



A YEAR IN REVIEW 2020

An Overview of the jurisprudence
of the UN Treaty Bodies

A TB-Net initiative



Coordinated by
the Centre for Civil and Political Rights



With the support of
Open Society Justice Initiative

About TB-Net

TB-Net is an informal group of international NGOs and networks working in strategic partnerships with the UN Treaty Bodies. Created in February 2017, TB-Net's mission is to support and enhance the effectiveness of the UN Treaty Bodies so that they can better contribute to the realisation of the human rights of all persons. TB-Net does so through advocacy, capacity building, technical assistance, and awareness raising through joint activities and projects.

TB-Net comprises the following members: Centre for Civil and Political Rights (CCPR Centre), Child Rights Connect, the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the International Disability Alliance (IDA), The International Movement Against All Forms of Discrimination and Racism (IMADR), International Womens' Rights Action Watch Asia Pacific (IWRAW-Asia Pacific) and the World Organisation Against Torture (OMCT).

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Foreword



2020 was undoubtedly a challenging year, and it was no different for the United Nations Treaty Bodies. However, amidst the complexity and difficulty introduced by the COVID-19 pandemic, most UN Treaty Bodies were able to continue their work on the adoption of individual communication views. Indeed, while most maintained a similar caseload to previous years, the Committee on the Rights of the Child was able to exceed its average caseload.

As there were over 180 individual communications assessed by the UN Treaty Bodies throughout 2020, we have produced this document in order to highlight the cases which we find most significant and identify important trends in the UN jurisprudence. With the goal of providing human rights defenders with an up-to-date view of the approach of each Treaty Body on relevant human rights issues, we have sought to summarise the pertinent legal issues explored in each key case, as well as provided a general overview of the work carried out by the Treaty Bodies in 2020 such as follow-up activities and reporting on views previously adopted.

As a continuation of the project initiated with the 2019 Yearbook and with the hope that this publication will reach even more members of civil society, we are confident that it will serve as a useful tool to assist human rights defenders with their litigation strategy at the universal level, and consequently contribute to the further realisation of human rights throughout the State parties.

Finally, we extend our thanks to all who contributed to this publication, notably Daniella Ferreira, Isis Alves, Tadeja Urbas and all involved staff of TB-Net member organisations. We also take this opportunity to thank the Open Society Justice Initiative for their valuable support.

Patrick Mutzenberg

Director of the Centre
for Civil and Political Rights

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Committee on Economic, Social and Cultural Rights



Introduction

In 2020, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights had 46 signatures and 26 State Parties. Throughout the year, Armenia and the Maldives accepted the Committee's competence to consider individual communications and ratified the Protocol in October and December respectively.

The Committee registered 26 new individual communications in 2020, with most relating to the right to adequate housing in [Spain](#). During the year, the Committee considered 13 communications, however **only one was assessed on the merits**. Three communications were declared inadmissible due to non-exhaustion of domestic remedies or to being insufficiently substantiated, and the other nine were discontinued, five of which by request of the authors.

Of the 13 considered, 12 communications were filed against [Spain](#), with the remaining communication filed against [Argentina](#). The majority of the cases relating to Spain were driven by two factors. Firstly, the **post-2008 severe housing crisis** and secondly the **granting of interim measures**, which provided an immediate incentive to appeal to the Committee and to eventually be able to count on a halt to evictions.

While the Committee considered 20 cases in 2019, we did not find the reduction in examinations in 2020 to be drastic on the basis that pending and examined cases both saw a reduction in submissions. Nonetheless, there are 151 communications pending examination, which means that these cases are not procedurally ready for examination. However, the number of cases ready for examination is 6, which does not amount to massive backlog in total.

The Committee also published its [second report](#) (E/C.12/68/3) relating to its follow up procedure in 2020, which expanded on the views adopted on the following cases: *I.D.G. v. Spain*, *Trujillo Calero v. Ecuador* and *S.C. and G.P. v. Italy*.

For more information, you can consult the [2020 Yearbook on the Committee on Economic, Social and Cultural Rights](#), developed by the Global Initiative for Economic, Social and Cultural Rights.

2020 CESCR case law:

- *Rosario Gómez Pardo v. Spain* (merits decision)
- *Luciano Daniel Juárez v Argentina* (inadmissibility decision)
- *A.M.O. and J.M.U. v. Spain* (inadmissibility decision)
- *M.B.B. v. Spain* (inadmissibility decision)
- *M.J.J.F. and J.A.A. v. Spain* (discontinuance decision)
- *El Bahri and others v. Spain* (discontinuance decision)
- *D.E.B. and L.M. v. Spain* (discontinuance decision)
- *J.S.M. et al. v. Spain* (discontinuance decision)
- *V.D.N. et al. v. Spain* (discontinuance decision)
- *H.B. et al. v. Spain* (discontinuance decision)
- *N.J.M.C. v. Spain* (discontinuance decision)
- *C.P.V.H. v. Spain* (discontinuance decision)
- *G.V.S.O. v. Spain* (discontinuance decision)

Rosario Gómez-Limón Pardo v. Spain

Following an eviction which proceeded without proper assessment, the Committee on Economic, Social and Cultural Rights found a violation of the author's right to adequate housing

Substantive Issues: Right to adequate housing

Relevant Article: Article 11

Facts

In 2012, the home in which 73-year-old Rosario Gómez Limón Pardo had lived for most of her life was purchased by a new owner. Upon transfer of title, the new owner sought to terminate the author's rental contract and after two years, a Madrid Court ordered her to vacate the property. The community of Madrid offered the author a shared accommodation or a temporary place in a retirement village, both of which she

rejected as unsuitable given her age, recent cancer diagnosis and partial disability. The author submitted a communication to the Committee on Economic, Social and Cultural Rights, but was evicted from her home before a decision had been reached. She claimed that she lacked access to adequate alternative housing and that her eviction thus amounted to a violation of her human right to housing.

Admissibility

The Committee noted that the State party did not challenge the admissibility of the communication under the argument of non-exhaustion of domestic remedies. In the Committee's view, the author did seek remedies in all available and effective instances. Therefore, the Committee found

that the case met the requirement of the exhaustion of domestic remedies, as established in article 3 (1) of the Optional Protocol, as well as all other admissibility requirements foreseen in articles 2 and 3 of the Optional Protocol.

Merits

Upon examination, the Committee underscored that States are under an obligation to assess the proportionality of an eviction in circumstances in which it may result in a violation of an individual's rights under the Covenant. It added further that such an analysis must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation, and to provide an effective remedy.

In the present case, no such proportionality examination had taken place prior to

the decision to evict Ms Limón Pardo. Accordingly, the Committee concluded that "the absence of such an assessment constituted a violation by the State party of the author's right to housing". The Committee also concluded that the State party violated the author's right to an effective remedy, since the eviction constituted a violation of her right to an adequate standard of housing, and the State did not provide an effective remedy which would ensure the realisation of this right to the maximum of its available resources.

Further, the Committee found that Ms Limón Pardo had been “evicted in spite of the Committee’s request for interim measures” and had not been “provided with

adequate alternative housing”. This failure to respect the requested interim measures was considered to amount to an additional violation of article 5 of the Optional Protocol.

Recommendations

Having established a violation of the Covenant, the Committee recommended that Spain reimburse Ms Limón Pardo’s legal costs, examine her housing needs and, if necessary, provide her with suitable alternative housing. The Committee also made two general recommendations, namely that Spain:

- Ensure that there is a normative framework which allows for persons subject to an eviction order that may violate their Covenant rights to challenge the decision and have authorities examine its proportionality; and
- Establish a protocol for complying with requests for interim measures.

Committee on the Rights of Persons with Disabilities



Introduction

The Committee on the Rights of Persons with Disabilities (CRPD) considers individual communications alleging violations of the rights of persons with disabilities by States which have ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities. To date, the Optional Protocol has 100 State parties, including the recent addition of St. Lucia in June 2020.

Throughout 2020, the Committee adopted views on 7 cases, 4 of which were assessed on the merits and 2 were declared inadmissible. An additional communication was also discontinued. These cases were spread across **5 States**, namely: **Brazil (1)**, **Germany (1)**, **South Africa (1)**, **Spain (2)** and **Sweden (2)**.

The cases in which the Committee assessed the merits related to the **right to inclusive education, freedom from torture or cruel, inhuman or degrading treatment or punishment, and equality and non-discrimination**.

When compared to 2019, where the Committee considered 9 individual communications, **the Committee did not see a significant reduction in 2020**. This was despite having held only one session in an online format throughout the year due to Covid-19 restrictions. However, the Committee elected to postpone all scheduled constructive dialogue with States and mainly focused on the examination of individual communications.

The Committee also published its [Report on follow up to views in 2020](#) (CRPD/C/23/3) concerning the following cases: *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015) and *Makarov v. Lithuania* (CRPD/C/18/D/30/2015).

For more information, you can consult the [Summaries of the CRPD Views on Individual Communications](#), developed by the International Disability Alliance.

2020 CRPD case law:

- *N.N. v. Germany* (discontinuance decision)
- *F.O.F. v. Brazil* (inadmissibility decision)
- *A.N.P. v. South Africa* (inadmissibility decision)
- *N.L. v. Sweden* (merits decision)
- *Ruben Calleja Loma et al. v. Spain* (merits decision)
- *Richard Salin v. Sweden* (merits decision)
- *J.M. v. Spain* (merits decision)

N.L. v. Sweden

Following a failure to assess the concrete possibility of access to adequate medical treatment for the author if removed to Iraq, the State violated her right to freedom from torture or cruel, inhuman or degrading treatment or punishment

Substantive Issues: Right to life; freedom from cruel, inhuman or degrading treatment; discrimination based on gender; equal recognition before the law

Relevant articles: Articles 6, 10, 12 and 15

Facts

The author is N.L., a national of Iraq, born in 1961, who had been diagnosed with depression with psychotic features and claimed that there would be a serious risk to her life and health if she were to be removed to Iraq, as she would be unable to access essential medical care. She had also been diagnosed with diabetes and high blood pressure.

The author arrived in Sweden for asylum on 13 March 2013, where she was assessed for international protection following death threats made by relatives because of her relationship with an Iraqi man. The Migration Agency denied her application for asylum on 14 February 2017, finding her statements to lack credibility. The Migration Court of Appeal later rejected her application for leave to appeal on 29 June 2017. After the expulsion order against the author became final, she applied for impediment of enforcement of the deportation order against her to the Migration Agency, noting a deterioration in health. The Migration Agency denied her application on 15 January 2018. The Migration Court also dismissed the appeal in 2018.

On 25 April 2018, the author submitted a second application for impediment of enforcement of the deportation order, also submitting a medical certificate from a psychologist who noted that her mental health had deteriorated further. The Migration Agency denied this author's second application, noting that the author did not invoke mental illness when

her case was assessed in her initial asylum process, but only after the expulsion order against her had become final. The Agency did not question that the author had a mental illness, however found that the medical documentation submitted by her did not support the assumption that her illness was serious enough to grant her a residence permit.

The author appealed the decision to the Migration Court. According to additional medical certificates, the author was diagnosed with a deep depression with serious suicide attempts, following which she was committed to hospital for almost two months. In her appeal to the Migration Court, the author argued that her condition was life-threatening and that she would not be able to receive adequate treatment for it in Iraq. The author's appeal was denied on the basis that the presented documents did not support the assumption that the author's mental condition was lasting. The decision was upheld by the Migration Court of Appeal on 21 January 2019.

Before the Committee, the author claimed that the State violated her right to life and to be free from torture or cruel, inhuman or degrading treatment or punishment. She also claimed that the State failed to ensure equal recognition before the law and carry out special measures based on the recognition of vulnerability as a woman with disabilities.

Admissibility

The Committee found that extraterritorial applicability did not prevent it from examining

the claim under article 1 of the Optional Protocol, as the author's claims could lead

to a grave risk to her life and health. The Committee also considered that the author had sufficiently substantiated her claims regarding a violation to the right to life and freedom from torture or cruel, inhuman or degrading treatment, under articles 10 and 15 of the CRPD respectively, for purposes of admissibility. On the question of articles 6, concerning women with disabilities, and 12, on equal recognition before the

law, the Committee noted that the author did not provide any additional information or argumentation which would justify her claim under articles 6 and 12 of the CRPD, nor had she explained how these claims would amount to a real and personal risk of irreparable harm if she were to be removed. The Committee therefore found that the author had failed to substantiate her claim made under articles 6 and 12 of the CRPD.

Merits

On the issue of article 15, the Committee noted that it was undisputed between the parties that the author had been diagnosed with depression and further that several medical certificates submitted by the author revealed she was undergoing treatment for severe depression. The documents outlined that the author was assessed to have a risk of severe or life-threatening complications, with the medical treatment she was undergoing described as “essential” and the risk of relapse assessed to be “grave without adequate care”. The Committee also noted the parties’ disagreement on the severity of the author’s health condition and whether it is lasting in nature, and took note of the State’s argument that the domestic authorities assessed her ill health to be primarily linked to her disappointment at her asylum process and her fear of being expelled.

Taking into account that the author submitted several medical certificates in which her health condition was assessed as severe and life-threatening without the treatment, and in the light of the information available during the domestic proceedings, the Committee found that the State’s authorities should have assessed whether the author would in fact be able to access adequate medical care if removed to Iraq. The Committee further observed that both parties agree on the fact that this did not occur. The Committee therefore considered that the failure by the domestic authorities to assess this risk in the light of the information available to them amounted to a violation of her rights under article 15 of the Convention. The Committee considered it unnecessary to separately consider the author’s claims under article 10 of the CRPD.

Recommendations

The Committee was of the view that the State had failed to fulfil its obligations under article 15 of the Convention and made the following recommendations to the State:

- To provide the author with an effective remedy, including compensation for any legal costs incurred in filing the present communication;
- Review the author’s case, taking into account the State’s obligations under the Convention and the Committee’s present Views;
- Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

As general measures, the State remains under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee required the State to ensure that the rights of persons with disabilities, on an equal basis with others, are properly considered in the context of asylum decisions.

Rubén Calleja Loma et al. v. Spain

Following discrimination, neglect and abuse in a school environment, the Committee found violations of the rights to inclusive education, to personal integrity and to the respect for the home and family life.

Substantive Issues: Right to inclusive education; discrimination and cruel, inhuman or degrading treatment or punishment on the basis of disability; respect for home and the family

Relevant Articles: Articles 7, 13, 15, 17, 23 and 24, read in conjunction with article 4

Facts

The author is Rubén Calleja Loma, a Spain national with Down syndrome born on 25 August 1999, who was represented by his father. The authors claimed that they are victims of violations by the State of their rights under articles 7, 13, 15, 17, 23 and 24, read in conjunction with article 4, of the Convention.

Rubén, then aged 10, entered grade 4 of compulsory primary education at the mainstream public school where he had been studying with the support of a special education assistant. His integration at the school had been going well until he started being subjected to discrimination, neglect and abuse based on disability by his teachers. Rubén also received no support from the special education assistant, which was only resumed after complaints of his parents.

Despite the complaints submitted by Rubén's parents to the Provincial Directorate of Education, the school's management failed

to take any measures to resolve the situation. In June 2011, Rubén was placed in a special education centre based on "psychotic outbreaks" and a general developmental delay "associated with Down syndrome".

On 6 May 2011, Rubén's parents reported the abuse and discrimination against Rubén during the 2009/10 and 2010/11 school years to the León juvenile prosecution service, who in turn filed a report with the Court of Investigation No. 3 of León alleging criminal neglect on Rubén's parents' part by not taking him to the special education centre. Rubén's parents were, however, acquitted of the charges.

The authors argued that they have exhausted all effective domestic remedies to address the violations of Rubén's rights. On 22 March 2013, the High Court of Justice of Castile and León rejected the parents' requirements to fulfill Rubén's right to be educated in a mainstream school.

Admissibility

The Committee noted the authors' claim that they have exhausted all effective domestic remedies available to them and considered that the requirements of article 2 (d) of the Optional Protocol have been met. The Committee also considered that the authors had sufficiently substantiated their claims for the purposes of admissibility, except for the authors' claim of violation of their access

to justice as outlined in article 13 of the Convention. Therefore, this specific claim was declared inadmissible, in accordance with article 7(f) of the Optional Protocol, however the remainder of the communication was declared admissible under article 2 of the Optional Protocol.

Merits

The Committee noted that, according to the authors, the administrative decision to enrol Rubén in the special education centre – upheld by the State’s courts – violated his right to an inclusive education, and further that it does not appear that the State’s authorities had carried out a reasonable assessment of Rubén’s educational needs and the accommodations he needed to continue attending a mainstream school. The Committee also observed that Rubén did not have a special education assistant at the beginning of the 2010/11 school year, since the teacher had decided that an assistant was not needed, and that an assistant was only assigned later at the request of Rubén’s parents.

Further, the decisions issued by the judicial authorities of the State did not take into consideration observations by the clinical psychologist G.C. which indicated that Rubén’s difficulties in adjusting to schooling were due to a lack of educational support and the discriminatory, hostile environment that he experienced there. Regarding the authors’ claim on article 24 read in conjunction with article 4 of the Convention (lack of adoption of legislation or policies to ensure the right to inclusive education) the Committee recalled the paragraph 19 of its General comment No. 4: “For article 4 (1) (b) of the Convention to be implemented, States parties should take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities and that are in violation of article 24.” On this basis, the Committee found that the administrative decision to place Rubén in a special education institution was in violation of his rights under article 24 of the Convention read alone and in conjunction with article 4.

Regarding article 23, the Committee took note of the authors’ claim that the State violated their right to family life by accusing the parents of neglect on the ground that they had refused to take their child to the special

education centre, and that the Court ordered Rubén’s parents to provide a surety of €2,400 each as a precautionary measure, lifted almost a year later, when the parents were acquitted. This excessive financial burden on Rubén’s parents compounded the tensions arising from their struggle for their child’s rights, impacting negatively on their personal and family well-being. The Committee recalled that the State has to “ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand that their children’s right to inclusive education on an equal footing be respected” (CRPD/C/ESP/IR/1, para. 84 (e)). In conclusion, the State failed to discharge its obligations under article 23 of the Convention read alone and in conjunction with article 4.

Regarding articles 15 and 17, the Committee noted the authors’ allegations that during the 2009/10 and 2010/11 school years, Rubén was subjected to discrimination and abuse in the mainstream public school, which endangered his physical integrity and undermined his dignity. The Committee recalled that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 15) and the State must take preventive measures, and that every person with disabilities has the right to respect for his or her physical and mental integrity on an equal basis with others (Article 17). Faced with the evidence, including testimonies at courts of law, about abuse against Rubén, the State had an obligation to carry out an effective and thorough investigation, but it failed to do so. Consequently, and in the absence of any comments from the State, the Committee considered that the State has violated Rubén’s rights under articles 15 and 17 of the Convention read alone and in conjunction with article 4.

Having found violations of the authors’ rights under the aforementioned articles of the Convention, the Committee did not consider it necessary to examine the same allegations under article 7 of the Convention.

Recommendations

As Committee was of the view that the State has failed to fulfil its obligations under articles 7, 15, 17, 23 and 24 of the Convention, read alone and in conjunction with article 4, the Committee made the following recommendations:

Concerning the authors, the State remains under an obligation to:

- Provide them with an effective remedy, including reimbursement of any legal costs together with compensation, taking into account the emotional and psychological harm they have suffered due to the treatment received and the way their case was handled by the authorities;
- Ensure that Rubén is admitted to a truly inclusive vocational training programme, in consultation with him and with his parents.
- Conduct an effective investigation into the allegations of abuse and discrimination reported by the authors and ensure accountability at all levels.
- Publicly recognize the violation of the rights of Rubén to inclusive education and to a life free from violence and discrimination, as well as the violation of the rights of his parents, who were wrongly charged with the offence of neglect, with psychological and financial consequences.
- Publish the present Views and circulate them widely in accessible formats.

In general, the State must prevent similar violations. In particular, the State, in close consultation with persons with disabilities and the organizations that represent them, must:

- Expedite legislative reform to fully eliminate the medical model of disability and clearly define full inclusion of all children with disabilities and its specific objectives at each level of education;
- Ensure that inclusive education is considered a right and grant students with disabilities the right to inclusive learning opportunities in mainstream education, with support as required;
- Formulate a comprehensive, inclusive education policy with strategies for promoting a culture of inclusion in mainstream education.
- Eliminate any educational segregation of students with disabilities in both special education schools and specialized units within mainstream schools.
- Ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand their children's right to inclusive education on an equal basis with others be respected.

Richard Sahlin v. Sweden

The Committee found violations to the right to employment, to equality and non-discrimination due to denial of reasonable accommodation by a Swedish University

Substantive Issues: Equality and non-discrimination; equal recognition before the law; work and employment; facts and evidence

Relevant Articles: Articles 3, 4 (2), 5 (2) and (3), and 27 (1) (b), (g) and (i)

Facts

The author, Richard Sahlin, is a national of Sweden and is deaf. The author obtained a doctorate in public law in 2004. In spring 2015, Södertörn University, a public institution, advertised a permanent position as a lecturer (associate professor) in public law. The author had previously been temporarily hired at Södertörn University, whose authorities knew of his needs for sign language interpretation. He was considered to be the most qualified candidate for the position by the recruiters and was given the opportunity to give a trial lecture as a step in the recruitment process. Despite his qualifications, the University cancelled the recruitment process on 17 May 2016, claiming that it would be too expensive to finance sign language interpretation as a means of guaranteeing the author's right to employment on an equal basis with others. Alternative forms of work adaptations or reasonable accommodation, including tasks that would not require interpretation were not considered during the recruitment process.

The author filed a complaint to the Discrimination Ombudsman, which brought

a civil suit on his behalf before the Swedish Labour Court, claiming that the decision to cancel the position was discriminatory, in violation of chapter 1, section 4 (3), and chapter 2, section 1, of the Discrimination Act. The Discrimination Ombudsman claimed that the author was entitled to 100,000 Swedish krona (\$10,695) compensation for the discrimination he had suffered.

On 11 October 2017, the Court found that the university had not discriminated against the author, considering that the appointment had been cancelled because it was too expensive for the university to finance the required sign language interpretation. It found that it was not reasonable to demand the university to finance interpreting expenses despite the size of its staff budget.

Before the Committee, the author alleged violations to the equal right to work and reasonable accommodation in employment, pursuant to articles 4(2), 5 (2) and (3), 8, 9 (1) (a) and 27 (1) (b), (g) and (i) of the Convention.

Admissibility

Regarding the exhaustion of available domestic remedies, as concluded by the Administrative Court, the author's claim relates to employment matters, excluded from the possibility of appeal under section 22a of the Administrative Procedure Act. As reported to the author by the Equality Ombudsman – a public authority specialized in the subject of discrimination – an appeal to the Supreme Administrative Court was therefore unlikely to bring effective relief.

Therefore, the author had exhausted all domestic remedies.

Regarding alternative reasonable accommodation and the State's argument that the related claim should be inadmissible as not raised in domestic proceedings, the Committee noted the author's agreement with the position of the State that the proceedings in the Labour Court were not focused primarily on a lack of inquiry on

alternatives. However, it also noted that the issue of a lack of inquiry was clearly brought to the attention of the Ombudsman, and that the subject matter of the author's complaint was obviously raising the issue of reasonable accommodation, which in itself implies an analysis of whether alternative measures are contemplated by the employer.

Regarding the State's argument that domestic proceedings maintained a high standard not revealing a denial of justice and thus the communication should be declared inadmissible, the Committee noted the author's argument that the recruitment process of the position to which he applied was cancelled because of the cost of the sign

language interpretation that would have been required for him to perform the functions of the position to which he had applied; that the alternative forms of work adaptations or reasonable accommodation other than sign language interpretation that he suggested, such as online teaching that is used by more and more universities, were not taken into account at any stage of the recruitment process; and that the Labour Court did not properly assess the accommodations suggested by the author.

Therefore, the Committee found that the author has sufficiently substantiated his complaint for purposes of admissibility and proceeded with its examination of the merits.

Merits

Regarding articles 5 and 27, the Committee noted the author's argument that his rights have been violated because the university and the Labour Court made an erroneous proportionality assessment of the costs of sign language interpretation, and failed to inquire into other possible accommodation measures.

The Committee noted that the possibility of holding a dialogue for the purpose of evaluating and building the author's capacities as a permanent lecturer was ruled out because the recruitment process was cancelled before any consultation and analysis of alternative measures of adjustment could be carried out. This absence of dialogue impacted the judicial proceedings throughout which the authorities focused their reasoning on the cost of sign language interpretation, without considering other possible adjustment measures. Further, the Committee recalled that the process of seeking reasonable accommodation should be cooperative and interactive and aim to strike the best possible balance between the needs of the employee and the employer. In determining which reasonable accommodation measures to adopt, the State party must ensure that the public authorities identify the effective adjustments that can be

made to enable the employee to carry out his or her key duties.

Regarding financial support, the Committee noted that according to the State party, even though the above-mentioned State-funded measures were the only ones involved in the Labour Court's judgment, that did not necessarily mean that other funding measures were not available, but that the failure of the Equality Ombudsman to raise this issue prevented the Court from considering the possibility of such funding measures. Through such a statement, the State recognizes the responsibility of public authorities to properly inform the parties involved in the judicial proceedings as to funding that could have been made available to support the author's employment.

The Committee finally noted that according to the author, State authorities did not take into account the positive impact that hiring a deaf lecturer could have had on the attitude of students and co-workers to promote diversity and reflect the composition of society, but also for future candidates with hearing impairments. The Committee welcomed that the Labour Court mentioned the benefit that the employment of the author could have had for other employees with disabilities.

Recommendations

The Committee, acting under article 5 of the Optional Protocol, was of the view that the State party has failed to fulfil its obligations under articles 5 and 27 of the Convention. The Committee therefore made the following recommendations to the State party:

Regarding the author,

- To provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation.
- To publish these views in accessible formats, making them available to all sectors of society.

In general,

- To ensure that employment of persons with disability is promoted in practice, and that the criteria applied to assess the reasonableness and proportionality of the accommodation measures is in line with the Convention and these recommendations, and that a dialogue with the person with disability is systematically carried out to implement his or her rights on an equal basis with others;
- To ensure that appropriate and regular training is provided to State agents involved in recruitment process and to legal servants, especially those of the Labour Court, on the Convention and its Optional Protocol, in particular on articles 9 and 27.

Committee on the Rights of the Child



Introduction

The Committee on the Rights of the Child (CRC) has the competence to consider individual communications concerning State parties that have ratified the Optional Protocol to the Convention on the Rights of the Child on Individual Communications (OPIC). To date, the Protocol has been ratified by 48 State parties.

The CRC still has **55 cases pending as of March 2021**, however **despite the Covid-19 pandemic, 2020 saw the highest number of views adopted by the Committee in a single year (25)**. The majority of cases related to **migration**, however other substantive issues also emerged such as the **right to education, circumcision, the international abduction of children** and others.

In 2020, decisions adopted by the CRC continued to predominantly **concern European States (84%)**, namely **Spain, Denmark, Belgium, Switzerland, Finland, Georgia** and **Germany**. The remaining cases were filed against Latin America, namely **Argentina, Paraguay** and **Panama**. Among all the mentioned countries, **Spain was the most frequent with 23 separate communications**. The high number of cases concerning Spain reflects the active participation of lawyers and NGOs working with migration, who together submitted several cases on the issue of age determination of unaccompanied migrant children. Once interim measures were granted by the Committee, there was an incentive to submit other individual communications, as also observed in the CESCR in eviction cases.

In January 2020, the Committee on the Rights of the Child published its [Guidelines on Third Party Interventions](#), which provides further guidance on ways to engage with the CRC. Additionally, the CRC published its second [Follow-up Progress Report on Individual Communications](#) in October 2020, providing details on the implementation of the Committee's adopted Views by States. The cases addressed were the following: *D.D. v. Spain* (CRC/C/80/D/4/2016), *N.B.F. v. Spain* (CRC/C/79/D/11/2017), *A.L. v. Spain* (CRC/C/81/D/16/2017) and *J.A.B. v. Spain* (CRC/C/81/D/22/2017).

For more information, you can consult the article of Child Rights Connect on the [OPIC's Annual Trends 2020](#), the [Child Rights Connect Trends Database](#), and the [Child Rights Connect Jurisprudence Database](#).

2020 CRC case law:

- *A.B. v. Spain* (discontinuance decision)
- *A.D. v. Spain* (merits decision)
- *A.E.A. v. Spain* (merits decision)
- *A.H.A. et al. v. Denmark* (discontinuance decision)
- *Anna Arganashvili v. Georgia* (discontinuance decision)
- *D.C. v. Germany* (inadmissibility decision)
- *E.H.R.S., A.I.R.S. and A.H.R.S. v. Argentina* (discontinuance decision)
- *H.B. v. Spain* (merits decision)
- *J.A. and E.A. v. Switzerland* (inadmissibility decision)
- *J.J. et al. v. Finland* (discontinuance decision)
- *L.D. and B.G. v. Spain* (merits decision)
- *L.I. v. Denmark* (inadmissibility decision)
- *M.B.S. v. Spain* (merits decision)
- *M.B. v. Spain* (merits decision)
- *M.H. v. Finland* (inadmissibility decision)
- *K.L. v. Spain* (discontinuance decision)
- *K.S.G. v. Spain* (inadmissibility decision)
- *N.R. v. Paraguay* (merits decision)
- *R.N. v. Finland* (inadmissibility decision)
- *R.S. v. Switzerland* (inadmissibility decision)
- *S.M.A. v. Spain* (merits decision)
- *U.G. v. Belgium* (inadmissibility decision)
- *V.A. v. Switzerland* (merits decision)
- *W.M.C. v. Denmark* (merits decision)
- *Y.F. v. Panama* (inadmissibility decision)

E.A. and U.A. v. Switzerland

In a case of deportation of two children to Italy, the Committee found that children should be systematically heard without age limit and independently of coinciding with the interest of their parents

Substantive Issues: Best interest of the child; rights to be heard

Relevant Articles: Articles 3 and 12

Facts

V.A., a national of Azerbaijan, submitted the communication on behalf of her sons E.A., born in 2009, and U.A., born in 2014, both Azerbaijani nationals. She and her husband are journalists and owners of a newspaper in Azerbaijan and fled that country with their sons EA and UA, as the situation of opposition journalists puts their lives in danger. On March 20, 2017, the family applied for asylum in Switzerland, but due to the absence of Azeri interpreters, their communication with officials was “almost non-existent”. The “precarious and degrading” conditions of the family’s accommodation and their linguistic isolation had repercussions on their psychological and physical integrity. On November 3, 2017, following a 7-month wait for the second asylum hearing, the family reluctantly agreed to withdraw their asylum application and be subject to voluntary repatriation. On November 13, 2017, the family left Switzerland.

Back in Azerbaijan, V.A. observed the presidential elections of April 11, 2018, and denounced some irregularities. During April 2018, she was beaten by two unknown people, interrogated for four hours in the Baku prosecutor’s office, and threatened with imprisonment if she did not stop publishing articles, participating in protests, and challenging the government.

Due to this situation, the author, E.A. and U.A. obtained an Italian visa, returned to Switzerland through Ticino and, on May 25, 2018, submitted a new asylum application. In the meantime, the author’s mother informed her that she was now wanted by Azerbaijani police. Due to the consequences

of the author’s health, a psychiatric report concluded that sending the mother and children back to their country of origin or moving them to another country or another Swiss canton would seriously damage their psycho-physical development. However, pursuant to the Dublin III Regulation of the European Union, the Swiss State Secretariat for Migration (SEM) submitted a request to Italy, and, on July 19, 2018, the Italian authorities agreed to receive them. On 20 July 2018, the SEM adopted a non-entry decision, ordering the return of the author and her children to Italy. The decision provides that E.A. and U.A. did not have special ties to Switzerland and that Italy had sufficient medical infrastructure and commitment to provide asylum seekers with essential treatment for serious illnesses and mental disorders. The author appealed against the SEM’s decision to the Federal Administrative Court, but this was dismissed. E.A. and U.A. were not heard during these administrative and judicial processes.

Even though the Swiss authorities had been informed that E.A. and U.A. had contracted chickenpox and a risk of contagion had been reported by a doctor, on September 12, 2018, at 2 a.m., the police came looking for the author, E.A. and U.A. in their hotel to execute their deportation from Zurich Airport by a 7:30 AM flight. Police officers showed them pictures of people being immobilized by the Police and told them that if their mother did not cooperate, they would be treated that way. As the author suffered panic attacks and a severe anxiety attack, the deportation could not be executed. The Police abandoned V.A. and her children at Zurich airport with no money, telling them to “manage to get

back” to Ticino. According to a psychiatric certificate, both E.A. and U.A. suffered serious trauma due to the attempted deportation to Italy. Further, it concluded that E.A. and U.A.

require medical and psychological support and their transfer under duress would pose a major risk to their mental health.

Admissibility

The Committee noted that while the author complained about the actions of the police during the attempted dismissal and the reception conditions of her family during her first stay in Switzerland, she had not exhausted the local remedies, hence the complaints under Articles 2, 3, 6 (2), 24 and 37 of the UNCRC were found inadmissible under article 7 (e) of the OPIC. Further, regarding the alleged discrimination against E.A. and UA by the SEM, the author set out

these complaints in a very general manner, without explaining the basis for the alleged discrimination. Hence, the Committee found them manifestly unfounded and inadmissible under article 7 (f) of the OPIC. However, the Committee considered that the author had sufficiently substantiated, for purposes of admissibility, the remainder of her claims under articles 3, 12 and 22. It therefore proceeded to the merits.

Merits

The Committee noted that article 12 guarantees the right of the child to be heard in any judicial or administrative proceedings affecting him or her, either directly or through a representative. Nevertheless it recalled that article 12 does not impose any age limit on the right of the child to express his or her opinion and that States parties should not adopt, whether in law or in practice, age limits such as to restrict the child’s right to be heard on all matters of interest to him.

According to the Committee, the State party’s argument that the children E.A. and U.A. were not to be heard as their interests coincided with those of their mother are incorrect, and went against the best interests of the child, since the situation of the children should be assessed

separately from that of their parents. Therefore, the Committee considered that in the circumstances of the case, the lack of a direct hearing of the children constituted a violation of article 12 of the Convention.

The Committee also took note of the fact that the authorities failed to take into account the trauma experienced by the children, including two escapes from their country of origin, one through a third country and one return to their homeland, and another trial under very traumatic conditions. The Committee considered that not having heard from E.A. and U.A. on these facts, which may have very different consequences for children than for their mother, the national authorities had not exercised due diligence in order to assess their best interests.

Recommendations

The Committee determined that Switzerland is under an obligation to reconsider the author’s request to deal with the EA and UA asylum claim urgently, to hear them, and to ensure the best interests of the children as a primary consideration. Further, the State should consider the social bonds forged by E.A. and AU. in Ticino since their arrival and the possible trauma experienced by the children, due to the multiple changes in their environment.

It also determined that Switzerland has the obligation to take all the necessary measures so that similar violations do not recur, in particular, by ensuring that children are systematically heard in the context of asylum procedures and that national protocols applicable to the return of children comply with the UNCRC.

C.R. v. Paraguay

For the first time, the Committee analysed and found a violation to the right of children to maintain personal relation and direct contact with their parents

Substantive Issues: Right to maintain personal relations and direct contact with the father

Relevant Articles: Articles 3, 9 (3) and 10 (2)

Facts

The author of the communication is N.R., a national of Argentina born on 20 January 1976. The author submitted the communication on behalf of his daughter, C.R., who was born on 16 June 2009 and is also an Argentine national. For an unspecified length of time, the author was in a relationship with L.R.R., a national of Paraguay with whom he had a daughter, C.R., who was born in La Plata, Argentina. In June 2009, 11 days after the birth of her daughter, L.R.R. left with her for her hometown, Asunción, Paraguay where they took up residence. The author occasionally travelled to Paraguay while his daughter was still small to visit her. No custody decision was ever made. On an unspecified date, L.R.R. began raising obstacles to contact between the author and his daughter. He was unable to communicate regularly with his daughter.

On 16 February 2015, the author initiated proceedings for access to his daughter before the Court Office No. 7 of the Juvenile Court (Fourth Roster) of Asunción. He requested that his daughter be able to communicate with him by telephone and that she be able to make trips to Argentina.

On 12 March 2015, L.R.R. responded to the author's application stating that since he rejected a proposal for alimony, she would not allow him to approach or communicate with his daughter. The author explains that previously, he had been sued for alimony and that he seems to have been denied access to his daughter because, in her mother's opinion, the alimony payments were too small.

On 14 April 2015, the hearing was held and they agreed that: (a) the author would communicate with his daughter by Skype on Mondays, Wednesdays and Fridays from 6 to

7 p.m.; (b) that the author's daughter would spend seven days with him in Argentina during the winter holidays and another seven days during the week of the author's birthday, during the summer holidays; and (c) that the author would spend one Saturday a month, from 9 a.m. to 6 p.m., with his daughter.

On 30 April 2015, the Asunción Court handed down final judgment No. 139, which established these arrangements for visitation and other forms of contact. The author requested that the arrangements be subject to the penalties for non-compliance set out in article 96 of the Code on Children and Adolescents and in Act No. 4711. His request was denied. On 11 August 2016, the Appeal Court rejected his appeal against that decision.

On 5 October 2015, the author initiated proceedings for enforcement of the judgment. On 14 December 2015, and on 6 and 12 January 2016, the author lodged complaints with the Juvenile Court in Asunción for failure to comply with the judgment. He also filed complaints, dated 29 April 2015 and 24 February 2016, concerning delays in the administration of justice. In addition, on 22 and 29 April 2015 and on 6 January 2016, he applied to the State party's courts for interim measures but did not receive a response.

On 30 March 2016, the Appeal Court of Asunción, in interlocutory order No. 64, upheld the complaint concerning delays in the administration of justice and enjoined the Juvenile Court to issue a ruling requesting enforcement of the judgment within 72 hours of being notified of the order. On 7 April 2016, in interlocutory order No. 66, the Juvenile Court ruled that enforcement of the access arrangements should begin again and that

the respondent should be notified of that ruling within three days. In May 2016, through interlocutory order No. 128, the Court decided to uphold compliance with the judgment and ordered that a social worker be sent to the respondent's home with a view to giving practical effect to the access arrangements in respect of the author and his daughter. On 28 June 2016, the Court, in final judgment No. 188, upheld the author's application for enforcement of the terms of final judgment No. 139 of 30 April 2015. The author pointed out that, in view of the series of complaints he filed, the measures ordered in interlocutory order No. 66 and final judgment No. 188 did not provide for the measures needed to ensure compliance.

On 8 July, 2 and 24 August, 3 November, 7 and 26 December 2016, 15 February and 6 March 2017, the author again lodged complaints claiming that the judgment was not being enforced. On 23 March 2017, he also filed a complaint before the Supreme Court of Justice regarding delays in the administration of justice.

The author noted that, on 25 April 2017, the Appeal Court, in interlocutory order No.

60, held that the right to the enforcement of judgments and other judicial decisions is a component of the fundamental right to effective protection of rights and no authority shall fail to enforce judgments with the force of *res judicata*, much less delay their enforcement, especially when the best interests of a girl who has the right to a relationship with the parent with whom she does not live are at stake. Furthermore, although there is no procedure for enforcing penalties for non-compliance with this kind of judgment, judges have legal means of enforcing the judgment.

The author claimed that his daughter was a victim of violations of Article 3 (best interest of the child); Article 4 (obligation to take all appropriate measures to ensure the rights of the Convention); Article 5 (right to parental direction and guidance consistent with child evolving capacities); Article 9 (3) (right of child separated from one or both parents to maintain personal relations); Article 10 (2) (right to keep personal relations with parents living in different countries); Article 18 (parental responsibilities and State assistance); and Article 19 (right to protection from all forms of violence).

Admissibility

The Committee found admissible his claims based on articles 3, 4, 5, 9 (3) and 10 (2) of the Convention. The Committee noted the State party's argument that the author's communication should be found inadmissible *ratione temporis* because the conduct alleged therein – non-compliance with the agreement on arrangements for visitation and other forms of contact that was approved by the courts in final judgment No. 139 of 30 April 2015 – did not continue to occur “on a permanent basis” after 20 April 2017, the date on which the Optional Protocol entered into force for the State party. The Committee considered that, in the particular circumstances of the case, the violations alleged by the author continued after the entry into force of the Optional Protocol. Accordingly, the Committee concludes that it is not precluded by

article 7 (g) of the Optional Protocol. The Committee also noted the State party's argument that, when the author submitted his communication, he had not exhausted all available domestic remedies because he had not submitted his complaint to the Supreme Court of Justice for it to rule on the merits of the dispute.

However, the Committee notes the author's argument that it was not possible for him to gain access to the Supreme Court of Justice, as the State party's legislation does not provide for the possibility of appealing “an interlocutory matter” before the Supreme Court. In view of the nature of the matter under consideration, the Committee found that the author had exhausted all the domestic remedies available to bring his complaint before the State party's judicial authorities. The Committee concluded that

the claim was admissible under article 7 (e) of the Optional Protocol.

The Committee considered that the author's claims under articles 18 and 19 of the Convention have not been sufficiently substantiated for the purposes of admissibility and found them inadmissible under article 7 (f) of the Optional Protocol.

The Committee considered that, for the purposes of admissibility, the author had

sufficiently substantiated his claims based on articles 3, 4, 5, 9 (3) and 10 (2) of the Convention, regarding the State party's failure to consider the best interests of the child and to implement the judicial decision establishing visitation rights and guaranteeing the right of the author's daughter to maintain personal relations and direct contact with her father. The Committee therefore found the complaint admissible and proceeded to consider it on the merits.

Merits

The Committee found a violation of articles 3, 9 (3) and 10 (2) of the Convention regarding whether the State party has taken effective measures to guarantee the right of the author's daughter to maintain a personal relationship and direct contact with her father on a regular basis. Under article 9 (3) of the Convention, States Parties have an obligation to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. "The preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties ... are particularly relevant in cases where parents are separated and live in different places." The Committee must therefore determine whether the State party's authorities have taken effective measures to ensure the preservation of personal relations and contact between the author and his daughter.

The Committee recalled that, as a general rule, it is for the national authorities to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice. The Committee's role is to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that

the best interests of the child were a primary consideration in that assessment. The Committee considered that the State party's failure to take effective steps to guarantee the right of the author's daughter to maintain personal relations and direct contact with her father on a regular basis deprived the girl of the enjoyment of her rights under the Convention.

According to the Committee, court procedures establishing visitation rights between a child and a parent from whom he or she is separated must be expeditiously processed, since the passage of time may have irreparable consequences for the relationship between them. This includes the rapid enforcement of decisions resulting from those procedures. Given the circumstances of the present case, in particular the length of time that has passed since the judicial decision establishing visitation rights was taken in 2015, and bearing in mind the young age of the author's daughter at that time, the Committee was of the view that the authorities did not carry out the Court's orders in a timely and effective manner and did not take the necessary steps to enforce those orders so as to ensure contact between the author and his daughter. The Committee concluded that this amounts to a violation of articles 3, 9 (3) and 10 (2) of the Convention.

Recommendations

Consequently, the State party should provide the author's daughter with effective relief for the violations suffered, in particular through the adoption of effective measures to ensure the enforcement of final judgment No. 139 of 30 April 2015, which established visitation arrangements in respect of the author and his daughter, including through counselling and other appropriate and proactive support services intended to rebuild the relationship between the girl and her father, taking due account of an assessment of her best interests at the current time.

The State party is also under an obligation to prevent similar violations in the future. In this regard, the Committee recommends that the State party:

- Take the necessary measures to ensure the immediate and effective execution of judicial decisions in a child friendly way, so that contact between the child and his or her parents is re-established and maintained;
- Train judges, members of the National Secretariat for Children and Adolescents and other relevant professionals on the right of children to maintain personal relations and direct contact with both parents on a regular basis and, in particular, on the Committee's general comment No. 14.

X.C., L.G. and W.G. v. Denmark

On a case of deportation of three children and their mother to China, the Committee declared that States shall not return a child to a country where there is a real risk of irreparable harm to the children

Substantive Issues: Protection of the family; best interest of the child; right to life; right to identity

Relevant Articles: Articles 3, 6 and 8

Facts

The author of the communication is W.M.C, a Chinese national acting on behalf of her children, X.C. L.G. and W.G., born in Denmark in 2014, 2015 and 2018 respectively. W.M.C escaped China after the Chinese authorities performed a forced abortion on her, arriving to Denmark on 12 March 2012 using a false passport. On 27 October 2012, she was detained by the police for staying in Denmark without valid travel documents. On 7 November 2012, she applied for asylum, which she initially sought in Denmark on the grounds that she feared being forced into an abortion if she were returned to China and got pregnant again. Following the birth of her two children, she feared that, if returned, she would be persecuted by Chinese authorities because she was unmarried and had two children. She further alleged that the children would be forcibly removed from her or that they would not be registered in the Hukou household register, which is essential for ensuring their birth registration and access to basic services such as health and education.

On 13 July 2015, the Danish Refugee Council considered that her asylum application,

initially dismissed as manifestly unfounded, was valid and referred it back to the Danish Immigration Service to process it accordingly. However, on 7 September 2015, X.C. and her mother were denied asylum by the Danish Immigration Service. Consequently, the author appealed the decision before the Refugee Appeals Board. She claimed that the Board never held an oral hearing, and thus she only had the opportunity to present her and the children's case through counsel's written statements. The Refugee Appeals Board denied a request for an oral hearing on the basis that the Immigration Service admitted the testimony of the author.

Moreover, her second child was born after the decision by the Danish Immigration Service and her case had thus not had the possibility of a second instance. She further claimed that the Danish Ministry of Foreign Affairs was aware, through their investigation, of the hard consequences and punishment that she would face if deported back to China. On 17 March 2017, the Danish Refugee Appeals Board upheld the Immigration Service decision denying asylum to the author and her children.

Admissibility

The Committee considered that the claims under article 3, 6 and 8 UNCRC were admissible under article 7 (e) OPIC. However, the Committee considered that the author's claim under article 2 UNCRC was manifestly ill-founded and inadmissible, since she presented the violation in general terms, without sufficient proof between the allega-

tion and the acts of the State. Moreover, the Committee also considered that the author's claim that the deportation of her children to China would constitute a violation of article 7 UNCRC was not sufficiently substantiated, the birth of the author's children had already been registered in Denmark, and that all three children have Danish birth certificates.

Merits

The Committee recalled its General Comment No. 6, in which it states that States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child; and that such non refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the UNCRC originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner and should be carried out following the principle of precaution. Where reasonable doubts exist that the receiving State cannot protect the child against such risks, State parties should refrain from deporting the child.

The Committee also recalled that the best interests of the child should be a primary consideration in decisions concerning the deportation of a child and that the burden of proof does not rest solely on the author of the communication, especially considering that

frequently the State party alone has access to the relevant information.

Therefore, the Committee determined that, given the available information on the situation in China, Denmark violated article 3 of the Convention, as it did not sufficiently verify whether the Danish birth certificates of the children would suffice for the purposes of registration in the Hukou household register. If they were not enough, the State failed to outline what other procedures would be required for the children to obtain their Chinese birth certificates; what would be the likelihood of obtaining these and how long would this process take.

Since the registration in the Hukou household register, is required by China to ensure access to health, education and social services, the Committee also considered that the decision of Denmark to deport the author's children would entail a violation of their right to life, survival and development under article 6, and their right to preserve their identity under article 8 of the UNCRC.

Recommendations

The Committee determined that Denmark should refrain from deporting the author and her children to China, and that it was under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

N.S. v. Spain

The individual communication was discontinued after the compliance of the State with an interim measure by the Committee

Substantive Issues: Right to education

Relevant Articles: no violation was found

N.S. v. Spain was the quickest case to be settled by the CRC individual complaints' procedure. Following an interim measure requested by the Committee, the Spanish government reacted and took a prompt decision admitting N.S., a Moroccan national born and raised in Melilla, to school.

Related article (with video): [The UN Committee welcomes Spain's decision to allow Moroccan child to attend public school](#)

A.H.A. et al. v. Denmark

The individual communication was discontinued after the compliance of the State with an interim measure requested by the Committee

Substantive Issues: Family reunification

Relevant Articles: no violation was found

As another example of the importance and effectiveness of the interim measures and the complaint system itself, Denmark granted asylum to the mother of six Syrian refugees in compliance with the interim request by the Committee on the Rights of the Child.

Related article (with video): [UN Committee welcomes Danish asylum for Syrian mother of six](#)

Committee on the Elimination of Discrimination Against Women



Introduction

The Committee on the Elimination of Discrimination Against Women (CEDAW) has the competence to consider individual communications alleging violations of the Convention on the Elimination of All Forms of Discrimination against Women relating to States parties to the Optional Protocol to the Convention on the Elimination of Discrimination against Women. The Protocol has 80 signatories and 114 State Parties, including the addition of Chile in March 2020.

In 2020, the Committee considered 17 communications. Out of these, 8 communications were declared inadmissible, while the Committee adopted views on 9 cases. Among such views, 3 cases concerned [North Macedonia](#) and related to **discrimination against Roma women**.

Despite the geographical diversity of the States parties to the Protocol, the **majority of the cases assessed in 2020 related to 14 European States**, namely [Bosnia and Herzegovina](#), [Denmark](#), [Finland](#), [Hungary](#), [Netherlands](#), [North Macedonia](#), [Poland](#), [Republic of Moldova](#), [Russian Federation](#), [Slovakia](#), [Switzerland](#), [Spain](#) and the [United Kingdom of Great Britain and Northern Ireland](#). One case concerned [Kyrgyzstan](#). We found that this continues a pattern identified in 2019 whereby individual communications concern mostly European states.

As of 27 October 2020, the Committee had **36 cases pending consideration**. In the [report on its 48th session](#), the Working Group on Communication observed that ‘even if the number of cases adopted during the most recent sessions had increased significantly, the number of cases ready for decision remained important and had not decreased proportionately. The Working Group appreciated the efforts made by the Petitions and Urgent Actions Section of OHCHR to prepare an increased number of draft recommendations for consideration’.

Regarding relevant developments on the CEDAW's follow up procedure in 2020, it is worth noting that, according to its report ([CEDAW/C/WGCOP/77/L.1](#)), the Working Group on Communications under the Optional Protocol decided to continue the on-going discussions on 13 decided cases at that time. The States concerned were [Bulgaria](#) (1), [Denmark](#) (1), [Finland](#) (1), [Mexico](#) (1), [the Republic of Moldova](#) (1), [the Russian Federation](#) (4), [Slovakia](#) (1), [Tanzania](#) (1), [Timor-Leste](#) (1) and [Ukraine](#) (1).

2020 CEDAW case law:

- *R.G. v. Kyrgyzstan* (merits decision)
- *S.B. and M.B. v. North Macedonia* (merits decision)
- *V.C. v. Republic of Moldova* (merits decision)
- *G.H. v. Hungary* (inadmissibility decision)
- *S.H. v. Bosnia and Herzegovina* (merits decision)
- *Rahma Abdi-Osman v. Switzerland* (merits decision)
- *L.O. et al. v. Switzerland* (inadmissibility decision)
- *K.S. v. Poland* (inadmissibility decision)
- *D.B. v. Slovakia* (inadmissibility decision)
- *M.A.M.N. v. United Kingdom of Great Britain and Northern Ireland* (inadmissibility decision)
- *S.N. and E.R. v. North Macedonia* (merits decision)
- *F.H.A. v. Denmark* (inadmissibility decision)
- *L.A. et al. v. North Macedonia* (merits decision)
- *R.R. and M.R. v. Finland* (inadmissibility decision)
- *G.M.N.F. v. Netherlands* (inadmissibility decision)
- *O.N. and D.P. v. Russian Federation* (merits decision)
- *S.F.M. v. Spain* (merits decision)

S.N. and E.R. v. North Macedonia

Following the eviction of two Roma pregnant women, the Committee found violations of the authors' rights to adequate housing, health and non-discrimination

Substantive Issues: Discrimination on the ground of ethnic origin; discrimination against Roma women; right to adequate living conditions; maternal health

Relevant Articles: 12 (2), 2 (d) (f), 4 (1)(2)

Facts

The authors are S.N. and E.R., women from North Macedonia of Roma ethnicity. Although claiming that her mother is a citizen of North Macedonia, S.N. never had any identity documents. E.R. had identity documents, but she lost them when her house was demolished by authorities and could not afford the fee to obtain new documents.

At the time of the submission of the communication, they were both minors and pregnant with their first child. S.N. had had two to three medical appointments, for which she paid, and E.R. had only one visit to a doctor, with the support of an NGO. They did not have access to public or private health insurance, as they did not meet any of the criteria required under national law. Therefore, they would need to pay for the medical care, including the labor procedure.

After being evicted from their homes - located in a settlement known as '*Polygon*' in Skopje – without prior and formal notice, as the land was privatized and sold to a private company,

S.N. and E.R. received an informal offer of alternative accommodation in another municipality by a public body. However, considering security concerns and the poor conditions of the shelter, they refused such an offer, and no other accommodation was proposed due to the lack of identity documents.

The authors claimed that there was no available and effective domestic remedy to their eviction and the lack of remedy for the violations. The petitioners also asserted that there were no legal regulations or procedures to ensure medical care or accommodation for them, given that they lack the identity documents. Given the urgency of the case, as they were pregnant, they filed a complaint before the Committee with the claim of violations of articles 2 (d) and (f), 4 (1) and (2), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention. They concern the right to health, including maternal care, to adequate living conditions and to be free of discrimination.

Admissibility

In light of article 4 of the Optional Protocol, the Committee observed that there was no concurrent complaint under analysis by other international procedures and that, given the urgency of the case as a consequence their pregnancies and the eviction, there were no available domestic remedy with a suspensive effect to which the authors could appeal,

especially considering that they did not have identity documents. The Committee also considered that the existence of legislation to address discrimination against women is not sufficient to demonstrate the availability of an effective remedy. Therefore, the Committee declared the communication admissible.

Merits

Regarding the authors' claim as victims of intersectional discrimination on the basis of gender, ethnicity, age and health status,

contrary to article 2 (d) and (f), the Committee asserted that the State party breached its obligations. In the present case, not only it did

not respect, protect or fulfil the authors' right to non-discrimination, but it failed to provide special measures to respond to the specific urgent needs of minor Roman pregnant woman in relation to the eviction from their houses.

In relation to the authors' right to health, particularly to reproductive health, the Committee concluded that the State breached its obligation under articles 12 (1) and (2) and 14 (2) (b). The authors did not have access to free health care and gave birth to their kids outside specialized hospitals. The Committee found that it failed to provide evidence of the measures adopted to ensure health care to the authors.

With reference to the authors' right to adequate living conditions, the Committee assessed that the lack of access to

appropriate accommodation, drinkable water and safe water for personal hygiene after the eviction constituted a risk of harm to their health and breached the State's obligation under the Convention provisions.

Lastly, the Committee noted that the authors were homeless during their pregnancies and after the evictions. As the State did not provide any evidence of appropriate accommodation alternatives, the Committee concluded the State had breached its obligations under article 14 (d) of the Convention. So, in the end of its analysis, the Committee found breaches of State obligations relate to articles of the Convention indicated by the authors in their complaint and included the consideration of General Recommendations Nos. 24 (1999) on women and health, as well as 25, 28 and 34 (2016) on the rights of rural women.

Recommendations

Particularly concerning the authors of the communication, the Committee urged the State to:

- Ensure adequate reparation, including material and moral damages due to housing and health care inadequate conditions during the pregnancy period, deteriorated by their eviction;
- Provide appropriate accommodation, access to clean water and adequate nutrition, as well as access to affordable health care.

More generally, the Committee recommended the State to:

- Adopt and implement policies and programmes to combat intersectional discrimination against Roma women and girls;
- Guarantee effective access to adequate housing for Roma women and girls;
- Ensure access to affordable and high-quality health care, including reproductive health care, and prevent and eliminate the imposition of illegal fees in public health services;
- Conceive programmes for poverty mitigation and social inclusion of Roman women and girls;
- Reinforce the implementation of temporary special measures, as enshrined in article 4 (1) of the Convention and in General Recommendation No. 25, in matters related to women and girls from ethnic minority groups, particularly Roman women and girls;
- Strengthen advocacy against intersectional discrimination based on sex, gender and ethnicity - through active engagement, financial support, participation of civil society and representation of Roma women and girl -, as well as to promote tolerance and equal participation of Roman women;

- Ensure access to information for Roma women and girls regarding their rights under the Convention;
- Ensure access to effective, affordable, accessible and timely remedies, with legal aid and assistance for fair legal procedures;
- Guarantee that no forced evictions of Roman women and girls will take place when alternative housing cannot be provided to the affected persons.

Separate Opinion

Individual opinion of Committee member Gunnar Bergby (dissenting)

The Committee member expressed his disagreement with the admissibility of the present communication, asserting that domestic remedies were not exhausted and that there was no evidence of unreasonable prolongation or lack of effectiveness of such remedies. He added that, as the eviction of the authors was under examination by the European Court of Human Rights, the communication was also inadmissible on the basis of article 4 (2) (a) of the Optional Protocol.

L.A. et al. v. North Macedonia

Following the eviction of four pregnant Roma women, the Committee found violations of the authors' rights to adequate housing, health and non-discrimination

Substantive Issues: Discrimination on the ground of national, ethnic or social origin

Relevant Articles: 12.2, 14.2 (b), 2 (d), 4.1, 4.2

Facts

The authors are L.A., D.S., R.A. and L.B., four North Macedonian women of Roma ethnicity. They are mothers of at least one child who were evicted from their homes in a settlement known as 'Polygon', in Skopje. During their pregnancies, they had lacked access to adequate health care, inclusive reproductive health, having very limited to no medical assistance at all due to the elevated costs of transportation, medical fees and medicines. They lived in extremely poor conditions, and only L.A. received a low social allowance, which was already low in value to maintain her and her four children. They also lacked access to clean water and could not maintain basic hygiene practices, as well as access to proper nutrition.

After privatizing and selling the area where they lived, the Inspectorate of the City of Skopje evicted the families living in the Polygon settlement, including the authors, without prior and formal notice. The authors could not apply for social housing, as they

did not have the required documents to do so, and did not accept the informal offer to relocate to a shelter due to security concerns and poor living conditions in the place. Therefore, the authors remained in the area where their former settlement was located, homeless and without access to water, which posed threats to their lives and health.

Despite being covered under the State's compulsory health insurance system, the authors argued that their health care was not free, and they could pay up to 20 percent of medical fees. In the case of maternal health care, they added that due to discrimination and stigma against Roma women, many gynecologists refused to register them as patients, which forced them to pay full price. Besides, in the area, there were no gynecologists available.

The authors argued that the State violated their rights to non-discrimination and health, and failed to consider their status as rural women.

Admissibility

In light of article 4 of the Optional Protocol, the Committee observed that there was no concurrent complaint under analysis by other international procedures and that, given the urgency of the case as a consequence their pregnancies and the eviction, there were no available domestic remedy to immediately guarantee alternative accommodation, reproductive health care and other basic

services. Regarding the eviction, the Committee noted that no effective remedy was available, especially considering that the authors were not notified. The Committee also considered that the existence of legislation to address discrimination against women is not sufficient to demonstrate the availability of an effective remedy. Therefore, the Committee declared the communication admissible.

Merits

Regarding the authors' claim of violation of their right to health, particularly to reproductive health, the Committee

concluded that the State breached its obligation under articles 12 (1) and (2) and 14 (2) (b) and (h) of the Convention. The

Committee recognized that the authors did not have access to free reproductive health services during their pregnancy, confinement and postnatal period, as well as to adequate nutrition. Due to this lack of affordable and appropriate care, the authors gave birth to their kids outside specialized hospitals, either on the street or in a social center.

The Committee observed that the situation was aggravated by the discrimination suffered by the authors. Led by the negative stigma against Roma women, gynecologists

have refused to register them as patients and, as a result, they need to pay a significant amount of the total costs. Further, the eviction without formal prior notice to the authors left them on the street, with no access to adequate housing or to safe water for drinking and personal use.

In conclusion, the Committee adopted the view that the State party failed to comply with its obligations, violating articles 2 (d) and (f), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention.

Recommendations

Particularly concerning the authors of the communication, the Committee urged the State to:

- Ensure adequate reparation, including material and moral damages due to housing and health care inadequate conditions during the pregnancy period, deteriorated by their eviction;
- Provide appropriate accommodation, access to clean water and adequate nutrition, as well as access to affordable health care.

More generally, the Committee recommended that the State party:

- Adopt and implement policies and programmes to combat intersectional discrimination against Roma women and girls;
- Guarantee effective access to adequate housing for Roma women and girls;
- Ensure access to affordable and high-quality health care, including reproductive health care, and prevent and eliminate the imposition of illegal fees in public health services;
- Conceive programmes for poverty mitigation and social inclusion of Roman women and girls;
- Reinforce the implementation of temporary special measures, as enshrined in article 4 (1) of the Convention and in General Recommendation No. 25, in matters related to women and girls from ethnic minority groups, particularly Roman women and girls;
- Strengthen advocacy against intersectional discrimination based on sex, gender and ethnicity - through active engagement, financial support, participation of civil society and representation of Roma women and girl -, as well as to promote tolerance and equal participation of Roman women;
- Ensure access to information for Roma women and girls regarding their rights under the Convention;
- Ensure access to effective, affordable, accessible and timely remedies, with legal aid and assistance for fair legal procedures;
- Guarantee that no forced evictions of Roman women and girls will take place when alternative housing cannot be provided to the affected persons.

Separate Opinion

Individual opinion of Committee member Gunnar Bergby (dissenting)

The Committee member expressed his disagreement with the admissibility of the present communication. He asserted that domestic remedies were not exhausted and that there was no evidence of unreasonable prolongation or lack of effectiveness of such remedies. He added that, as the eviction of the authors was under examination by the European Court of Human Rights, the communication was also inadmissible on the basis of article 4 (2) (a) of the Optional Protocol.

S.B. and M.B. v. North Macedonia

Discrimination against Roma women in access to health services, particularly sexual and reproductive health care, constituted a violation of the Convention by North Macedonia**Substantive Issues:** Discrimination against Roma women**Relevant Articles:** Articles 1, 2 (a), (c) and (e) and 12

Facts

The authors are S.B. and M.B., two North Macedonian women of Roma ethnicity. They live in the biggest Roma community in the country, in Šuto Orizari. There, they claim to have experienced several difficulties to enjoy access to health, in particular to gynecological services. In spite of the more than 13,000 women living in the municipality, there is a lack of offer of such services. Further, they claim that prejudice and discrimination against Roman woman by health professionals are also part of the obstacles faced.

The authors file their claim in relation to their experiences with the private practice health-care facility of Dr. L.K., a gynecologist. After several reported cases of discrimination against Roma women, two civil society organizations developed a simulation test with Roma and non-Roma women. The results demonstrated that when the authors sought medical assistance and to be registered as patients of Dr. L.K., they were rejected under the justification that the doctor no longer accepted young patients. However, when a non-Roma woman asked to be registered as a patient, the nurse proceeded with the request and medical assistance was provided minutes later.

The authors claimed that this discriminatory experience caused them emotional pain and suffering. They further noted that the facility

tested was the closest one to the municipality where they live, and that they would need to travel to a remote area to seek further treatment options.

The petitioners decided to file a lawsuit against the private health care provider, requesting the recognition of violation of their right to equal treatment and the award of non-pecuniary damages. During the hearing, Dr. L.K. attributed the denial of admission to the fear of losing other patients, on the basis that she had once received feedback regarding a Roma patient who 'smelled bad'. At the end of the procedures, the Court rejected the petitioners' claim as unfounded, as the facts were part of a simulation and they failed to complete their medical file with health identification cards and medical records. The authors, then, appealed this decision, but had no success. Without a public hearing, the appellate Court upheld the initial decision.

Claiming the exhaustion of domestic remedies, the authors filed the present communication to the CEDAW Committee, alleging violation to access to health and non-discrimination, as established on articles 1, 2 (a) (c) (e) and 12 of the Convention and in light of General Recommendation No. 24.

Admissibility

The Committee declared the communication admissible as the same matter was not under assessment by any other international procedure. While not essential for the admissibility of a communication, the

Committee also observed that the State failed to challenge it. Finally, the Committee found that the available domestic remedies to the claim of violation of right to health had been exhausted.

Merits

The Committee highlighted the challenges presented by discrimination and its intersectional forms, such as when sex and gender-based discrimination are also linked to other factors, such as race, ethnicity, religion, health status, class, age and others. Additionally, the Committee also recalled the multiple barriers faced by Roma women to access gynecological services and the recommendation for the adoption of special measures for women from ethnic minorities, raised in previous Concluding Observations on North Macedonia.

Although noting the adoption of new legislation to address the issue of discrimination in 2019, the Committee found that it was not sufficient to address the situation brought by the authors, and that in practice the authors were not protected against acts of discrimination. In addition, the Committee took note of the failure of the Court to properly assess the burden of proof in discrimination cases

With respect to the claim of a violation of the authors' rights to health, the Committee found that the refusal of their registration as patients was indisputable and amounted to a breach of the State's obligations under article 12. In fact, the State should have paid special attention to the health needs of Roma women and those belonging to vulnerable and disadvantaged groups. Further, the State should have adopted measures to eliminate any persistent obstacles in this respect and ensured their access to timely and affordable medical services, particularly to those related to reproductive health.

In light of the aforementioned reasoning, the Committee found that North Macedonia violated the authors' rights to non-discrimination and health as established under articles 1, 2 (a) (c) (e) and 12 of the Convention and considering CEDAW General Recommendations No. 24 and No. 28.

Recommendations

In relation to the authors, the Committee recommended that the State:

- Provide appropriate reparation, including moral and material damages due to the lack of realization of their sexual and reproductive health rights, especially with regard to gynecological services;
- Enable the authors' access to affordable health services, particularly those related to sexual and reproductive rights.

In general, the Committee requested the State:

- To adopt and implement effective policies, programs and measures to combat intersectional forms of discrimination and stigma against Roma women and girls, including in health care;
- To implement with efficacy new legislation on health, as well as to ensure access to affordable and high-quality health care and sexual and reproductive care, including by eliminating language barriers and with a special attention to guarantee access to free gynecological services;
- To raise awareness of judges on issues of non-discrimination, including the shifting of burden of proof and women's rights to effective remedies;
- To train health-care providers on discrimination against Roma women and girls;

- To conceive programmes for poverty mitigation and social inclusion of Roma women and girls;
- To reinforce the implementation of temporary special measures, as enshrined in article 4 (1) of the Convention and in General Recommendation No. 25, in matters related to women and girls from ethnic minority groups, particularly Roma women and girls;
- To strengthen advocacy against intersectional discrimination based on sex, gender and ethnicity - through active engagement, financial support, participation of civil society and representation of Roma women and girl -, as well as to promote tolerance and equal participation of Roma women;
- To ensure access to information for Roma women and girls regarding their rights under the Convention;
- To commit funds and prioritise regional cooperation at the European level to combat all forms of discrimination, including intersectional discrimination, and to promote inclusion.

O.N. and D.P. v. Russian Federation

Following a case of violence against a couple of lesbian women without appropriate remedy, the Committee found a breach of the State's obligation under the CEDAW Convention

Substantive Issues: Violence and discrimination against women on the basis of their sexual orientation; access to justice and effective remedy; due diligence obligations on gender-based violence

Relevant Articles: Articles 1, 2 (b)-(g) and 5 (a)

Facts

The authors are O.N. and D.P., two Russian nationals who are a lesbian couple. On the night of 19 to 20 October 2014, they were going home in the streets of Saint-Petersburg when they noticed that a man was following them. After a public display of affection, they were insulted and assaulted by that man, while another one filmed the aggressions with a mobile phone. When the violent acts finished, they returned to their homes fearing for their security.

On the following day, they reported the case to the police station. O.N. was subjected to a medical examination, which found a concussion and hematoma on her hip. D.P. did not have any visible injuries until that moment and, when marks appeared later, she did not have any of them documented. After this, the investigator in charge of their case refused to open a criminal case due to the lack of identification of witnesses and perpetrators. This was overruled by a deputy prosecutor, who ordered further inquiry by the investigator, including the assessment of the gravity of the injuries, collection of closed-circuit television recordings and the conduction of other inquiry procedures. Despite having conducted further medical examinations a month after the incident and requesting the recordings, which had already been destroyed, the investigator still refused to open a criminal case. The authors were not informed of the actions carried out and the refusal.

After two appeals arguing the lack of effective investigation, a criminal case was open, but the offense listed did not include the crime's homophobic motivation. The authors requested, then, the reclassification of the crime, which was refused by the investigator under the allegations that the motivation had a subjective nature and the perpetrators had not been identified. The authors unsuccessfully appealed this decision twice, including the claim that the investigator did not concern the death threat to which they were subjected. The Courts upheld the investigator's decision.

The authors appealed once more, contesting, now, the investigator's failure to act and, after an interruption of the proceedings due to the non-identification of the perpetrators, the court requested the investigator to reclassify the crime. The request was again rejected. Following lack of information concerning the investigations, the authors decided that further appeals would have been ineffective and considered having exhausted all the domestic remedies.

Addressing the complaint to the Committee, the authors claimed that the State breached its obligations under articles 1, 2 (b) (c) (e) and (f) and 5 (a) of the Convention and violated their rights to non-discrimination, to an effective, prompt and independent investigation and to appropriate remedies.

Admissibility

The Committee noted that the case had not been discussed by another international investigation procedure. It further stated that, even

if a cassation review was available, there was no evidence that the authors could have been successful with their claim regarding the fail-

ure to conduct an effective and timely investigation. This matter was not addressed by the

State. Therefore, the Committee considered that the communication was admissible.

Merits

The Committee observed that State parties can be held responsible for law enforcement decisions that contravene the provisions of the CEDAW Convention. Besides, States must take actions to eliminate direct and indirect discrimination, as well as to transform and eliminate gender stereotypes. For the present case, the Committee noted that discrimination includes gender-based violence against women and its intersectional forms. Therefore, States can be held responsible for private acts, when they fail to prevent, investigate, punish and/or provide compensation in respect to acts of violence.

The Committee also noted that frequently cases of violence against lesbian, bisexual and transsexual women do not meet appropriate outcomes. Also, legislation, regulations, customs and practices can discriminate against women and, in such cases, the State must address the issue under penalty of violating their rights. Furthermore, the Committee noted that gender stereotypes must be assessed

considering the level of gender sensitivity of the investigation.

In the present case, the Committee assessed that: the investigative authorities failed to timely and adequately act during the investigations, as well as to inform the authors, and that authorities did not provide adequate remedy to the violence suffered. The Committee recalled that, in previous CEDAW Concluding Observations on the State party reports, it had already declared its concerns regarding acts of violence against lesbian, bisexual and transgender women.

Therefore, the Committee concluded that the State failed to protect women's rights in the context of violence and discrimination based on sexual orientation, as well as to provide access to justice and remedy after the physical and moral damages suffered by the petitioners. The State thus violated its obligations under articles 1, 2 (b)-(g) and 5 (a) of the Convention.

Recommendations

In light of the violations suffered by the authors, the Committee requested the State to provide adequate remedies, including monetary compensation and psychological rehabilitation, according to the gravity of the violations.

More generally, the Committee addressed the following recommendations to the State:

- To guarantee timely gender-sensitive training for police and investigative authorities on gender-based violence against women, towards raising the common understanding that crimes with homophobic motivations are gender-based violence;
- To act with due diligence to respect, protect and fulfil women's rights, including lesbian women and the right to be free from gender-based violence;
- To adequately investigate all allegations of gender-based violence against women on the basis of hatred towards lesbian women, bring perpetrators to a fair trial and appropriately punish them;
- To ensure safe and prompt access to justice, including free legal aid if necessary, to lesbian women victims of violence.

S.M.F. v. Spain

The Committee found that Spain violated the Convention after a case of obstetric violence during childbirth in a public hospital

Substantive Issues: Obstetric violence

Relevant Articles: Articles 2 (b) (c) (d) (f), 3, 5 and 12

Facts

The author is S.M.F., a Spanish national who was in the final phase of her pregnancy, which was normal and well-monitored. After experiencing some discomfort but not yet the active phase of labour, the author went to a public hospital in Spain seeking guidance. However, the hospital staff started several unnecessary procedures without informing her or asking for her consent.

The procedures included the administration of synthetic intravenous oxytocin without advising the author of adverse impacts, which caused fever and vomiting; the excessive digital vaginal examinations - 10, in total - which likely resulted in an infection of the newborn baby; restricting the authors movements during dilatation; refusing to allow the author choose the delivery position; the refusal to have her partner present during labour; the instrumental delivery with a ventouse and the episiotomy, both performed without informing the author or obtaining her consent; the admission of her daughter to the neonatal unit for seven days due to an infection; and the interference with breastfeeding.

As a result of the experience, the author developed a post-traumatic stress disorder and has required psychological support. The author claimed that the separation after birth damaged the relationship between the

daughter and her parents, which took a year of psychological work to break through. The author noted that she still suffers from anxiety, insomnia and repetition of the traumatic events. Additionally, due to the harm caused by the episiotomy, the author needed to rehabilitate her pelvic floor, which restricted her sexual activity for a period of two years.

The author argued that these facts demonstrated obstetric violence and filed two complaints with the Xeral-Calde Hospital and with the hospital's ethics committee, however they remained answered. Then, the author also submitted a claim arguing the financial responsibility of the public administration to the Ministry of Health of Galicia, which was later rejected. The author appealed this decision to the Administrative Court of Santiago de Compostela which dismissed the appeal. A subsequent appeal was later also dismissed by the Galician High Court of Justice. Finally, the author elected to file an application for *amparo*, a remedy for the protection of constitutional rights, which was also dismissed on the basis of lack of special constitutional significance.

The author filed the present communication to the CEDAW Committee, claiming that Spain breached its obligations under articles 2, 3, 5 and 12 of the Convention, due to obstetric violence during childbirth.

Admissibility

The Committee noted the State's rationale for dismissing the admissibility of the communication, given that the author did not file the complaints claiming violation of fundamental rights, but rather invoked financial responsibility. However, the Committee recalled the precedent of the European Court of Human Rights, according

to which the authors of a communication do not necessarily need to exhaust all available remedies, but must give the opportunity to the State to provide an effective remedy to the case. Therefore, the Committee considered that the author had exhausted all available domestic remedies and declared the communication admissible.

Merits

Taking note of the author's and State's arguments, the Committee invoked article 2 (a) of the Convention, which requires State parties to guarantee the implementation of the principle of equality, as well as articles 2 (f) and 5, through which States are obliged to adopt all the adequate measures to modify or abolish existing laws, regulations, customs and practices that result in discrimination against women.

In the present case, the Committee also recalled the report of the Special Rapporteur on violence against women (A/74/137), in which obstetric violence is identified as a widespread and systematic form of violence, driven by poor labour conditions, resource limitations and power dynamics rooted in stereotypes. The report highlights that episiotomies may have negative physical and psychological effects on the mother, may put her life at risk and potentially be classified as gender-based violence and torture and inhuman and degrading treatment.

In the view of the Committee, the State authorities in charge of assessing the responsibility for the obstetric violence must exercise caution to not reproduce stereotypes. In the

current case, the Committee highlighted that, since the pregnancy progressed normally and there was no medical urgency, the author should have received enough information on the existing other alternatives. However, as acknowledged by domestic courts, the judge failed to comprehensively assess the evidence presented by the author, including technical reports, and to provide an independent assessment if there were conflicting conclusions with other relevant sources.

The Committee added that the administrative and judicial authorities based their decisions on stereotypical and discriminatory concepts relating to sexuality, maternity and childbirth. These were applied when assessing whether the lack of information was reasonable, when prohibiting the presence of the father during the delivery, when depriving them from sexual relations for two years and assessing the resulting psychological harm.

Giving due consideration, the Committee found that the State violated the author's rights under articles 2 (b) (c) (d) (f), 3, 5 and 12 of the Convention, related to non-discrimination and right to health.

Recommendations

On this basis, the Committee recommended that the State party provide adequate reparation, including financial compensation due to the physical and psychological harm suffered by the author.

In general, the Committee addressed the following recommendations to the State:

- Ensure women's rights to safe motherhood and access to adequate obstetric care services, providing them information at each moment of childbirth and requiring their free, prior and informed consent before any invasive treatment, with due exceptions;
- Carry out a research on obstetric violence in the State party, to have an overview of the situation and guide public authorities to combat this violence;
- Properly train obstetricians and health workers on women's reproductive health rights;
- Ensure access to effective remedies when violations to women's reproductive health rights occur, including obstetric violence, and provide training to judicial and law enforcement corps.

R.G. v. Kyrgyzstan

Lack of gender-sensitive penitentiary facilities constitutes discrimination against women, as established in the Convention

Substantive Issues: Discrimination against a woman prisoner; gender-based discrimination against a prisoner; lack of gender-sensitive penitentiary facilities

Relevant Articles: articles 2 (a) (b) (d) (e) (f), 3 and 5 (a), 12 and 15 read in conjunction with article 1

Facts

R.G. is a Kyrgyzstani woman who was found guilty of murder and sentenced to 15 years imprisonment by the Maili-Say City Court. The author appealed this decision, and the Regional Court overturned the initial verdict, referring it for additional investigation. After two overturned appeals, the author was sentenced to conditional release. However, until this latest decision, the author had passed through five different detention centres in Maili-Saili, Jalalabad, Tash-Komur, Nookan and Bazar-Korgon.

During the periods of imprisonment in each establishment, the author claims that they were deprived of access to water, sanitation, privacy, nutrition and basic infrastructure (e.g., bedding, light, heating and fresh air). For example, when using the bathroom or the only buckets for toilet needs, male guards in charge of supervision could see her. In some detention settings, she could not read due to the lack of light and, therefore, could not prepare for court hearings or have access to any type of information.

The author adduces that upon her arrival at the detention centres, there were no women

guards. In this case, she was searched by male guards, despite the earlier determination that only guards of the same sex of the detainee can do so. The author also did not receive any hygienic supplies - including tampons, sanitary pads or napkins - and could not properly wash her underwear and other clothes. R.G. also noted that she had been insulted, and referred to inappropriately as "little rose" and "rozochka".

The author elected to file several complaints, to start civil proceedings and to appeal to different judicial bodies, including to the Office of Prosecutor of the Jalalabad region, to the City Courts of Jalalabad, Tash-Komur and Bishek, to the Pervomaisk District Court. The author was unsuccessful at the lower bodies and the case was addressed twice by the Supreme Court of Kyrgyzstan, however the author remained unsuccessful.

In their communication to the Committee, the author argued that the State violated the articles 2 (a) (b) (d) (e) and (f), 3 and 5 (a), read in conjunction with article 1 of the Convention, given that the State did not provide gender-sensitive detention conditions.

Admissibility

The Committee confirmed that the matter was not under analysis under another international procedure. It also considered that the author exhausted all the available domestic remedies,

since the conditions of detention were twice brought to the Supreme Court on two different grounds. There, the Committee declared the communication admissible.

Merits

Taking note of the allegations made by the author, the Committee observed that no explanation had been provided by the State,

which limited itself to describing the premises and did not address the lack of women guards. The Committee further recalled

article 3 of the Convention (equality) and rule 53 of the United Nations Standard Minimum Rules for Treatment of Prisoners, which provides that detained women should be attended and supervised by women officers.

The Committee also recalled its General Recommendation No. 35, which provides that gender-based violence constitutes discrimination under article 1 of the Convention. In light of this, the Committee observed that the lack of facilities for women also results in discrimination and that gender-sensitive approach must be adopted, as prescribed by the General Assembly in its resolution 65/229 (United Nations Rules for the Treatment of Women Prisoners

and Non-custodial Measures for Women Offenders). The Committee also found that the disrespectful treatment of the petitioner by the male penitentiary agents, including the invasion of privacy, insults and inappropriate touching, constitutes sexual harassment and discrimination, as established on article 1 and 5 (a) of the Convention.

The Committee found that on the basis that the author suffered moral and physical damage, while enduring negative health consequences, degrading treatment and sexual harassment, the State did not meet its obligations under articles 2 (a) (b) (d) (e) (f), 3 and 5 (a), 12 and 15 read in conjunction with article 1 of the Convention

Recommendations

The Committee recommended that the State provide adequate reparation to the author, including appropriate compensation, as well as enable her to access health services to address the negative health consequences.

In general, the Committee made the following recommendations to the State party:

- Take actions to ensure the protection of the dignity, privacy, physical and psychological safety of women detainees in all the detention centres, including appropriate accommodation and materials;
- Guarantee access to gender-specific health care in detention centres, including adequate psychological services;
- Ensure that alleged violations of women detainees related to the prohibition of discrimination, cruel, inhuman and degrading treatment are effectively investigated, with prosecution and adequate punishment of perpetrators;
- Protect women detainees from all forms of abuse, including gender-specific ones, and guarantee that they are searched and supervised by adequately trained women staff;
- Guarantee that all staff working with both women and men detainees receive appropriate training in respect to gender-specific needs and human rights of women detainees;
- Adopt policies and programmes that protect the needs of women prisoners, considering their dignity and fundamental rights.

Committee on the Elimination of Racial Discrimination



Introduction

The Committee on the Elimination of Racial Discrimination (CERD) has the competence to assess communications alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination by States parties who have made the necessary declaration under article 14 of the Convention. To date, more than 50 States have given such declarations.

While in 2019 no views were adopted, **in 2020, the Committee adopted only 1 view** on a case concerning **indigenous people's right to land in Sweden**. Notably, in the recent jurisprudence of the Committee since 2016, **all the communications examined concerned European States**.

Regarding the [Inter-state communications procedure](#), some relevant developments were observed, particularly the appointment of *ad-hoc* Conciliation Commissions for *Qatar v. Saudi Arabia* and *Qatar v. UAE* in 2020. The process, however, was suspended in 2021 after the recovery of their diplomatic relationships. In the case of *State of Palestine v. Israel*, no substantial development was observed in 2020.

Lars-Anders Ågren et al v. Sweden

The Committee found that Sweden violated the indigenous Sami people's land rights and the right to an effective protection and remedy, in the context of the mining concessions on their traditional territory.

Substantive Issues: Right to property; right to equal treatment before the tribunals and all other organs administering justice; right to effective protection and remedies

Relevant Articles: 5 (a) (d) (v) and 6

Facts

The authors are 15 indigenous persons, members of the Vapsten Sami community. For them, traditional reindeer herding constitutes the core of their cultural identity and traditional livelihood, practiced in their traditional Vapsten territory. Despite the vital importance of such an area to the community, the State of Sweden granted exploitation concessions to a private company to carry out its mining activities with three open-pit mines and a large infrastructure, all located in Vapsten pasture zones. Additionally, other projects were authorized, critically reducing the area for reindeer herding of the Vapsten community and psychologically affecting them.

The authors claimed that such mining concessions were granted without their consent despite being located in their traditional territory where they obtain their traditional livelihood, amounting thus to a violation of their right to property as prescribed in article 5 (d) (v) of the Convention. They argued that they could no longer sustain their culture with such concessions and would be forced to relocate from their traditional land.

Furthermore, the authors asserted that the State violated article 5 (a) of the Convention, which establishes the right to equal treatment before tribunals and other organs administering justice. The authors explained that Swedish mining legislation and policies are discriminatory and treat a Swedish indigenous reindeer group as a Swedish property rights holder, not providing a different treatment as an indigenous community.

They also claimed that Sweden infringed their right to effective protection and remedies, as enshrined in article 6 of the Convention. The Supreme Administrative Court can only issue decisions regarding the application of national law, but do not provide legal mechanisms to question the legislation itself, which, in the present case, constitutes the root cause of the discrimination endured by the authors. Moreover, the petitioners argue that monetary compensation is not an adequate remedy for their removal from the Vapsten traditional land, essential to their cultural identity and livelihood.

Admissibility

The Committee confirmed the victim status of the authors due to the lack of prior consultation in the grant of the concessions, negatively affecting their rights. Also, in light of article 26 (2) of the UN Declaration on the Rights of Indigenous Peoples, endorsed in CERD General Recommendation No. 23 (1997), the Committee invoked the concept of traditional

ownership and other traditional occupation as a basis for the right to own, use, develop and control lands. Therefore, on the basis of article 14 of the Convention and rule 94 of its rules of procedure, the Committee affirmed the admissibility of the communication, and asserted that the claims are relevant to articles 5 (a) (d) (v) and 6 of the Convention.

Merits

Regarding article 5 (d) (v) of the Convention, the Committee clarified that the scope of the complaint is to assess if the State party's dismissal of the allegations based on the legal determination of Sami property rights amounts to a violation of the Convention. In this regard, the Committee recalled its General Recommendation No. 23 (1997), in which the rights of indigenous peoples to own, develop, use and control their traditional lands, as well as the restitution of lands and territories if they are forcibly removed without their consent from their traditional lands, are recognized and protected. The Committee also noted that these rights are also enshrined in article 26 the UN Declaration on the Rights of Indigenous Peoples, for which Sweden voted in favor.

The Committee also reaffirmed that communal lands are essential for the cultures, spirituality, integrity and economic survival of indigenous communities, and should not be misunderstood as mere possession and production resources. It further found that indigenous peoples' land rights constitute are essential for the realization of their right to life, and that the non-recognition and violation of such rights are also a form of discrimination.

It highlighted that the Swedish Supreme Administrative Court had already recognized the Sami reindeer community's property rights from their traditional use, basing this view on immemorial prescription and customary law. Moreover, the Nordic Sami Convention protects both the individual and collective property rights of Sami indigenous peoples, as access to land and water are vital for their culture, language and social life. Finally, it also noted that in its last Concluding Observations after the review of Sweden, the Committee had already expressed its concern with the land rights of the Sami people.

Recognizing the principle of proportionality, the Committee found that the right to property is not absolute, but eventual limitations and regulations to indigenous

lands must consider their distinctive status and ensure that they do not impact the survival of the inhabitants. The Committee also found that the State did not comply with its obligation of adequate and effective prior consultation of the community before granting the concession.

In this manner, the Committee clarified that State parties must ensure equality of rights *de jure* and *de facto*. Any governmental, national and/or local policies must be reviewed to have discriminatory obstacles removed and to contain measures to ensure such rights, as outlined in article 2 (1) (c) of the Convention. The Committee also recalled that racial discrimination can be found when no adequate free, prior and informed consultation can be proved by the State, with whom the burden of proof rests. In the present case, the Committee found that the State Party breached the authors' right to be consulted prior to a decision, by delegating the consultation to the private mining company. Further, the lack of environmental and social impact studies prior to the decision of concession undermines an informed consent by the affected communities. The Committee therefore concluded that the State violated the authors' land rights when granting the concessions, violating article 5 (d) (v) of the Convention.

Regarding article 5 (a) and the authors' claim that their right to equal treatment before the tribunals and all organs administering justice, the Committee found that the authors did not provide sufficient evidence for their claims and therefore did not adopt a view on this matter.

With respect to article 6 of the Convention and the authors' rights to seek effective protection and remedies, the Committee sustained that Sweden did not provide sufficient proof of domestic remedies that could offer adequate reparation to the damages endured by the petitioners. It also provided that States should ensure the return of the lands and territories as

the first adequate remedy. Compensation could constitute an alternative measure for situations where this was factually impossible.

Finally, the Committee observed that the disregard of the authors' property rights, the

impossibility of obtaining effective remedy, and the lack of assessment of the impacts on the authors' rights with the possibility of irreparability constituted a violation of article 6 of the Convention.

Recommendations

In light of the violations of the authors' rights, the Committee recommended that the State:

- Revise the mining concessions after ensuring an adequate process of free, prior and informed consent.
- Amend the national legislation to include an accurate status of the Sami as indigenous peoples in matters of land and resources, as well as to consecrate the international standard of free, prior and informed consent.
- Disseminate the view adopted by the Committee, with translations to Swedish and the author's language.

Committee on Enforced Disappearances



Introduction

The individual communication procedure for the Committee on Enforced Disappearances (CED) is outlined in article 31 of the Convention on Enforced Disappearances. To date, it can only be used in the context of the 25 States parties that have made a declaration recognising the Committee's competence to examine communications.

In 2020, the Committee adopted views on **1 case (E.L.A. v. France)**, while in 2019 **no views were adopted**. In the history of the **Committee's jurisprudence**, **only two views have ever been adopted**: in 2016 and 2020. Consequently, **the follow up mechanism has only addressed the two cases which were decided on their merits**.

In 2020, a [follow up report](#) on the first view adopted by the Committee (*Yrusta v. Argentina*, Communication No. 1/2013) was issued. After considering the case, the Committee found that the State had violated the authors' rights and sent follow up letters to the State to ensure the implementation of recommendations made. The Committee received three follow up reports by the State, in February 2018, March 2018 and September 2019. Having analysed the most recent report in 2020, the Committee still found that **the State did not satisfactorily implement the recommendations addressed on the Committee's view: 2 were graded D and three were graded B**. According to its criteria, the Committee considered three recommendations partially satisfied, while two others received no reply from the State. In light of the insufficient implementation of the views, the Committee decided to keep its follow up procedure open and to issue another follow up letter.

E.L.A. v. France

After rejecting several of the author's asylum applications, the Committee found that France violated his right to *non-refoulement*

Substantive Issues: Enforced disappearances, non-refoulement

Relevant Articles: Article 16

Facts

The author is E.L.A., a Sri Lankan national who filed several asylum applications before French authorities, claiming that he feared for his life and integrity if returned to Sri Lanka. As a member of the Tamil community in Sri Lanka, the author was arrested on several occasions during the Civil War in the country and claimed that he and his family were threatened and ill-treated by State authorities.

The author decided to leave Sri Lanka and moved to France after two years living in Turkey. From 2003 to 2017, the author filed four asylum applications in France arguing that his return to Sri Lanka could seriously endanger his integrity and safety. Before French national authorities, he indicated that his family was suffering persecution, that his brother was kidnapped by the Sri Lankan Army in 2004 and was later found dead in a mass grave, that his uncle was killed by the Army, that he suffered post-traumatic stress disorder due to these circumstances, that he had physical scars of the torture suffered. To provide evidence of his allegations, he attached Sri Lankan media articles, a statement from the European Parliament in

Brussels, medical certificates, Sri Lankan investigation sheets and other documents.

All applications were rejected under different arguments, namely the vagueness and lack of details of the allegations; lack of new elements in new applications; lack of translation, insufficient and/or untimely submission of evidence; inconsistency and lack of substantiation of the claims. Following each rejection, the author appealed the decisions, but the review authorities have always upheld the initial decision. In 2017, the Cergy-Pontoise Administrative Court issued a final binding decision ordering his return to Sri Lanka within thirty days.

He filed the present complaint before the Committee on Enforced Disappearances claiming that the State violated article 16 of the Convention, which prohibits *refoulement* if there are risks of enforced disappearances. He reiterated the arguments used in his asylum applications, adding the increased fear after the terrorist attack in 2018 against the Christian community, to which he is part.

Admissibility

In assessing the admissibility criteria contained in article 31 (1) and (2) of the Convention, the Committee considered that even if part of the facts occurred before the Convention entered into force for the State party, those that took place thereafter can be taken into consideration. This includes the author's third and fourth asylum applications. Regarding the exhaustion of domestic remedies, the Committee also noted that the applications were analyzed on five occasions

by asylum courts. It noted that despite the lack of appeal of the final decision by the Cergy-Pontoise Administrative Court, the suspensive effect was not guaranteed, which would render it an ineffective remedy. Further, the Committee noted that express and direct reference to the risk of enforced disappearance is not indispensable, when in substance such risk was raised in the petitioner's claims. Therefore, the communication was declared admissible.

Merits

The Committee recalled that article 16 (1) requires substantial grounds for believing that the individual could be subjected to enforced disappearance, and further that article 16 (2) lists a consistent pattern of gross, flagrant or mass violations in the country of destination (Sri Lanka) as a criteria. In applying article 16 (1), the Committee asserted that the risk of enforced disappearance must be assessed comprehensively. For this purpose, State authorities must genuinely and critically assess the issue, not merely formal aspects or limit themselves to previous decisions. In

this sense, the Committee concluded that the last Court did not rightfully consider the consequences of the disappearance of the author's brother. It added that authorities dismissed the petitioner's medical certificates without providing a consistent reasoning, as well as the general context of enforced disappearances in Sri Lanka.

In light of these considerations, the Committee found that the return of E.L.A. to Sri Lanka would constitute a breach of article 16 of the Convention.

Recommendations

Pursuant to article 31 (5) of the Convention, the Committee recommended that the State:

- Re-examine the petitioner's asylum application;
- Renounce the deportation of the author during the analysis of his application before French courts.

Separate Opinions

Individual opinion of Committee member Moncef Baati (dissenting)

The Committee member expressed his disagreement with the view adopted by the Committee, regarding both the analysis of admissibility and merits of the communication.

On admissibility, the Committee member asserted that criteria of article 31 (2) (d) was not met as domestic remedies were not exhausted, noting that the author could have filed an appeal of the refoulement decision of the Cergy-Pontoise Administrative Court and requested its suspension. Secondly, he did not hire a lawyer and did not apply for legal aid. Thirdly, if the author had appealed, he could have alleged his right to family life, since he is married in France. Lastly, one month was a reasonable time to enforce his return to Sri Lanka.

On the merits, with a view to the future work of the Committee, the member outlined that Sri Lanka signed and ratified the Convention, which entered into force in 2016, before the issuance of the return order. The Committee member also highlighted that since then, the Committee only received one request for urgent action related to Sri Lanka, and that on the occasion of disagreement with the view of a State party, the Committee must make its own evaluation based on an initial report for the review cycle and its consideration. Further, criteria for homogenous application of article 16 should be established.

Individual opinion of Committee member Juan José López Ortega (dissenting)

The Committee member expressed his disagreement with the view adopted by the Committee, who, in his opinion, 'cannot act as a court of third instance'. In the present case, the member is of the opinion that France fully respected the author's rights, with a thorough analysis of his applications by several administrative and judicial bodies and founded arguments for their rejection. Therefore, argued that the State decisions were not arbitrary or unreasonable.

The member also stated that after 14 years since his first asylum application, the risks of the author being subjected to enforced disappearance by Sri Lankan authorities had drastically decreased, and that the author did not provide evidence that he would still face such risks. Following the reasoning of the European Court of Human Rights, he adds that widespread violations cannot be an evidence of a situation of risk and regretted the disagreement between the Committee and the regional court on this matter.

Committee Against Torture



Under the procedure outlined in article 22 of the Convention Against Torture, the Committee Against Torture can receive individual communications alleging violations of the Convention by State party's which have accepted the competence of the Committee. However, to date only 69 States have done so.

In April 2021, **219 individual communications were still pending consideration by the Committee.**

Notably, the Committee Against Torture **did not adopt any views** on individual communications in 2020. **This was a marked reduction in the consideration of communications from 2019**, where the Committee adopted views in 24 cases. This was driven by the occurrence of only one online session (69th session) and the **cancellation of two sessions due to the Covid-19 pandemic.**

However, during its [Intersessional Meeting](#) (27 November - 30 December 2020), the Committee examined twenty-five communications and took the following actions:

- Declare the inadmissibility of the following communications: *F.K. v. Denmark* (CAT/C/70/D/743/2016), *J.D. v. Switzerland* (CAT/C/70/D/819/2017), *H.T. v. Switzerland* (CAT/C/70/D/888/2018) and *Z.S. v. Georgia* (CAT/C/70/D/915/2019);
- Discontinue the following communications: *V.A. v. Kazakhstan* (CAT/C/70/D/638/2014), *S.V. v. Russian Federation* (CAT/C/70/D/660/2015), *J.S. v. Canada* (CAT/C/70/D/684/2015), *G.S. v. Canada* (CAT/C/70/D/705/2015), *A.S. v. Canada* (CAT/C/70/D/728/2016), *S.V. v. Australia* (CAT/C/70/D/740/2016), *J.L. v. Canada*

(CAT/C/70/D/741/2016), *C.C. v. Switzerland* (CAT/C/70/D/808/2017), *B.S. v. Canada* (CAT/C/70/D/838/2017), *T.Ç. and M.E.Ç. v. Georgia* (CAT/C/70/D/861/2018), *R.K.K. v. Switzerland* (CAT/C/70/D/870/2018), *B.K. et al. v. Canada* (CAT/C/70/D/873/2018), *F.S. v. Switzerland* (CAT/C/70/D/876/2018), *H.S.D. v. Canada* (CAT/C/70/D/877/2018), *S.S. v. Australia* (CAT/C/70/D/895/2018), *R.T. v. Australia* (CAT/C/70/D/932/2019), *B.T. v. Serbia* (CAT/C/70/D/936/2019), *A.R. v. Sweden* (CAT/C/70/D/950/2019), *M.B. v. Montenegro* (CAT/C/70/D/970/2019) and *B.T.M. v. Switzerland* (CAT/C/70/D/1015/2020);

- Postpone the analysis of the communication *R.G. v. Russian Federation* (No. 902/2018).

Although the decisions were taken in 2020, the relevant reporting was not published until 2021. More details on any significant movement in the jurisprudence will be explored in the 2021 edition of our Yearbook.

Additionally, **the Committee launched a follow up report in June 2020** ([CAT/C/68/3](#)) assessing the implementations of recommendations outlined in the following views: *Aarrass v. Morocco* (No. 477/2011), *Ramírez Martínez et al. v. Mexico* (No. 500/2012), *F.K. v. Denmark* (No. 580/2014), *R.G. et al. v. Sweden* (No. 586/2014), *Asfari v. Morocco* (No. 606/2014), *I.A. et al. v. Sweden* (No. 729/2016), *A.N. v. Switzerland* (No. 742/2016), *Harun v. Switzerland* (No. 758/2016), *Yrusta and del Valle Yrusta v. Argentina* (No. 778/2016), *M.G. v. Switzerland* (No. 811/2017) and *A v. Bosnia and Herzegovina* (No. 854/2017).

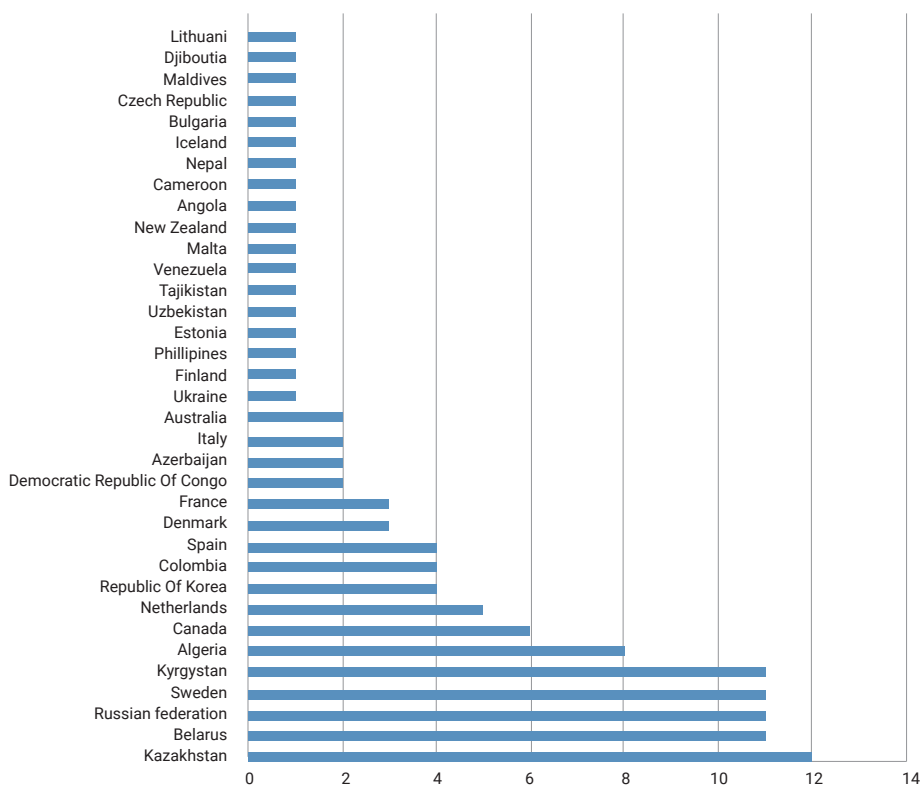
Committee on Migrant Workers



The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted on 18 December 1990 and entered into force on 1st July 2003. As of 1 October 2021, the Convention has been ratified by only 56 States and remains the least ratified UN human rights instrument.

The Committee's individual communication procedure is outlined in the text of article 77, however has yet not entered into force. To achieve this, at least 10 States must accept the competence of the Committee to consider individual communications, which to date has only been accepted by [Ecuador](#), [El Salvador](#), [Mexico](#), [Turkey](#) and [Uruguay](#). As such **no views were adopted** by the Committee in 2020.

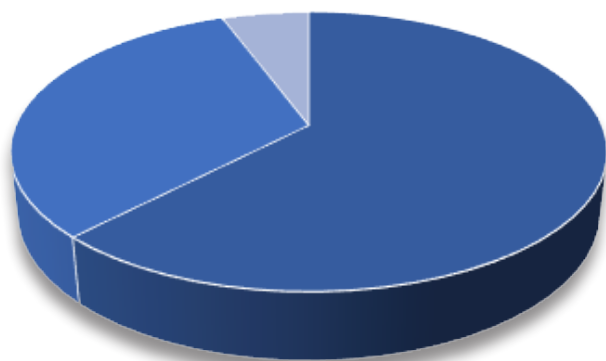
Human Rights Committee



In 2020 (128th; 129th and 130th Sessions), the Human Rights Committee adopted views on **119 individual communications**.

Geographic Trends

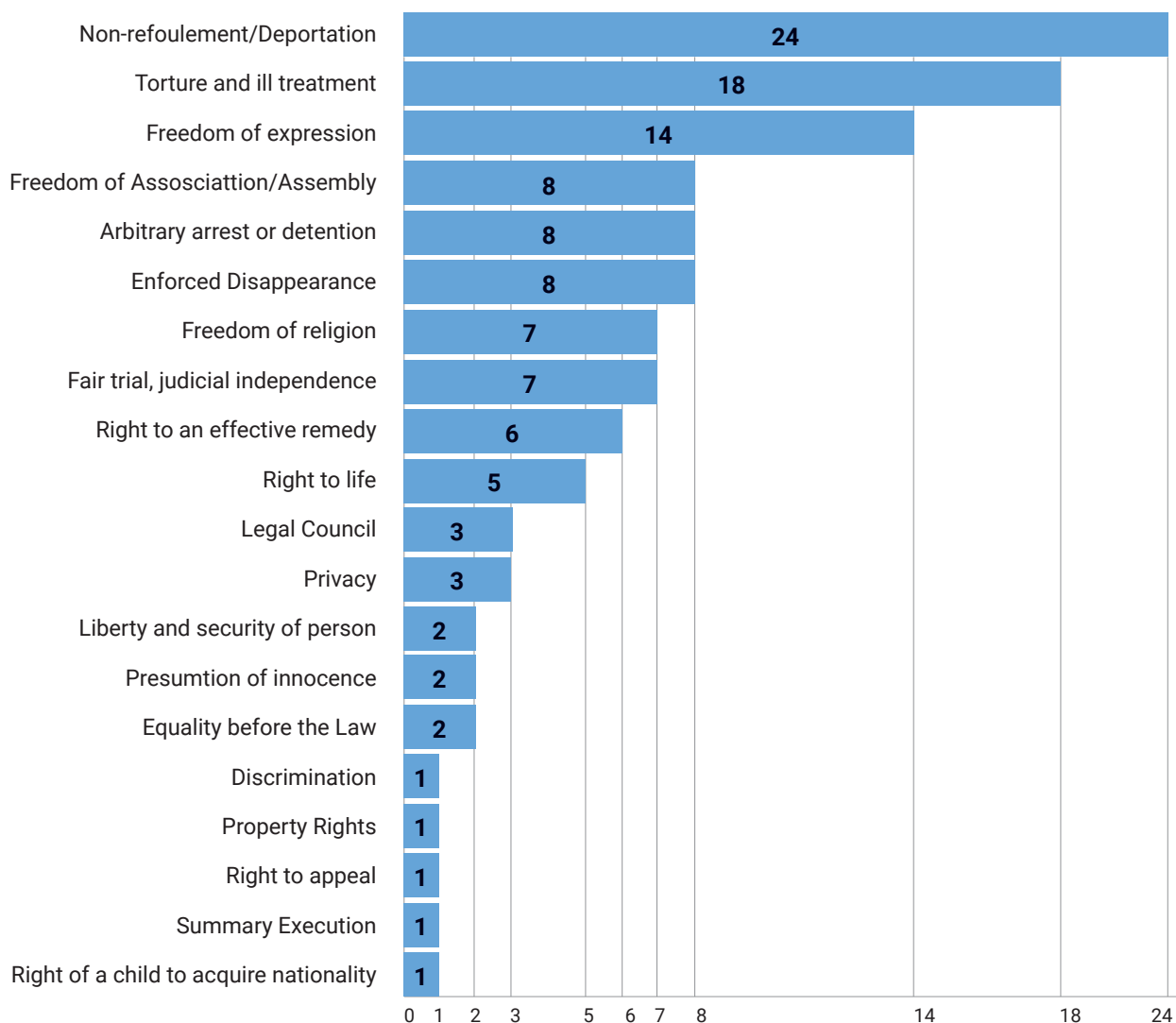
The geographical spread of the Human Right Committee's Communication shows that Kazakhstan, Belarus, Sweden and Kyrgyzstan had the greatest number of views adopted. Additionally, other States such as Djibouti and Malta have had their first individual communication views adopted in 2020.



Violations of the Covenant

Of the **119 views** adopted by the Committee in 2020, **66 were found to contain violations of the Covenant**. Of the remainder, **34 were declared inadmissible** according to the criteria outlined in the Optional Protocol and a further **6 were found to reveal no violations of the Covenant**.

66 Violation **34** Inadmissible **6** No Violation



Thematic trends within Violations

Qualitative thematic breakdown of trends identified in the individual communications views adopted in 2020. Note that the individual communications may contain more than one theme.

Freedom of Religion

Of the 119 individual communications assessed, seven were found to involve the freedom of religion, conscience and thought as provided for in article 18 of the Covenant. While four of these communications were declared inadmissible, we identified that communications which revealed violations typically involved the State acting in a discriminatory manner against religious minority groups, such as Jehovah Witnesses and Scientologists. In 2020, violations were revealed in communications brought against France, Azerbaijan, and Kazakhstan. In particular, the State of Azerbaijan, imposed fines on those Jehovah Witnesses for practicing their religion without government approval. Notably, all four communications brought against Sweden in the 129th session alleged a violation of the Covenant on the basis that tax laws in Sweden did not allow for tax deductions for their religious sect (Jehovah Witnesses) and those who were employed by it. However, all four were considered inadmissible.

Freedom of Expression, Association and Assembly

Similarly, we identified substantial crossover within communications alleging a violation of freedom of assembly, freedom of expression and freedom of expression as provided for in articles 19; 21 and 22 of the Covenant.

As with previous years, we identified a significant number of views relating to alleged violations of the aforementioned rights involving the States of Belarus and Kazakhstan (22). In both States, authorities have implemented a number of rules and restrictions on the ability of their population to participate in public events, such as demonstrations and peaceful protests. One communication brought against Belarus involved an organised demonstration relating to the criminal prosecution of human rights defender Aleksander Belyatsky and several other political activists, in which authorities refused to allow the protest to go forward on the basis of inadequate medical planning. The Committee found a violation in this instance, as well as in several others relating to Belarus involving similar facts. In reviewing the jurisprudence, we also identified that authorities' refusal to allow for peaceful assembly is also becoming increasingly relevant in Kazakhstan. Finally, the state of Djibouti had their first communication brought to the Committee, which involved the State's decision to dissolve a political party (see below).

Role of the State responsibility in Search and Rescue Missions in the Mediterranean Seas leads to different outcomes by the Committee

With respect to state responsibility for search and rescue missions at sea, we identified a potential discrepancy in the approach taken by the Committee at the 128th and 130th Sessions. Two communications were assessed in 2020 which involved the same set of facts and similar legal argument, however the Committee concluded two different results. The communications concerned the events on 11 October 2013, when a vessel in distress became shipwrecked in the Mediterranean Sea. This incident occurred 113 km South of Italy and 218 km from Malta, resulting in the deaths of over 200 people. The authors of both communications argued that the actions of both Italy and Malta in failing to assist Search and Rescue missions, as well as failing to conduct an effective investigation into the incident, revealed a violation of the Covenant. The Committee found that while the case relating to Italy revealed a violation, the twin communication relating to Malta was inadmissible. The discussion prompted a number of dissenting opinions in both instances.

G. Yakovitsky - A. Yakovitskaya v. Belarus

Violation of the right to life in Belarus as the State ignores interim measures in a case of death penalty

<https://ccprcentre.org/decision/17059>

Substantive Issues: Fair trial, imposition of a death sentence after unfair trial, independent and impartial tribunal and presumption of innocence

Relevant Articles: article 6, article 9.1,2,3 and article 14.2, 3 (a), (b) (d)

Facts

The author of the communication is a national of Belarus who claimed that the State party violated her father's rights under 6 (1) and (2), 9 (1)-(4) and 14 (1), (2), and (3)(a), (b), and (d) of the Covenant. The Committee granted interim measures under rule 92 of its rules of the procedure and requested the State party not proceed with the death sentence of the father while the case was under examination.

On 28 July 2015, the author's father killed T.A. This crime was committed after the consumption of alcohol and was motivated by jealousy. On the same day, the father was arrested on suspicion of murder and subsequently detained. He was remanded in pretrial detention on 31 July 2015, was not brought before a judge or other officer authorized by law until December 2015, as part of his criminal trial.

At the trial the author's father was found guilty of intentional deprivation of life of another person committed with extreme cruelty, noting he had already committed murder and had evaded paying alimony, and sentenced him to death. Following the verdict, the author's father submitted unsuccessful cassation appeals, a request for a pardon, and an appeal within the supervisory review procedure.

The author, on behalf of her father, claimed that the State party violated her father's right to life under article 6 of the Covenant. She also claimed that his trial, which lacked due process guarantees and resulted in a death sentence, itself violated her father's rights under article 6 (1) and (2) of the Covenant.

She further argued that her father's rights were violated under article 14 (1) of the Covenant as court proceedings were biased and failed to maintain objectivity. The author claimed that his rights to be presumed innocent under article 14 (2) was likewise violated as during the trial he was brought to court hearings in a head to knees position, forced to sit in a cage, which biased reporting by state media before the court sentence had been handed down. During his appeal, he was also forced to wear special clothing for persons sentenced to death, marked with Russian letters indicating his sentence. Beyond these, the author also claimed a violation of her father's rights under articles 14 (3) (a), (b), and (d) of the Covenant as he was not informed of the nature and cause of the charges laid, was not offered sufficient time to prepare his defence and his access to his lawyer was limited.

Admissibility

The Committee noted the State party objection that the author's father did not file any complaint about violations of his right to communicate confidentially with his counsels and the special clothing for

persons sentenced to death. In the absence of any further information, it considered itself precluded by article 5(2)(b) of the Optional Protocol from considering this part of the communication owing to a lack

of exhaustion of domestic remedies. The Committee however considered that it was not precluded from considering the author's remaining claims, raising issues under article

6(1) and (2), 9 (3) and 14 (2) of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeded to the examination of merits.

Merits

The Committee noted that the State party failed to respect the request for interim measures by **executing the author's father before the Committee had concluded its consideration of the communication**. It noted that this was incompatible with State obligations under article 1 of the optional protocol, for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of communications and in the expression of its views. Indeed, by not respecting the Committee's request for interim measures, the State party violated its obligations under article 1 of the optional protocol.

Regarding the claim that the author's father was not informed of his rights under article 9(3) of the Covenant, the Committee recalled that anyone arrested or authorized must be brought promptly before a judge or other officer authorized by law to exercise judicial power. In its view, 48 hours is ordinarily sufficient to transport the individual and to prepare for a judicial hearing. In the present case, the Committee considered that it cannot conclude that the author's father was brought promptly for a judge or other officer authorized by law to exercise judicial power. Accordingly, it found a violation of article 9 (3) of the Covenant.

The Committee also noted the allegation that no presumption of innocence was applied in the author's case, as he was handcuffed and kept in a cage during court hearings before the sentence was handed down. In this respect, it recalled that defendants should normally not be shackled, kept in cages or otherwise presented to the court in a manner that indicates that they may be dangerous criminals. In light of this, the Committee found that the right of the author's father to be presumed innocent, as guaranteed by article 14 (2) was also violated.

Finally, in assessing the author's claim that her father's right to life under article 6 was also violated, the Committee recalled that in the case of a trial leading to the imposition of the death penalty, scrupulous respect for procedural guarantees is particularly important. It also noted that the violation of such fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty should render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. In light of the above violation of article 14 (2), the Committee concluded that the final sentence of death and the subsequent execution did not meet the requirements of article 14 and consequently revealed a violation of the right to life.

Recommendations

Pursuant to article 2 (3) (a) of the Covenant, the State party remains under an obligation to provide the author with an effective remedy. This requires it to:

- Make full reparation to individuals whose Covenant rights have been violated.
- To take all steps necessary to prevent similar violations from occurring in the future.

Elena Genero v. Italy

Gender discrimination against a female firefighter in Italy

<https://ccprcentre.org/decision/17071>

Substantive issues: Equality of arms and fair hearing, gender equality, non-discrimination, participation in public affairs

Relevant Articles: article 14.1, article 25 and article 26

Facts

The author is a national of Italy who claimed that the State party violated her rights under article 14(1) and 25(c) of the Covenant. The author had served as a volunteer (temporary) firefighter for 17 years in the State party.

In 2007, she competed to enter the Italian National Firefighters Corps as a permanent member, however her candidacy was refused on the basis that she did not fulfil the minimum height requirement of 165 cm. While her height was estimated at 160-161 cm, domestic legislation in Italy requires that permanent firefighters have the minimum height requirement of 165cm, in order to perform technical and operational functions. With regard to temporary firefighters, a presidential decree No. 76 was announced in 2004, that required a minimum height of 162 cm (for both men and women).

The author challenged both height requirements in court, arguing that it was discriminatory and constituted an abuse of power. The court rejected the author's complaints and labelled them as ill-founded. The court stated that the difference of 3cm between the two positions was due to the fact that permanent firefighters were on a permanent roster and the additional effort that was needed for the job as a permanent firefighter. The court found that these were administrative decisions and the fact that the same height requirement was required from

both sexes was indicative that it was not a discriminatory practice.

The author appealed this decision on several domestic levels and additionally, filed a complaint with the European Court of Human Rights – which was rejected as being inadmissible on the basis of Article 34 and 35 of the European Convention on Human Rights.

The author alleged that she is a victim of a violation of her rights under article 25(c) of the Covenant, and maintained that the height requirement, undifferentiated between men and women, constitutes indirect discrimination against women. She noted that the average height of women in Italy is 161 cm, while the average height of men is 175 cm. By establishing a minimum height requirement well above the female average, the State party excludes the majority of women from the ability to serve. The author also added that while a certain physical condition is necessary to perform firefighter duties, that condition is not exclusively attributable to height but also to other physical parameters, such as corporal composition or muscular strength. She also noted that her serving as a firefighter for 17 years is direct evidence that a height lower than 165 is compatible with rescue functions. The case was subsequently dismissed as ill-founded.

Admissibility

The Committee noted that the author had lodged an application concerning the same events with the European Court of

Human Rights, however this was rejected in September 2014 for the failure to meet the admissibility requirements laid down in

Article 34 and 35 in the European Convention of Human Rights. The Committee recalled through its jurisprudence in *Mahabir v Austria* (CCPR/C/82/D/944/2000), that the declaration of inadmissibility may not be done on purely procedural grounds, but must be assessed on the basis of merits.

According to the author, the Committee needed to assess the contradictory jurisprudence within the domestic courts of Italy, as they have two separate judgements. However, the Committee noted that the fact that domestic courts make different judgements is not enough to substantiate the admissibility requirements for the Article 14(1) of the Covenant. The author was not able to substantiate her claim that there was absence of a competent, independent and impartial tribunal established by law. As such,

the Committee stated that under Article 14(1), this case would not be admissible. Similarly, with respect to the claim under Article 25(c) of the Covenant relating to the discriminatory nature of the national provisions regulating access to the National Firefighters Corps, the Committee considered that the author had not substantiated her claim well enough for it to be admissible.

However, the Committee found that the author's claim under Article 25(c) and 26 of the Covenant relating to the alleged gender-based discrimination that she faced as a candidate for the National Firefighters Corps, as well as the unjustified distinction between the height requirements between the permanent and temporary positions, to be sufficiently substantiated and therefore admissible.

Merits

The Committee was required to assess whether the disqualification of the candidate from the National Firefighters Corps on the basis of her height constituted gender-based discrimination. The Committee notes that not every distinction, exclusion or restriction based on the grounds listed in the Covenant, amounts to discrimination, as long as it is based on reasonable and objective criteria and pursues a legitimate aim under the Covenant.

The Committee took note of the author's uncontested argument that the undifferentiated minimum height requirement has the effect of excluding a majority of Italian women. As such, it observed that such a height requirement constitutes a restriction to access to the National Firefighters Corps, and the Committee was required to assess whether the restriction meets the criteria of reasonableness, objectivity, and legitimacy of the aim.

The Committee noted that the author had been successfully carrying out the same functions as a permanent member for 17 years, and that neither the State party nor national administrative courts had justified the precise role that such a height requirement would play in the effective

performance of these functions that other physical attributes. It also observed that the State Council of Italy recently called for the elimination of minimum height requirements, and that recent domestic jurisprudence had found the requirement unconstitutional.

On the basis that the height restriction results in more women becoming temporary firefighters as opposed to permanent, the Committee concluded that the disproportionate effect on female candidates resulted in indirect discrimination in violation of article 26 of the Covenant.

On the author's argument under article 25(c), the Committee recalled its general comment No. 25 which outlines the obligation "to ensure access on general terms of equality, the criteria and process for appointment, promotion, suspension and dismissal must be objective and reasonable". It further noted that "it is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25(c). Having considered that the legislative height requirement was unreasonable and discriminatory, the Committee concluded that the author's rights under article 25(c) were also violated.

Recommendations

Pursuant to article 2(3)(a) of the Covenant, the State party remains under an obligation to provide the author with an effective remedy, including full reparations to all individuals whose rights have been violated. The Committee recommended that the State party provide the author with adequate compensation and evaluate the possibility of admitting the author as a permanent firefighter. Additionally, the Committee recommended that the State party take all necessary steps to ensure that similar violations do not occur in the future, including amending current domestic legislation.

A.S. et al. v. Malta

Claim of the violation of the right to life after the State party refuses to cooperate with Search and Rescue mission leading to 200 perishing at sea, Committee rules that the authors failed to exhaust the domestic remedies

<https://ccprcentre.org/decision/17127>

Substantive Issues: Effective remedy, exhaustion of domestic remedies, jurisdiction of the Committee, right to life and torture / ill-treatment

Relevant Articles: article 2.3, article 6 and article 7

Facts

The authors of the communication submitted the communication on their own behalf as well as on the behalf of 13 of their relatives who, on 11 October 2013, were on board a vessel that was shipwrecked in the Mediterranean Sea. This shipwreck happened 113 km south of the Island of Lampedusa, Italy and 218 km from Malta, and resulted in the death of an estimated 200 people.

The authors alleged that the State authorities failed to take the appropriate measures to render assistance to their relatives who were in distress at sea, in violation of their rights under article 6 of the Covenant. The authors also alleged that the State authorities failed to carry out an effective investigation into the events of the shipwreck, in violation of Article 6 read in conjunction with article 2(3). Further, the authors alleged that this was a violation of their rights under article 7 read in conjunction with article 2(3), as the lack of investigation caused and continues to cause them anguish, amounting to inhuman and degrading treatment.

On 10 October 2013, the authors' relatives arrived in Libya and were transported, in a large group including Syrian refugees, onto a fishing vessel with over 400 people. After a collision with another boat, the vessel started to take on large quantities of water and the crew informed the emergency operator (an Italian number for emergencies at sea) that the vessel was going to sink with children on board around midnight. The first call was followed by several others within until 3pm to the emergency operator and to the

Armed Forces of Malta as well as to the Italian Rescue Centre. The Maltese Rescue Forces located the vessel in their waters around 4pm, and sent a rescue mission at 5pm. Similarly, the Italian Rescue Control sent assistance at about 6pm. Allegedly, the Italian Rescue Control did not receive any instructions to assist the vessel until it had capsized, due to the fact that if they interfered, the Maltese authorities would not have taken responsibility for the vessel or the members aboard. The authorities are unable to ascertain exactly how many people died in the shipwreck, but estimate over 200 people, including 60 children did not survive.

The authors allege that the Italian and Maltese authorities attempted to pass responsibility to assist the vessel onto one another. Allegedly, the Italian Rescue centre informed the Maltese authorities of the vessel at 1 pm, and gave them the location of Italian ships that would be near to the shipwreck, yet failed to provide a specific location until 3.37pm. The one ship identified, the ITS *Libra* (an Italian Ship), was also allegedly given instructions to move away from the shipwrecked vessel so that the Maltese authorities would not be able to avoid taking responsibility for the rescue mission. It was only at 5.07pm, when the vessel had capsized that the ITS *Libra* was given instructions to intervene and aid the distressed vessel.

The authors submitted that this complaint was brought as there was no effective remedy available for them to raise this issue with domestic authorities. Neither Malta or

Italy initiated any form of investigation into the circumstances of the shipwreck and the prosecutor requested that the criminal proceedings be discontinued.

While the shipwreck occurred outside both national territories of Malta and Italy, the authors alleged that the complaint falls under the jurisdiction of both Malta and Italy for several reasons. Firstly, both State Parties are parties to the International Convention on Maritime Search and Rescue, and while Maltese authorities were responsible for the search and rescue in the area, the Italian

Authorities were exercising de facto control over the Maltese area and they were both in communication with the vessel in distress. The authors argued that there is a causal link between the negligence and failure to act from both State parties and the resulting deaths of the victims. On this basis, the authors alleged there is a jurisdictional link between the State party that receives the calls of distress and having the obligation to provide emergency services. Therefore, the authors reiterated the complaints under article 6 and 7 of the Covenant, read in conjunction with Article 2(3).

Admissibility

The Committee observed that under article 1 of the Optional Protocol the State Party argued that the communication was inadmissible, as the events occurred outside the territorial waters of the State Party. The Committee recalled that it has the competence to receive and consider communications from individuals subject to the jurisdiction of the State parties, within their territory and to all persons subject to their jurisdiction, including anyone within the power or effective control of that State party, even if they aren't directly situated on its territory. In addition, as indicated in general comment No.15 (1986), the enjoyment of Covenant rights is not limited to citizens of the State party but all individuals, regardless of their nationality or statelessness (such as refugees or migrant workers) that may find themselves in the territory or subject to the jurisdiction of the State party. This position applies, even when States are operating outside their given territory where such power or effective control over individuals is enforced.

According to paragraph 63 of general comment No.36 (2018) on the right to life, the State party has the obligation to respect and ensure the rights under article 6 of all person within their territory and to all persons subject to their jurisdiction, that is "all persons over whose enjoyment of the right to life it exercises power or effective control" including individuals located on marine vessels and aircraft registered by

them or flying their flag, and over those that find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea.

The Committee also noted that according to article 98 of the United Nations Convention on the Law of the Sea, each State must require the master of a ship flying its flag to proceed with all possible speed to rescue of persons in distress, if informed of their need of assistance, as far as reasonably can be expected of them. Further, coastal States are encouraged to promote the establishment, operation and maintenance of adequate and effective search and rescue services regarding safety on and over sea and are required to set up mutual regional arrangements. The Committee also referred to the International Convention on Maritime Search and Rescue (1979) and the International Convention for the Safety of Life at Sea (1974), which provide that States should lead coordination search and rescue operations.

In the present case, the Committee noted that it is undisputed that the issue concerned happened outside the territories of the State and that the vessel concerned was not flying a Maltese Flag. The question before the Committee is therefore whether the alleged victims could be considered having been under the effective control or power of the State party, even though it happened outside

the territory of the party. The Committee understands that it is also undisputed that the State party formally initiated the coordination of the rescue and search operation of the vessel at distress, therefore exercising effective control over the vessel and the individuals concerned. Due to this, it can be stated that there could potentially be a direct and reasonably foreseeable causal relationship between the acts of the State party, and the outcome of the operation. Therefore, the Committee is not precluded in considering this communication according to article 1 of the Optional Protocol.

However, the Committee would need to assess whether the communication should

be considered on the basis of the fact that the authors of the communication have not exhausted domestic remedies available to them. The Committee notes that the State party has argued that there were various domestic remedies available to the authors of the communication and considers that even though domestic remedies can appear to be ineffective and with no prospect of success, that the authors of the communication should have expressed due diligence in this regard and followed the procedures in raising their claims. In this context the Committee concludes that the authors failed to raise their claims before any State party judicial or quasi-judicial authority and therefore the communication must be considered inadmissible.

Separate Opinions

Individual Opinion of the Committee member Andreas Zimmerman (dissenting)

Although Andreas Zimmerman concurred with the outcome of the complaint, he disagreed that the complaint should be rejected on the basis of the authors failing to exhaust domestic remedies, rather that the complaint should not have been considered according to Article 2(1) of the Optional Protocol, as authors were at the time not within the jurisdiction of Malta. Zimmerman noted that the family members of the authors were not at the time within the territorial waters of Malta, nor was the vessel in distress waving a Maltese flag. The only facts that supported the claim of the individuals being within the jurisdiction of Malta, would be that the vessel in distress was within the search and rescue zone that Malta has responsibility over under the applicable rules of the law of the sea and that the Maltese authorities has been in radio contact with the vessel in distress and has activated the rescue procedures. In this context, the Committee turned violations of the United Nations Convention on the Law of the Sea and or the International Convention on Maritime Search and Rescue (1979) and the International Convention for the Safety of Life at the Sea (1974) – which are violations – into violations under the Covenant. By doing this, Zimmerman argued that the Committee may be doing a disservice to search and rescue missions at sea, as State parties may become more reluctant in taking such obligations as they may in turn be a violation under the Covenant.

Joint Opinion of Committee Members Arif Bulkan, Duncan Iaki Muhumuza and Gentian Zyberi (dissenting)

The members jointly disagreed with the Committee's conclusion that the communication is inadmissible.

Firstly, the members noted the obligation of States to cooperate in rescuing people stranded at sea is included in the United Nations Convention on the Law of the Sea and the International Convention on Maritime Search and Rescue (1979) and the International Convention for the Safety of Life at the Sea (1974) and observed that Italy and Malta share that responsibility, although not in equal measure. Regarding the Covenant, the Committee noted that in light of article 2(1), the State party has an obligation to respect and ensure the rights under article 6 of all persons within their territory and all persons subject to their jurisdiction, including to protect the lives of all individuals located on vessels and aircraft or those that find themselves

in a situation of distress at sea as informed by international law. Due diligence requires taking reasonable, positive measures that do not impose a disproportionate burden on State parties in response to reasonably foreseeable threats to life. As an obligation of conduct, this would require the State to do their utmost to try to save persons in distress at sea. In the present case, the State party assumed this responsibility and the facts of the case a level of shortcomings which should be assessed on their merits.

Secondly, the members recalled the general comment No.36 in which the Committee expanded on the obligation of the State parties to conduct an investigation where it knew or should have known of potentially unlawful deprivations of life. Despite over 200 people drowning to their death, more than seven years later, the State party has not initiated any legal proceedings to determine the circumstances of the shipwreck or to hold those responsible accountable. Noting that in the communication, the authors did not seek any compensation or civil remedy for their personal losses, however are hoping to hold those responsible criminally accountable. When an unnatural death occurs, it is the States duty to investigate the circumstances and prosecute and punish those responsible – independent of any claim of the relatives. Such an obligation is even stronger given the context of the situation. Therefore, the members argued that this was the responsibility of the state and the authors should not be prejudiced for not having exhausted domestic remedies.

Accordingly, the members argued that the case should not be declared inadmissible. Given the lack of due diligence displayed by the State party authorities in their efforts to rescue the hundreds of people in distress, they would have found a violation of the rights of the authors' relatives under article 6(1) read in conjunction with article 2(3) of the Covenant.

Individual opinion of Committee member Hélène Tigroudja (dissenting)

Committee member Hélène Tigroudja disagreed with the majority on the issue of obligations relating to search and rescue operations and the application of State responsibility. Tigroudja noted that the authors raised their concerns on the shared responsibility of both Italy and Malta in their efforts in the search and rescue operations, however with the Committee splitting this complaint into two different complaints, each directed at a different state, it has eluded the question of shared responsibility between the two States.

Tigroudja argued that the Committee has missed the opportunity to elaborate on this shared responsibility of cooperation and coordination, and to provide clarification regarding paragraph 63 of the general comment No.36 on the right to life, which affirmed the States' obligations in a situation of distress at sea. Even in the event where States could have created a legal vacuum to escape responsibility, the Committee could have utilised this chance to reaffirm their shared obligations.

Additionally, due to the significance of the tragedy, Malta could not have ignored this issue. Under these circumstances, Malta had the obligation to investigate ex officio into the incident and the deaths. Thus, the Committee failed to recognise this responsibility of Malta and allowed Malta to argue that the incident happened in the high seas, where they lacked jurisdiction.

A.S., D.I., O.I. and G.D. v. Italy

Effective control of Italy over a shipwrecked vessel leads to an obligation to rescue passengers in line with ICCPR art 6

<https://ccprcentre.org/decision/17161>

Substantive Issues: Right to life; inhuman and degrading treatment; right to an effective remedy

Relevant Articles: article 2 (3), article 6 and article 7

Facts

The authors, who were migrants seeking asylum, submitted this communication on behalf of their relatives who perished at sea as the result of their vessel capsizing in the Mediterranean Sea on 11 October 2013. The authors claimed that there were no effective remedies available that would enable them to submit their claims to domestic authorities, having attempted to submit their complaint to the Public Prosecutor at the Court of Agrigento, Italy and the Public Prosecutor of the Court of Syracuse, Italy as well as the Red Cross of Malta and Italy. The authors considered that even after these claims, Italian and Maltese authorities have failed to initiate appropriate investigations into the events that occurred has meant that they do not have an adequate domestic remedy at their disposal.

The authors acknowledge that they may pursue civil remedies, however they are not seeking compensatory damages for the tragedy concerned, rather that those responsible be prosecuted and punished. Further, they argue that without a proper investigation into the matter, no domestic civil remedy would be allowed to be sought either way. Finally, the authors argued that the scale of the tragedy and their limited economic, cultural, and linguistic means render it in the interests of justice that exhaustion of domestic remedies be not required.

The authors acknowledge that the shipwreck occurred in both the national territories of both Italy and Malta, and that the complaint should fall under the jurisdiction of both states for several reasons. Firstly, due to the International Convention on Maritime Search and Rescue, both States would be responsible for the search and rescue of

the distressed vessel in that area. Secondly, Italian authorities were exercising de facto control over the area, as Italy is often the only State that is willing to carry out such rescue operations. Secondly, both the Italian and Maltese authorities were in continuous contact with the vessel and failed to exercise control over the area or the persons in distress. This resulted in various shortcomings in the search and rescue operation which led to over 200 people perishing at sea.

The authors reiterated that there is a duty to render assistance to those in distress at sea under various International Rules and Conventions, and argued that the State's failure to fulfil these obligations were in violation of their rights under Article 6(1) of the Covenant. The authors noted that the failure of the Italian authorities to inform the Maltese authorities in a reasonable time, to send their own coast guard vessels at the first sign of distress and failure to assume responsibility over the sinking vessel, delayed the search and rescue mission by two critical hours which could have saved lives.

This violation of Article 6(1) of the Covenant is read in conjunction with article 2(3) of the Covenant, as the Italian authorities failed to launch an official, independent, and effective investigation into the shipwreck in order to ascertain the facts and to identify and punish those responsible. Further, that article 7 should be read in conjunction with article 2(3), as the failure to launch a proper investigation resulted in the authors living in anguish over the deaths and disappearances of their loved ones, amounting to inhuman and degrading treatment.

Admissibility

The Committee referred to its General Comment No.15 (1986), noting that the rights to be enjoyed as listed in the Covenant are not limited to the citizens of the State parties but are also available to all individuals regardless of their nationality or statelessness (such as asylum seekers or migrants). This principle also applies to those that would be under the effective control of the State regardless how this control was obtained.

Further, General Comment No.36 (2018) provides that the State party has the obligation to respect and ensure the rights under article 6 of all persons within their territory and those subject to their jurisdiction, such as those over whom the State exercises effective control. This includes “persons located outside any territory effectively controlled by the State”, such as “all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea” (reference is made to the Concluding Observations on Malta [CCPR/C/MLT/CO/2](#)).

The Committee further noted that according to article 98 of the United Nations Convention on the Law of the Sea, each State is to require the master of the ship that is flying their flag to proceed with all possible search and rescue operations for persons or vessels in distress. Coordination of search and rescue operations of ships from different States need to be done between neighbouring States, taking into account the various International Rules and Conventions that regulate the regional coordination centres.

In this case, it was undisputed that the event occurred outside the territory of Italy, however the question remained as to whether the persons were under the effective control of Italy. On the day, the Italian authorities received communication of the vessel in

distress sometime between 11 am and 12:30 pm, to which they only informed Malta of the vessel after 1 pm. During such time, although the Italian and Maltese authorities were in constant contact, Italy failed to mobilise a search and rescue party. Only once Italy had received information that the vessel had capsized did they then send through their own vessel in order to aid the Maltese authorities with the operation.

The Committee considered that “in the particular circumstances of the case, a special relationship of dependency had been established between the individuals on the vessel in distress and Italy”. This relationship of dependency was formed due to the fact that the vessel had made initial contact with the Italian authorities, that the State party maintained this contact, the close proximity of the search and rescue vessel to the shipwrecked vessel and the ongoing involvement of the Italian authorities in the rescue mission. Due to this relationship of dependency, certain International Rules and Covenants establish that the State party would have legal obligations towards the persons on the vessel. The decisions made by the State party directly affected those on the shipwrecked vessel, and “that they were thus subject to Italy’s jurisdiction for the purposes of the Covenant, notwithstanding the fact that they were within the Maltese search and rescue region and thus also subject concurrently to the jurisdiction of Malta” (see *A.S., D.I., O.I. and G.D. v. Malta*, [CCPR/C/128/D/3043/2017](#))

Therefore, as a jurisdictional link had been established, and the State party had not objected to the fact that there are no other effective domestic remedies available to the authors in addition to the authors having properly substantiated their claims, the Committee considered the communication admissible.

Merits

The Committee noted the authors’ claim that many of their family members have

disappeared or died due to the State party’s negligent acts and omissions in the rescue

activities at sea. However, the State party claimed that in the present case it was the responsibility of the Maltese rescue centre to launch the search and rescue operations, that the Italian vessel did intervene in the operation before the Maltese authorities requested it and that from that point, the Italian vessel became the focal point of the search and rescue operation.

The Committee recalled that the right to life “includes an obligation on the State party to adopt any appropriate laws or take measures in order to protect life in a reasonable manner”, including “reasonable and positive measures”, with no disproportionate burden on a State party to fulfil this obligation. Although the authors maintained that the Italian authorities failed to respond in a prompt manner for the search and rescue mission, the Committee found that the Italian authorities intervened before being requested to, that they had informed the Maltese authorities of the location of the distressed vessel and that the Italian vessel had carried out over 23 different rescue operations on the very same day before responding to the present case.

In addition, the Committee noted that the principal responsibility for the search and rescue operations should “lie with Malta”, as they undertook in writing that they would be responsible for such. Even with this, the State party had failed to properly prove as to how or if the Maltese authorities had the direct location of the vessel, why they failed to properly respond to the distress calls, why they assumed that the Maltese authorities would have full responsibility for the search and rescue mission and why there was such a delay of the Italian vessel to aid in the search and rescue operation. On this basis, the Committee found that the State party had failed to meet its positive obligations in terms of article 6(1) of the Covenant.

In addition, the Committee noted that no official, independent, and effective investigation was carried out and this failure constituted a violation of article 6 alone and in conjunction with article 2(3) of the Covenant. The Committee did not examine separately the claim under article 7 of the Covenant.

Recommendations

The State party was requested to:

- Proceed with an independent and effective investigation in a prompt manner and, if found necessary, to prosecute and try those who are responsible for the death and disappearance of the authors’ relatives;
- Take all steps necessary to prevent similar violations from occurring in the future.

Separate Opinions

Joint Opinion of Committee members Yuval Shany, Christof Heyns and Photini Pazartzis (dissenting)

In their dissenting opinion, the three Committee members disagreed with the majority’s decision regarding the jurisdictional link between Italy and the persons on the vessels. The members stated that the Committee failed to distinguish between situations in which the States have the potential to place individuals under effective control and when people are actually under effective State control.

The members considered that it was not proven that Italy had assumed this responsibility or had assumed the responsibility of the search and rescue operation that was legally in Malta’s area in the high seas. Although Italy had made initial contact with the vessel in distress, and had coordinated the search and rescue operations and eventually sent a vessel to the shipwreck, this could not prove effective power or control over the persons in the shipwreck, when there is already a State that has this responsibility. The members noted that while there were many

failures by the Italian search and rescue operations that could lead to international responsibility or criminal charges, these failures could not establish effective power or control over persons to establish jurisdictional links between the State and the persons involved. It is therefore Malta's primary responsibility to conduct the search and rescue operations in the maritime area and Italy has only a supportive role. They conclude that the communication should have been declared inadmissible.

Individual opinion of Committee member Andreas Zimmermann (dissenting)

Similarly, Committee member Andreas Zimmerman reiterated that just because the person found themselves in the search and rescue zone of a given State Party of the Covenant, does not bring that person within the meaning of jurisdiction for the purposes of article 2(1) of the Covenant.

It should be understood that Italy's failure to send its navy ship to aid the search and rescue operations to save the persons in distress at sea was in violation of its obligations under the rules of the law of the sea, however this question should have not been discussed by the Committee. To the majority, this case had little legal relevance to article 2(1) of the Covenant. Furthermore, Zimmerman argued it was problematic that the Committee agreed that the persons in distress were under the concurrent jurisdiction of Italy and Malta while finding that the Malta communication was inadmissible.

As the Committee has found a violation of the State party, this leaves Italy in a peculiar situation, as they will now need to pay compensation to the victim's families, without being the State party that was fully responsible. This raises the question of joint and several liability on the part of both States.

Individual Opinion of Committee Member David H. Moore (dissenting)

Committee member Moore argued that the admissibility determination in the present case raised two key questions. First, the State party's obligations extended to those within their territory and under their jurisdiction. It seemed to be that the Committee interpreted this as disjunctive, whereas previous case law sees the Committee interpreting the matter as conjunctive. No one contends that the high seas are within Italy's jurisdiction – the main question would be if the shipwreck was within Italy's jurisdiction. Secondly, the member considered that the use of other Conventions in the discussion could cause future uncertainty. On this basis, the Committee should have found the communication as inadmissible.

Individual Opinion of Committee member Gentian Zyberi (concurring)

While agreeing with the decision of the Committee, the member sought to clarify the jurisdictional link and the legal obligations on the part of the State regarding the search and rescue operations. Member Zyberi argued that this specific case and the relevant legal framework demonstrates the need for shared responsibility amongst States to conduct search and rescue operations, especially those with responsibility for the area but also those that have the residual responsibility and the means to aid.

The member argued that this jurisdictional link must be based on the legal obligations of States to render assistance to those in distress at sea. The right to life protects those individuals from acts or omissions from states that could cause an unexpected death at the high seas, that the principle of power and control, which implies extraterritorial jurisdiction, was construed to be interpreted in specific circumstances at sea. These principles introduce an obligation of due diligence for States to provide their best efforts when available to aid those in distress at sea. Further, in light of the failed search and rescue operations, the State had the obligation to launch a prompt and effective investigation into what happened and to hold those responsible to account.

Individual opinion of Committee member José Manuel Santos Pais (concurring)

The member agreed with the Committee's decision in reaching the conclusion that the State party had violated article 6(1) and article 2(3) of the Covenant. However on reassessment of the facts, the member argued that it could be determined that the Italian naval authorities originally failed to act when they first received the navigational warning. This is established by their consistent failure to provide valuable information to the Maltese authorities and preventing their own vessel (which was the closest vessel to that in distress), from intervening in rescue operations.

On this basis alone, the persons on the shipwrecked vessel were under the jurisdiction of Italy for purposes of the Covenant. Further, Italy failed to provide convincing reasons as to why they did not provide timely assistance to those in distress. Due to this, charges were brought against officers of the Italian Navy, the Italian Coast guard and the Italian rescue centre (at least 7 officers), for failing to provide assistance and for negligent homicide. Seven years have passed, and the trial before the domestic courts are yet to be completed, demonstrating an excessive delay for effective and prompt justice. The State has failed to explain such a delay.

Individual opinion of Committee member Vasilka Sancin (concurring)

Member Vasilka Sancin fully agreed with the outcome of the communication and the finding of a violation of article 6, read alone and in conjunction with article 2(3) of the Covenant. The member however also underlined that the tragic event happened at high seas, where according to the law of the sea, neither Malta or Italy may exercise any territorial jurisdiction, other than over the vessels flying the flags or in events envisaged by the United Nations Conventions on the Law of the Sea. According to the Covenant, the principle of applying "power or effective control" in terms of jurisdiction, is intrinsically linked with the right to life. This was emphasized in general comment No.36 – that State parties must respect and protect the lives of individuals who find themselves in distress at sea.

For this reason, the communication should be considered admissible on the basis of the following: (1) Italy had power to act according to all relevant Covenant and their international duties; (2) Italy led victims to believe that they would comply with these duties and (3) that if the duties were done, they could have directly affected the situation. On this basis, Italy had these victims under their effective power or control – which introduced the positive obligations under the Covenant. When Italy failed to protect these lives, a prompt and proper investigation should have been made into the violation of rights.

Individual Opinion of Committee member Hélène Tigroudja (concurring)

The author fully supported the conclusion of the Committee and further emphasised that this communication addressed "some maritime legal black holes". This conclusion gave weight to a new "right to be rescued at sea", but unfortunately when assessing the outcome of Malta, the Committee did not follow the same rigorous reasoning. Further, the member reiterated her concern at the method taken by the Committee in solving the question of extraterritorial jurisdiction exercised by Italy, as there is "a mix between substantive obligations and the exercise of a jurisdictional link by Italy" and such link is not clearly made.

More information:

ECRE : [Failure of Italian authorities to respond promptly to distress calls from sinking vessel](#)

EJIL Talk: [Drowning Migrants, the Human Rights Committee, and Extraterritorial Human Rights Obligations](#)

A.G. et al. v. Angola

Turkish followers of the Gülen Movement at risk for refoulement, Committee finds a violation and condemns State party for lack of implementation of protective laws

<https://ccprcentre.org/decision/17126>

Substantive Issues: Non-refoulement; torture and ill-treatment

Relevant Articles: 7, 13 and 14

Facts

The authors are followers of the teachings of Fetullah Gülen and travelled to Angola between 2011 and 2016 to establish a school there. After the attempted coup d'état in July 2016, Turkey put international pressure to close international schools associated with the Gülen movement and expel teachers and other Turkish nationals living abroad who were perceived as their followers. After several visits from Turkish government officials, the President of Angola issued a decree ordering the closure of the Colégio Esperança Internacional and the expulsion of all Turkish citizens associated with the school.

In February 2017, police officers came to the school, brutally pushed all the Turkish teachers and other family members present – including children – into two vehicles for a short drive and then returned to the school. The authors were told that they have 5 days to leave the country and their passports were confiscated. No information or reasons were given for their expulsion.

The authors requested protection from the UNHCR office in Luanda. Yet, the pressure from the Government onto the authors to leave the country continued. In May 2017, the authors and their families were issued notices as to when their departure would be, according to instructions given by the Angolan Migration and Foreigners Service. The Turkish asylum seekers were then divided into groups and a list was prepared, indicating which individuals or families were allowed to leave.

Despite the issuance of protection letters and several meetings between the Angolan

authorities and the UNHCR representatives, the Government of Angola insisted that the authors would need to leave the country without their asylum claims to be assessed. Their work visas were not renewed and the authors faced constant risk of refoulement. The status and treatment of asylum seekers in Angola is governed by the Right of Asylum and Refugee Status Act (Law No. 10/15) adopted on 17 June 2015, but is not yet implemented. Since the adoption of the law, no asylum seekers' claims have been assessed.

The authors complained that the expulsion order issued by the Government of Angola would undoubtedly put the authors at risk of refoulement if returned to Turkey as those that have any perceived association with the Gülen movement have suffered torture or cruel and inhuman treatment in violation of ICCPR art. 7. Additionally, the authors stated that Turkey had been violating their rights to a fair trial and to due process of law (art. 14 ICCPR) through the treatment afforded to those with a real or perceived affiliation with the Gülen movement – to which they have been accused as terrorists. Finally, the authors stated that they have the right to have their expulsion order be reviewed by a competent tribunal before their removal from the country as set in ICCPR article 13.

The authors argued that they were not able to exhaust domestic remedies, as this would put them more at risk for expulsion due to the judicial nature and processes of the Angolan judicial system.

Admissibility

On the issue of domestic remedies, the Committee noted the authors' claim that domestic remedies available would be ineffective, as they would not be able to contest the presidential decree that ordered their expulsion. The Committee noted that there has been a lack of implementation of Law No.10/15, and that the State has failed to demonstrate an effective domestic remedy that would be available to the authors.

Further, the Committee noted the authors' claim under article 14 of the Covenant, that

if they returned to Turkey, that they would be at risk of being subjected to an unfair trial, conviction based on their association with the Gülen movement and could be arbitrarily detained and ill-treated on this basis. The Committee considered that this claim cannot be dissociated from those presented under article 7, so they will examine these claims under article 7 instead of 14. The Committee also considered the authors' claims under articles 7 and 13 of the Covenant to be sufficiently substantiated for the purposes of admissibility.

Merits

The Committee recalled its General Comment No.31, noting that States have the obligation to not extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as contemplated in articles 6 and 7 of the Covenant. The Committee reiterated that this risk must be personal, and that substantially high grounds for proving that this risk is real must exist. The organs of State are responsible for assessing evidence on a case by case basis to determine if such a risk exists.

The Committee found that in this present case, the State party had not demonstrated that the administrative or judicial authorities have conducted such an individualised assessment into the real and substantial risks associated with such an expulsion. Therefore, the State party had failed to comply with their obligations under article 7 of the covenant

in light of non-refoulement. Further, the Committee noted that the authors were not able to challenge the decision on their deportation, were not told the reasons for the expulsion, were not given time to explore effective remedies or to have their case reviewed by a competent authority.

Therefore, the Committee found that the presidential decree expelling all the teachers and their families, in conjunction with the lack of due individual process into the asylum requests, lack of effective or domestic remedies available and the real risk of refoulement if deported to Turkey were in violation of the principles enshrined in the Covenant. Bearing these factors in mind, the Committee found that the author's removal from Angola to Turkey, if implemented in the absence of due procedure would violate the rights of the authors and their families under articles 7 and 13 of the Covenant.

Recommendations

The State party remains under an obligation to review the authors' cases, taking into account the State party's obligations under the Covenant and the Committee's present Views. As such, the State party was requested to:

- Refrain from expelling the authors and their families until their request for asylum is properly considered.
- Take all steps necessary to prevent similar violations from occurring in the future, including by ensuring the prompt implementation of the law on the right to asylum and refugee status, and by putting in place fair and effective asylum procedures, offering effective protection against refoulement.

N. Alekseev v. Russian Federation

Russia refusal to authorize peaceful assembly for LGBT Rights reveals violations on the basis of discrimination

<https://ccprcentre.org/decision/17184>

Substantive Issues: Non-discrimination; right of peaceful assembly

Relevant Articles: article 21 and article 26

Facts

The author is an activist for the LGBT Rights in Russia and the president of the Russian LGBT Human Rights Project. Since May 2006, the author and other activists have attempted to hold peaceful protests in Moscow which have all been denied by Russian authorities.

On 26 September 2014, the author and other activists submitted a notification to the Mayor of Moscow stating that they intended to hold a gay parade in support of tolerance, providing notification of the time, date and place of the event. On 1 October 2014, the Moscow regional security and anti-corruption department informed the author that the parade would not be allowed as it would promote, amongst minors, non-traditional sexual relations, cause moral damage, outrage religious and moral sensibilities of others and would negatively interfere with society and traffic.

Due to this, the organizers cancelled the parade and filed a complaint with the District Court in Kostroma, arguing that the laws and regulations did not allow them to ban parades, as long as they conducted it in a way that conformed with legislation. In addition to this, the authorities could take the necessary steps to allow for a peaceful protest and to protect the participants and that the itinerary could be changed in order to better adjust to

the moral expectations. However, the court rejected the application and stated that there had been no violation of the law.

On 25 October 2014, the author complained to the regional court, which only confirmed the previous Court's decision in December 2014. The authors' classification appeal to the President of the Regional Court was unsuccessful and rejected in February 2016. Finally, the author complained to the Supreme Court of the Russian Federation, which was rejected in April 2015.

Due to this, the author claimed that the State party has denied him and other activists an opportunity to hold LGBT parades in violation of his rights under articles 21 and 26 of the Covenant and further that he is being discriminated against as a result of his sexual orientation. The author claimed that the blanket prohibition on the intended parade by the State party violated his right to hold a peaceful assembly according to article 21. The State party also did not provide how the restrictions imposed on the parade would be aligned with the legitimate aims as mentioned in article 21. The author believes that the State party indicated that they were aiming to protect the morals of society but instead they are attempting to silence the LGBT community and their concerns.

Admissibility

The Committee recalled that according to article 5(2) of the Optional Protocol, the complaint may not be examined under another procedure of international investigation or settlement. The State party

argued that the author has filed three similar complaints to the European Court of Human Rights and that two of these complaints are still pending before the Court. However, the Committee concluded that even though

the subject matter of the complaints might be similar, that the complaints before the European Court of Human Rights concerned the right to picketing from 2006 to 2015, whereas the current complaint related to a parade in Moscow in 2014. Due to this fact, the Committee considered that the

definition of “same matter” was not satisfied and the Committee was not precluded from assessing the complaint. Similarly, the Committee found that the author had sufficiently substantiated the complaint under articles 21 and 26, and was therefore admissible.

Merits

The Committee noted the author’s complaints of his violation of his rights under articles 21 and 26, and further observed that the right to hold a peaceful assembly constitutes the foundation to participatory governance based on democracy and human rights, and should be enjoyed by all. The Committee recalled that article 21 protects peaceful assemblies wherever they take place, be it indoors or outdoors, and that no restriction is permissible unless it is (a) imposed in conformity with the law and (b) necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protections of the rights and freedoms of others. The onus remains on the State party to refrain from limiting this right in a disproportionate manner, and to prove that this requirement was complied with.

The Committee noted that it understood that peaceful protests may be limited for practical reasons, however it is for the State to comply with all their positive obligations to facilitate an assembly where feasible, meaning road closures or extra security may be necessary. The Committee observed that both the State party and the author agree that the failure to authorise the pride parade in Moscow on the 11th of October 2014 was an interference with the author’s right of assembly, however disagree on whether the limitation was lawful.

The Committee observed that restrictions on peaceful assembly due to the moral freedoms of society should only be imposed in the exceptional circumstances, as this restrictive ground should not be used to protect an exclusive group of people, but rather should be understood in the universality of human

rights, pluralism and the principle of non-discrimination. This restriction may not be imposed on the basis of sexual orientation or gender identity.

Further, the Committee noted the fears of the State party that by allowing the peaceful demonstration, that this might encourage others that disagree to carry out illegal acts, however the State party has the duty to do everything reasonably foreseeable to protect the participants from the violence of others. Additionally, the Committee noted that the State Party may not use the excuse of disturbing traffic in order to impose restrictions on the peaceful assembly as this does not qualify as a ground of prohibition, especially in the case where the authors noted they were willing to relocate.

Finally, the Committee noted the author’s complaint that this discrimination was made on the basis of his sexual orientation, which is a violation of article 26. According to general comment No.18, article 26 requires all persons to be equal before the law and have equal protection under it. The Committee observed that the reasons behind the restrictions to the peaceful assembly were mostly made on the basis of the homosexual content of the parade and that the State party failed to prove how the restrictions made were on the basis of objective criteria.

The Committee found that the State party had failed to prove that the restrictions imposed on the author’s right to a peaceful assembly were based on reasonable and objective criteria or were in pursuit of a legitimate aim, and revealed a violation of the author’s rights under articles 21 and 26 of the Covenant.

Recommendations

The State party was requested to provide the author with an effective remedy and should:

- Review its legislation with a view to ensuring that the rights under article 21 of the Covenant, including organizing and conducting peaceful assemblies, and article 26 may be fully enjoyed in the State party.

Separate Opinions

Joint opinion of Committee members Vasilka Sancin and Yuval Shany (dissenting)

The two Committee members agreed on most of the analysis of the admissibility and the merits offered by the majority of the Committee, however disagreed with the approach of the Committee to question the abuse of the right to submit a communication and therefore, dissented to the admissibility of this communication.

The members noted that according to the Optional Protocol, the Committee should find communications that were submitted in a way that would abuse the rights of the State party to exercise their own rights under the Optional Protocol, as inadmissible. They argued that this communication should be considered under the same umbrella, as even though the author alleges that the claims submitted to the European Court of Human Rights are different to that submitted before this Committee. The claim submitted at the European Court and the Committee both speak of the same issues, and even though they cover different dates or different parades, the claims at the European Court cover the date of this Moscow parade.

The members considered that the Committee did not apply article 5(2) of the Optional Protocol in an appropriate manner, as both matters have identical facts, legal issues and parties to the suit and that they involve events that occurred at the same time. The members noted that article 5(2) of the Optional Protocol is in place so that the same human rights matter is not dealt with at various quasi-judicial forums and reduces the risk of conflicting jurisprudence on the same matter.

The members felt that the authors had failed to justify or give an adequate reason for initiating parallel legal proceedings at various institutions. Absent this reasoning, the practice is an abuse of the right of submission and should have been declared inadmissible under article 3 of the Optional Protocol.

D. Kitumaini et al. v. DR Congo

Violation of the right to life in a case of assassination of a human rights defenders without justice over more than 15 years

<https://ccprcentre.org/decision/17149>

Substantive Issues: Effective remedy, interference with one's home, liberty and security of person, right to family, right to life, torture / ill-treatment.

Relevant Articles: article 17, article 6, article 7 and article 9.1

Facts

The authors of the communication are the wife and children of Pascal Kabungulu, who was assassinated in 2005. Pascal Kabungulu was a human rights defender who was working to combat impunity and corruption. After years of attempted assaults, threats, and intimidation due to his reporting on allegations of corruption and impunity in the armed forces, Pascal Kabungulu was assassinated in July 2005. On the night in question, three armed men wearing masks and uniforms broke into the authors' home and shot Mr. Kabungulu in front of the authors and other witnesses. The three men then fled, taking the victim's computer and some of his personal belongings. Given the status and international reputation of Pascal Kabungulu, various non-governmental organisations condemned this attack on an international level.

The next day, investigations began with two officers being identified as suspects and placed in detention. In the days that followed, these two officers were smuggled out by their lieutenant. Subsequently, a complaint was filed against the Lieutenant and the officers after their escape. But after the assassination, the authors received various threats and decided to leave the country and moved to Canada. Once in Canada, the author launched a complaint with the Senior Military Prosecutor's office concerning the assassination of her husband, the smuggling out of the perpetrators and their upcoming criminal charges and punishment. The author's legal representation requested a

copy of the case file once the commission had published its final inquiry on the attack, which identified the three men involved and condemned the officers and the lieutenant for their behaviour.

In November 2005, the trial for the murder of the victim started in the Bukavu Military court, where at least 6 individuals were brought forward. However, in December 2006, the Court stated that they refused to exercise their jurisdiction over the Lieutenant and the Vice Governor D.K.K, as they could only be tried by the Military Supreme Court. After various disruptions to judicial proceedings, the Lieutenant received a promotion within the ranks. In 2008, even though various requests had been made for the trial to be resumed at the Military Supreme Court, the trial resumed at the Military High Court.

In the years that followed, various organisations applied pressure on the government to expedite this process. The authors claim that Pascal Kabungulu was arbitrarily deprived of his life, in violation of article 6(1) of the Covenant and that no adequate domestic remedy was provided after 10 years, in violation of article 2(3) read in conjunction with article 6(1). Additionally, the State party failed to protect the victim against threats, intimidation and attempted assault on various occasions, as a human rights defender, claiming a violation of the victim's right of security of person under article 9(1) of the Covenant. Further, the authors also alleged that the failure of the State party to deliver justice after 10 years and the

lack of exacerbated uncertainty the family has faced over the last 10 years reveals a violation of article 7 of the Covenant, read in conjunction with article 2(3).

Finally, the family were also subjected to unlawful interference with their privacy,

family and home life in the years before and after the murder, which the authors alleged revealed a violation of their rights under article 7 and 17 read in conjunction with article 2(3) and article 23 of the Covenant.

Admissibility

The Committee found that in relation to the exhaustion of domestic remedies, the State party not only has a duty to investigate alleged violations against human rights defenders, but also the obligation to prosecute and punish those responsible. The Committee found that the authors exhausted all possible domestic remedies available to them, and had properly

substantiated their claim under articles 2(3), 6(1), 7, 17 and 23 of the Covenant. Therefore, these claims will be declared admissible.

The Committee found that the claim in relation to 9(1) was not appropriately substantiated as it had not been raised before the national authorities.

Merits

The Committee noted that the State party had not responded to all allegations raised by the authors and had failed to provide further information or case files to substantiate or disregard certain claims. In the absence of such information or any explanations from the State party, due weight should be given to the author's testimony. The Committee noted the authors' recollection Pascal Kabungulu's assassination in 2005, and that the trial began the same year. However, after 15 years, no real justice has been served. The Committee concluded that the State party had deprived the victim of his right to life in violation of article 6(1) of the Covenant. Additionally, the Committee noted the anguish that such a death can cause for family members, and found this to also reveal a violation of article 7 of the Covenant. Further, the State party had failed to provide reasons as to why those 3 men

barged entry into the victim and author's home and assassinated him. After this, the family continued to experience various threats and intimidation resulting in them emigrating to Canada. On this basis, the Committee found a violation of article 17 of the Covenant. The Committee will not assess article 23(1) separately.

Under these circumstances, the Committee concluded that the State party remains under the obligation to provide an effective remedy, and to adequately investigate, prosecute and punish those responsible for Pascal Kabungulu's assassination. Due to the States inability to deliver justice for the assassination or for the authors, the State has failed to deliver an effective remedy, revealing another violation of article 6 read in conjunction with article 2(3) and a violation of article 7, read in conjunction with article 2(3) and article 17 of the Covenant.

Recommendations

The State party remains under an obligation to:

- Pursue in a prompt, effective, exhaustive, independent, impartial and transparent manner the investigation and prosecution of the murder of Pascal Kabungulu
- Provide the authors with detailed information on the outcome of these proceedings;
- Prosecute, try and punish those responsible for the violations committed;
- Provide the authors with adequate compensation and appropriate measures of satisfaction.

The State party also remains under an obligation to prevent similar violations from occurring in the future. The Committee requested that the State party provide information about the measures that have been taken by the State in effect of the present views. This must be done within 180 days, by 5 may 2021.

D.Z. v. Netherlands

A stateless child claimed that the Netherlands violated his right to acquire a nationality, the Committee agrees

<http://ccprcentre.org/decision/16776>

Substantive Issues: Child's right to a nationality; effective remedy

Relevant Article: Article 24

Facts

The author's mother was born in China in 1989, however her birth was not registered in the civil records as such registration is performed, and civil status is established, through an individual's inclusion in a household registry. After her brother was born a few years later, her parents abandoned her. Due to this reason, the author's mother was unable to obtain proof of Chinese citizenship and holds no documentation proving her identity. She later received a temporary residence permit, which once expired classified the author's mother as an illegal alien. The author's father is not in contact with her or the mother and has failed to recognise paternity.

The author was born in Utrecht in 2010 and was registered in the Municipal Personal Records Database where he was given an "unknown nationality", as his mother had no records to prove her nationality. The author's mother later made several attempts to confirm Chinese nationality for her son, in order to satisfy the legislative requirement that a person must provide conclusive proof of nationality, in order to change their status from "unknown" in the civil registry. These attempts have either been unsuccessful, or the author has been instructed that in order to gain proof of nationality, their mother would need to be registered in the Civil Registry of China. For these reasons, the author's mother has been unable to change the author's nationality entry in the civil registry to stateless, so that he can enjoy the international protections afforded to Stateless children, including the right to acquire the nationality of the state in which he was born in, which is the Netherlands.

In 2012, the author's mother lodged a request with the civil registration department of the municipality of Utrecht for her son's nationality to be recorded as 'stateless' instead of unknown. In the municipality's view, the author's nationality was Chinese according to Chinese law. The author's mother lodged an appeal against this decision, which was rejected as there was no proof that the child was stateless. The Council of State concluded that the author's mother had failed to provide proof of the child's statelessness, and that there weren't any rules within national or international law that could aid this legal gap.

In 2015, the author applied to the municipality of Katwijk for recognition as a Dutch citizen, arguing that he should be allowed access to nationality, despite his lack of registration as a stateless person. The Mayor of Katwijk acknowledged that the State party lacked a determination procedure for the author and to determine his statelessness. But the appeal commission concluded that it was not up to the Mayor to fill this gap in procedure and rejected the author's appeal. This was upheld by the Council of the State in 2016.

As a result, the author lives with his mother in a restricted freedom centre for failed asylum seekers with young children. The environment is one of constant fear, health problems, family tensions and social exclusions. As the author continues in legal limbo, the author submitted that the lack of the State party's approach of addressing statelessness and rules relating to residency rights and acquiring nationality is in violation of his rights under article 24(3) of the Covenant. He argued that after 6 years of filing petitions

to obtain nationality from the State he was born in, while all the while being registered as “unknown nationality”, that he still has no prospect of acquiring nationality or even formally establishing his statelessness.

Additionally, the author argued that the State failed to provide him with an adequate effective remedy, and therefore the violation of article 24(3) must be read in conjunction with article 2(3).

Admissibility

The Committee noted that the author has exhausted all effective remedies available to him. And that according to the author’s arguments for his rights being violated

under article 24(3), that these arguments are sufficiently substantiated in accordance with the Optional Protocol. On this basis, the communication was declared admissible.

Merits

The Committee noted that under article 24 of the Covenant, every child has the right to special measures of protection because of their status as a minor, and that the primary consideration in all decisions should consider the best interests of the child. The Committee recalled that while general comment No.17 does not require a State to give their nationality to every child born in their territory, every state should establish internal procedures in cooperation with other States to make sure that every child is born with a nationality. In addition, the UNHCR Guidelines on Statelessness No.4 provides that States must determine the nationality of a child where this has been delayed, in order to not prolong this period of “unknown nationality”. This period should not exceed 5 years, in order to ensure that all children are not precluded from enjoying the rights conferred by citizenship for a prolonged period.

The Committee further recalled that in the concluding observations on the State party’s fifth periodic report, that it had already expressed concern over reports that the State had drafted legislation to determine the statelessness of children which were not in accordance with international standards. Similar recommendations were made by the Committee on the Rights of the child. The Committee further noted that in the present communication, the author’s mother had made several attempts to various entities in order to obtain the required proof to be able to register her child within the municipal laws. When each of these attempts were unsuccessful, domestic authorities did not attempt to aid the mother.

Bearing all this in mind, the Committee was of the view that the communication revealed a violation of article 24(3) read alone and read in conjunction with article 2(3) of the Covenant.

Recommendations

The State party remains under an obligation to:

- Provide the author with adequate compensation;
- Review its decision on the author’s application to be registered as stateless in the civil registry of the State party, as well as its decision on the author’s application to be recognized as a Dutch citizen, taking into account the Committee’s findings in the present Views;
- To review the author’s living circumstances and residence permit, taking into account the principle of the best interests of the child and the Committee’s findings in the present View.

Additionally, the State party remains under an obligation to take all steps necessary to avoid similar violations in the future, including reviewing its legislation in accordance with its obligation under article 2 (2) of the Covenant to ensure that a procedure for determining statelessness status is established, as well as reviewing its legislation on eligibility to apply for citizenship, in order to ensure that its legislation and procedures are in compliance with article 24 of the Covenant.

Separate Opinions

Individual opinion of Committee Member Yadh Ben Achour (concurring)

Committee Member Yadh Ben Achour concurred with the Committee's finding of a violation of the author's rights according to the communication, however provided a dissenting view as to the Committee's treatment of article 2(2) when read in conjunction with article 24. The Committee found, based on previous jurisprudence, that since it had dealt with article 24 on its own, it did not see the point in dealing with Article 2(2) read in conjunction with article 24. Member Achour disagreed on the basis that regardless of article 24, the State party's actions in failing to adopt new administrative laws would violate article 2(2) under the Covenant. He felt that therefore, this part of the communication should be admissible as well.

Individual Opinion of Committee Member Hélène Tigroudja (concurring)

Committee Member Hélène Tigroudja also concurred with the outcome of the Communication by the Committee, however agreed with Mr Ben Achour's view that the Committee erred in their judgement on other branches of the Covenant. Member Tigroudja noted that the author is specifically referring to article 16 (recognition of legal personality) and article 7 (cruel or inhuman treatment) which the Committee failed to address adequately. Noting that it has been confirmed by various other international bodies and instruments, stateless children are vulnerable due to their lack of juridical personality within the State. In this manner, the Committee erred by only focusing on the violations of his right to have a nationality, as this lack of legal personality could ultimately lead to conduct in scope of article 7 by the State.

Ahmed Tholal and Jeehan Mahmood v. Maldives

Judicial restrictions imposed on the report of the national Human Rights Commission of Maldives, Committee finds a violation of the freedom of expression<https://ccprcentre.org/decision/17163>**Substantive issues:** Freedom of expression**Relevant Articles:** Article 19**Facts**

The authors of the communication are two nationals of the Maldives who claimed that the State Party had violated their rights under article 19 of the Covenant. At the time when the alleged violations took place, the authors were members of the national Human Rights Commission, an independent and statutory body in Maldives. In September 2014, the Commission submitted a report to be considered during the second universal periodic review of Maldives by the Human Rights Council. In the report the Commission questioned the independence, transparency, impartiality, competence, consistency and accessibility of the judiciary of Maldives, as well as criticized the Government of Maldives. Following the publication of the report, the Supreme Court initiated proceedings against the Commission, alleging that

acts against national security and interests were committed and that unlawful representation and dissemination of information in the name of the State took place. The Supreme Court found that the Commission had acted unlawfully by deliberately attempting to undermine the independence of the judiciary and the Constitution of Maldives, and ordered the Commission to follow guidelines which limit the Commission's ability to freely share information with the United Nations.

On this basis, the authors submitted that the charges and guidelines imposed by the Supreme Court of the State Party have constituted a restriction of their protected communication with the United Nations and violated their right to freedom of expression.

Merits

The Committee considered whether the Supreme Court's findings against the Human Rights Commission fell within one of the acceptable restrictions of freedom of expression. The Committee noted that any such restriction must be applied only for the prescribed purposes and must be directly related to the specific need. In this case, the Committee found that the State Party did not explain how the measures taken by the Supreme Court were provided by law, nor how they were necessary, proportionate or in the pursuit of a legitimate aim under article 19(3) of the Covenant.

In evaluating the proportionality of the restriction, the Committee recalled that it is an essential element of a free and democratic society to allow their citizens to criticize or publicly evaluate the branches of their government without

fear of interference, within the limits set in article 19(3) of the Covenant. The Committee also considered that the context and forum in which the report was submitted was meant to improve the human rights situation and that the Supreme Court's guidelines have affected the ability of the Commission from raising concerns regarding any public or private institution in the Maldives. The Committee therefore found the guidelines as disproportionate limitations of the authors' freedom of expression, as they did not represent the least-intrusive instrument to achieve the function of protecting peace and security. Further, such restrictions were not in pursuit of a legitimate aim as defined by article 19(3) of the Covenant. The Committee therefore concluded that the facts before it disclosed a violation of authors' rights under article 19 of the Covenant.

Recommendations

In the present case, the Committee found its views to constitute sufficient remedy, however the State party remains under the obligation to take all necessary steps to prevent the occurrence of similar violations in the future.

Separate Opinions

Committee members Heyns, Santos Pais and Zimmermann dissented from the majority, arguing that the facts did not show that the authors have been personally affected and could not be considered as “victims”. Further, even if the case were to be admissible, the facts would not lead to a violation of the Covenant as the alleged victims “did not show that their right of freedom of expression had been infringed”.

Daher Ahmed Farah v. Djibouti

Dissolution of a political party Mouvement pour le renouveau démocratique et le développement in Djibouti, Committee finds violations of freedom of expression, association and the right to take part in the conduct of public affairs

<https://ccprcentre.org/decision/17164>

Substantive issues: Freedom of expression, Freedom of association, Right to vote

Relevant Articles: Article 2, Article 3, Article 9, Articles 14, Article 19, Article 22, Article 25

Facts

The author of the communication is a national of Djibouti who claimed that the State Party had violated his rights under articles 2, 3, 19, 22 and 25 of the Covenant, read in conjunction with articles 9 and 14.

The Party of Democratic Renewal was the main opposition party in Djibouti, however was declared illegal by authorities in November 1996. The author of the communication was elected as the President of the party in July 1997 and has been prosecuted for illegal administration of the political party, organization of illegal demonstrations and the dissemination of false news. In 2001, the party was restored to legality after the change of its name into "Movement for Democratic Renewal and Development" (Mouvement pour le renouveau démocratique et le développement), with the author still acting as President. Nevertheless, the persecution of the Mouvement continued. According to the author, he was arrested and imprisoned on numerous occasions in 2003, exiled to Belgium in 2004 and his party suffered arbitrary dissolution by a decree on the grounds that it had invited the Eritrean Head of State to invade Djibouti and thus undermined the country's independence and territorial integrity.

In November 2008, Mouvement filed a

petition for the nullification of the decree that was ruled inadmissible as it was submitted out of time. The authenticity of the document that was the reason for the dissolution of the party was therefore never examined. Mouvement appealed that it had not been notified of the decision to dissolve it or the date in which the decree had been published in the Official Gazette, yet the Supreme Court rejected the appeal. According to the judgement the decree was published in the 10 July 2008 edition of the newspaper La Nation, however, the author submits the decree was not published in its entirety and that the newspaper is not responsible for publishing laws and regulations. The author argued that the decree had been transmitted to the Ministry of the Interior to enable it to ensure that the Mouvement was dissolved, but was not transmitted to the political party itself.

On this basis, the author submitted that the dissolution of the Mouvement and the dismissal of the appeals lodged, which were not based on the examination of the merits of the case, amounted to violations of the right to freedom of expression pursuant to article 19 of the Covenant, the right to freedom of association pursuant to article 22 of the Covenant and the right to take part in the conduct of public affairs and to be elected pursuant to article 25 of the Covenant.

Admissibility

The Committee noted the distinction between the author as a natural person and the Mouvement as a legal person and underlined

that the author has claimed to be "a victim of his individual rights under the Covenant as a direct consequence of his role in the

Mouvement.” The Committee concluded that article 1 of the Optional Protocol is not an obstacle to the admissibility.

However, the Committee found the contention raised by the State party that the author has committed an abuse of rights within the meaning of article 3 of the Optional Protocol as inadmissible, as Djibouti has failed to demonstrate what “misinformation was submitted by the author”. Further, the Committee also found inadmissible the author’s claim under article 2 of the Optional Protocol regarding

the violations under articles 9 and 14, as the nature of the submitted claims was hypothetical, all available domestic remedies were not exhausted and the author had merely cited the latter violations without substantiating them.

Nevertheless, the Committee did consider that the author had sufficiently substantiated their claim under articles 19 (freedom of expression), 22 (freedom of association) and 25 (the right to take part in the conduct of public affairs and to be elected) of the Covenant and thus found them admissible.

Merits

The Committee considered whether the dissolution of the political party constituted interference with the right to freedom of association under article 22 of the Covenant. It concluded that since political parties are a “form of association essential to proper functioning of democracy”, the dissolution of the Mouvement amounted to interference with the author’s right to freedom of association.

The Committee further evaluated whether the “interference was warranted”, meaning if it was provided for in law, only imposed for one of the purposes set in article 22(2) and necessary in a democratic society for achieving one of these objectives. In this manner, Djibouti had to demonstrate that the prohibition of association was necessary to avert a real threat to national security, that less intrusive measures would be insufficient to achieve the same purpose and that the restriction was “proportionate to the interest to be protected”. The Committee noted that the decree stated that it will be published in the Official Gazette but was only partially published in the newspaper La Nation. The lack of such communication hampered the ability of the author to defend himself.

The Committee also noted Djibouti’s failure to respond to the author’s central claim and reiterated that Djibouti had “a duty to investigate in good faith all allegations of violations of the Covenant made”. The Committee therefore found that the national

court’s consideration of whether the dissolution decree was effectively notified in full did not meet the requirements of a careful examination. The Committee also determined that Djibouti had failed to prove that Mouvement was dissolved to address a real threat to national security, therefore revealed a violation of article 22 of the Covenant. The Committee also considered that the right to freedom of expression pursuant to article 19 of the Covenant can be restricted only as provided for by law and must be necessary, as well as conform with the strict test of proportionality. The Committee concluded that since the State party had failed to demonstrate the existence of a real threat to national security, the author is also a victim of the violation of article 19.

Finally, as the Committee had noted, the right to freedom of association includes the right to form and join organizations and associations concerned with political and public affairs, and “is an essential adjunct to the rights protected by article 25 of the Covenant”. The Committee observed that the author had been arrested and imprisoned several times due to his political activities as a member of the opposition party, including 23 times between 2013 and 2014. It concluded, in line with the previous findings, that the author has been “deprived of the opportunity to participate in the conduct of public affairs” in violation of his rights under article 25 of the Covenant.

Recommendations

The State party remains under the obligation to provide authors with an effective remedy, including full reparation to the individuals whose Covenant rights have been violated. The Committee requested that the State take appropriate steps to:

- Declare the presidential decree of 9 July 2008 null and void;
- Allow the author to pursue his political activities freely and to consider reregistering the political party;
- Allow the author to participate in the elections;
- Provide the author with adequate compensation and appropriate measures of satisfaction.

The State party is also under the obligation to prevent similar violations from occurring in the future and to provide a follow-up information about the measures taken to give effect to the Committee's Views by 8 October 2020.

F.A.J. and B.M.R.A. v. Spain

Claim that the lack of investigation into the whereabouts of disappeared persons raises violations of the Covenant, inadmissible *ratione temporis* and as domestic remedies not exhausted

<https://ccprcentre.org/decision/17165>

Substantive issues: Effective remedy, Legal Personality, Liberty and security of person, Right to life and Torture/ill-treatment

Relevant Articles: Article 2.3, Article 6.1, Article 7, Article 9 and Article 16
Facts

The authors of the communication are two nationals who are submitting the communication on their own behalf as well as on behalf of their parents and grandparents, whose whereabouts became unknown since August 1936, after they were arrested by officers of Guardia Civil. In their communication they claim that the State party is responsible for a continuing violation under articles 6, 7, 9 and 16 of the Covenant, read in conjunction with article 2(3) of the Covenant.

The authors submitted that the facts of the present case related to the systematic practice of enforced disappearances of persons accused of adhering to an ideology contrary to that of Franco regime during the Civil War. During Spain's transition to democracy in 1977, an Amnesty Act for all the crimes committed had been adopted. The authors state that their father, Mr. A.M. was detained for a week at the Manacor police station in mid-August 1936, but was later released and had disappeared from his home. His pregnant wife, J.V. was also called in by the same police station, in order to testify to achieve the release of A.M and had disappeared after entering the station. Therefore, one of the authors of the communication had to grow up without her parents and the other author, her daughter, had felt the effect of the trauma due to the disappearance of her grandparents.

The authors submitted a complaint of crimes against humanity to the Central Court of

Investigations No. 5 of the National High Court. The Court ruled that no amnesty law adopted could be invoked to obstruct its investigations and assumed the jurisdiction. The Public Prosecution Service, however, successfully filed a complaint, arguing that the Court did not have the territorial jurisdiction and that its decision constituted a violation of the principle of legality and non-retroactivity. The authors appealed and reached the Constitutional Court but were rejected on the grounds that their complaint was time-barred and subject to the amnesty law which had come into force. In 2012, the authors also turned to the courts of Argentina on the basis of universal jurisdiction, however, Spain opposed all orders of extradition issued by Argentina. The authors have also pursued various administrative courses of action in an attempt to obtain reparation and have applied orphan's pension, but were denied at all instances.

On this basis, the authors submitted that the State Party has violated its positive procedural obligation to investigate and establish the whereabouts of disappeared persons, to identify, prosecute and punish the perpetrators and to provide full reparation under articles 6, 7, 9 and 16 of the Covenant, read in conjunction with article 2(3). The authors also claimed a continuing violation of their rights under article 7 of the Covenant, read in conjunction with article 2(3) due to profound suffering and stress caused by the enforced disappearance of their family members

Admissibility

The Committee first determined whether the case was admissible *ratione materiae*, rejecting the State Party's argument that the term "enforced disappearance" is not explicitly used in the Covenant and therefore the complaint should be submitted to the Committee of Enforced Disappearances. The Committee recalled that it has in the past examined a large number of individual communications related to enforced disappearances and has found violations in several of them as the practise also constitutes violations of the Covenant. Spain further contested that the communication is inadmissible as it is an *actio popularis* that serves as a comprehensive critique of legislation and judicial proceedings. The Committee, however, stated that since the authors have substantiated their claim with personal harm and have identified specific violations of their individual rights under the Covenant, "article 1 of the Optional Protocol does not constitute an obstacle to the admissibility".

Spain further argued that the disappearances occurred before the existence of the Covenant. The Committee noted that the

obligation under articles 6, 7, 9 and 16, read in conjunction with article 2(3), did not exist before the Covenant entered into force for Spain in 1997. It would therefore be unreasonable for it to regard the ratification of the Covenant as entailing an active duty on its part to investigate enforced disappearances which occurred in the past.

The Committee also highlighted that the authors did not explain why they did not present their complaint to the Committee upon Spain's ratification of the Optional Protocol. Accordingly, "the Committee cannot conclude that it has jurisdiction over a violation that took place in 1936, even if there are certain continuing effects related to such a violation". Finally, the Committee also considered that the authors have not shown that they have raised the claim of a continuing violation of their own rights under article 7 of the Covenant, read in conjunction with article 2(3), before domestic courts and thus considered that the local remedies have not been exhausted.

The communication is therefore inadmissible.

Separate Opinions

Joint opinion of Committee members Moore, Sancin, Santos Pais, Shany and Zyberi

The authors concurred with the decision of the Committee that it would be unreasonable to construe the obligations of State Parties for the issue of "the prompt and effective investigation of past crimes, which assume the availability of sufficient forensic evidence and witnesses" under the Optional Protocol as allowing for a review events that have occurred long before the adoption of the Covenant or of the Optional Protocol. The members were also of the opinion that the authors should have exercised a certain degree of diligence in pursuing their claims before the Committee after Spain's ratification of the Optional Protocol.

Joint opinion of Committee members Ben Achour, Bulkan, Fathalla and Tigroudja

The authors concurred with the decision of the Committee on the *ratione temporis* inadmissibility, however, partially dissented to the decision on inadmissibility of the claim of a violation of authors own rights under article 7 of the Covenant, read in conjunction with article 2(3). The authors have filed multiple claims before national and regional courts in Spain, have asked for the recognition as victims and consequential reliefs, and have even invoked the claim before the Argentinian legal system. Moreover, the members noted that since the Supreme Court had ruled that crimes committed during the Civil War and the Franco era could not be investigated or prosecuted, the position of the lower courts had therefore been cemented and the authors had in fact no available remedy to exhaust. The members concluded that the author's own claim is admissible.

Joint opinion of Committee members Kran and Quezada Cabrera

The authors concurred with the decision of the majority of the Committee regarding the inadmissibility *ratione temporis*, however, were not able to agree that the authors' claim of a continuing violation of their own rights under article 7, read in conjunction with article 2(3) of the Covenant is inadmissible for failure to exhaust domestic remedies. The members noted that the authors have unsuccessfully brought legal claim before the National High Court, the Court of Palma de Mallorca, the High Court of Mallorca, the Constitutional Court and the Court of Manacor, as well as unsuccessfully taken procedural and administrative steps before the Technical Commission of Disappeared Persons and Graves of the government of the Balearic Islands. Moreover, the members also noted that the State party has not disputed that the judgement of the Supreme Court in 2012 has led to a general dismissal of all appeals lodged and left the authors without any further effective remedies. The members therefore concluded that the communication is admissible regarding the claims relating to articles 2(3) and 7 of the Covenant.

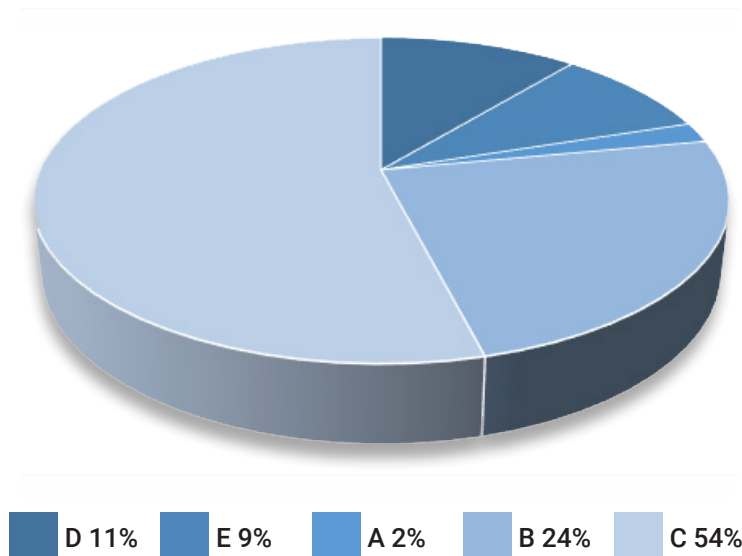
Follow-up activities under the First Optional Protocol in 2020

Human Rights Committee followed-up on State's party implementation of its Views during the 128th and 130th sessions

The Human Rights Committee followed up on Views adopted under the Optional Protocol to the Covenant during its 128th and 130th session in 2020. It has assessed the replies received and actions taken by 10 different State parties and has given out 46 gradings.

The follow-up process of the Human Rights Committee is based both on written observations from State parties and the contributions of the civil society organizations. During the process, the Committee followed up on 13 communications and assigned ratings from 'A', meaning largely satisfactory, to 'E', meaning it reflects the rejection of the recommendation.

Communication number	State party	Assessment grades given in 2020
2627/2015, Marchant Reyes et al.	Chile	B, C, B, B
1759/2008, Traoré et al.	Côte d'Ivoire	D, D, D, D, D
2290/2013, Karma Fofana	Ecuador	A, C, C, C
2668/2015, Tiina Sanila-Aikio	Finland	C, C, C
1744/2007, Narrain et al.	Mauritius	B, B
2750/2016, Padilla Garcia et al.	Mexico	C, C, B, C, B, C, C
2502/2014, Miller and Carroll	New Zealand	C, C, B
2751/2016, Portillo Cáceres et al.	Paraguay	C, C, C, C
2250/2013, Katashynskyi	Ukraine	C, B
1769/2008, Ismailov	Uzbekistan	C, E, C
2430/2014, Allakulov	Uzbekistan	C, C
1914, 1915 and 1916/2009, Mu-saev	Uzbekistan	E, C, E, B
No. 2555/2015, Allaberdiev	Uzbekistan	B, E, C



We identified that the predominant grading issued by the Committee in 2020 was 'not satisfactory' (10 State parties), which refers to a response being provided however the action taken or the information provided was not relevant or it did not address the recommendation. The Committee graded only one action as largely satisfactory, while 11 actions out of 46 were graded as only partially satisfactory. The Committee also found four actions to be directly contrary to its recommendation.

Assessment criteria	A	B	C	D	E	Total
Assessments given in 2020	1	11	25	5	4	46
States achieving the grades	Ecuador	Chile Mexico Mauritius Uzbekistan New Zealand Ukraine	Ecuador Chile Mexico Paraguay Uzbekistan New Zealand Finland Ukraine	Côte d'Ivoire	Uzbekistan	

The only action graded as largely satisfactory 'A' in 2020 related to the recommendation given to [Ecuador](#), in the communication *Karma Fofana v. Ecuador*, to expunge the author's criminal record in the National Police's computer database for his illegal entry into the State's territory with the aim of asking for asylum.

The Committee found the actions of six State parties to be partially satisfactory (11 recommendations), indicating that steps were taken to implement the recommendations of the Committee, but additional information or actions remains necessary. Such recommendations include the measures of satisfaction, providing information on the investigation, compensation and guarantees of non-repetition.

Assessment criteria	A	B
Actions taken by State parties to implement the Views	- expunging criminal records (Ecuador)	- effective remedy, including compensation (Mauritius, Chile) - measures of satisfaction (Chile) - non-repetition (Mauritius, New Zealand, Ukraine, Chile) - providing info on the investigation (Mexico)

The only State party to receive a grade 'D', reflecting no cooperation with the Committee, was **Côte d'Ivoire**. In the communication *Traoré et al. v. Côte d'Ivoire*, the Committee examined the arbitrary arrest and detention of one person and the enforced disappearance of his relatives accused of political dissent. Five recommendations were provided, including to conduct a full and comprehensive investigation and to punish those responsible, to provide the author with detailed information on the results of the investigation, release or return of the remains of the victims, provide reparation and adequate compensation and provide a guarantee of non-repetition. Due to the lack of cooperation by the State party, the Committee will request a meeting with a representative of Côte d'Ivoire during one of the future sessions.

The lowest graded State party in 2020 and the only one graded with an 'E' was **Uzbekistan**. The State has obtained this grade four times in three different communications, namely *Ismailov v. Uzbekistan*, *Musaev v. Uzbekistan* and *Allaberdiev v. Uzbekistan*. The gradings referred to a failure to conduct a full and complete investigation and also the failure to provide appropriate measures of reparation such as adequate compensation.

We identified that throughout 2020, State parties were more successful in implementing recommendations relating to the provision of compensation and satisfaction to the victims, than in conducting an effective investigation, providing a public apology or providing guarantees of non-repetition. For example, as outlined below, the recommendation of providing a public apology was given 3 times by the Committee to 3 different State parties (**Chile, Ecuador and Uzbekistan**), however has always lacked a satisfactory implementation. Similarly, the recommendation of providing an effective remedy, including conducting an effective investigation was given by the Committee to four different State parties (**Côte d'Ivoire, Mexico, Paraguay and Uzbekistan**) however was never implemented satisfactorily.

Assessment criteria	C	D	E
Actions taken by State parties to implement the Views	<ul style="list-style-type: none"> - full reparation (Ecuador, Finland, New Zealand) - adequate compensation (Ukraine, Uzbekistan, Mexico) - effective remedy, including investigation (Mexico, Uzbekistan, Paraguay) - return of the remains of the victim (Mexico) - public apology (Ecuador, Uzbekistan, Chile) - non-repetition (Ecuador, Finland, Uzbekistan) - release the author from detention (New Zealand, Uzbekistan) 	<ul style="list-style-type: none"> - effective remedy (Côte d'Ivoire) - providing info on the investigation (Côte d'Ivoire) - return of the remains of the victim (Côte d'Ivoire) - adequate compensation (Côte d'Ivoire) - non-repetition (Côte d'Ivoire) 	<ul style="list-style-type: none"> - appropriate reparation, including compensation (Uzbekistan) - effective remedy, including investigation (Uzbekistan)

The table below is provided for a more detailed understanding of the 2020 follow-up assessment by the Committee.

Communication number	State party	Assessment given in 2020
2627/2015, Marchant Reyes et al.	Chile Seizure of artwork by the Carabineros of Chile	B: Effective remedy, including localization and return of missing banners B: Appropriate measures of satisfaction B: Non-repetition C: Public acknowledgement of the violation
1759/2008, Traoré et al.	Côte d'Ivoire Arbitrary arrest and deten- tion, torture and holding in inhuman conditions of one person and the enforced disappearance of his cous- ins accused of political dissent	D: Effective remedy, including diligent investigation and punishment of those responsible D: Providing the author with detailed information on the results of the investigation D: Release, or return of the remains of the victims D: Reparation and adequate compensation D: Non-repetition
2290/2013, Karma Fofana	Ecuador Arbitrary detention of a person with refugee status	A: Expunging the author's criminal records C: Ensure full reparation C: Public apology C: Non-repetition, including adopting institutional measures
2668/2015, Tiina Sanila-Aikio	Finland Right to vote in elections to the Sámi Parliament	C: Provide author with an effective remedy and full reparation C: Review Section 3 of the Act on the Sámi Parliament C: Non-repetition
1744/2007, Narain et al.	Mauritius Equality before the law and the participation in public affairs	B: Provide effective remedy, including financial compensation B: Non-repetition, including the revision of the community-based electoral system

Communication number	State party	Assessment given in 2020
2750/2016, Padilla Garcia et al.	Mexico Enforced disappearance	B: Providing the authors with detailed information on the outcome of the investigation B: Psychological rehabilitation and medical treatment for the authors C: Effective remedy, including investigation into the circumstances of the authors disappearance C: Release, or return of the remains of the victim C: Prosecution and punishment of those responsible C: Full reparation, including adequate compensation C: Non-repetition
2502/2014, Miller and Carroll	New Zealand Continued detention after serving punitive sentences	B: Non-repetition, including the review of the legislation C: Provide effective remedy in the form of full reparation C: Reconsider the authors' detention and facilitate their release
2751/2016, Portillo Cáceres et al.	Paraguay Crop fumigation with agro-chemicals and its impact on people's lives	C: Effective remedy, including a thorough investigation into the events C: Imposition of criminal and administrative penalties on the parties responsible C: Full reparation, including adequate compensation C: Non-repetition
2250/2013, Katashynskyi	Ukraine Violation of the right and the opportunity to take part in the conduct of public affairs and to be elected at genuine periodic elections	B: Non-repetition C: Adequate compensation and appropriate measures of satisfaction

Communication number	State party	Assessment given in 2020
1769/2008, Ismailov	Uzbekistan Arbitrary detention and violation of fair trial guarantees in criminal proceedings	C: Effective remedy, including a retrial or release C: Non-repetition E: Appropriate reparation, including compensation
2430/2014, Allakulov	Uzbekistan Quashing of final decisions clarifying the enforcement of Uzbekistan's court decision in author's favour	C: Effective remedy, including adequate compensation C: Appropriate measures of satisfaction, aiming at restoring reputation, honour, dignity and professional standing
1914, 1915 and 1916/2009, Musaev	Uzbekistan Failure to promptly bring a person detained on a criminal charge before a judge and to adequately address torture allegations, resulting in violation of fair trial guarantees	B: Non-repetition C: Retrial or release E: Full reparation, including appropriate compensation E: Effective remedy, including a thorough investigation
No. 2555/2015, Allaberdiev	Uzbekistan Torture and arbitrary detention	B: Effective remedy, including quashing of the conviction, release or retrial C: Non-repetition E: Conducting a full and effective investigation, prosecuting those responsible and providing compensation and measures of satisfaction



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