



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

TREATY BODIES

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CRC 91st session jurisprudence highlights

REPATRIATION FROM SYRIAN REFUGEE CAMPS OF CHILDREN WHOSE PARENTS ARE LINKED TO TERRORIST ACTIVITIES

[Communication 100/2019, S.N. et al. v. Finland](#)

Facts

The authors submitted the communication on behalf of their grand-children, who are of Finnish nationality, but born in the Syrian Arab Republic and currently held in the Al-Hol camp in the north-east of the country. Their parents are alleged to have collaborated with Da'esh.

Committee's decision

The Committee on the Rights of the Child followed its previous decision in similar cases of repatriation of French children,¹ and considered the following elements to establish that Finland had jurisdiction in this case, as the State of the children's nationality:

- the information available to it on the Finnish children being held in the Al-Hol camp in life threatening conditions and under the control of a de facto authority who is unable or unwilling to protect them as publicly stated;
- its relationship with the Syrian authorities; and
- its capability and power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses. This capability is demonstrated by the fact that the State party has already successfully repatriated at least 26 Finnish children without reporting any incidents relating to their repatriation, other than delays in negotiations with local authorities, or any refusal to cooperate on the part of the Syrian Democratic Forces.

Finally, given that the State party was aware of the prolonged detention of these Finnish children in a life-threatening situation, and was capable of taking action, the Committee considered that the State party had a positive obligation to protect them

from an imminent risk of violation of their right to life and an actual violation of their right not to be subjected to cruel, inhuman or degrading treatment. The Committee considered that there was sufficient information to establish that the conditions of detention pose an imminent and foreseeable threat to the lives of the children and that their prolonged detention constitutes cruel, inhuman or degrading treatment or punishment, in violation of articles 6(1) and 37a) of the Convention.

Remedies

The State party was requested

- to take urgent positive measures to repatriate the children, acting in good faith;
- to support their reintegration and resettlement;
- to take additional measures, in the meantime, to mitigate the risks to their lives, survival and development while they remain in the north-east of the Syrian Arab Republic.

ACCESS TO PUBLIC EDUCATION OF CHILDREN WITH IRREGULAR ADMINISTRATIVE STATUS IN MELILLA, SPAIN

[Communications Nos. 114/2020 , 116/2020, 117/2020 and 118/2020, A.B.A et al. v. Spain](#)

Facts

Different communications were submitted by eight children of Moroccan nationality born and raised in Melilla, Spain, to migrant parents, and who had irregular administrative status. Even though the children had the right to attend public school by law, they were unable to access public education in Melilla in practice, because they were requested to provide documents that were difficult or impossible to obtain given their irregular administrative status.

¹ *F.B. and others v. France* (CRC/C/89/DR/77/2019,

CRC/C/89/DR/79/2019 and CRC/C/89/DR/109/2019), para. 6.4.

Committee's decision

The Committee on the Rights of the Child followed its previous decision in a similar case,² in which it considered that the child's right to education under article 28 of the Convention was violated. In all cases, the Committee noted that, although the State party recognized that all children have the right to access to education regardless of their migration or administrative status, all authors had been prevented from attending school despite having filed several documents that constituted sufficient evidence of their actual residence in Melilla. According to the Committee, this gave rise to the State party's obligation to take all the necessary steps to confirm their actual residence in the city in an expeditious manner and immediately school them, which the State party failed to do.

The Committee also determined that the authors had substantiated, at a minimum, a *de facto* indirect differentiation, as the way in which the administrative requirements to access public school were applied, had a disproportionate effect on the authors, also on the basis of their irregular administrative status and, consequently, their national origin. The Committee outlined that, to be permitted under the Convention, this differentiation has to be based on reasonable and objective criteria, which are proportional to a legitimate aim. The Committee held this was not the case and therefore decided the State party had violated the authors' right to non-discrimination under article 2, read in conjunction with article 28 of the Convention.

Finally, the Committee reminded the State party's obligation to comply with a request to adopt interim measures under article 6 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It noted that the State party had failed to comply with the interim measures requested, which consisted in the immediate schooling of the authors while the examination of their communications was pending. It therefore found that the State party had violated its obligations under article 6 of the Optional Protocol.

Remedies

By the time the communication was considered, all authors had been schooled. However, the State party was requested to provide the authors with full reparation as well as taking proactive steps to help

them catch up at school with their peers. It also recommended that the State party adopt immediate measures to corroborate a child's residence in the city when they request access to public education; to immediately school them once their residence in the city is accredited; to provide children with an effective and accessible remedy if there is a dispute with regards to their right to education; and to provide specialized training for judges and administrative staff on the application of the Convention.

RETURN TO CANADA OF THE AUTHOR'S DAUGHTERS UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION OF 25 OCTOBER 1980

[Communication 94/2019, W.W. and S.W. v. Ireland](#)

Facts

The author was a Canadian and Irish national, who submitted the communication on behalf of her two daughters, born in 2015 and 2017 respectively. In 2009, the author moved from Ireland to Canada, where she met and married the father of her two daughters (the father), a Canadian national. In 2018, divorce and custody proceedings were initiated in Ireland. In 2019, despite a court order obtained by the father preventing the author from removing the children from Canada, the author and her children left Canada for Ireland. On 15 March 2019, the father initiated proceedings under the Hague Convention on International Child Abduction before the Irish High Court. On 24 May 2019, the Court ruled that there had been a wrongful removal of the two children by the author and found that she had not established a grave risk to the children should they be returned to Canada. The author's appeal to the Irish Court of Appeal was dismissed on 30 July 2019. She claimed that she did not apply for leave to appeal to the Supreme Court as she was unrepresented and had no reasonable possibility to appeal in light of her mental health situation and the limited time between the notification of the rejection of legal aid on 2 August 2019 and the date ordered by the Court of Appeal to return the children to Canada on 21 August 2019.

² *A. E. A. v. Spain* ([CRC/C/87/D/115/2020](#)), para. 12.7.

Committee’s inadmissibility decision

On the non-exhaustion argument, the Committee recalled that ordinarily financial considerations, without adequate justification, do not absolve the authors from exhausting domestic remedies. The Committee considered that the 20-day timeframe to file an appeal to the Supreme Court was not in itself a sufficient reason to lift the exhaustion requirement and that there was no information in the file that would suggest that the author’s mental health condition was of such nature as to justify the non-filing of such an appeal. The Committee also considered that the author had failed to substantiate, in the particular circumstances of her case, that her financial situation and the lack of access to legal aid during that part of the procedure was an impediment to file an appeal to the Supreme Court, especially given that, during that

same period, the author was able to submit a request for interim measures before the European Court of Human Rights and the present complaint before the Committee. The Committee also noted the State party’s argument, unrefuted by the author, that if the Supreme Court would have granted leave to appeal, it would have been then possible for the author to apply for a stay on the return order, which in all likelihood would have been granted considering the practice of the Supreme Court in such cases. The Committee therefore found the communication inadmissible for failure to exhaust domestic remedies under article 7 (e) of the Optional Protocol.

This is the second cases relating to international child abduction. In a previous case against [Chile](#), the Committee found a violation of the Convention.

CRPD 27th session jurisprudence highlights

ACCESSIBILITY OF INFORMATION, COMMUNICATIONS AND CULTURAL ACTIVITIES, AND STATES’ OBLIGATION TO ENSURE THE PROGRESSIVE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS TO THE MAXIMUM EXTENT OF ITS AVAILABLE RESOURCES

[Communication 56/2018, Lauren Henley v. Australia](#)

Facts

The author of the communication claimed that the State party had failed to enable her, as a person with a disability, to live independently and participate fully in all aspects of life by not providing audio description on free-to-air television. The author has been completely blind since an injury she endured following a motor vehicle accident in 2006. She alleged to be unable to access free-to-air television in the State party on an equal basis to sighted users, because of the lack of audio description, i.e., the narration of visual

elements in television, film and live performance. During gaps in dialogue, audio description describes visual elements that appear on screen, such as scenes, settings, actions, costumes and on-screen text. The provision of audio description would enable access to television programming that is otherwise unavailable to Australians who are blind or visually impaired. She also claimed that audio description was neither available on free online “catch-up” television services provided by Australian broadcasters.

Committee’s decision

In its Views, the Committee on the Rights of Persons with Disabilities noted the author’s argument that the measures taken by the State party to provide audio description content on television, including through trials and budget allocation, were insufficient and inconsistent with its obligation under article 4(2) of the Convention to take measures to the maximum of its available resources to ensure the progressive realization of economic, social and cultural rights of persons with disabilities. The Committee also noted that the State party had not provided any evidence of financial constraints and that in any case resource constraints were not a reason for its failure to adopt legislation, devise strategies, concrete plans and monitoring frameworks to ensure that concrete and

deliberate steps are made towards full realization of the Convention rights.

The Committee recalled that “progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of rights”. The Committee considered that the steps taken towards the full realization of rights should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Convention. The Committee also recalled that “[i]n accordance with the Convention, States parties are not allowed to use austerity measures as an excuse to avoid ensuring gradual accessibility for persons with disabilities. The obligation to implement accessibility is unconditional [...]”.

While giving due regard to the measures taken by the State party to provide audio description to persons with visual impairments, including through research, two trials in 2012 and 2015 and the provision of funding to the main television broadcasters in 2020, the Committee observed that these measures did not reveal the existence of a strategy to progressively and effectively take the necessary steps to provide audio description in a sustainable manner to persons with visual impairments. The Committee observed, in particular, that the State party had failed to adopt specific legislation, a policy framework, a sustainable budget line allocation or any other foreseeable measures to demonstrate its commitment to advance in the provision of audio description to persons with visual impairments in a sustainable manner. The Committee therefore found that the State party had failed to comply with its obligations under articles 9 (1)(b) (accessibility in information, communications, and other services) and 30 (1)(b) (access to TV programmes and other cultural activities), read in conjunction with articles 4 (1) (prohibition of discrimination on the basis of disability) and (2) (progressive realization of economic, social and cultural rights) of the Convention.

Remedies

The State party was requested, inter alia, to adopt action plans and strategies to identify existing barriers to accessibility – including the provision of audio description services to visually impaired persons-, set time frames with specific deadlines

and provide both the human and material resources necessary to remove the barriers. Such action plans and strategies should be strictly implemented. The State party was also asked to strengthen their monitoring mechanisms to ensure accessibility and continue providing sufficient funds to remove barriers to accessibility and train monitoring staff, and to take the necessary legislative and policy measures with a view to ensuring the provision of audio-description services to visually impaired persons.

RIGHT OF FAMILY CAREGIVERS OF PERSONS WITH DISABILITIES TO SOCIAL PROTECTION

[Communication No. 51/2018, Bellini et al. v. Italy](#)

Facts

The communication was submitted by Ms. Bellini on her own behalf and on behalf of her daughter and her partner. The author is a family caregiver to her daughter and partner, both of whom are persons with disabilities. She claimed that the lack of legal recognition of the status of family caregiver in the Italian legal system and the lack of individualized support provided to the family, including a lack of financial assistance, social support services, care services or respite care amounted to a violation of her, her daughter’s and her partner’s rights under the Convention.

Committee’s decision

In its decision on admissibility, the Committee on the Rights of Persons with Disabilities examined the author’s victim status as to the claims the author had raised on her own behalf in connection to her role as a family caregiver. The Committee noted that under article 1 of the Convention, the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights of persons with disabilities. However, the Committee noted that it was aware of instances in which the rights of persons with disabilities cannot be realized without the protection of family caregivers. It further noted that article 28 (2) (c) explicitly requires States Parties “(t)o ensure access by persons with disabilities and their families living in situations of poverty to assistance

from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care”. The Committee therefore concluded that **the right of family members under article 28 (2) (c) is indivisibly linked to the protection of the rights of family members with disabilities and that it confers a right on family members who do not have a disability to submit a claim on their own behalf under the Convention, under the condition that such a right is a necessary prerequisite for the realization of the rights of family members with disabilities.** The Committee further emphasized its General Comment No. 6 on equality and non-discrimination, in which it noted that the reason for incorporating the concept of “discrimination by association” into the Convention was to eradicate and combat all discriminatory situations that are linked to disability. The Committee therefore concluded that it was not precluded by article 1 of the Optional Protocol from considering the claims presented by the author on her own behalf under article 28 (2) (c), read in conjunction with article 5 of the Convention.

As to the merits of the case, the Committee found that the lack of individualized support services provided to the author’s daughter and partner; the failure by the State party to promote, facilitate and provide appropriate legislative, administrative, budgetary, judicial, programmatic, promotional and other measures to ensure the full realization of the right to live independently and be included in the community as enshrined in the Convention; and the failure to provide adequate support services to family carers so they can in turn support their relatives to live independently in the community amounted to a violation of the rights of the author’s daughter and partner under article 19 of the Convention. The Committee further found that the failure by the State party to provide the family with adequate support amounted to a violation of the rights of the author’s daughter and partner to home and family under article 23 of the Convention. The Committee finally found that the lack of social protection, assistance with disability-related expenses, adequate training, counselling, financial assistance and respite care provided by the State party authorities amounted to a violation of the rights of the author, her daughter and her partner rights under article 28 (2) (c), read in conjunction with article 5 of the Convention.

Remedies

The State party was therefore asked to, inter alia, take appropriate measures to ensure that the author’s family has access to adequate individualized support services, including respite care services, financial support, counselling services, social support, and other adequate support options in order to ensure their rights under articles 19, 23 and 28 (2) (c) of the Convention. The State party was also asked to ensure, through amending its domestic legislation, as necessary, that social protection programmes meet the requirements of the diverse range of persons with disabilities on an equal basis with others.

WITHDRAWAL OF LIFE SUPPORT TO A PERSON WITH DISABILITY – INADMISSIBILITY DECISION FOR RES JUDICATA

[Communication No. 85/2021, S.S. v. the United Kingdom of Great Britain and Northern Ireland](#)

Facts

The communication was submitted by J.S. on behalf of her son S.S. The author’s son suffered a heart attack in 2020. He was deprived of oxygen for at least 45 minutes and went into a coma. The hospital doctors and a court-appointed expert assessed him to be in a vegetative state and considered it to be in his best interest to discontinue hydration and nutrition. The author’s wife supported discontinuing life support, while his mother and sisters opposed it. During the domestic proceedings, the domestic courts concluded, on the basis of the evidence before it, that S.S. would have wished for life support to be withdrawn. On the basis of that evidence, the Court held that it was lawful and in the best interests of S.S. for nutrition and hydration to be withdrawn. The author claimed that the withdrawal of life support amounted to a violation of her son’s right to life and other rights under the Convention.

Committee’s decision

The Committee on the Rights of Persons with Disabilities noted that on 7 January 2021 the European Court of Human Rights had dismissed an application submitted by the author on behalf of

her son as being manifestly ill-founded. It further noted that the Court had clarified that it had found that the author's application before the Court did not disclose any appearance of a violation of the rights and freedoms set out in the European Convention on Human Rights or the Protocols thereto and that subsequently the author's claims were found to be manifestly ill-founded. The Committee noted the State party's argument that the same matter had therefore been considered on the merits by the Court, rather than being dismissed for procedural reasons, and that consequently there was no proper basis for the Committee to reopen the matter. Taking note of the fact that the claims raised by the author in her application before the European Court of Human Rights referred to the same substantive right (right to life) as those raised before the Committee, and that the additional claims before the Committee were closely linked to the main claim on right to life, the Committee concluded that her complaint before the Court concerned the same matter as the communication submitted before the Committee. The Committee considered that the examination of the author's application by the European Court went beyond an examination of purely procedural admissibility criteria and that the reasons provided by the Court indicated a certain consideration of the merits of the application before the Court. The Committee therefore found that it was precluded by article 2 (c) of the Optional Protocol from considering the communication.