



INTERNATIONAL HUMAN RIGHTS REPORTS VOLUME 27 (2020)

SUMMARY OF CASES

The following is a **summary of the cases** in Volume 27 IHRR (2020) hard copy and online. They are cases decided by the UN human rights treaty monitoring bodies (TMBs) and by the Inter-American and African Commissions and Courts, plus the European Committee of Social Rights. Nearly all were decided in 2019; a small number in 2018 or 2020. Some Inter-American Commission and Court cases were decided earlier: they have only recently been translated from Spanish to English.

All of the cases summarised have full commentaries in 27 IHRR Online. The commentaries are not printed in the hard copy.

1. CERD CASES

Inter-state cases. The most remarkable event in the UN human rights treaty monitoring body system in 2019 was the submission of the first ever inter-state communications, which were submitted to the CERD Committee. The Committee ruled that it had jurisdiction to consider all three cases: **Qatar v Saudi Arabia (2019)**, **Qatar v UAE (2019)** and **Palestine v Israel (2019)**. The most interesting ruling was that in **Palestine v Israel**, in which the Committee (with some members dissenting) rejected Israel's objection that the Committee lacked jurisdiction because Israel did not accept Palestine as being in treaty relations with it for CERD. The Committee also issued separate admissibility decisions in the two **Qatar** cases; an admissibility decision in **Palestine v Israel** is pending. See further the 27 IHRR online commentaries.

2. HRC CASES

As in earlier years, the Human Rights Committee (HRC) was the UN TMB that decided the largest number of cases in the time period covered in the volume.

Climate change: environmental protection. New developments occurred in two HRC cases on environmental matters. In **Teitiota v New Zealand (2019)** the HRC put ICCPR states parties on notice of the legal principle and its elements that will be applied by the HRC to future deportation cases involving the return of persons to states adversely impacted by climate change. In **Portillo Cáceres et al v Paraguay (2019)**, the HRC held that Article 6 ICCPR (the right to life) requires states parties to take all appropriate measures to address threats to the right to life resulting from environmental pollution, such as that caused by agrochemicals in this case. The HRC's approach to Article 17 was also far-reaching. When the adverse consequences of environmental pollution are sufficiently serious, they may adversely affect the well-being of individuals to the point where the pollution constitutes violations of private and family life and the home (Article 17 ICCPR), as on the facts of that case. See further the 27 IHRR online commentaries.

Disappeared persons. Two cases against Mexico were reported. In **Valdez Cantu v Mexico (2019)** the HRC found Mexico responsible for an enforced disappearance in violation of multiple ICCPR articles. The case is one of many enforced disappearances that followed the militarisation of the war against drugs by the government in the years after 2006. In **Moreno Zamora v Mexico (2019)** the HRC decided that there was insufficient evidence to prove that state agents were responsible for a disappearance in a non-drugs case, but found that the procedural obligation to conduct an effective investigation had not been complied with. See further the 27 IHRR online commentaries.

Return to face a threat to life or to torture or other proscribed ill-treatment. There were two cases of violation of the obligation in Articles 6 and 7 ICCPR not to return failed asylum seekers to a state (in both cases Afghanistan) where they would be at a real risk to their lives and/or torture or

other proscribed ill-treatment: **R.N. and F.M. v Denmark (2019)** and **Q.A. v Sweden (2019)**. In both cases there were dissenting opinions by HRC members who disagreed with the conclusions drawn by the HRC from its assessment of the approach taken by the sending state's immigration authorities. The question arises whether the HRC sometimes goes too far in not following such assessments at the national level. See further the 27 IHRR online commentaries.

Death penalty. The HRC found violations of the right to life in two death penalty cases, both on the ground that the accused had not been given a fair trial: **Ivanov v Belarus (2019)** and **Khaleel v Maldives (2018)**. In the **Ivanov** case, the state was also found in violation of Article 1, ICCPR Protocol 1 for not complying with the HRC's interim measure requesting that the execution not occur while the application was pending. The question whether the method of execution in that case (by shooting) complied with Article 7 ICCPR was not raised. See further the 27 IHRR online commentaries.

Torture, etc. The HRC found violations of Article 7 ICCPR in several cases. The most striking was **Mukhortova v Kazakhstan (2019)** in which a well known human rights lawyer was committed to a psychiatric hospital for 15 months after she had criticised a member of parliament. The author's detention attracted international press coverage and an EU Parliament resolution. See further 27 IHRR online commentary.

Forced labour and slavery. In **Pharaka v Nepal (2019)** the HRC found that a fourteen year old child had been forced to work in violation of Article 8 ICCPR as a domestic servant in an army officer's household for two years until he escaped. See further the 27 IHRR online commentary.

Freedom of the person. The most striking case under Article 9 ICCPR was **Özçelik, Karaman and I.A. v Turkey (2019)**. The authors had been detained as suspected members of a terrorist organisation that had allegedly been involved in the attempted coup in Turkey in 2016. The HRC found that their detention was 'arbitrary' in violation of Article 9(1) and that procedural guarantees in Articles 9(2) and (3) had not been complied with. Despite the emergency, the authors' detention was 'arbitrary' as not 'reasonable and necessary' and the procedural violations were not 'strictly required' by the 'exigencies of the situation.' The HRC also held that, contrary to its wording, Turkey's Article 4 derogation could not extend to Article 9. Also of note was **Vovchenko v Russia (2019)** in which, exceptionally, the HRC found a violation of Article 9 based on its different interpretation of the national law from that of the state's own courts. In several cases, the HRC confirmed that a public prosecutor was not an independent and impartial judge for the purposes of Article 9(3): see eg **Neklyayev v Belarus (2019)**. See further the 27 IHRR online commentaries,

Right to a fair trial. Several violations of the right to a fair trial were found in the death penalty case of **Khaleel v Maldives (2018)**, including the use of coerced evidence and decisions concerning mental capacity to stand trial and the calling of witnesses. The right to legal assistance was an issue both in the **Khaleel** case and in **Orchin v Russia (2019)**. See further the 27 IHRR online commentaries.

Freedom of religion. In **Nazarov et al v Turkmenistan (2019)** the HRC applied its interpretation that conscientious objection on grounds of religion is protected by Article 18(1) ICCPR. In **Geller v Kazakhstan (2019)** a fine for organising a Hare Khrisha meeting and ceremony was a violation of manifestation of religion in Article 18(3). See further the 27 IHRR online commentaries.

Freedom of expression and assembly. The HRC found violations in political settings of freedom of expression in **Kusaitė v Lithuania (2019)** and of freedom of assembly in cases concerning restrictions on public meetings in East European states: see **Lopasov v Belarus (2019)**; **Neklyayev v Belarus (2019)**; and **Toregozhina v Kazakhstan (2019)**. See further the 27 IHRR online commentaries.

Indigenous persons. In **Käkkäläjärvi v Finland (2018)** the HRC upheld claims by members of the indigenous Sami people challenging a national court decision granting the right to vote in Sami Parliament elections to individuals who were considered by the authors to be ineligible to vote. See further 27 IHRR online commentary.

3. CAT CASES

Deportation or extradition. In **Harun v Switzerland (2018)** the CAT Committee applied its interpretation of Article 3 CAT by which the prohibition of return to another state extends beyond a risk of 'torture', which is the only term included in the text of Article 3 CAT, to a risk of 'cruel, inhuman or degrading treatment or punishment' short of torture as well. The Committee failed to clarify that the obligation in Article 14 CAT to ensure to victims of torture 'as full rehabilitation as possible' applies to *refoulement* cases so that it must not occur if there is a 'real risk' of the required rehabilitation not happening in the receiving state. In **Ceydet Ayaz v Serbia (2019)** the CAT Committee found that Serbia had violated Article 3 by failing to make an individualised assessment of the risk to the complainant of ill-treatment proscribed by it he were extradited to Turkey. See further the 27 IHRR online commentaries.

Torture and other proscribed ill-treatment in non-return cases. In **E.L.G. v Spain (2019)**, the Committee applied its interpretation of Article 11 CAT by which a state party must provide a person detained by it with medical assistance to prevent their being subjected to torture or other proscribed ill-treatment. Although not an obvious interpretation of Article 11, medical assistance provides a key safeguard for detainees. Whereas in the **E.L.G.** case the Committee found that the state party had complied with its procedural obligation in CAT to investigate alleged acts of 'torture or cruel treatment', in **Zentveld v New Zealand (2019)** there was a violation of that obligation: the state had not investigated alleged ill-treatment, including the use of ECT, at a state psychiatric hospital for children. The case attracted much publicity and the Committee's Views prompted a government Royal Commission on Abuse in Care. **Ali Aarrass v Morocco (2019)** was a different case again, with the Committee finding that the solitary confinement to which the complainant was subjected was a violation of the obligation in Article 16 CAT to prevent proscribed ill-treatment short of torture by state actors. In such cases, there is a clear overlap with the same obligation in Article 7 ICCPR that is within the jurisdiction of the HRC. See further 27 IHRR online commentaries.

4. CEDAW CASES

The CEDAW Committee's Views printed in Volume 27 underline its concern at ongoing and deeply entrenched stereotypical attitudes that cause discrimination against women.

Social security discrimination. In **Ciobanu v Moldova (2019)** the Committee found that the law providing for social insurance pensions based on length of employment indirectly discriminated against women in view of cultural factors that led women to be the main providers of child care. Its strongly worded Views condemned the 'feminisation of poverty' and stereotypical attitudes underlying the law. See further 27 IHRR online commentary.

Discrimination in pregnancy and maternity cases. **S.F.M. v Spain (2020)** was first case in which the Committee found stereotypical attitudes in administrative and judicial proceedings in the pregnancy and maternity context. The Committee found that the treatment that the author received in hospital prior to the birth of her daughter and administrative and judicial responses to her complaints about it involved stereotypical attitudes in violation of CEDAW. See further the 27 IHRR online commentary.

Domestic violence. In **X and Y v Russia (2019)** the Committee found that the respondent state's laws and practice on domestic violence—which led to the authors having no remedy for repeated physical violence by their husbands--displayed gender-based stereotypical attitudes to domestic violence in violation of CEDAW. The state authorities regarded domestic violence as a 'domestic matter.' See further the 27 IHRR online commentary.

Refoulement. In **R.S.A.A. v Denmark (2019)** the Committee joined other UN TMBs in giving its treaty an extra-territorial reach in the context of *refoulement*. The Committee found Denmark in violation of CEDAW because its immigration authorities had not made a sufficiently individualised assessment of the risk of domestic violence that the author would face if returned to Jordan. See further the 27 IHRR online commentary.

5. CRPD CASES

Fitness to plead and detention. **Doolan v Australia (2019)** and **Leo v Australia (2019)** both concerned the detention of aboriginal persons charged with assaults who had been found mentally not fit for trial. They were remanded to high security correctional institutions in which they were detained for years longer than they could have been detained if convicted. The CPRD Committee found violations of the authors' CPRD rights to non-discrimination, equal protection of the law, access to justice, liberty and freedom from inhuman treatment. In an earlier case with similar facts, **Noble v Australia (2016)** 24 IHRR 52 (2017), the Australian Government did not accept the Committee's findings. See further the 27 IHRR online commentaries.

Albinism. **Z v Tanzania (2019)** was a case of serious violence against persons with albinism. The Committee found that Tanzania had not complied with its CRPD obligations to protect the authors from violence (such as cutting off their arms) or to investigate its occurrence. In the absence of any challenge by the respondent state, the Committee did not rule on the question whether albinism is an 'impairment' so as to give rise to a disability covered by the Convention. See further the 27 IHRR online commentary.

Exhaustion of local remedies. **M.W.J. v UK (2019)** was inadmissible because of non-exhaustion of local remedies. The Committee rejected the authors' claims that judicial review would not have provided a remedy and that they lacked funding to go to court. The CRDP and CEDAW are the two UN human rights treaties for which the UK has accepted the right of individual communication. As yet all communications brought against it under these two treaties have been declared inadmissible. See further the 27 IHRR online commentary.

6. CESCRC CASES

Right to adequate housing. **López Albán v Spain (2019)** and **Gómez-Limón Pardo v Spain (2020)** were two of a series of cases against Spain in which the CESCRC Committee spelt out detailed rules governing the right to adequate housing and protection from eviction in Article 11 ICESCR. See further the 27 IHRR online commentaries.

7. CRC CASES

Age determination. In **J.A.B. v Spain (2019)**, **M.T. v Spain (2019)** and **R.K. v Spain (2019)** the CRC Committee found the procedures followed by Spain to determine the age of unaccompanied young asylum seekers fell short of due process standards in the CRC and violated the right to identity in Article 8 CRC. These were the latest of fourteen age determination cases against Spain taken to the Committee. See further the 27 IHRR online commentaries.

Contact with parents. **N.R. v Paraguay (2020)** was the first communication in which the Committee adopted Views in a case arising in a private law setting. The Committee found that the Paraguayan courts had not enforced a court order for contact between a child and her father in Argentina in violation of her right to maintain a personal relationship with a parent in Articles 9 and 10 CRC. See further the 27 IHRR online commentary.

8. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS CASES

Right to life. In **Jose Rusbell Lara et al v Colombia (2017)** Colombia was found responsible by the Commission for violations of Articles 4 (right to life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights for the assassination of Mr. Rusbell Lara, a human rights defender, by members of a paramilitary group and for inadequate investigation and non-prosecution of those responsible. See further the 27 IHRR online commentary.

Death penalty. In **Bucklew v US (2018)** the Commission found that the judicial proceedings by which the courts of the state of Missouri had rejected Russell Bucklew's claim that his execution by lethal injection would be contrary to the US constitution was a violation of the rights to a fair trial and to due process in the American Declaration on the Rights and Duties of Man. In addition, Russell Bucklew's detention on death row for over 20 years was a violation of the prohibition of cruel, infamous or unusual punishment in the Declaration. Russell Bucklew was executed by lethal injection in 2019.

The Commission's Report had recommended that the death sentence be commuted. See further the 27 IHRR online commentary.

Freedom of expression, freedom of the person and the right to a fair trial. **Roca Antunez et al v Cuba (2018)** concerned the detention and conviction of leading Cuban dissidents for sedition for publishing information about the state's economic, social and political situation. The Commission's Report found violations of the inter-American standards in the American Declaration on the Rights and Duties of Man governing pre-trial detention, due process and punishment for the free exercise of the rights to freedom of expression and association. It also stressed Cuba's obligation to repeal the provisions of its law that were not in line with the right to a fair trial and other individual freedoms protected by the Declaration. See further the 27 IHRR online commentaries.

LGBT prison conjugal visits. The Commission's Report in **Alvarez Giraldo v Colombia (2018)** reaffirmed the inter-American standards by which the sex and sexual orientation of a person fall within the prohibited categories of discrimination in Article 1.1 of the American Convention on Human Rights. The Report concluded that conjugal visits are an important aspect of an inmate's right to privacy and autonomy, which cannot be restricted on the ground of his/her sexual orientation. See further the 27 IHRR online commentary.

9. INTER-AMERICAN COURT OF HUMAN RIGHTS

Disappeared children. **Rochac Hernandez v El Salvador (2014)** concerned the enforced disappearance and appropriation of children in El Salvador at the hands of Salvadoran armed forces in the course of counter-insurgency operations during the country's internal armed conflict in the early 1980s. The Inter-American Court found multiple violations of the American Convention on Human Rights, including the rights to life and personal liberty. It also applied international humanitarian law. The judgment reaffirmed the importance of the right to know the truth in Inter-American human rights law and the Inter-American Court's intolerance of impunity and amnesty laws. See further the 27 IHRR online commentary.

LGBT rights in the military. In **Flore Freire v Ecuador (2016)** the Inter-American Court found that Ecuador had violated the applicant's right to equal protection of the law in Article 24 of the American Convention on Human Rights by dismissing him from the armed forces following his conviction for a disciplinary offence of "professional misconduct" on the basis of evidence that he had been seen engaging in homosexual conduct on military premises. The Court held that the prohibition of homosexual acts could not be justified by the legitimate aim of maintaining discipline or other military values. See further the 27 IHRR online commentary.

10. AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

Torture and other proscribed ill-treatment. In **Shumba v Zimbabwe (2017)** the complainant, a human rights lawyer, claimed that he had been subjected to electric shock and other physical ill-treatment while in detention for offences relating to the overthrow of the government. In the absence of evidence from the state to the contrary, the Commission upheld the complainant's credible claims, finding a violation of Article 5 ACHPR (freedom from torture, etc). The Commission rejected the state's objection of non-exhaustion of domestic remedies. The complainant had fled to South Africa and if he returned to avail himself of available remedies he would have risked further detention and ill treatment. See further the 27 IHRR online commentary.

11. AFRICAN COURT OF HUMAN AND PEOPLES RIGHTS

Tanzania is the state against which most cases have been brought in individual applications to the African Court, quite possibly because the Court is located in Arusha. In 2019 Tanzania withdrew its acceptance of the right of individuals and NGOs to bring cases against it. As in two of the following cases, most Tanzanian cases have concerned the right to a fair trial.

Fair trial. In **Nguza Viking and Johnson Nguza v Tanzania (2018)** the applicants were charged with rape. The prosecution attracted a great deal of publicity in Tanzania as the applicants were a father and son who were celebrated 'pop' musicians. The Court found violations of the right to defence in

Article 7(1)(c) ACHPR because the applicants had not been given prosecution witness statements and had not been allowed to call and cross-examine witnesses. There was also a violation of the same provision in the case of one of the applicants because he had not been allowed to have an impotency test which might have shown that he was not capable of committing the rapes with which he was charged. Violations of the right to defence in Article 7(1) (c) were also found in **Tobias Mango and Another v Tanzania (2018)**. The Court held that Article 7(1)(c) requires that an accused be 'promptly informed' of the prosecution evidence—an obligation that was not complied with on the facts, with some witness statements not being given to the applicants until two and a half years after the commencement of the trial. In addition, legal representation was not provided to the applicants by the state during the actual trial. Article 7 ACHPR does not expressly guarantee free legal aid. However, it has been read into Article 7 (1)(c) ACHPR by the Court as a necessary part of the accused's right to defence in serious cases--as in this case of armed robbery which carried a possible penalty of 30 years imprisonment. See further the 27 IHRR online commentaries.

The right to a nationality. Anudo Ochieng Anudo v Tanzania (2018) was the first nationality related judgment by the Court and is to be added to the evolving international jurisprudential landscape on how nationality matters are addressed in international human rights law. The Court found a violation of the right not to be arbitrarily deprived of one's nationality, but did not address the applicant's problem of being left as a stateless person in 'no man's land' on the Tanzanian-Kenyan border. See further the 27 IHRR online commentary.

12. EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Social, legal and economic protection. In **European Committee for Home-Based Priority Action for the Child and the Family v France (2013)** the European Committee of Social Rights held that a law that suspended family allowances to reduce truancy at school was a violation of the right of the family to social, legal and economic protection (Article 16 ESC) as it gave parents the exclusive responsibility to achieve this legitimate aim, and so was disproportionate. However, the Committee also decided that the implementation of the law had not violated the right to protection against poverty and social exclusion (Article 30 ESC) because there were other measures of family benefit provided by the state that meant that the overall protection that it gave complied with Article.30. See further the 27 IHRR online commentary.