4097/2022

G.S. v. Republic of Moldova

Institution of criminal proceedings and abuse of fair trial rights for embezzlement in Moldova

Substantive issues: Right to a fair trial; presumption of innocence; right to appeal; imprisonment on the ground of inability to fulfil a contractual obligation

Facts: The author, a Romanian national, was appointed as the General Director of Vitaproduct, a company established by Orhei-Vit, located in the Republic of Moldova. Vitaproduct had all its business operations in the Russian Federation. Due to oversupply of goods and non-payment of instalments by buyers, Vitaproduct's debts remained unpaid and started accumulating. Orhei-Vit lodged a criminal complaint against the author with the Russian Investigation authorities for large scale fraud and embezzlement. The Russian authorities decided not to initiate criminal proceedings hence, Orhei-Vit lodged a criminal complaint against the author in the Republic of Moldova, and criminal proceedings were initiated. While travelling to the Republic of Moldova, the author was detained and remained in detention during the criminal proceedings. A District Court held that the author's actions only amounted to abuse of trust and ordered his immediate release on payment of a fine.

The author and his family emigrated to the United Kingdom, and in 2012, Orhei-Vit appealed against the order of the District Court and the Appeal Court convicted the author of fraud and sentenced him to 10 years' imprisonment and payment of damages in full. The author claims that he was not informed of the appeal proceedings and the judgment was not delivered to him. In 2013, the author filed an application before the Supreme Court requesting for reinstatement of the time limit for lodging a cassation appeal which was rejected. The author was arrested in London in 2020 following an extradition request by Moldovan authorities. This request was rejected by the Magistrate's Court which held that it would be in violation of article 3 of the European Convention on Human Rights as there was no assurance that the author would not be subject to cruel, inhuman or degrading treatment on his return to Moldova. This decision was not appealed, and the author was released from detention. The author claims that the authorities in Moldova lacked competence to institute criminal proceedings against him and that the entirety of the criminal proceedings were in violation of his right to not be imprisoned merely on the inability to perform a contractual obligation, and fair trial rights under articles 11, 14 (1), (2), (5) and (7), and 15 (1) of the Covenant.

Admissibility: The Committee noted that according to rule 99 (c) of the Committee's rules of procedure a communication may constitute an abuse of the right of submission when submitted five years after the exhaustion of domestic remedies by the author of the communication, or three years after the conclusion of another procedure of international investigation or settlement.

Contrary to the author's argument that it was only in the course of the extradition proceedings initiated in 2020 that he became aware of significant violations of his rights in the criminal proceedings against him and that the relevant date to be considered would be that of the proceedings initiated in 2020, the Committee noted that the final domestic decision in the author's case was in 2013, when the Supreme Court rejected the author's application for reinstatement of time limit for the cassation appeal. The present communication was submitted in 2021, with a delay of 8 years. The Committee held that the author had not sufficiently explained his reason for not submitting the communication to the Committee till 2021. The Committee considered the delay to be unreasonable and as amounting to an abuse of the right of submission and accordingly rendered the communication as inadmissible under article 3 of the Optional Protocol.

CCPR/C/139/D/2870/2016

D.O., G.K., and S.G. v. Republic of Moldova

Refusal to register constituent documents of religious organizations in the Transnistrian region

Substantive issues: Freedom of religion; freedom of association; discrimination on the ground of religious beliefs

Facts: The authors of the communication- D.O. is a national of the Republic of Moldova, and S.G., and G.K. are nationals of the Russian Federation, who are the religious ministers and members of the board of directors of Jehovah's Witnesses in Transnistria (Republic of Moldova). The self-proclaimed Transnistrian Moldovan Republic adopted a law requiring all religious organizations to align their constituent documents with the new legislation, and provided that non-conformity with the law would lead to liquidation of the religious organization. In light of this, the authors submitted a request to the Ministry of Justice of the Transnistrian Moldovan Republic to register the changes to their constituent documents. One the first request by the authors, the Ministry ordered a board of experts to conduct a religious examination which found that some activities of the organization contradict the existing laws. The authors' corrected the shortcoming highlighted by the board of experts and submitted three other requests for registration to the Ministry, all of which were rejected citing errors in the application as well as the goals and objectives of the organization as being contrary to the existing laws.

The authors instituted complaints against both, the Republic of Moldova and the Russian Federation (communication is registered as a separate case CCPR/C/139/D/2871/2016). The authors referred to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Republic of Moldova where it is stated that the Transnistrian region falls under the jurisdiction of both the Republic of Moldova and the Russian Federation, and both should share the responsibility to uphold respect for human rights. The authors also refer to the findings of the European Court of Human Rights in *Ilaşcu and Ors v. The Republic of Moldova* and *Catan and Ors v. the Republic of Moldova and Russia* with respect to responsibility of both the states for violation of the European Convention on Human Rights. In the present communication, the authors cite violation of their right to religion, association, and equal protection of the law under articles 18 (1) and (3), 22 (1) and (2) and 26 of the Covenant.

Admissibility: The Committee also noted the emphasis by the State party that it has never supported the self-proclaimed entity established in Transnistria and has repeatedly drawn the attention of the de facto authorities in the region to acts that have been unacceptable under human rights and has also sought aid at the international level for mediation and other assistance. The Committee also observed the information of the State party that under its national legislation, the authors have the possibility to register their organization in the Republic of Moldova and no obstacles for such registration exist. The Committee noted that both the parties acknowledge that the Republic of Moldova has no effective control over the territory of Transnistria and has no involvement with the decisions taken by the de facto authorities in Transnistria. The Committee noted that there is no relevant information how the Republic of Moldova should have acted to secure the authors' rights given their lack of effective control over Transnistria and that the authors had failed to substantiate their claims. For these reasons the Committee held the present communication as inadmissible under article 2 of the Optional Protocol.

NETHERLANDS

CCPR/C/137/D/2894/2016

A.D.-N. v. Netherlands

Inadmissibility due to declining a government shelter that required cooperation with deportation procedures.

Substantive issues: Cruel, inhuman or degrading treatment or punishment

Facts: A.D.-N., a Somali national without identity documents, has been homeless in the Netherlands since his asylum applications were repeatedly denied starting from 1992. After being declared an "unwanted alien," his struggles included living in inadequate conditions, suffering from health issues, and facing legal barriers to accessing shelter due to his refusal to cooperate with deportation procedures. Court decisions initially granted him the right to basic shelter without requiring deportation cooperation, but this was overturned on appeal. His final attempt to access a designated facility failed because there was no immediate prospect for his deportation.

The author alleges that the Netherlands violated his rights under article 7 of the Covenant by not providing unconditional accommodation and exposing him to inhumane conditions, notably in the Vluchtgarage squat. He argues that the state's failure to offer basic assistance breaches international and European human rights standards, referencing findings by the European Committee of Social Rights, criticisms by the Council of Europe's Commissioner for Human Rights, and urgent appeals from UN special rapporteurs. Despite not explicitly invoking article 7 in domestic courts, he asserts that his case and living conditions akin to those in a European Court of Human Rights violation cases centralize the article's essence. Currently, he resides as a squatter in Amsterdam, underscoring his ongoing accommodation challenges.

Admissibility: While the State party argued the author hadn't exhausted all domestic remedies, particularly regarding his choice not to appeal certain judgments and his refusal to stay in a government-run facility, the Committee noted the author had pursued all available remedies related to accessing a municipal shelter and had indirectly invoked article 7 in domestic courts.

However, the Committee found the claim regarding the Vluchtgarage inadmissible, concluding the author chose to stay in substandard conditions and declined a government shelter that required cooperation with deportation procedures. As for the broader claim of unconditional access to shelter, the Committee deemed it inadmissible due to the non-exhaustion of domestic remedies, as the author had not pursued available remedies with the same diligence for all options. Consequently, the Committee declared the communication inadmissible.

Separate opinion: Committee member Hélène Tigroudja issued a dissenting opinion. The argument centers on the Committee overlooking the broader context. The opinion contends that the migrant's situation stems from the country's widely criticized policy towards undocumented

migrants, essentially trapping the individual. This policy violates the fundamental right to human dignity enshrined in the Covenant. Furthermore, the offered alternative wasn't a true choice, as it demanded cooperation with deportation, which contradicts the absolute nature of human dignity. The author believes the committee should have examined the larger issue of poverty and anti-migrant policies that contribute to such situations. Ultimately, rejecting the case allows the nation to shirk its responsibility to uphold human dignity for all.

CCPR/C/137/D/3210/2018

J.Â S. v. Netherlands

Inadmissibility for lack of substantiation and failure to prove domestic remedies were fully pursued, particularly regarding allegations of mistreatment and the legality of the arrest

Substantive issues: Torture; cruel, inhuman, or degrading punishment or treatment; arbitrary arrest and detention; deprivation of liberty; right to an effective remedy

Facts: J.S., a Dutch national born in 1958, claims his rights were violated during his 2014 arrest for rape and kidnapping, leading to a six-year prison sentence. He argues the arrest was conducted illegally and under degrading conditions, without proper identification by the arresting officers or notification of his rights. Despite raising these issues through the Dutch legal system up to the Supreme Court, his appeals were rejected. His subsequent complaint to the European Court of Human Rights was also declared inadmissible, with the Court stating he hadn't exhausted all domestic remedies, and finding no manifest violation of the European Convention on Human Rights regarding his arrest and the use of his statements made under duress.

The author complains of moral suffering from violent, degrading and inhumane arrest conditions, alleging that his grievances were ignored and unpunished by domestic courts. He claims his rights under articles 7, 2 (3), 9 (1), 9 (2), and 10 of the Covenant were violated, notably due to excessive force and lack of information at arrest. He seeks investigation, punishment for those responsible, full compensation, his case being reconsidered on the basis of the Committee's findings and clearing his record related to the incident.

Admissibility: The Committee found that the author did not adequately demonstrate he had raised his main grievances, related to inhumane and degrading treatment during his arrest, in national proceedings, particularly under articles 7 and 10 of the Covenant. The Committee also noted the author's claims about the legality and conditions of his arrest under article 9 but found them unsubstantiated because the State party argued the arrest was lawful and necessary, a point the author did not effectively contest. Since the author failed to provide specific evidence or arguments to support his claims, the Committee declared the communication inadmissible.

CCPR/C/138/D/2958/2017

G.J. v. Netherlands

Lack of fulfilment of admissibility requirements

Substantive issues: Equality of arms; right to be presumed innocent; right to be tried without undue delay; right to an effective remedy; right to hold political office

Facts: G.J., a Dutch national and former Finance Minister of Curaçao, claims his rights under several Covenant articles were violated by the Netherlands. His involvement in the 2013 political murder investigation of Helmin Magno Wiels led to his arrest and subsequent legal battles. Despite challenging the lack of evidence and the infringement of his right to a speedy trial, his petition was rejected after an *ex parte* meeting between the examining magistrate and the prosecution. G.J. highlights the futility of appealing under Curaçao's legal system, noting similar efforts by others have failed.

G.J. claims the Netherlands violated his Covenant rights by branding him unjustly as a suspect and conducting a biased, prolonged pretrial investigation. He criticizes the lack of fairness in the investigation process, particularly highlighting an *ex parte* meeting that excluded him from challenging the prosecution's stance, a move he argues is not supported by procedural laws. G.J. also notes the investigation's failure to explore alternative scenarios or to utilize available forensic evidence, which has kept him under suspect status without substantial evidence for over three and a half years. This, he argues, infringes on his right to a timely trial and impacts his potential political career, as current laws prevent him from being appointed as a cabinet minister due to his suspect status. G.J. seeks the Committee's intervention to remove his suspect status, end the criminal proceedings against him, and obtain compensation for the harm suffered.

On 27 April 2018, the author contested the relevance of certain legal proceedings against him to his complaint before the Committee, emphasizing his ongoing detention in Venezuela since 2017. He detailed an appeal against a 2019 conviction where a 2018 court ruling had publicly implicated him in murder, violating his presumption of innocence as safeguarded by article 14(2) of the Covenant. Additionally, he highlighted a breach of article 14 (1) concerning a denial of access to essential court records post-investigation, affecting his right to a fair trial and timely legal proceedings, citing delays from October 2016 to December 2018.

The author contends that the State party has infringed upon his rights under article 25 of the Covenant, arguing that a 2012 law prevents him from being considered for a cabinet minister role due to his status as a criminal suspect. This law makes it a criminal offense to nominate someone who is officially recognized as a suspect in a criminal investigation for a cabinet position, thereby denying him the opportunity to serve based on these preliminary accusations, despite not having been tried or convicted by a court.

Admissibility: The Committee acknowledges the State party's argument that the author's claims related to article 14, both independently and together with article 2 (3) of the Covenant, should be deemed inadmissible under article 5 (2) (b) of the Optional Protocol, due to his not having exhausted all available domestic legal remedies. It found his claims regarding unfair trial and excessive investigation duration inadmissible, citing a lack of effort to use all available remedies. Additionally, G.J.'s claim of rights violations under article 25 related to his political aspirations was deemed unsubstantiated, especially following his serious offense conviction. Thus, the Committee declared the communication inadmissible.

CCPR/C/139/D/3236/2018

S.E.H v. Netherlands

Inadmissibility for non-exhaustion of domestic remedies and lack of substantiation in a deportation process

Substantive issues: Freedom of movement; degrading treatment; non-discrimination

Facts: The author, born in the European part of the Netherlands, resided in Bonaire from 2010 to 2016 without officially registering. During this period, he committed criminal offenses, leading to a persona non grata declaration and an order for his removal in November 2015. Despite filing objections and initiating legal proceedings, including an appeal to the Joint Court of Justice, the decisions to deport him were upheld.

The author contends that his exclusion from Bonaire and subsequent deportation to Curaçao violate his rights under article 12 of the Covenant, either independently or in conjunction with articles 2 (1) and 26. He questions the validity of the Netherlands' reservation regarding article 12, asserting that his rights were arbitrarily denied in all six Caribbean islands within the Netherlands. Additionally, he argues that treating him as a foreign national and expelling him to Curaçao amounts to degrading treatment under article 7 of the Covenant. Lastly, the author seeks compensation for expenses incurred during his return from Curaçao to the European part of the Netherlands, contending that this trip could have been avoided if not for his "arbitrary" deportation to Curaçao.

Admissibility: The Committee finds the author's claims under article 7 inadmissible due to the lack of exhaustion of domestic remedies, as he did not raise allegations of degrading treatment before national authorities. Regarding the claims under article 2 (1), the Committee deems them incompatible and inadmissible, as they are not distinct from the examination of the author's rights under article 12. The Committee concludes that the author has failed to substantiate his claim under article 12, as the expulsion was prompted by his illegal stay and activity in Bonaire. The objections to the reservation and declaration under article 12 are considered inadmissible due to insufficient substantiation. Additionally, the claims under article 26 are deemed inadmissible, lacking sufficient substantiation and failing to establish discriminatory treatment. Consequently, the Committee declares the communication inadmissible under articles 2, 3, and 5 (2) (b) of the Optional Protocol, with the decision transmitted to both the State party and the author.

NEW ZEALAND

CCPR/C/138/D/3666/2019

Arthur William Taylor et al. v. New Zealand

Voting rights of criminally convicted or sentenced persons in New Zealand

The Committee's views on voting rights of prisoners in New Zealand that a blanket ban violates the Covenant shows the potential of a profound impact by reaffirming the importance of the principle of inclusivity in democratic processes. The Committee's views on disenfranchisement of prisoners to be undertaken in a manner where clear legal standards and assessments are applied in order to specifically determine the reasonableness is an important guiding factor for countries which have similar laws on voting rights of prisoners. It is also noteworthy that the Committee found that disenfranchisement should relate to the nature of the offence in order to ensure equal opportunity for all to participate in a democratic electoral process.

Substantive issues: conditions of detention; cruel, inhuman or degrading treatment or punishment; discrimination; discrimination on the ground of race; effective remedy; indigenous peoples; treatment of prisoners; voting and election

Facts: Voting rights of prisoners in New Zealand have been modified several times over the past 50 years. In 2010 New Zealand passed the Electoral (Disqualification of Sentenced Prisoners) Amendment Act (2010 Act) where persons detained in a prison pursuant to a sentence of imprisonment imposed after the commencement of the 2010 Act were disqualified from registration as electors. In 2020 New Zealand passed a legislative bill (2020 Act) which removed the blanket ban on electoral registration imposed on sentenced prisoners since 2010, and the position under the 2020 Act was that prisoners serving sentences of three years or more, sentences for life or preventive detention were disqualified from registering to vote.

The three authors, Mr. Taylor (19 years prison sentence), Sandra Hinemanu Ngaronoa (7 years 2 months prison sentence) and Sandra Wilde (2 years 9 months prison sentence) -the latter authors are Māori individuals- are nationals of New Zealand who were imprisoned due to criminal sentences at different times, and their present communication arises from domestic challenges to the 2010 Act. In 2014, the authors filed for judicial review before the High Court and sought for interim measures to preserve their right to vote in a general election that was scheduled and challenged the lawfulness of the 2010 Act. The Court held that the 2010 Act could not be invalidated. An appeal was filed which was rejected on the ground of undue delay. Another appeal for review by a full bench was also rejected on the grounds that there was insufficient time to review it before a general election that had been scheduled on 20 September 2014.

In 2013, the authors had filed a claim seeking a declaration that the 2010 Act was inconsistent with the provision of the New Zealand Bill of Rights Act and Human Rights Act, and a declaration of inconsistency in favour of the authors was made which was also confirmed by the Supreme

Court. In 2016, the authors filed separate claims against the Attorney General before the High Court arguing the inconsistency of the 2010 Act. In 2016, the High Court dismissed the authors' claims.

The authors appealed to the Court of Appeal claims that given the disproportionately high number of Māori in prisons, there would be a reduction in their representation in the electoral polls. The Court of Appeals dismissed the appeal, and the authors requested leave to appeal to the Supreme Court which dismissed the authors' appeal with respect to entrenchment. In 2014, two of the Māori authors filed a claim before the Waitangi Tribunal, a standing commission of enquiry, alleging that the 2010 Act violated the rights of the Māori to political representation and self-determination which did not address the discrimination but held that Māori had been disproportionately affected.

The authors claim that the enactment of the 2010 Act has violated their right to respect, right against cruel or degrading treatment, liberty, to participate in public affairs and equality before the law under articles 2 (1) - (3), 5, 7, 10, 25 and 26 of the Covenant.

Admissibility: The Committee noted the State party's submission that the authors have not exhausted domestic remedies with respect to their claims under articles 7, 10, and 26, and the authors' acknowledgement that they did not invoke the substance of claims under articles 7 and 10 before domestic authorities. The Committee held that it is precluded by article 5 (2) (b) of the Optional Protocol from examining the authors' claims under articles 7 and 10, and aspects of the 2010 Act being motivated by racially discriminatory legislative intent under article 26.

Two of the authors, Mr. Taylor and Ms. Ngaronoa, claimed that although the subject of the domestic proceedings at issue was the legitimacy of the 2010 Act, their rights under article 25 have not been restored because they remain unable to vote under the 2020 Act. The Committee held that this claim was unfounded as they had not demonstrated that they exhausted all domestic remedies to contest the 2020 Act; and held the claims under article 25 (b) as inadmissible under article 5 (2) (b) of the Optional Protocol.

Recalling its jurisprudence that articles 2 and 5 of the Covenant lay down general obligations and do not give rise, when invoked separately, to claims under the Optional Protocol, the Committee considered these claims as inadmissible *ratione materiae* under article 3 of the Optional Protocol. Contrary to the State party's argument that the communication was entirely inadmissible with respect to Mr. Taylor and Ms. Ngaronoa, the Committee noted that while Mr. Taylor and Ms. Ngaronoa were disqualified from registering to vote under the Electoral Act 1993 (law to the 2010 Act), they remained disqualified under the 2010 Act. The Committee held that Mr. Taylor and Ms. Ngaronoa were affected by the 2010 Act for the purpose of article 1 of the Optional Protocol.

Contrary to the State party's argument that the claim under article 25 of the Covenant was inadmissible as the State party had already provided remedy from the same through enactment of the 2020 Act by removing the blanket ban on voting by prisoners, the Committee held that when the communication was submitted, none of the authors enjoyed the right to vote and hence, for the purposes of admissibility, the authors have victim status with respect to their claims of denial of the right to vote under article 25 of the Covenant. Furthermore, the Committee noted Mr. Taylor's claim under article 26 is inadmissible as he is not Māori and does not explain his claim of discrimination. However, the Committee held that Ms. Ngaronoa and Ms. Wilde, as Māori

prisoners, have sufficiently substantiated the allegedly racially discriminatory effects of the 2010 Act on them under article 26. For these reasons, the Committee declared the authors' claims under article 25 and 26 (for Ms. Ngaronoa and Ms. Wilde) as admissible.

Merits: In its assessment as to whether the 2010 Act violated the authors' rights under article 25 (b) of the Covenant, the Committee noted that there was nothing to indicate that automatic disenfranchisement of prisoners convicted of serious offences deterred further offending, and thus raised questions regarding the proportionality of the disenfranchisement to the objective of deterrence. While agreeing that corollary deprivations to imprisonment were justifiable as punishments for serious criminal offences, disenfranchisement represented a realm of separate and additional punishment. Committee referred to para. 14 of its General Comment No. 25 which stated that if the disenfranchisement of prisoners was considered as a form of punishment, then clear legal standards and assessments should be applied in order to specifically determine the reasonableness of the same. The Committee noted that in the absence of certain circumstances, deprivation of the right to vote is unrelated to the nature of the offence and that as citizens of the State party, they should have an equal opportunity to participate in democratic electoral processes.

The Committee considered that the automatic disenfranchisement owing to a criminal conviction in the absence of a reasonable connection between the nature of the offence and the stripping of voting rights violates article 25 (b) of the Covenant. And since the 2010 Act did not meet this standard of a reasonable connection, it was held to be incompatible and had violated the authors' rights under article 25 (b) of the Covenant. In pursuance of evaluating such reasonable connection, the Committee noted that Mr. Taylor and Ms. Ngaronoa had been convicted of serious drug offences and there was no indication about the offences committed by Ms. Wilde, thus giving no assessment whatsoever of a reasonable connection between the specific nature of their offences and the disenfranchisement, thus violating article 25 (b) of the Covenant. Having found a violation of article 25 (b), the Committee did not deem it necessary to examine the claims under article 26.

Recommendations: Taking into account that in the present communication the authors did not request for any pecuniary compensation, the Committee held that its views on the merits of the claim constitute sufficient remedy for the violation found. However, the State party is under an obligation to:

a) Prevent similar violations from occurring in the future;
b) Review its legislation on voting restrictions for prisoners and align it with the State party's obligations under article 25 (b) of the Covenant.

Deadline for implementation: 5 January 2024

CCPR/C/139/D/4170/2022

Kyung Yup Kim v. New Zealand

Detention and extradition of the author to China

Substantive issues: Arbitrary detention-arrest; cruel, inhuman or degrading treatment or punishment; deprivation of liberty; extradition; fair trial

Facts: The author is a national of the Republic of Korea and has permanent resident status in New Zealand. He was accused of murdering a woman in Shanghai and so the Shanghai police issued an arrest warrant for him. In 2010, INTERPOL issued a request for law enforcement authorities worldwide to provisionally arrest him pending his extradition. In 2011, New Zealand's authorities arrested the author on request for arrest and extradition to China. A district court in New Zealand found the author eligible for surrender and from 2014-2015 the Minister of Justice sought and obtained assurances from China with respect to the author. AIn 2021, after obtaining additional assurances from China, the Minister of Justice decided that the author could be surrendered, and the Supreme Court also reaffirmed this decision. Initially having been detained in 2011, the author was granted bail in 2016 and terms of the bail were relaxed in 2019. The author claims that his rights to not be subjected to cruel and inhuman treatment, liberty and security, humanity, and equality before courts and tribunals have been violated under articles 7, 9, 10 and 14 of the Covenant. The author remained in New Zealand while his case was being examined by the Committee.

Admissibility: Contrary to the author's claim that he was detained in conditions amounting to death row which subjected him to a risk of extra-judicial killing in China, the Committee notes the various assurances taken by New Zealand about the authors non-refoulement claims and considered these aspects of the communication as inadmissible. The Committee also decided that the claims of the author regarding the length of the detention and health conditions as inadmissible, given the timely decisions of New Zealand and medical treatment meted out to the author. The Committee considered that the author had sufficiently substantiated his claims regarding risk of torture in China (article 7), arbitrary arrest and detention in New Zealand (article 9 (1)) and declared those claims as admissible and subject to examination on merits.

Merits: With respect to claims of risk of torture in China, the Committee noted that given the assurances and monitoring regime of New Zealand, it has not been established that nothing has aggravated the risk that the author will be tortured in China. The Committee considered that New Zealand had sufficiently considered the author's arguments about why he would face risk without disregarding them and acted with due diligence and care in requesting diplomatic assurances. The Committee concluded that author had not demonstrated that his extradition to China would result in substantial risk of torture and hence there was no violation of article 7 of the Covenant. With respect to claims of arbitrary arrest and detention, the Committee observed that the detention of the author from 12 September to 01 December 2014 had no lawful basis and was arbitrary as a warrant issued by the High Court had expired before the issuance of the new warrant and hence constituted a violation of article 9 (1) of the Covenant. However, the remaining periods of the author's detention and his release on restrictive bail were not violative of article 9 (1).

Recommendations: New Zealand is under an obligation to:

a) Provide the author with an effective remedy for violation of his right under article 9 (1) and this requires giving the author adequate compensation;
b) Prevent similar violations from occurring in the future.

Deadline for implementation: 26 April 2024

Separate opinions: Rodrigo A. Carazo, Carlos Gómez Martínez, and Imeru Tamerat Yigezu issued a joint partially dissenting opinion. For them, a change in cause of the claims would explain New Zealand's failure in providing an adequate basis for deprivation of liberty of the author and hence the Committee should not have concluded a violation of article 9 (1).

José Manuel Santos Pais issued an individual partially dissenting opinion concurred with the joint opinion and held that the author did not exhaust domestic remedies for arbitrary detention. Hence there is no violation of article 9 (1).

ROMANIA

CCPR/C/137/D/3662/2019

G.A.P. v. Romania

The claim of usage of covert surveillance for evidence gathering, a violation of the right to privacy

Substantive issue: Right to privacy and the private nature of correspondence

Facts: The author of the communication is a Romanian businessman. He acted as the Vice-Chair of the Board of Directors of a company between 2002 to 2006. The company signed a joint venture agreement with a university for the use of 225 hectares of land in Bucharest which was owned by the university. In 2000, the joint venture was incorporated. The company changed its name to SC Banaesa Investments SA. In 2005, another individual filed a complaint against the author and one another before the General prosecutor's office of the High Court of Cassation and Justice. The office refused to prosecute this complaint due to a lack of substantive evidence and legal grounds. However, the National Anti-Corruption Directorate initiated a prosecution against the author and others for complicity in the abuse of power.

In 2012, the National Anti-Corruption Directorate indicted the author and 10 others alleging that he had served as an accomplice to the offences of abuse of power and active bribery. The author applied to the Court of Appeal requesting to rely on expert evidence relating to three issues including suspicions that covert surveillance evidence gathered by the Directorate against him had been tampered with. He argued that it was unconstitutional to rely on covert surveillance evidence secured with the assistance of the Romanian Intelligence Service based on a previous Constitutional Decision no. 51/2016 which dealt with the amendment of criminal procedure regarding use of surveillance methods. The Bucharest Court of Appeal convicted the author of complicity in the offences of abuse of power and active bribery, holding that he acted with intent and knowledge to acquire the land through illegitimate means causing a significant loss of potential monetary gain to the State and sentencing him to nine years of imprisonment. The author's application and appeal to use expert evidence and witnesses were also dismissed and rejected by the High Court of Cassation and Justice; however, his sentence was reduced by it to seven years. In 2018, the author applied to the European Court of Human Rights arguing that his right to a fair trial and the principle of no punishment without law was violated. The author submitted the present communication to the Committee alleging a violation of article 17 due to the use of covert surveillance against him.

Admissibility: Despite the State party's argument against admissibility, citing ongoing examination by the European Court of Human Rights, the Committee determines that the issues raised differ substantially from those being investigated. Additionally, it considered whether domestic remedies

have been exhausted, concluding that they have been pursued adequately. Acknowledging the author's status as a victim due to the direct impact of intercepted communications leading to imprisonment, the Committee proceeds to review the remaining admissibility issues. The Committee emphasised its role as a body which is not tasked with re-evaluating domestic legal proceedings or findings of fact unless there is clear evidence of arbitrariness, manifest error, or denial of justice. As a result, the Committee found that the author had not sufficiently substantiated the claim that the surveillance tactics employed violated his rights under article 17 of the Covenant. In conclusion, the Committee deemed the claims insufficiently substantiated for admissibility purposes and declared them inadmissible under article 2 of the Optional Protocol.

RUSSIAN FEDERATION

CCPR/C/138/D/2669/2015

A.T. v. Russian Federation

Publication of allegedly false arrest warrant by a newspaper and subsequent violation of fair trial rights by authorities of the Russian Federation

Substantive issues: Presumption of innocence; fair trial; right to cross-examine witnesses; access to counsel

Facts: The author, a national of the Russian Federation, claims that in 2002, a district wide newspaper published an arrest warrant issued against the author by the district police along with the author's personal information and photograph. The author was placed in pre-trial detention and the author claims that he was not assisted by a legal counsel during his hearing and due to his lack of legal knowledge, he claims to not have complained about the lack of a counsel until his criminal case was heard in the Regional Court.

The author requested the district police to initiate criminal proceedings for calumny against the editor-in-chief of the newspaper which published the arrest warrant. The district police rejected this request, and this was challenged by the author before the Public Prosecutor's Office which rejected the request. This was also upheld by the District Court stating that two decisions on refusal to initiate criminal proceedings had already been adopted. The author's supervisory review appeal was also rejected by the Regional Prosecutor's Office. Subsequently, the author's pre-trial detention was extended, and this was done in the absence of the author or his counsel. The author appealed to the Supreme Court of the Russian Federation to which he received no response. The author also claims that the testimony of a witness supporting his claim was not reflected in the indictment.

The Regional Court convicted the author to life imprisonment and on a cassation appeal to the Supreme Court of the Russian Federation, the author's sentence was modified to 25 years of imprisonment, and the author's claims regarding violation of his fair trial rights were not addressed. The author submitted an application to the European Court of Human Rights which ruled that the application was inadmissible due to non-exhaustion of domestic remedies. In order to exhaust domestic remedies, the author appealed to the Presidium of the Supreme Court which refused to examine the author's appeals due to procedural errors. On rectification of errors, the author filed a supervisory review appeal to the Presidium which was also rejected. The author submitted four appeals to the Chairperson of the Supreme Court, but the Court refused to examine the appeals. The author submitted another appeal to the Chairperson of the Supreme Court which refused to examine the appeal on the basis that it had already been examined and a final decision had been made. The author again approached the European Court of Human Rights from which he received no response. Hence the author claims a violation of his fair trial rights under article 14 (2) and (3) (a), (b), (d), and (e) of the Covenant.

Admissibility: With respect to the author's claims regarding his right to the presumption of innocence with respect to the publishing of his arrest warrant in the newspaper, the Committee concluded that the material before it did not allow it to establish whether and to what extent

the publication affected the trial and the outcome against the author. For this, the Committee observed that the author had not sufficiently substantiated his claims under article 14 (2).

With respect to the author's claims under articles 14 (3) (a), (b), (d), and (e) about the lack of a legal counsel to assist him during the hearing on the extension of his pre-trial detention, the Committee noted that the author did not contests the State party's claims that the author did not exhaust all available domestic remedies and that the judgement had provided clear information about the available legal remedies. The Committee concluded that it is precluded from considering these claims of the author. With respect to exhaustion of all available domestic remedies by the author, the Committee noted that the author provides no information about submitting an appeal and that the author was not clear about his presence during the hearing.

Additionally, the Committee noted that the author had been convicted for several offences, whereas the interrogation of the witness, whom the author claims he did not get to present, was only with respect to a few elements of one of the offences. The Committee noted that even if this were to fall short of the requirement under article 14 (3) (e), the author had failed to substantiate his claims that the interrogation of the witness was absolutely necessary given the seriousness of the offences and there was a failure to substantiate his claim. For these reasons, the Committee decided that the communication is inadmissible under articles 2 and 5 (2) of the Optional Protocol.

CCPR/C/139/D/2964/2017

A. A. v. Russian Federation

Ill-founded fabrication of criminal case and violation of fair trial rights in the Russian Federation

Substantive issues: Right to defense; right to an interpreter; right to question witnesses; right to compensation; right to be informed of the nature and cause of the charge; right to preparation of defense; right to a fair trial

Facts: The author is a Russian national of Azeri ethnicity currently serving a prison sentence in the Russian Federation. In 2011, a City Court found the author guilty of extortion committed by a group and sentenced him to 15 years imprisonment. In a cassation appeal, the author maintained his innocence and claimed that evidence against him had been fabricated and claimed violation of his fair trial rights. The cassation appeal was rejected, while acknowledging a claim of the author that two witnesses were unable to make an appearance. The author lodged an appeal to the Supreme Court which was also rejected. The author further appealed the decision to the Judicial Board in Criminal Matters of the Supreme Court which reduced his sentence by one year. The author filed an appeal for insufficient reduction of his sentence before the Chair of the Supreme Court which was declared inadmissible.

The author claims that initially he was charged with nine crimes, and convicted for one for which he claimed civil compensation, to which the City Court granted compensation, which the author claims he never received. The author claims bias by the court in favor of the prosecution and reliance on the testimony of the victims and non-opportunity for cross-examination. For these reasons the author claims a violation of his fair trial rights under articles 14 (1), (3) (a), (b), (e), and (f), (5) and (6) of the Covenant.

Admissibility: On the author's claim that the criminal case against him was fabricated, the Committee referred to its General Comment No. 32 and emphasized that article 14 (1) only guarantees procedural equality and fairness and it cannot be equated to ensuring the absence of error on part of the competent tribunal. The Committee held that the present communication did not show that the domestic court proceedings had suffered from any such defects as they had duly examined the author's complaints about the alleged fabrication of the case.

The Committee referred to its previous decision in *S.P. v. Russian Federation* to hold that the author's supervisory review appeals cannot be considered as effective remedies and that the author had failed to exhaust all domestic remedies by not raising these claims in previous instances. Furthermore, the committee was of the view that the author failed to provide how the cross-examination of the witnesses was relevant and how they would have impacted the proceedings and failed to substantiate the same. With respect to not receiving compensation as ordered by the City Court, the Committee held that it did not provide any evidence nor any explanation regarding the same and did not even lodge a complaint with the domestic authorities. For all these reasons, the Committee decided the present communication as inadmissible under article 2 of the Optional Protocol.

CCPR/C/139/D/2925/2017

Vladimir Yurlov et al. v. Russian Federation

Dissolution of religious organization for distribution of extremist literature in the Russian Federation

Substantive issues: Cruel, inhuman and degrading treatment; freedom of thought, conscience and religion; freedom of association; discrimination on the ground of religion; minority rights

Facts: The authors are nationals of the Russian Federation and members of Jehovah's Witnesses. A police search of the authors' organisation yielded in the discovery of banned extremist literature, so a City Court found the organisation guilty of production and distribution of extremist material. Mr. Yurlov who is one of the authors as well as the Chairman of the organisation, appealed to the Supreme Court which rejected the appeal. A second search of the organisation yielded more copies of extremist literature, and the Prosecutor filed a case to have the organisation declared as an extremist organisation. The Supreme Court declared the organisation as an extremist organisation and ordered its dissolution. The authors claim a violation of their rights to not be subject to degrading treatment, freedom of religion, freedom of association, non-discrimination, and profess culture and religion as minorities under articles 7, 18 (1) and (3), 22 (1) and (2), 26 and 27 of the Covenant.

Admissibility: The Committee noted that the authors submitted their claim in personal capacity and did not claim rights for the organisation as a legal entity and hence had standing under article 1 of the Optional Protocol. However, as only Mr. Yurlov took part in the domestic proceedings as the organisation's Chairman, the other two authors cannot be said to have exhausted all domestic remedies, and hence the Committee decided to examine the communication only in respect of Mr. Yurlov. Furthermore, the Committee held that the interpretation of 'torture' under article 7 does not cover the elements invoked by Mr. Yurlov in relation to dissolution of the organisation, and the claims under article7 were considered insufficiently substantiated and hence inadmissible. However, the rest of Mr. Yurlov's claims were deemed admissible for consideration on merits.

Merits: The Committee noted that the State party did not provide concrete facts about how the publications distributed by Mr. Yurlov's organisation threatened the rights of others and how it was contrary to article 20 (2). The Committee held that the domestic courts did not provide a valid legal basis for restriction under article 18 (3). Furthermore, the Committee noted, referring to practices listed as integral to freedom of religion in its General Comment No. 22, that the legislation of the State party did not accord religious groups any such rights, and held that through the dissolution of the organisation, Mr. Yurlov's rights under article 18 (1) were violated. The Committee noted that the State party failed to justify how the distribution of banned publications endangered the rights of others and the security of the State to warrant the dissolution of the organisation. The Committee also noted that the rights of an unregistered group are limited and held that there was a violation of article 22 (1). Given that claims under articles 18 (1) and 22 (1) were addressed and had found their violation, the Committee decided not to address the complaints under articles 26 and 27 separately.

Recommendations: The State party is under an obligation to:

a) Re-open domestic proceedings and review the decision of the Supreme Court ordering the dissolution of the organization;

b) Provide Mr. Yurlov adequate compensation, including reimbursement of court fees and legal expenses incurred.

Deadline for implementation: 21 April 2024

Separate opinions: Committee members Yvonne Donders and Laurence R. Helfer issued a joint partially dissenting opinion. They agreed with the Committee's findings on articles 18 (1) and 22 (1) but was of the view that collective aspects of the right to profess and practice a minority religion which is a crucial aspect of article 27 had to be addressed separately.

Committee member Carlos Gómez Martínez issued a partially dissenting opinion. He disagreed with the Committee's treatment of claims under articles 26 and 27 and was of the belief that their violations warranted separate examinations.

CCPR/C/139/D/2871/2016

D.O., G.K., and S.G. v. Russian Federation

Refusal to register constituent documents of religious organizations

Substantive issues: Freedom of religion; freedom of association; discrimination on the grounds of religious beliefs

Facts: The authors of the communication- D.O. is a national of the Republic of Moldova, and S.G., and G.K. are nationals of the Russian Federation, who are the religious ministers and members of the board of directors of Jehovah's Witnesses in Transnistria (Republic of Moldova). Following the adoption of a law by the self-proclaimed Transnistrian Moldovan Republic requiring all religious organizations to align their constituent documents with the new legislation, the non-conformity with the same leading to liquidation of the religious organisation, the authors submitted a request to the Ministry of Justice of the Transnistrian Moldovan Republic to register the changes to their constituent documents. One the first request by the authors, the Ministry ordered a board of experts to conduct a religious examination which found that some activities of the organisation contradict the existing laws. The authors' corrected the shortcoming highlighted by the board of experts and submitted three other requests for registration to the Ministry, all of which were rejected citing errors in the application as well as the goals and objectives of the organisation as being contrary to the existing laws. The fourth refusal was challenged by the authors before the City Court which ruled in favour of the authors.

However, this decision was quashed by the Supreme Court and a subsequent supervisory review submitted by the authors was also rejected by the Supreme Court. Letters to the Prime Ministers of the Russian Federation and Republic of Moldova were also sent by the authors which received no response. The authors instituted complaints against both, the Russian Federation and the Republic of Moldova (communication is registered as a separate case CCPR/C/139/D/2870/2016). The authors referred to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Republic of Moldova where it is stated that the Transnistrian region falls under the jurisdiction of both the Republic of Moldova and the Russian Federation, and both should share the responsibility to uphold respect for human rights.

The authors also refer to the findings of the European Court of Human Rights in *Ilaşcu and Ors v. The Republic of Moldova* and *Catan and Ors v. the Republic of Moldova and Russia* with respect to responsibility of both the states for violation of the European Convention on Human Rights. In the present communication, the authors cite violation of their right to religion, association, and equal protection of the law under articles 18 (1) and (3), 22 (1) and (2) and 26 of the Covenant.

Admissibility: The Committee noted, considering the separate claims of the authors against the Russian Federation and the Republic of Moldova that the alleged violations took place in Transnistria which forms a part of the territory of the Republic of Moldova. The Committee noted that under article 1 of the Optional Protocol and article 2 (1) of the General Comment No. 31 which provides that States are to ensure the rights under the Covenant to all persons within their territory and subject to their jurisdiction, it implies that this would extend to anyone within the power or effective control of the State party, even if not present within the territory of the State party.

Observing the authors' claims that the Russian Federation exercises effective control over Transnistria which stems from its military presence in the area and high reliance of de facto authorities of Transnistria on the Russian Federation as unsubstantiated, the Committee held that the authors' allege violations resulting from the actions of the de facto authorities of Transnistria and not that of the Russian Federation, especially with respect to the refusal of registration by the Ministry and subsequent actions by the Supreme Court of the Transnistrian Moldovan Republic. For these reasons the Committee held that the authors have failed to sufficiently substantiate their claims for the purposes of admissibility and declared the communication as inadmissible under article 2 of the Optional Protocol.

CCPR/C/139/D/2824/2016

V.G v. Russian Federation

Admissibility: time frame for submission of appeal and new claims

Substantive issues: Fairness of proceedings; honor and reputation

Facts: The author of the complaint was the head of a local administration of a town in the Russian Federation and he also served as an assistant to a deputy of the State of Duma of the Federal Assembly of the Russian Federation. The author claims in the complaint that the Council of Deputies of his town was trying to defame him and remove him from office by damaging his reputation. The author claims that in 2011, a free to air television channel- NTV, broadcasted a news report, which was later uploaded to a public domain on the internet, by falsely accusing him of illegally selling a sewage truck of the municipality, which is a criminal offence, and also convicted him of unlawful deprivation of liberty of deputies from the local Council of Deputies. The author claims that it was another individual who illegally sold the truck, and the said person was convicted by a court judgement.

The author lodged a civil lawsuit in a District Court against NTV and the author of the news report claiming reimbursement of damages and compensation for moral harm and also sought the retraction of the news report. The District Court rejected the author's claim on the basis that it was unfounded and held that the news report could not be considered as defamatory as it did not focus on a particular individual and was just an expression of opinion by the journalist. The author appealed against the decision of the District Court claiming violation of fair trial rights on the grounds that the decision had been rendered in his absence and that he was not notified about the time and place of the hearing.

The Moscow City Court rejected the appeal and upheld the judgement of the District Court and emphasized on ensuring a balance between private interests and freedom of the media. The author lodged a cassation appeal which was also dismissed by a judge of the Moscow City Court. The author claims that though he had a possibility of lodging a further appeal in cassation before the Supreme Court of the Russian Federation, he was unable to do so because of a six-month time limit for lodging a cassation appeal, which had expired, and a further application for a reset would delay the process of the case by several years. Accordingly, the author in the communication claims a violation of articles 14 (1) and (6), 16 and 17 for serious damage to his honor and reputation as well as the right to protection by the law against such damage.

Admissibility: Contrary to the arguments of the author, the Committee stated that there was no basis for the author to claim that an application for the reset of the procedural time for filing a cassation appeal would have delayed the legal process by several years and that the author did not have the time to lodge the appeal due to receipt of the decision of the Moscow City Court on the last day of the six-month time period for submission of the appeal. The Committee noted that the time spent by the court in considering the cassation appeal was not to be considered when calculating the six-month period and that the six-month time period began from the day following the adoption of the appeal and hence, the author's claims were unfounded and was not based on concrete evidence and facts. The Committee emphasized on the requirement for authors to avail themselves of all domestic remedies in order to fulfil the criteria under article 5 (2) (b) of the Optional Protocol, and recognized that the author in the present case failed to show adequately

that he did not have access to an effective remedy through a cassation appeal before the Supreme Court of the Russian Federation, and hence considered the author's claims under article 14 (1) and 17 as inadmissible.

Furthermore, the Committee was unwilling to accept new claims made by the author under article 14 (2). Referring to its decision in *D.C. v. Lithuania*, the Committee in the present decision stated that the author did not substantiate why the new claim could not have been raised in his initial submission, and accordingly considered the new claim inadmissible due to violation of article 3 of the Optional Protocol. The Committee also considered the author's claims under articles 14 (6) and 16 as not having been duly substantiated and hence inadmissible under article 2 of the Optional Protocol. Overall, the Committee considered the claims of the author in the present communication as inadmissible under articles 2, 3, and 5 (2) (b).

CCPR/C/139/D/2765/2016

Andrey Pavlenko and Ors. v. Russian Federation

Dissolution of a local religious organization of Jehovah's Witnesses for distribution of "extremist" publications

Substantive issues: Cruel, inhuman and degrading treatment; freedom of thought, conscience and religion; freedom of association; discrimination on the ground of religion; minority rights

Facts: The authors of the communication are nationals of the Russian Federation and members of Jehovah's Witnesses, with Mr. Pavlenko being the Chairman of the local organization of Jehovah's Witnesses for the city of Abinsk ("organization"). Two members of the organization faced an administrative conviction for the offence of mass distribution of extremist religious literature. Following this, the Krasnodar Territorial Court ordered the dissolution of the organization and confiscation of its property. Mr. Pavlenko appealed this decision to the Supreme Court of the Russian Federation arguing that at the time of their administrative conviction, the two convicted individuals had terminated their membership with the organization and that the decision to dissolve the organization hindered the peaceful manifestation of their religion. The Supreme Court upheld the decision of the trial court, and a supervisory appeal filed by Mr. Pavlenko was rejected by the Supreme Court. The authors have claimed in the communication that the Russian Federation (State party) has violated their rights under articles 7, 18 (1) and (3), 22 (1) and (2), 26 and 27.

Admissibility: Contrary to the State party's submission that a similar complaint was submitted to the European Court of Human Rights by other local religious organizations, the Committee noted that the complaint submitted consisted of a different set of issues which cannot be attributed to the present communication. The Committee noted that the authors submitted the present communication in a personal capacity and not seeking rights for the organization as a legal entity, hence the communication is admissible under article 1 of the Optional Protocol. However, the Committee noted that as only Mr. Pavlenko took part in the domestic proceedings, the other two authors in the present communication cannot be said to have exhausted all domestic remedies and accordingly, only the claims of Mr. Pavlenko would be examined. Additionally, the Committee rejected the claim of Mr. Pavlenko that classification of the organization as an extremist organization is contrary to article 7, explaining the aim of article 7 is the protection of the individual and that his claims were insufficiently substantiated and hence inadmissible. Still, the claims of Mr. Pavlenko under articles 18 (1) and (3), 22 (1) and (2), 26, and 27 were considered to be admissible.

Merits: The Committee noted that the dissolution of the organisation deprived Mr. Pavlenko of a number of individual rights essential for the free manifestation of his religion and was hence in violation of article 18 (1). The Committee also held that there was no legal basis for the dissolution of the organisation and that the domestic authorities did not meet the criteria under article 22 (2) as they failed to show that the restriction on freedom of association was justified under one of the grounds listed under article 22 (2). Additionally, the Committee noted that the decision to practise a religion as a group or as a registered organisation should rest with the individual and that the State party had no legitimate aim in the dissolution of the organization which is in violation of article 22 (1). The Committee also stated that it had addressed claims under articles 18 (1) and 22 (1), and there is no need to separately examine claims made under article 26 and 27.

Recommendations: The Committee held that the State party is under an obligation to:

a) Reopen domestic proceedings and review the decision of the Krasnodar Territorial Court;
b) Provide Mr. Pavlenko with adequate compensation, including reimbursement of court fees and legal expenses incurred;
C) Prevent similar violations from happening in the future.

Deadline for implementation: 21 April 2024

Separate opinion: Committee members Rodrigo A. Carazo and Carlos Gómez Martínez issued a partially dissenting joint opinion. They disagreed with the majority's decision on not examining claims made under article 26 and 27 and stated that a minimum argument regarding the violation of articles 26 and 27 had to be made instead of simply deciding not to examine the violations.

CCPR/C/138/D/2947/2017

Ferid Ragim ogly Yusub v. Russian Federation

Extradition to Azerbaijan from Russian Federation on charges of organizing illegal departure

Substantive issues: Non-refoulement; risk of torture and other forms of ill-treatment

Facts: the author is a national of Azerbaijan whose sister married a prominent political figure in Azerbaijan. Due to domestic violence and abuse, the author's sister fled Azerbaijan and the author submits that since then he has been persecuted by the police, detained several times and subject to ill-treatment in detention. The author fled to Egypt where he was granted refugee status and later moved to the Russian Federation in 2015. The author's sister and children were forced to return to Azerbaijan, and they again managed to flee to Georgia where they were granted asylum. In 2014, the Ministry of Internal Affairs of Azerbaijan opened a criminal investigation against those allegedly involved in the illegal departure of the author's sister and the author was charged *in absentia*.

The author was put on a wanted list and a District Court ordered his arrest *in absentia*. In 2015 the author was arrested in Moscow pursuant to the international search initiated by Azerbaijan and a District Court ordered that he be remanded in detention which was extended. An extradition request by Azerbaijan was also submitted with the assurance that the author's life would not be subject to any risk on his extradition to Azerbaijan. In 2015, while in detention, the author lodged a request for refugee status which was rejected. The author's appeal and a request for temporary refugee status were also rejected. In 2016, the extradition request was granted, and the author challenged the same before the City Court where a representative of the UNHCR also submitted how there was a real risk to persons considered as political opponents in Azerbaijan. However, the City Court rejected the author's complaint and on appeal, it was upheld by the Supreme Court.

In 2017, the author requested the European Court of Human Rights to apply interim measures to prevent his extradition which was rejected for failing to comply with the admissibility criteria and his case was never considered on merits. The author claims in the communication that in the event of his extradition to Azerbaijan, he would be at a risk of being subject to torture in violation of article 7 of the Covenant. Post the submission of the communication, the author was detained by Russian authorities and despite being informed of the interim measures applied by the Committee, the police did not release him.

Interim measures: The Committee noted that the adoption of interim measures was vital to its function and that by failing to respect the request for interim measures transmitted to the State party on two occasions, the State party had failed its obligations under article 1 of the Optional Protocol.

Admissibility: Contrary to the State party's argument that the author failed to exhaust all domestic remedies, the Committee noted that the author's supervisory review complaint before the Presidium of the Supreme Court had been rejected. The Committee noted that the statistical information provided by the State party in substantiation of its argument that the supervisory review before the Presidium was an effective domestic remedy to be exhausted was very general and did not reflect the number of extradition cases involving allegations of a risk of torture and ill-treatment. The Committee held that it was not precluded from examining the present communication under article 5 (2) (b) of the Optional Protocol. Furthermore, the Committee held that the author had

sufficiently substantiated his claims under article7 and hence declared the communication as admissible.

Merits: The Committee referred to its General Comment No. 31 regarding expulsion of persons from its territory when there are substantial grounds to believe that the person may be subject to a real risk of irreparable harm. The Committee also noted the weight to be given to the State party's assessment regarding such expulsion. In furtherance of this, the Committee believed the State party took reasonable measures to verify the alleged risks posed to the author and also noted the lack of clarity and inconsistency on behalf of the author in his claims that his case was tried arbitrarily by the domestic authorities. The Committee held that despite there being no monitoring system to ensure the effective implementations of Azerbaijan's assurances with respect to the author, the information and risk assessment made by the State party do not show that there was any real risk of treatment contrary to article 7 to the author on his extradition. However, the Committee was of the view that the extradition of the author pending the Committee's consideration of his communication was in contradiction of the Committee's request for interim measures of protection which was a violation by the State party of its obligations under article 1 of the Optional Protocol.

Recommendations: State party is obliged to avoid violations of article 1 of the Optional Protocol in the future and to comply with requests of the Committee for interim measures and to ensure that authors are not removed from the State party's jurisdiction when their respective cases are under consideration by the Committee.

Deadline for implementation: 4 January 2024

CCPR/C/138/D/2895/2016 and CCPR/C/138/D/2896/2016

A.K. and M.K. v. Russian Federation

Right to defence and legal assistance

Substantive issues: Fair trial rights; right to counsel; absence of a counsel in cassation appeal hearing in criminal proceedings

Facts: The authors are nationals of the Russian Federation and given the substantial factual and legal similarity, the Committee under rule 97(3) of the Committee's rules of procedure decided to join the communication. A.K. was sentenced to life imprisonment for several murders and assaults by the Supreme Court whereas, M.K. was sentenced to 17 years and 6 months imprisonment by a Regional Court for murder and burglary. Both authors lodged separate cassation appeals before the Supreme Court of the Russian Federation. During the hearing, A.K. claims that he had a counsel appointed who did not appear for the hearing whereas M.K. had no counsel appointed on his behalf. Both the authors filed separate supervisory reviews appeal complaining the violation of their right to defence. In both the cases, the supervisory appeals were rejected.

Another review for a supervisory appeal was found inadmissible. With respect to the inadmissibility of the supervisory review, A.K. complained to the Constitutional Court on the obligatory presence of a counsel in criminal proceedings i.e., the presence of the counsel was only required when the convict requested it. The Constitutional Court rendered A.K.'s claim as inadmissible. Post this, A.K. also requested for his criminal proceedings to be reopened which was rejected by the District Court and the City Court refused to admit A.K.'s cassation appeal against these decisions. The authors claim a violation of their right to legal assistance under article 14 (3) (d) of the Covenant. Additionally, M.K. also claimed a violation of his right to an effective remedy, and fair trial rights under articles 2 (3) and 14 (1) of the Covenant due to absence of legal assistance at the cassation hearing.

Admissibility: the Committee noted that there was a delay at the national level between the alleged violations claimed by the authors and the submission of the communication. Despite there being no fixed time limit for submission of the communication under the Optional Protocol, the Committee held that it expected a reasonable explanation justifying the delay. The Committee noted that as per rule 99(c) of its rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies unless there are reasonable justifications for the delay, while noting that when time is of the essence, the author generally bears the burden of ensuring that the claims are raised in an expeditious manner. The Committee noted that in the instance of A.K. and M.K., the communications were submitted eleven and seven years after their final convictions respectfully.

While the Committee noted the authors justification for the delay with references to the supervisory review appeals that they filed, and in the case of A.K., the appeal made to the Constitutional Court and the Ombudsperson for Human Rights, the Committee did not consider these to be convincing justifications. Furthermore, the Committee noted that the authors also waited for a lengthy period before bringing their claims before the domestic authorities as well, and that the argument of A.K. on his legal illiteracy and lack of awareness about his rights were vague and general and to this extent also noted his ability to have prepared a cassation and a supervisory review appeal separate from that prepared by his lawyer. The Committee considered that the authors failed to provide convincing reasons to justify the lengthy delays in raising the alleged violations before the national courts as well as in raising the communication. For these reasons the Committee held that both the communications constitute an abuse of the right of submission and held them as inadmissible under article 3 of the Optional Protocol.

CCPR/C/137/D/2992/2017

Sasha Maimi Krikkerik v. Russian Federation

Failure of domestic authorities to prevent hate crimes against the LGBTQI+ community

Substantive issues: Right to peaceful assembly; non-discrimination

Facts: The author, a national of the Russian Federation, took an active role in cause advocacy and events related to the LGBTQI+ community. The author was assaulted when returning from an authorized pride parade and was severely injured. The author filed a complaint with the police requesting to investigate the assault. The police refused to initiate the investigation, despite acknowledging the existence of animosity towards the LGBTQI+ community. Subsequent complaints by the author to the police were dismissed as premature. The District Court declared the actions of the police as illegal and instructed the authorities to rectify the mistakes. However, the author has not been informed of any progress in the investigation.

The author was again a victim of violence, and criminal proceedings were initiated. The author addressed a number of petitions to the police officials, which were dismissed. An appeal to the District Court was dismissed, and an appeal to the City Court was also rejected. The author believed that filing a cassation appeal was not an effective remedy, as it is a supervisory procedure and need not be exhausted for the purposes of admissibility. The author claims a violation of his right not to be subject to cruel, inhuman or degrading treatment, unlawful attacks on his honour, reputation, and privacy, and non-discrimination under articles 2, 7, 17 and 26 of the Covenant.

Admissibility: Contrary to the State party's argument that the author failed to exhaust domestic remedies, because he did not appeal under the cassation review, the Committee held that the State party failed to show that there was a chance of success where a motion for prosecution for violent crimes had not been granted. The Committee concluded that the cassation review contains elements of an extraordinary remedy. Lacking clarification from the State party on the effectiveness of the cassation review, the Committee held that it was not precluded by article 5 (2) (b) of the Optional Protocol from examining the Communication. The Committee further held that the claim of the author under article 2 could be considered under article 2 (3) read with claims under article 7, and the author's claims under articles 7, 17, and 26 had been sufficiently substantiated for the purposes of admissibility.

Merits: The Committee noted that though the obligations under the Covenant cannot be viewed as a substitute for domestic law, the State party had a positive obligation to prevent a violation of article 7 that went beyond adopting necessary criminal law provisions, and that obligation can be expected to apply in cases of reasonably foreseeable threats. The Committee noted that instead of protecting the participants of the pride parade where the author was assaulted from known risks, the measures taken by the State party further exposed the participants to violence. The Committee held that the State violated article 7 of the Covenant by not preventing a foreseeable attack on the author. The Committee noted that although the Covenant does not provide a right for individuals to require the State party to criminally prosecute persons, the State party is under an obligation to carry out prompt and impartial investigation, and cannot resort to the excuse that domestic courts have dealt with such matters, when it is evident that judicial remedies would be ineffective.

The Committee concluded that the investigation conducted by the State party has not been effective and has been going on for an unduly long time, which is a violation of article 7 read with article 2 (3) of the Covenant. The Committee also observed that 'discrimination' as used in the

Covenant covers discrimination on the basis of sexual orientation, and that the principle of equality requires States parties to take actions to mitigate conditions that perpetuate discrimination. The Committee observed that the State party was under an obligation to provide effective protection to the author, a member of a targeted social group, and failure to do so led to a violation of article 26. The Committee decided that as it found violations of articles 7 and 26, there was no need to separately examine claims under article 17.

Recommendations: The State party is obliged, *inter alia*:

a) Provide the author with adequate compensation, including reimbursement of court fees and legal expenses incurred;
b) To provide the author with psychological rehabilitation if needed;
c) Take all necessary steps to prevent such violations from occurring in the future and bring domestic laws in line with practices concerning the protection of LGBTQI+ in line with the Covenant.

Deadline for implementation: 11 September 2023

SOUTH AFRICA

CCPR/C/139/D/3178/2018

C.L. v. South Africa

Inadmissibility for insufficient substantiation regarding the non-translated national constitution and its impact on the legal profession

Substantive issues: Right to a fair trial; non-discrimination; right of minority groups to enjoy their own culture and use their language

Facts: The author, C.L., a South African lawyer and member of the Afrikaans language community, alleges a violation of articles 2, 14, 26, and 27 of the Covenant by the State party for not translating national legislation into all official languages. Despite constitutional provisions mandating equal status for official languages, the author claims numerous legislative acts remain untranslated in Afrikaans, leading to discriminatory access to laws for non-English proficient citizens. The author pursued domestic remedies, initiating legal proceedings and filing complaints, but faced dismissals from courts, including the Supreme Court of Appeal and the Constitutional Court. The Communication highlights the arbitrary and selective nature of the translation process, adversely affecting various South African languages.

The author asserts that the State party violates its obligations under article 2 (1) and (2) of the Covenant by neglecting to translate national legislation into all official languages and failing to justify the necessity of this practice. Additionally, he argues that the State's arbitrary approach to translation constitutes language-based discrimination, breaching article 26 of the Covenant. As a lawyer with Afrikaans-speaking clients, he contends that the State's refusal to translate legislation hampers his ability to represent them effectively, resulting in discrimination under article 14. Furthermore, he claims that this practice unjustly impedes the maintenance and development of Afrikaans' official status, violating article 27. Finally, he asserts that the State has not provided an effective remedy to address language discrimination, contravening article 2 (3) of the Covenant.

The author requests the Committee to direct the State party to adopt measures for the expeditious translation of new legislation into all official languages within five years and prioritize translating past core legislation within the same timeframe.

Admissibility: The Committee finds these claims inadmissible due to insufficient substantiation, as the author hasn't provided specific details on personal adverse effects resulting from the alleged failure to translate legislation. Consequently, the Committee deems the communication inadmissible under article 2 of the Optional Protocol. The decision will be communicated to the State party and the author.

SPAIN

CCPR/C/138/D/3305/2019

Mangouras v. Spain

Right to have a sentence review by a high court of the captain of the Prestige catastrophe

The case underscores the critical importance of fair trial rights and the review of convictions under international law. The Committee concluded that Mangouras' right under article 14 (5) of the Covenant, which ensures the review of convictions by a higher tribunal, was violated. This highlights the necessity for States to uphold procedural rights and ensure mechanisms for reviewing convictions, reflecting a broader commitment to human rights and fair judicial processes. The Committee recommended providing Mangouras with an effective remedy and implementing measures to prevent similar violations in the future.

Substantive issues: Right to a trial with due guarantees; equality of procedural means; right to review by a higher court

Facts: Apostolos Ioannis Mangouras, a Greek citizen born in 1935, was the captain of an oil tanker that sank off the coast of Galicia, Spain, in November 2002, spilling 63,000 tons of oil. Initially acquitted of environmental damage but found guilty of disobedience and sentenced to nine months in prison in November 2013, his acquittal was overturned by the Supreme Court in January 2016. The Supreme Court declared him guilty of environmental damage, sentencing him to two years in prison but suspended the sentence for three years in May 2016. Mangouras argued that the Supreme Court's ruling violated his rights to a fair trial and equal means of defense, as it changed facts established by a lower court and concluded new facts without hearing him. Additionally, he was not allowed to participate in the underwater inspections of the wreckage or informed of all test results. His appeals, including one to the Constitutional Court, were dismissed.

Admissibility: The Committee rejected the State's request to reconsider the admissibility of the communication, highlighting that the author had effectively exhausted domestic remedies. It noted that although the author didn't explicitly invoke article 14 (5) in domestic proceedings, his actions sought the protections it offers, specifically the right to have a conviction reviewed by a higher court. The Committee also considered that the constitutional appeal and nullity incident were not effective remedies for the alleged violation, in line with previous decisions that no further domestic remedies needed to be pursued once the highest court had decided the issue, when those remedies does not have a reasonable chance of success.

Merits: The Committee acknowledged the author's claim that his conviction for environmental damage was handed down by the Supreme Court without the opportunity for a full review. While the State party argues that the Supreme Court conducted a thorough review, the author's concern lies in the impossibility of obtaining a review of his conviction at the second instance. Therefore, the Committee must determine whether the State party violated the author's rights under article 14 (5) of the Covenant by not allowing his conviction to be reviewed by a higher tribunal.

The Committee emphasized that article 14 (5) of the Covenant guarantees individuals the right to have their conviction and sentence reviewed by a higher tribunal. This right is violated if someone

previously acquitted at first instance cannot have their conviction reviewed by a higher court. Even if a person acquitted at first instance is later convicted on appeal by a second instance court, including the highest judicial instance, this should not impair their right to a review.

Furthermore, the Committee acknowledged the State party's argument that the Supreme Court judgment in the author's case did not review established facts but only the legal assessment made by the court of first instance. However, the Committee highlighted the author's contention that a review of an acquittal differs from a review of a conviction by a higher tribunal. Additionally, while the State party argued that the right to a second hearing does not include the right to appeal against a decision issued by a second instance court, the Committee noted that article 14 (5) of the Covenant does not provide for exceptions like article 2 (2) of Protocol No. 7 to the European Convention on Human Rights. The Committee underscored that the State party, having not entered a reservation to article 14 (5) of the Covenant, is obligated to guarantee this right in all circumstances, regardless of the presence of reservations.

In this case, the Provincial Court sentenced the author for disobeying orders but acquitted him of environmental damage. However, the Supreme Court overturned the acquittal and sentenced the author, also overturning the initial conviction. Despite the technical grounds, the author wasn't given the opportunity for a review as required by the Covenant, leading to a violation of his rights under article 14 (5).

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide the author with an effective remedy that allows for the review of the conviction and sentence imposed;

b) Take all necessary measures to prevent similar violations in the future.

Deadline for implementation: 14 January 2024

Separate opinion: Committee members Farid Ahmadov, Rodrigo A. Carazo, Yvonne Donders, Laurence R. Helfer and José Manuel Santos Pais issued a joint concurring opinion. The members support the Committee's identification of a breach of article 14 (5) of the Covenant, highlighting the nuanced relationship between this article and article 2 (2) of Protocol No. 7 to the European Convention on Human Rights. States bound by both without reservations must align with their broadest interpretations, ensuring the right to appeal even when national practices or interpretations, such as Spain's, might suggest narrower limits.

Despite Spain's reliance on a more restrictive view under Protocol No. 7, practical examples from Colombia, Argentina, and even Spain demonstrate mechanisms to ensure appeal rights, challenging the notion of a "logical limit" to the right of appeal and aligning with the principle that the most favorable human rights provision should prevail. This broader approach reflects a commitment to ensuring that rights under concurrent treaties are harmoniously interpreted to favor the individual's right to appeal, emphasizing the expansive scope of article 14 (5) of the Covenant over the narrower constraints of Protocol No. 7 to the European Convention on Human Rights.

More information on the case:

- **Le Point** - Marée noire du Prestige : capitaine, assureur et propriétaire jugés responsables
- **Antena 3** - Quedan absueltos los tres acusados de causar la catástrofe del Prestige

CCPR/C/137/D/3165/2018

Carles Puigdemont i Casamajó v. Spain

Suspension of the Catalonia President without prior conviction or proportional assessment

This is a noteworthy case as it stands out due to its intersection of political, legal, and human rights dimensions within the context of the Catalan independence movement in Spain. It raises complex questions about the balance between political activism and legal obligations, particularly regarding the suspension of elected officials during criminal proceedings relating to his political activities. It also dealt with the question of automatic suspension in case of persons who stage a violent and public uprising, interestingly the domestic courts found the criteria to be met and suspended the author's participation. This case underscores the challenges in reconciling domestic legal processes with international human rights standards, highlighting the importance of procedural fairness and the right to political participation in contentious political environments.

Substantive issues: Voting and elections; participation in public affairs; freedom of expression; freedom of assembly; right of peaceful assembly

Facts: The author, Carles Puigdemont i Casamajó was the President of the *Generalitat* of Catalonia from January 10, 2016, to October 27, 2017, and during this time he navigated a tumultuous period marked by Catalonia's declaration of independence. This declaration led to a constitutional crisis, triggering a heavy-handed response from the Spanish government, including arrests and legal proceedings against pro-independence leaders, including the author.

The crisis escalated when Catalonia held a referendum on independence on October 1, 2017, despite the Spanish Constitutional Court's suspension of the referendum law. The referendum resulted in a 92% vote in favor of independence, but only a 43% turnout, amidst clashes with police officers sent by the Spanish government. Following Catalonia's declaration of independence on October 27, 2017, the Spanish government dissolved the Catalan Parliament under article 155 of the Constitution and called for new regional elections on December 21, 2017.

On October 30, 2017, the Spanish Attorney General initiated criminal proceedings against the author and other pro-independence leaders for rebellion, sedition, and misappropriation of public funds. Facing imminent arrest, the author and five ministers fled to Belgium on October 30, 2017. Subsequently, on November 3, 2017, a European arrest warrant was issued for the author and other exiled leaders for failing to appear before the National High Court.

Amidst legal battles, the author was re-elected to the Parliament of Catalonia on December 21, 2017, maintaining a majority of pro-independence parties. However, attempts to nominate the author as President of Catalonia faced challenges due to legal restrictions imposed by the Spanish government and courts. Despite efforts to petition the Constitutional Court and the Supreme Court for relief, the author faced prolonged legal hurdles, which hindered his political rights and rendered him unable to assume office.

In January 2018, after a series of legal challenges and dismissals of petitions by the Constitutional Court and the Supreme Court, the author opted to step aside to allow the nomination of an alternative candidate for the presidency of Catalonia. This decision was prompted by the author's perceived lack of viable options due to the ongoing legal constraints and the risk of detention upon

returning to Spain. Thus, the author relinquished his candidacy to avoid further political deadlock and enable the functioning of the government of Catalonia under new leadership.

The author asserts that the State party's actions were aimed at obstructing his exercise of freedom of political opinion, contrary to article 9 of the Covenant. He contends that the measures taken by all branches of the government constitute a systematic and cumulative infringement of his rights to political association, assembly, and peaceful protest, as outlined in articles 21 and 22 of the Covenant. Additionally, he argues that the State party violated his rights under article 25 of the Covenant, which safeguards the right to participate in public affairs, including voting and standing for election. The author claims to have exhausted domestic remedies, as his appeals to the Constitutional Court and the Supreme Court, which could have provided redress, were rejected, leaving him with no other recourse. He urges the Committee to recognize the State party's violations and demand remedial action to halt these alleged infringements.

Admissibility: The Committee noted two main issues on which it decided the admissibility of the author's claims: (a) obstruction of the author's candidacy for the Catalan Presidency and (b) his suspension as a deputy in the Parliament of Catalonia. In this regard, the Committee held that the author raised for the first time allegations under article 14 (2) of the Covenant in his comments on the State party's observations on the merits Since the author has not explained why he could not submit these allegations under article 14 (2) at the time of the initial communication or at the time of submitted an expanded version thereof, the Committee held these allegations to be an abuse of the right of submission and hence inadmissible. At the same time, the Committee also found that the author's general claims under articles 19, 21 and 22 had not been sufficiently substantiated in relation to either of the two specific actions on which his communication was based and therefore finding those claims inadmissible as well.

Regarding the mootness of the communication due to the author stepping down as a deputy, the Committee maintained that the alleged harm remains until retroactively repaired. The State party's argument that the communication was premature due to pending domestic rulings was rejected, in view of procedural economic considerations and the opportunity for both parties to present their case.

Concerning exhaustion of domestic remedies, the Committee noted the author's efforts to prevent alleged violations and ineffective nature of the subsequent remedies that were made available to him. The Committee found the arguments substantiated and that no other reasonably available remedies were offered by the State party. Consequently, the communication was declared admissible under article 25 of the Covenant for consideration of its merits.

Merits: The Committee decided to determine the merits of the claims made under article 25 as per the above-mentioned two main issues. With respect to obstruction of the author's candidacy for the Catalan presidency, the author claimed that requiring physical presence at the investiture meeting obstructed his candidacy, that such a requirement was not established by law, that investiture was not essential for fulfillment of parliamentary functions, and the true goal of insisting on it was to prevent his election due to past events. Additionally, returning to the State party would result in his arbitrary detention in connection with the criminal charges levelled against him.

The Committee noted that certain conditions for exercising rights under article 25 had to be established by law, including implicit ones, and while exceptions were made during the COVID-19 pandemic, physical presence was not automatically deemed unnecessary. Still, despite being abroad, the author exercised various political rights and held proxy voting in parliament. Therefore, the Committee found no violation of article 25 of the Covenant, as the requirement of physical presence aimed to protect the rights of parliamentarians and constituents.

Regarding the second issue of the author's suspension as a deputy in the Parliament of Catalonia, the Committee noted his argument that the suspension was not established by law, as the offence of rebellion under article 472 of the Criminal Code is limited to persons who stage a violent and public uprising. A similar criterion of violence is also included in article 384 bis of the Criminal Procedure Act. As a result, he claimed that his actions cannot be understood as meeting this criterion. Concerning article 472 of the Criminal Code, the Committee noted the State party's argument that the investigating judge's assessment was not arbitrary. However, it was not tasked with evaluating the courts' interpretation of domestic law or the facts. Instead, it had to determine if the initial application of article 472 and the resulting application of article 384 bis met the Covenant's requirements.

The Committee acknowledged that the investigating judge charged the author with rebellion for inciting protest, but that he was eventually convicted of sedition as no violence occurred. It emphasized the presumption of peaceful assemblies and the lack of evidence linking the author to violent acts. Concerning article 384 bis of the Criminal Procedure Act, the Committee recognized the State party's interest in upholding civic responsibility and the rule of law but noted the author's argument that such suspensions should be reserved for extraordinary circumstances. It deemed the automatic suspension of elected officials before conviction incompatible with the Covenant's requirements of reasonableness, and objectivity.

In conclusion, the Committee found that the State party violated the author's rights under article 25 of the Covenant, as the decision to prosecute him for rebellion automatically led to his suspension as a deputy, without reasonable and objective grounds established by law.

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide the author with an effective remedy;
b) Make full reparation to individuals whose Covenant rights have been violated;
c) Take steps to prevent similar violations from occurring in the future.

Deadline for implementation: 10 September 2024

Separate opinion: Committee member José Santos Pais issued a partially dissenting opinion. He discussed the author's actions amid a tumultuous political landscape in Spain. Despite facing criminal charges and fleeing to Belgium, the author continued his political activities, including seeking re-election and pursuing a candidacy for the Presidency of the *Generalitat*. However, legal challenges ensued, leading to his suspension from public duties under the Criminal Procedure Act. Santos Pais argues that the suspension was necessary given the serious political and social circumstances, emphasizing the reasonable, proportionate, and predictable nature of the measure. Additionally, he also contends that the author's attempts to challenge the suspension through domestic and international avenues were premature, highlighting challenges in effectively applying the exhaustion of the domestic remedies principle. Ultimately, according to Santos Pais, the author's actions, which defied legal norms and court decisions, compromised his political rights and precluded a violation of article 25 of the Covenant in the context of his suspension from the Parliament of Catalonia.

More information on the case:

- **El País –** Puigdemont celebra una resolución de un comité de la ONU que dictamina que España no debió suspenderlo como diputado.
- **La Vanguardia –** ONU dictamina que España vulneró el derecho a la participación política de Puigdemont.
- **The Guardian** – Spain has violated Puigdemont's political rights, his lawyers tell UN

CCPR/C/139/D/2762/2016

D.E.P. v. Spain

Delayed contesting violations of trial rights through domestic remedies

Substantive issues: Fair trial; competent, independent, and impartial tribunal

Facts: The author, a Spanish citizen, alleges a violation of his rights under article 14, paragraph 1, of the Covenant. He worked as a manager in an agricultural company accused of tax fraud. Despite initial dismissal, after appeals, he was convicted in a trial in 2012. Lack of impartiality in the judicial process is alleged due to the involvement of judges who were involved in previous decisions. Citing article 219 of the Organic Law of the Judiciary, the author argues that one of the magistrates should have abstained from hearing the appeal due to prior involvement in the case. The author notes the contrast with another magistrate who did abstain from the initial trial proceedings, which is seen as significant.

Although he attempted to appeal, his appeal was rejected. Then, when attempting to file a constitutional appeal with the Constitutional Court, it was not admitted. The sentence became final in 2013, and despite requesting the suspension of the execution of the sentence, this was denied, resulting in the issuance of a prison order.

The author alleges a violation of his right to a fair trial under article 14, paragraph 1, of the Covenant. He contends that the State party denied him access to the recusal procedure against judges and magistrates, as provided for in Spanish law, and failed to correct the violation of his right to an impartial tribunal. Despite exhausting domestic remedies, he argues that the Magistrate in question did not recuse himself despite grounds for abstention, violating his right to a fair trial. The author seeks a declaration of violation and redress, including nullifying the rulings and fair compensation.

Admissibility: The Committee considers the State party's claim that the communication constitutes an abuse of the right to submit communications under article 3 of the Optional Protocol due to filing the motion to set aside proceedings six months after being notified of the appeal dismissal. However, since the author submitted the communication within the five-year period after exhausting domestic remedies, the Committee deems it not an abuse of the right.

Regarding the timeliness of the motion to set aside proceedings, the Committee notes that the author raised the issue of the magistrate's impartiality nearly six months after being notified of the appeal dismissal, which was beyond the legally established 20-day period. The Committee emphasizes that authors must exercise due diligence in utilizing available remedies. In this case, the author did not provide justification for the delay or demonstrate that he became aware of the grounds for recusal later. Therefore, the Committee finds the communication inadmissible due to the author's lack of diligence in utilizing available domestic remedies.

SRI LANKA

CCPR/C/137/D/2406/2014

V.M. v. Sri Lanka

Failure to investigate and provide effective remedy for severe torture to a former Tamil member

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; right to an effective remedy

Facts: The author of the communication is V.M., a national of Sri Lanka and a former member of the Liberation Tigers of Tamil Eelam (LTEE). After leaving the group, he was abducted and taken to a police station where he was interrogated, beaten repeatedly, threatened and detained in an overcrowded cell with poor hygienic conditions. For several weeks he was subjected to severe. He was forced to sign a statement he did not understand. He was treated for 3-4 days in a hospital and required 18 stitches to his intestines. He appeared in court but did not understand the proceedings as he was not provided an interpreter. He was detained between court hearings but was finally released after paying a bribe. He fled to Switzerland and was granted refugee status. He did not file claims for relief in Sri Lanka, alleging that relief is either unavailable or ineffective. He claims that the State party violated his rights under article 7, relating to the prohibition against torture, alone and in conjunction with article 2 (3).

Admissibility: There were technically multiple avenues available to the author in Sri Lanka that would have allowed him to seek relief. With regard to applications before the Supreme Court, there is a one-month deadline which the author could not have met due to his injuries. Moreover, procedures available in the State party lack basic procedural guarantees to be considered an effective determination of a claimant's rights. Certain procedures have only resulted in convictions of perpetrators in exceptionally rare circumstances. Some procedures do not have the power to order compensation. Thus, the State party failed to demonstrate that any of the alleged domestic remedies available to the author would have been effective.

Merits: The Committee noted the author's allegations that he was subjected to severe torture, rape, ill-treatment and threats by State agents while in detention, causing him to require significant medical treatment, and was only released after paying a bribe. The Committee noted that in Switzerland, he was diagnosed with several conditions consistent with these allegations. The State party did not provide an effective remedy or investigation into his claims by a competent and independent judicial body and failed to respond to the author's allegations on the merits. Thus, the State party violated article 7, read in conjunction with article 2 (3).

Recommendations: The State party should, *inter alia*, to take appropriate steps to:

a) Conduct a thorough, impartial, independent and effective investigation into the facts submitted by the author;
b) Prosecute, try and punish those responsible for torturing the author, and make those measures public;
c) Provide adequate compensation and take appropriate measures of satisfaction to the author for the violations suffered.

Deadline for implementation: 10 September 2023

SWEDEN

CCPR/C/137/D/2813/2016

Christer Murne et al. v. Sweden

Use of lethal force and arbitrary deprivation of life of a person with psychological disability

Substantive issues: Right to life; torture; cruel, inhuman or degrading treatment or punishment; right to an effective remedy

Facts: The authors are Swedish nationals and are the parents and sister of Daniel Murne (deceased). At the time of the events, Daniel was 22 years old and started showing signs of psychosis and his mental health started deteriorating. His parents called the police so that he could be hospitalized, however, when the police arrived, Daniel was alone at home and the police were unaware of his condition. Daniel got agitated and in the ensuing confusion, one of the police officers aimed to shoot at Daniel's leg which misfired and killed him instantly. The investigation of Daniel's death was inconclusive, and a district court held in a judgment that Daniel had been unpredictable and aggressive. Since the lives of the police officers had been under attack, one of the police officers had acted in self-defense. The Court of Appeal confirmed this ruling and held that no serious objections could be made against the actions of the police officer. The authors' application for leave to appeal was denied by the Supreme Court.

The authors commenced civil proceedings for damages for violation, pain, suffering and loss of income from work, which was dismissed by the District Court. The Court of Appeal and Supreme Court rejected the authors' leave to appeal. The authors lodged an application with the European Court of Human Rights which was declared as inadmissible. The authors allege the arbitrary deprivation of Daniel's life in violation of his rights under article 6 read alone and in conjunction with article 2 (3). The authors claim that the parents' seeing their son shot dead and the lack of effective investigation violated their rights under article 2 (3) read in conjunction with article 7.

Admissibility: Contrary to the State party's submission, the Committee noted that the 5-year delay in submitting the present communication was exceeded only by a few months and it was attributable to the impact caused by Daniel's death on his family and the lack of capacity exhibited by the authors' counsel in pursuing the case. The Committee held that the communication did not constitute an abuse of the right of submission under article 3 of the Optional Protocol. Furthermore, the Committee held that there was no obstacle in examining the communication under article 5 (2) of the Optional Protocol as the European Court of Human Rights' ruling on inadmissibility did not give rise to the conclusion that it had sufficiently considered the merits of the matter in declaring inadmissibility.

The Committee found that the authors' claims of their own rights under article 7 as being insufficiently substantiated and hence inadmissible under article 3 of the Optional Protocol. The Committee noted the authors' claims regarding flaws in investigation, arbitrary deprivation of Daniel's life and declared the communication in this aspect under article 6(1) read alone and in conjunction with article 2 (3) (a) as admissible.

Merits: On the authors' allegations of alleged flaws in the investigation and court proceedings, the Committed noted that the authors' claims requested a re-evaluation of the facts and evidence in the domestic proceedings. The Committee however found that it had not been established that the investigation and judicial proceedings were arbitrary or amounted to denial of justice. Furthermore, the authors' claims on deficiencies in police training and legislation on self-defense were of a general nature, and the Committee held that the authors had not established how Daniel's rights under article 6 had been breached due to such deficiencies.

However, the Committee found that there were certain deficiencies in planning and coordinating the operation while confronting Daniel, where there was an unnecessary use of firearms and failure to protect Daniel by considering his psychological disability. The Committee believed this amounted to arbitrary deprivation of his life in violation of article 6 of the Covenant.

Recommendations: The State party is obliged to provide adequate compensation to the authors and prevent future violations of similar matters.

Deadline for Implementation: 18 September 2023

Separate opinions: Committee members Farid Ahmadov, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha and Teraya Koji issued a joint dissenting opinion. For them, there was an abuse of right of submission, and there was no violation of the authors' rights under article 6 as the State party considered all information and evidence available.

Committee member Yvonne Donders issued a partially dissenting individual opinion. She disagreed with the views that the authors' gravity of violations claimed justified the delay in submitting the communication as 'violations' seems to predetermine a finding on the merits of the case.

CCPR/C/139/D/3674/2020

J.-C. S. v. Sweden

Deportation of a person belonging to Tutsi ethnicity to Burundi

Substantive issues: Right to life; torture; cruel, inhuman or degrading treatment or punishment

Facts: The author is a Burundian of Tutsi ethnicity and is a member of an opposition political party in Burundi. He was also an employee of a popular media outlet in Burundi. On a search of the author's home the police found a photo of the author with the president of the opposition party, which led to the author's persecution by the National Intelligence Service. Subsequently, in 2015 the author also took part in protests against the then Burundi President's bid for a third presidential term. Post this, the author worked for the International Organisation for Migration (IOM) in Burundi. Subsequently, fearing for his safety after a staff member of the IOM was killed, in 2017 the author decided to leave Burundi and settle in Sweden, where he continued his political activities as a member of the opposition party.

The author applied for asylum in Sweden, but the Swedish Migration Agency rejected his application and decided to expel him to Burundi noting that the general situation in Burundi and the author's individual circumstances, despite him being Tutsi did not necessitate the grant of asylum. The author claims that his return to Burundi would violate his right to life, security, and liberty and right against torture under articles 6, 7, 9 and 13 of the Covenant.

Admissibility: The Committee took note of para. 12 of its General Comment No. 31 which imposed a general legal obligation on States parties to the Covenant not to extradite, deport, expel, or remove a person from its territory when there were substantial grounds for believing that there was a real risk of irreparable harm as under articles 6 and 7 of the Covenant. The Committee, contrary to the author's claims, considered that the fact that author stayed in Burundi for around 2 years after his participation in the protests against the Presidential bid and faced no persecution contradicts his present claims that he would be at risk on his return to Burundi, and that a mere risk of imprisonment cannot be claimed as a violation of article 9.

Furthermore, the Committee held, contrary to the author's argument regarding procedural errors and non-consideration of material evidence by the Swedish Migration authorities, that the author had not sufficiently substantiated his claims under article 13. Moreover, the Committee held that the Swedish authorities had considered all claims of the author and that the author had not demonstrated that the Swedish authorities acted arbitrarily or engaged in conduct amounting to manifest denial of justice. For these reasons the Committee decided the communication as inadmissible under article 2 of the Optional Protocol.

CCPR/C/139/D/3656/2019

S.K. v. Sweden

Inadmissibility in a case of deportation from Sweden to Liberia

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment

Facts: The author is a Liberian national whose application for asylum has been denied in Sweden. The author claims to have been the vice president of a Liberian organization which was instrumental in working towards the removal of the Speaker of the House of Representatives for his alleged involvement in a corruption scandal. The author claims to have played an active role in the same, which attracted threats against him and his family, due to which he fled to Sweden where he subsequently applied for asylum. He claims that while he was in Sweden, his uncle's home was burned down, and his mother was murdered. The Swedish Migration Agency rejected the author's application for asylum and this decision was upheld by the Migration Court noting that the author's claims were vague and lacked credibility and detail.

The Migration Court also noted that civil society activity in Liberia was not restricted and the author not lodging a complaint with the police regarding his mother's murder also pointed towards lack of credibility of such claims. Furthermore, the Court held that authorities in Liberia were generally not unable or unwilling to protect its citizens and that the author had insufficiently substantiated that he would lack protection of the State on his return to Liberia. The author in his communication claims that this violates his right under article 7 of the Covenant as he would be subject to cruel, inhuman or degrading treatment if he were to return to Liberia.

Admissibility: The Committee noted that the author in his communication challenges the assessment of evidence and factual conclusions reached by the State party's authorities but fails to substantiate as to why such an assessment is arbitrary or amounts to a denial of justice. The Committee held that the author failed to fully substantiate his claim that there would be a violation of article 7 of the Covenant on his return to Liberia. For these reasons the Committee decided the author's communication as inadmissible under article 2 of the Optional Protocol.

CCPR/C/139/D/3183/2018

D.P. and E.P. v. Sweden

Homeschooling of child on the philosophical and pedagogical convictions of parents

Substantive issues: Right to education; freedom of belief; non-discrimination

Facts: The authors are dual nationals of Sweden and the United States of America and submit the complaint on their own behalf and on behalf of their minor daughter, C.P., who is also a dual citizen. Owing to excellent academic performance of C.P. due to home-schooling for around 3 months and resultantly being promoted to studying with older children, the authors requested permission from the municipal Child and Education Board to homeschool C.P. Though the law mandates that children of school age must regularly attend school, the law also provides for alternative schooling in certain circumstances.

The authors claimed that the public education was not sufficient to meet the requirements of their daughter, and given their philosophical and pedagogical convictions, homeschooling would be better suited to meet her educational needs, especially given their daughter's bilingualism and fluency in English. The Child and Education Board rejected this request on the reasoning that permission for alternative education could only be granted if it can be seen as an adequate alternative and only when transparency was met and there was an exceptional circumstance.

The authors claim that this has forced them to leave the country in order to homeschool their children in accordance with their convictions. The authors claim in the communication that their right to privacy without any unlawful interference, respect for religion, freedom of belief of one's choice, right of parents to ensure religious and moral education of their children in conformity of their convictions, and non-discrimination on the basis of any political or other opinion have been violated under articles 2 (1), 17, 18 (1), (3) and (4), 26 and 27 of the Covenant.

Admissibility: The Committee held that the provision under article 2 of the Covenant under which the authors made a claim, and that it cannot give rise to a separate claim under the Optional Protocol as they lay down general obligations for State parties and hence the same would be inadmissible *ratione materiae* under article 3 of the Optional Protocol.

The Committee also held that the authors had failed to substantiate that the rejection of homeschooling had impacted their privacy and family under article 2. With respect to the authors' claims under article 18, the Committee was of the opinion that the Covenant does not guarantee everyone's right to education as such. The Committee noted that the authors left the State party and relocated to the US on the final decision regarding their request, and that the State party's decision did not hinder the parents to simultaneously impart education to their children in line with their own values. This was considered as amounting to the authors challenging the general applicable legal framework and that the claim does not strictly fall under article 18 (1) of the Covenant as the authors did not sufficiently substantiate that integrated education would qualify as a manifestation of 'religion' or 'belief'.

The Committee held that the authors had not sufficiently substantiated that the decision of the domestic authorities was clearly arbitrary or amounted to denial of justice. The Committee also held that with regard to the claims of the authors under articles 26 and 27 regarding non-discrimination and practice of culture, State parties have a margin of appreciation in assessing when similar situations justify different treatment, and the authors in the communication had not substantiated that the domestic authorities' decision was discriminatory. For these reasons the Committee considered the present communication as inadmissible under articles 2 and 3 of the Optional Protocol.

TUNISIA

CCPR/C/138/D/3703/2020

Annie Daboussi et al. v. Tunisia

Doctor accused of committing crimes dies after 30 months in detention due to detention conditions and lack of appropriate medical treatment

Substantive issues: Right to life; cruel, inhuman or degrading treatment or punishment; arbitrary detention

Facts: The authors of the communication are Annie Daboussi, husband of Jilani Daboussi, and their two children, Samy and Sarah, all French nationals. Jilani, a doctor who held various public positions, was accused of embezzlement, corruption, and favoritism. He was the subject of three successive criminal prosecutions and was remanded in custody. At the time, he was 65 years old with no health problems other than diabetes. Shortly after his detention, he suffered a cardiac arrest. It took the prison authorities several hours to react and organize his transfer to a hospital. He was resuscitated but suffered from complications which required significant treatment, and he was treated in the detention center under unhygienic circumstances. It was finally decided that he would be released, but he died that same night after 30 months in detention. The authors attempted to initiate procedures in France but have had no news on progress of the procedure. They claim Covenant violations of articles 6 (1) (right to life), 7 (prohibition against torture or cruel, inhuman or degrading treatment or punishment), 9 (1) (freedom from arbitrary detention), 10 (1) (humane treatment), 14 (1) (fair trial), 3 (a) and (c) (due process), and 17 (prohibition against interference with privacy, family, home or correspondence and right to honor and reputation).

Admissibility: The Committee concluded that the authors did not fail to exhaust domestic remedies because none of the numerous complaints filed by the authors led to any investigation and no other domestic remedies would have offered a reasonable prospect of redress. The authors' claims regarding articles 14 (1) and 3 (a) were general and not sufficiently substantiated and were therefore inadmissible. Furthermore, the authors did not take any steps before domestic courts in relation to attacks on Jilani Daboussi's reputation and insufficiently substantiated their other article 17 claims, thus claims under article 17 were inadmissible.

Merits: The Committee concluded that the State party's failure to investigate numerous complaints regarding Jilani Daboussi's treatment considering his serious medical condition constituted a failure in its duty to protect the life of Jilani Daboussi in violation of article 6 (1) of the Covenant. The Committee also concluded that in view of the seriousness of the allegations and their substantiation, considering that the State party failed to provide specific evidence of measures taken to provide safe and hygienic detention conditions, the communications disclosed a violation of article 7 of the Covenant. The Committee declined to separately consider whether the communication reveals violations of article 10. The Committee concluded that the 30-month pretrial detention was arbitrary in violation of article 9 (1) of the Covenant because it was not

provided for by Tunisian law, was repeatedly extended without explanation, and decisions could have been taken on the merits during that time frame. Finally, the 30-month delay, in consideration of his detention and medical conditions, also violated article 14 (3) (c) of the covenant.

Recommendations: The State party should provide adequate compensation to the authors for the violations that Jilani Daboussi suffered.

Deadline for implementation: 10 January 2024

More information on the case:

- **Franceinfo** - Reims: le combat de Sarah Daboussi pour son père, mort en Tunisie après 31 mois d'incarcération sans procès
- **VOA Afrique** - Enquête en France sur la mort un Tunisie d'un dépoté proche de l'ancien régime

UZBEKISTAN

CCPR/C/138/D/3025-3037/2017

Lilya Mullina et al. v. Uzbekistan

Jehovah's Witnesses administrative conviction of unlawful religious activity, arbitrary arrest and illegal detention

Substantive issues: Right to liberty and security of person; interference with privacy, family, home of correspondence; right to freedom of thought, conscience and religion; freedom of expression freedom of assembly; freedom of association

Facts: The authors of both the communication are Jehovah's Witnesses and nationals of Uzbekistan. As per the facts in the communication no. 3025/2017, the authorities entered the author's house on the pretext of "passport checking" and proceeded to search the home unlawfully and to seize religious publications published by Jehovah's Witnesses. Similarly in communication no. 3037/2017, the police entered the author's home without permission where a small group had gathered to read and study the Bible and enjoy a social visit and searched each person and confiscated personal property. The police then transported the authors to the police station, where they were detained for about two hours.

In both cases, the authors were tried and convicted for the violation of the Code of Administrative Responsibility for illegal storage of religious literature and for conducting unlawful religious activities in their homes. As a result, they were sentenced to pay heavy fines and all the confiscated material was destroyed. Their appeals were summarily rejected by the Courts and their motion filed with the Prosecutor General of Uzbekistan has been pending for more than a year.

Having exhausted all the domestic remedies, the authors filed the present communications claiming a violation of their rights under 9 (1) (only for communication no. 3037/2017), 17 (1), 18 (1) and (3), 19 (2) and (3), 21 (1) and (2) and 22 (1) and (2) of the Covenant on the grounds that their privacy was breached during a home search for religious literature, and their convictions were based on Jehovah's Witnesses' lack of registration, infringing on their freedom of belief and expression. They assert that freedom of religion should not depend on registration, and their activities were unjustly deemed illegal.

Admissibility: The Committee noted that the authors have exhausted their domestic remedies and they have sufficiently substantiated their claims under articles 9, 17, 18, 19, 21 and 22 of the Covenant, for the purposes of admissibility.

Merits: The Committee scrutinized communications and noted the authors' contentions that the authorities intruded into a residence without consent, conducted unwarranted searches and detained them without clarification, it found that the State party failed to substantiate these actions. Consequently, the Committee determined that these actions contravened the authors' rights under article 9 of the Covenant concerning liberty and security of person. Moreover, the authors asserted breaches of their rights under article 17 and article 18 due to unauthorized entry

into their homes by the police and confiscation of religious materials. The State party's failure to justify these incursions led the Committee to conclude that they violated the authors' rights. Furthermore, the Committee addressed constraints on the authors' freedom of religion under article 18 owing to their convictions and fines for religious activities. The State party failed to establish the necessity and proportionality of these limitations, thereby violating the authors' rights. Additionally, the authors alleged violations of their freedom of expression and association under articles 19 and 22 due to police raids and seizures. The Committee deemed these actions disproportionate and unjustified by the State party, constituting further violations. In conclusion, the Committee was of the view that the State party failed to justify its actions and violated the rights of the authors under the Covenant.

Recommendations: The State party is obligated to:

a) Provide the authors with adequate compensation, including reimbursement of any legal costs they have incurred;

b) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 15 January 2024

CCPR/C/139/D/3089-3093/2018

Irina Nasirova et al. v. Uzbekistan

Administrative conviction of Jehovah's Witnesses for unlawful religious activity

Substantive issues: Interference with privacy and home; freedom of thought, conscience and religion; freedom of expression; freedom of assembly; freedom of association

Facts: The five authors of the communications are Jehovah's Witnesses from Uzbekistan. All of them were subjected to substantial administrative fines of between 20 and 100 times the minimum wage for illegally producing, processing or distributing religious materials. In all five cases, the authors' homes were searched by the police without search warrants on the pretext of taking "extensive measures", "passport checks" and "anonymous calls" and their religious literature and personal belongings were seized and destroyed. All the authors were subsequently charged with offences under the Code of Administrative Responsibility and were held guilty of illegal possession of religious materials based on the fact that Jehovah's Witnesses were not registered as religious organizations and were sentenced to hefty fines.

All the appeals filed by the authors were rejected, the decisions of the supervisory reviews are still pending for over a year and there is no direct appeal to the Supreme Court of Uzbekistan. Hence the present communications were filed claiming violations under articles 17, 18, 19, 21 and 22 of the Covenant on the grounds that the police unlawfully entered their homes and confiscated their religious literature, they searched and seized their belongings, and they were prevented from exercising their right to peaceful assembly and freedom of association.

Admissibility: The Committee noted that the authors have exhausted all the domestic remedies, and the State party has not contested the admissibility of the communications due to non-exhaustion. The Committee considered that the authors had substantiated their claims under articles 17, 18, 19, 21 and 22 of the Covenant.

Merits: Contrary to the submissions by the State party, the Committee noted that even though in two cases there was an authorization to search provided by the prosecutor, there was no such authorization shown at the time of the search. Additionally, there was no information provided about the threat to public safety that prompted the police to enter and search the authors' homes. Therefore, it was concluded that the search of the authors' homes was disproportionate to the threat of harm allegedly associated with the possession of religious literature and was a violation of the authors' rights under article 17 (1) of the Covenant. Concerning article 18, the Committee was of the view that the punishment in the form of substantial fines of between 20 and 100 times the minimum wage amounts to a disproportionate limitation of their right to manifest their religion under article 18. The Committee did not deem it necessary to examine the same facts for violation of articles 19, 21 and 22 of the Covenant.

Recommendations: The State party is obligated to:

a) Provide the authors with adequate compensation, including reimbursement of any legal costs they have incurred and of the fines paid;

b) Take all steps necessary to prevent similar violations from occurring in the future.

Deadline for implementation: 10 April 2024

VENEZUELA

CCPR/C/139/D/3066/2017

Omaira del Carmen Ramírez v. Venezuela

Arbitrary eviction targeting a woman and her children within the context of a police and military operation

The importance of this case lies in the Committee's failure to provide justification for not separately examining complaints related to article 24 (children's rights). Multiple Committee members issued multiple separate opinions since they believed that both the negative obligation (violent eviction without due process) and the positive obligation (failure to provide alternative housing) should have been addressed, indicating a violation of article 24 (1). Additionally, the case is significant due to the State's lack of cooperation during the proceedings, which increased its burden of proof.

Substantive issues: Home; cruel, inhuman, or degrading treatment; access to courts; effective remedy

Facts: The author is Omaira del Carmen Ramírez, a Venezuelan citizen also representing her children, Greyber Alejandro Coronado Ramírez and Grendy Alejandra. The claim relates to the government's *Operativos para la Liberación del Puebo* (OLP), police and military operations to combat insecurity where mass human rights violations occurred. The author and her children were forcefully evicted from her apartment during one such operation, causing a deterioration in living conditions and psychological well-being. Despite filing a constitutional protection action seeking restitution or alternative housing, the author has not received a response from the Venezuelan Supreme Court. The author asserts that she exhausted all available domestic remedies, claiming a violation of her right to housing and related rights.

The author alleges that she and her children were forcibly evicted without notice or relocation options, violating their rights under article 17 (1) of the Covenant, and subjecting them to cruel, inhuman, or degrading treatment as per article 7. Furthermore, the author contends that the eviction was motivated by punitive measures related to her adult son's alleged misconduct, constituting an illegal and arbitrary punishment without due legal process, violating article 14 and article 15 (1) of the Covenant. The author also alleges a violation of articles 2 (3) and 14 (1) as the authorities did not provide the opportunity to legally contest the eviction.

The State party's non-cooperation is noted, as it failed to provide observations on the admissibility and merits of the communication, despite multiple invitations. The Committee emphasizes the State's obligation to examine allegations in good faith and provide relevant information. The lack of response requires giving due weight to the author's claims, provided they are well-founded.

Admissibility: The author exhausted domestic remedies by filing a constitutional protection action, but the lack of response made it ineffective. Allegations under article 15 (1) are declared

inadmissible due to insufficient demonstration of raising them in substance at the national level in the application for *amparo* or before the national court. Claims related to articles 7, 17 (1), 24, and 14 (1) (read with article 2 (3)) are considered admissible, and the Committee proceeds to examine them on the merits.

Merits: The Committee acknowledged the author's claim of being forcibly evicted, constituting a violation of their right to home under article 17 (1) of the Covenant. The eviction, carried out without presenting a search warrant or legal justification, occurred in the context of combating organized crime. Despite finding nothing illegal, no legal proceedings were initiated. The Committee deemed this eviction arbitrary, as it lacked due process and consideration of consequences, thus violating their rights under article 17 of the Covenant.

The Committee acknowledged the author's claim that the forced eviction of her and her minor children, without offering alternative housing, resulted in extreme suffering amounting to cruel, inhuman, and degrading treatment under article 7 of the Covenant. Considering the violent raid and the absence of alternative housing, particularly impacting vulnerable minors, the Committee deems the eviction punitive and arbitrary, violating their rights under article 7. Therefore, it will not separately address claims related to the violation of article 24 of the Covenant.

The Committee acknowledged the author's claim that she was unable to challenge her eviction effectively or have her rights adjudicated by a court, as her application for *amparo* remains unresolved. Referring to its general comments, the Committee noted that the author lacked access to an effective remedy to challenge the eviction and obtain redress for the harm suffered, violating her rights under article 14 (1) in conjunction with article 2 (3). Therefore, the Committee found a violation by the State party of the author's and her minor children's rights under articles 7, 17 (1), and 14 (1) in conjunction with article 2 (3) of the Covenant.

Recommendations: The State party is obligated, *inter alia*, to:

a) Provide redress, including compensation and alternative housing;
b) Prevent similar violations.

Deadline for implementation: 25 April 2024

Separate opinions: Committee member Hernán Quezada issued a concurring individual opinion. For him, the Committee agrees that the State violated the rights of the author and her two children. However, there is concern about the lack of clear justification for the decision not to examine complaints related to article 24 separately. Committee member Hernán Quezada emphasizes the importance of proper justification, especially regarding the protection of children's rights. The individual opinion aims to highlight this concern without challenging the overall conclusion.

Committee members Wafaa Bassim, Rodrigo A. Carazo, Koji Teraya and Carlos Gómez Martínez issued a partially concurrent joined opinion. The author disagrees with the Committee's decision not to separately address the complaint regarding the violation of article 24. The members argue that the Committee's decisions should be adequately reasoned and propose an alternative wording, emphasizing that the distress and suffering under article 7 also cover the lack of protection mentioned in article 24.

Lastly, Committee members Yvonne Donders, Laurence R. Helfer, José Manuel Santos Pais and Tijana Šurlan issued a joint partially dissenting opinion. The members agree with the Committee's findings on violations but argue that the Committee should have also recognized a breach of the "measures of protection" clause in article 24 (1) of the Covenant. The case involves the forceful eviction of a woman and her minor children, leading to precarious circumstances. The State's failure to provide alternative housing violates both the negative obligation (violent eviction without due process) and the positive obligation (failure to offer alternative housing), indicating a violation of article 24 (1).

More information on the case:

- **PROVEA** - Comité de Derechos Humanos de ONU condena desalojo forzoso ocurrido durante OLP.
- **Runrun.es** - Comité de DDHH de la ONU falla a favor de familia desalojada arbitrariamente en una OLP.

CCPR/C/137/D/2888/2016

O.R.C.H., T.G. and S.A.A.M. v. Venezuela

Inadmissibility in a case of censorship (freedom of expression) and the right to participate in public affairs

Substantive issues: Freedom of expression; right to receive information; right to take part in public affairs; right to an effective remedy

Facts: The authors are Venezuelan nationals, O.R.C.H., T.G., and S.A.A.M., representing legal and journalist organizations. They claim Venezuela violated their rights under the Covenant by targeting the NTN24 news channel during the 2014 protests, citing government actions such as suspending the channel and blocking its web pages without legal process, under the guise of preventing unrest. Their legal challenges were ignored, reflecting a broader suppression of freedom of expression through intimidation, control over telecommunications, and digital blackouts, aimed at silencing dissent and controlling information.

The authors claim Venezuela violated their rights under the Covenant by censoring the NTN24 news channel, infringing on their freedom of expression (article 19) and the right to participate in public affairs (article 25). They argue this censorship lacked legal justification, necessary oversight, and proportionality. They also criticize Venezuela's media regulation laws for fostering self-censorship and a State media monopoly, further stifling democratic discourse. Despite legal efforts to challenge these actions, they faced delays and a lack of judicial response, constituting a denial of justice. The authors, representing themselves and associated civil society organizations, argue these actions have directly impacted their ability to engage in and inform public discourse, violating their Covenant rights.

Admissibility: The Committee considered the admissibility of a case against Venezuela, focusing on whether the authors, involved in freedom of expression associations and impacted by actions against the NTN24 channel, had standing as victims. Although the State argued the authors were not direct victims, the Committee recognized their special role in society and their impacted watchdog function. However, the Committee found the communication inadmissible because the authors had not exhausted all domestic remedies, specifically failing to file a constitutional amparo application, a remedy available for restoring rights before violations occurred. Consequently, the communication was declared inadmissible under the Optional Protocol.

05 - CREDITS

The authors of the summaries were the following:

Laura P. Shaw:

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Poorna Poovamma KM:

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Diego Enrique Uribe Bustamante:

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CCPR/C/137/D/3211/2018

CCPR
Centre for Civil and Political Rights

Visiting address:
Rue de Varembé 1 CH-1202 Geneva Switzerland

Postal address:
PO Box 183 CH-1211
Geneva Switzerland

Tel : +41(0)22 / 33 22 555
Email : info@ccprcentre.org
Web : www.ccprcentre.org