United Nations CRC/C/82/D/33/2017

Convention on the Rights of the Child

Distr.: General
8 November 2019

Original: English

Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 33/2017*, **

Communication submitted by:	E.P. and F.P. (represented by counsel, D. Norrung)
Alleged victims:	A.P. and K.P.
State party:	Denmark
Date of communication:	10 September 2017
Date of adoption of the decision:	25 September 2019
Subject matter:	Deportation of children to Albania where they claim a risk of persecution based on a blood feud
Procedural issues:	Another procedure of international investigation or settlement; failure to exhaust domestic remedies; substantiation of claims
Substantive issues:	Right to life; best interest of the child; non-refoulement; right to education
Articles of the Convention:	2, 3, 6 and 28
Article of the Optional Protocol:	7 (d), (e) and (f)

1.1 The authors of the communication are E.P. and F.P., nationals of Albania, born in 1967 and 1977, respectively. The authors submitted the communication on behalf of their son, A.P., born on 14 April 2002, and their daughter, K.P., born on 3 May 2005, also nationals of Albania. They claim that by deporting their children to Albania, the State party would violate the children's rights under articles 2, 3, 6 and 28 of the Convention. The authors are represented by counsel. The Optional Protocol entered into force for Denmark on 7 January 2016.

1.2 On 18 September 2017, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested that the State party refrain from returning the authors and their children to Albania while the case was under

* Adopted by the Committee at its eighty-second session (9–27 September 2019).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffe, Olga A. Khazova, Cephas Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Aissatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.

consideration by the Committee. On 21 September 2017, the State party suspended the execution of the deportation order against the authors and their children.

1.3 On 1 November 2017, the State party requested that the admissibility of the communication be examined separately from the merits and the interim measures be lifted. On 6 February 2018, the working group on communications, acting on behalf of the Committee, decided to deny both requests.

The facts as submitted by the authors

2.1 On 30 June 2012, the authors arrived in Denmark with their two children, A.P. and K.P. On 3 July 2012, they claimed asylum on the grounds of a blood feud in Albania that threatened their lives. On 18 July 2012, the Danish Immigration Service rejected their application without the right for appeal, as the application was considered to be manifestly unfounded.

2.2 On an unspecified date, the authors applied for a residence permit on humanitarian grounds under section 9b (1) of the Aliens (Consolidation) Act, on the basis of the father's hospitalization. The Ministry of Justice rejected the application on 7 June 2013 and ordered the authors and their children to leave Denmark by 22 June 2013. On 21 June 2013, the authors initiated a lawsuit against the Danish Immigration Service, claiming asylum or alternatively a right to appeal their asylum case. In late 2015, a high court rejected the authors' claims. Although their request to suspend their deportation during the judicial proceedings had been denied, the authors were able to remain in Denmark, as the Human Rights Committee had granted a request for interim measures consisting in the suspension of their deportation.[1]

2.3 On 7 January 2016, the authors applied for residence on humanitarian grounds under section 9c (1) of the Aliens (Consolidation) Act, arguing that their deportation would be against the children's best interests. Along with the application, they submitted a report by a psychologist who had examined the children and had described their connection to Denmark and anxiety over the prospect of returning, in particular the boy's fear of "being at risk and life threatened". In February 2016, the Danish Immigration Service decided to suspend the deportation of the authors and their children while their application was being considered.

2.4 The Danish Immigration Service rejected the application on 21 July 2017. It determined that there were no special reasons, including consideration for family unity and welfare of the children or any other significant health or humanitarian circumstances, that justified granting a residence permit. It observed that a refusal of residence in that case would not constitute a violation of either the Convention on the Rights of the Child or the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). It considered that despite their schooling in Denmark and knowledge of Danish, the children did not have such a connection with Denmark that might justify a residence permit. The Danish Immigration Service stated that the fact that the children were suffering severe pressure in view of the prospect of returning to Albania could not lead to a different conclusion. It noted that A.P. had spent a significant part of his upbringing and formative years in Albania and that K.P. had also begun her schooling there, and determined that they could continue their upbringing and schooling in Albania. Referring to the 2012 decision by the Danish Immigration Service that found the blood feud-related claims to be manifestly unfounded, it found that the children would be able to grow up with their parents in a family environment in Albania.

2.5 On 27 July 2017, the authors appealed this decision to the Immigration Appeals Board, with a request to suspend their deportation. On 4 August 2017, the request to suspend the deportation was rejected while the appeal was still pending before the Board.

[1] See *E.P. and F.P. v. Denmark* (CCPR/C/115/D/2344/2014).

Complaint

3.1 The authors allege that returning their children to Albania would violate the principle of non-refoulement under article 2, in connection with article 6 of the Convention. They claim that the children would run a risk to their lives, in particular the boy, given that the blood feud had forced the family to hide and live separately, and eventually flee Albania. They state that their attempt to settle the blood feud was unsuccessful.

3.2 The authors further argue that the children's deportation is not in their best interests and thus would constitute a violation of article 3 of the Convention. Referring to a psychologist's assessment of the children, the authors claim that the children have a clear subjective fear of returning to Albania.

3.3 The authors claim that the children's return would constitute a serious setback in their education, in violation of article 28 of the Convention, given that they have been in the Danish school system for the past five years and will have to adapt to a new school system in another language.

3.4 Finally, the authors claim that the subject matter of their complaint to the Human Rights Committee is not the same as that of the present complaint, because the previous complaint concerns the rejection of the authors' asylum claims for being unfounded.

State party's observations on admissibility

4.1 In its observations dated 1 November 2017, the State party recalls the facts of the communication, including the procedural history. It also notes that in 2015, the Human Rights Committee declared the authors' communication inadmissible under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.[2]

4.2 As regards the admissibility of the authors' communication, the State party claims that the authors' appeal is pending before the Immigration Appeals Board. It argues that even if the Board dismisses the appeal, the matter can still be brought to the courts under section 63 of the Constitution. Therefore, the State party claims that domestic remedies have not been exhausted, and that the communication should be declared inadmissible under article 7 (e) of the Optional Protocol on a communications procedure.

Authors' comments on the State party's observations on admissibility

5. In their comments dated 6 December 2017, the authors argue that while the appeal dated 27 July 2017 was pending before the Immigration Appeals Board, their request to suspend the deportation had already been rejected on 4 August 2017. They state that their deportation has been suspended only because of the request for interim measures granted by the Committee. Therefore, the authors claim to have exhausted domestic remedies.

State party's observations on admissibility and the merits

6.1 In its observations dated 6 June 2018, the State party reiterates its description of the facts and its allegations on the admissibility of the communication. It contends that the authors can still request a judicial review even though the Immigration Appeals Board rejected the authors' appeal on 6 April 2018.

6.2 Additionally, the State party claims that the authors have failed to establish a prima facie case for the purpose of admissibility under article 7 (f) of the Optional Protocol, as they have failed to substantiate the risk that the children would face upon return. The State party adds that, should the Committee find the communication admissible, it has not been established that there are substantial grounds for believing that the deportation would constitute a violation of articles 2, 3, 6 and 28 of the Convention.

6.3 The State party notes that the authors have not provided any new submission or information on their situation different from that already provided and assessed by the Immigration Appeals Board in its decision of 6 April 2018.

[2] See *E.P. and F.P. v. Denmark*.

6.4 The State party recalls that the Committee has held that it generally falls within the jurisdiction of the national courts to examine the facts and evidence of a case, unless such examination is clearly arbitrary or amounts to a denial of justice. In this respect, the State party notes that the Immigration Appeals Board took into account the principle of the best interests of the child as required by article 3 of the Convention.

6.5 The State party further notes that national authorities are better placed to assess not only the facts of a case but, more particularly, the credibility of the authors, since they had an opportunity to hear them.[3] It states that the authors' application for residence under section 9c (1) of the Aliens Act, claiming that the children's rights would be violated by their deportation, was thoroughly considered and refused by the Immigration Appeals Board on 6 April 2018. It also notes that previously, on 18 July 2012, the Danish Immigration Service had refused the authors' asylum application based on a blood feud for being manifestly unfounded. Also, on 2 November 2015, the Human Rights Committee had declared the authors' communication inadmissible, finding their claims insufficiently substantiated. Furthermore, the State party notes that the authors have failed to identify any irregularity in the decision-making process or any risk factors that the Danish authorities have failed to take properly into account.

6.6 The State party notes that, as established by the Committee in its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, States parties should not return a child to a country where there are substantial grounds for believing that he or she would be subjected to a real risk of irreparable harm, such as those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. With regard to the alleged violations of articles 2 and 6 of the Convention, the State party notes that the authors' claims before the Committee rely on the same fear of blood revenge referred to in the proceedings before the Danish Immigration Service and the Human Rights Committee, which found the authors' claims manifestly unfounded and insufficiently substantiated, respectively. Therefore, it maintains that the authors have failed to sufficiently substantiate the real risk of irreparable harm to which the children would be exposed if returned to Albania.

6.7 The State party states that article 3 of the Convention requires States parties to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents or other legally responsible individuals. It further contends that a child's parents have the main responsibility for safeguarding the best interests of their child, and notes that under article 9 of the Convention, States parties are to ensure that a child is not separated from his or her parents against their will. The State party argues that in this case, no information or documentation on file indicates that A.P. and K.P. and their parents cannot reside together in Albania, and there has thus been no violation of article 3.

6.8 The State party contends that the children's return to their country of origin with their parents would not violate their rights under articles 3 and 28 of the Convention. It reiterates the reasoning presented by the Immigration Appeals Board in its decision of 6 April 2018 that the children's country of nationality bears the positive duty to ensure their right of residence and the continued protection of childhood. Also, it considers that a child does not have a separate right of immigration to obtain better living conditions in another country. It argues that A.P. and K.P.'s school attendance in Denmark during their various immigration proceedings does not give rise to the aforementioned positive duty on the part of Denmark, eliminating that of their country of nationality. It finds that the children will be able to attend school in their native language in their country of origin without any major challenges, given that they had both attended school in Albania and were 10 and 7 years old, respectively, at the time of entering Denmark, and spoke their native language, which they are assumed to still master.

[3] The State party cites, in this regard, the judgments of the European Court of Human Rights in the cases *M.E. v. Sweden*, Application No. 71398/12, Judgment, 26 June 2014, para. 78; *R.C. v. Sweden*, Application No. 41827/07, Judgment, 9 March 2010, para. 52; and *X v. Sweden*, Application No. 36417/16, Judgment, 9 January 2018, para. 47.

Authors' comments on the State party's observations on admissibility and the merits

7.1 In their comments dated 3 July 2019, the authors reiterate the facts and their allegations regarding admissibility and the merits of the communication. Furthermore, they claim that, while neither Danish law nor the Convention confers a general right of residence based on a prolonged stay in Denmark, the combination of several circumstances in the present case – the blood feud, the physical and psychological health of the family members, the strong and increasing ties to Denmark and the children's fear of returning – justify the granting of a residence permit.

7.2 The authors also allege that the fact that the children have spent their formative years, spanning from age 7 to age 15, in Denmark should be taken into account.[4]

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible.

8.2 The Committee notes the State party's arguments that the communication is inadmissible under article 7 (e) of the Optional Protocol, as the appeal before the Immigration Appeals Board was pending when the communication was initially submitted to the Committee, and the authors had not requested a judicial review of the Board's subsequent refusal of the appeal.

8.3 The Committee, however, notes the authors' arguments that neither the pending appeal nor a request for judicial review would have suspended their deportation and that they were able to remain in Denmark only because of the interim measures granted by the Committee. The Committee considers that, in the context of the authors' imminent expulsion to Albania, any remedies that do not suspend the execution of the existing deportation order against them cannot be considered effective. [5] Therefore, the Committee considers that the communication is admissible under article 7 (e) of the Optional Protocol.

8.4 The Committee notes that the matter raised before the Human Rights Committee related to the alleged risks the authors and their children would face because of a blood feud in Albania. The Committee notes that the authors' claim under article 6 of the Convention on the Rights of the Child in the present case is largely consistent with the claims already examined by the Human Rights Committee under article 6 of the International Covenant on Civil and Political Rights. Accordingly, the Committee finds that it is precluded by article 7 (d) of the Optional Protocol on a communications procedure from considering the authors' claims that the blood feud in Albania would expose their children to a risk of irreparable harm if the family were to be removed to Albania.[6] The Committee however notes that the rest of the authors' claims, namely their claims under articles 3 and 28 of the Convention, were not raised in their communication before the Human Rights Committee. The Committee therefore considers that it is not precluded by article 7 (d) of the Optional Protocol from considering those claims.

8.5 The Committee takes note of the authors' argument that the children's deportation is not in their best interests and would constitute a serious setback in their education, in violation of articles 3 and 28 of the Convention.

8.6 The Committee recalls that the assessment of the existence of a real risk of irreparable harm in the receiving State should be conducted in a child- and gender-sensitive manner,[7] that the best interests of the child should be a primary consideration in decisions concerning the return of a child, and that such decisions should ensure that the child, upon

[4] The author cites, in this regard, the European Court of Human Rights, *Osman v. Denmark*, Application No. 38058/09, Judgment, 14 June 2011.

[5] See, in this regard, the Committee's Views on *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 11.3.

[6] See also *Y and Z v. Finland* (CRC/C/81/D/6/2016), para. 9.2.

[7] General comment No. 6, para. 27.

return, will be safe and provided with proper care and enjoyment of rights.[8] The best interests of the child should be ensured explicitly through individual procedures, as an integral part of any administrative or judicial decision concerning the return of a child.[9]

8.7 The Committee also recalls that it is generally for the organs of the States parties to review and evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists upon return, unless it is found that such evaluation was clearly arbitrary or amounted to a denial of justice.[10]

8.8 In the present case, the Committee observes that, in its decision dated 18 July 2012, the Danish Immigration Service thoroughly examined the authors' claims based on the children's connection to Denmark, and that this decision was confirmed by the Immigration Appeals Board on 6 April 2018. In this regard, it notes the finding by the Danish Immigration Service that A.P. and K.P. would be able to continue their upbringing and schooling in their native language in Albania, considering that they had both attended school there before their departure, and that any relevant allegations arising from a blood feud, such as A.P. having to hide, have already been found by the Human Rights Committee to be not sufficiently substantiated.

8.9 The Committee further observes that, while they disagree with the conclusions reached by the Immigration Appeals Board, the authors have not demonstrated that the examination of facts and evidence by the domestic authorities was clearly arbitrary or amounted to a denial of justice.

8.10 In the light of all of the above, the Committee finds that the authors have failed to justify the existence of a real risk of irreparable harm upon return to Albania. The Committee therefore considers that the communication has not been sufficiently substantiated and declares it inadmissible under article 7 (f) of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 7 (d) and (f) of the Optional Protocol;

(b) That the present decision shall be transmitted to the author of the communication and, for information, to the State party.

[8] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, paras. 29 and 33.

[9] Ibid., para. 30.

[10] See *A.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.8.