

INTERNATIONAL HUMAN RIGHTS REPORTS

SUMMARY OF CASES IN VOLUME 28 (2021) ISSUE 1

The following is a **summary of the cases** in Volume 28 Issue 1 (2021) hard copy and online. They are cases decided by the UN human rights treaty monitoring bodies (TMBs) and by the Inter-American Commission and Court and by the African Court. They were decided in 2019 or 2020. The Inter-American Court case was decided earlier: it was only recently translated from Spanish to English.

All of the cases summarised have extensive commentaries in 28 IHRR online. These online commentaries are not printed in the hard copy. The authors of the commentaries are indicated in the IHRR entry on the Centre website and/or at the end of the commentary for each case.

A summary of cases like the present one is published for each issue. These quarterly summaries are put together in an **annual summary of cases** for each volume. The first annual summary was for volume 27 online (2020). It is published on the Centre website.

1. HRC

As always, the Human Rights Committee was the UN TMB that decided the largest number of cases in the relevant time period.

Enforced disappearance. *Mora Carrero and Mora Carrero v Venezuela* (2020) is one of the small number of ‘disappeared persons’ cases in which the Committee has not found a violation of the ICCPR, either substantively or procedurally. While there was evidence that a regional political leader had been ‘disappeared’, this might have been carried out by irregular groups without the consent or authorization of the State party’s authorities; the HRC also had insufficient evidence to conclude that the procedural investigation had not been sufficient.

Arbitrary killing of a trade union leader. In *López Martínez v Colombia* (2020), it was not enough that the state had prosecuted and convicted the murderers of a prominent trade union leader; in a context in which some 38 trade union leaders had been murdered since 1999, the procedural obligation in Article 6 ICCPR required that the instigators of such crimes were sought too.

Death in police custody. In *Kulieva v Tajikistan* (2020) there were substantive and procedural violations of Article 6 ICCPR when an arrested suspect died in police custody.

Torture. The HRC found violations of Article 7 ICCPR in *Kulieva v Tajikistan* (2020) and *Taysumov v Russia* (2020). In both cases the HRC upheld claims that arrested persons had been tortured in police custody in violation of Article 7 ICCPR and that the procedural obligation to investigate had not been satisfied.

Right to a fair trial. Two cases concerned the obligation to inform a convicted person of his rights on appeal resulting from Article 14(3)(d) ICCPR. In *Sadykov v Kazakhstan* (2019) the appellant was not informed of his right to be present during the hearing. In *Kaliyev v Russia* (2019) he was not informed of his right to legal representation on appeal. In both cases the HRC indicated that the state was required to take the initiative to inform the appellant of his right.

Right to take part in the conduct of public affairs. In one of the relatively few cases under Article 25(a) ICCPR, in *Staderini and De Lucia v Italy* (2019) the HRC held that the state’s rules governing referenda imposed unreasonable restrictions on citizens seeking to promote them.

Delay in the bringing of communications to the HRC. Whereas there is no exact time limit for the submission of communications, the HRC Rules of Procedure contain an 'abuse of the right of submission' limitation, with five years from the exhaustion of local remedies being the normal limit. In *Kaliyev v Russia* (2019), the HRC, with four members dissenting, accepted a communication that was submitted after ten years, on the basis that it fell with the 'justifiable reasons' exception in the Rules. The HRC's approach is in marked contrast with the tight six months rule in the European Convention of Human Rights (soon to be reduced to four months: ECHR Protocol 15).

2. CAT

Extradition of terrorist suspect. *Erdogan v Morocco* (2019) was one of three CAT cases in which Turkish nationals faced extradition from Morocco to Turkey to be tried for offences arising out of the attempted coup against the Turkish government in 2016. In all three cases, the HRC found that the extradition would violate Article 3 CAT. What was crucial to the Committee ruling in this case was that, beyond the general situation, it found no indication that an 'individualized assessment' of the complainant's 'real and personal risk' of torture had been made.

Deportation of indigenous people's defender. In *Calfunao Paillalef v Switzerland* (2019), the CAT Committee found that deportation of an indigenous people's defender from Geneva to Chile would place her at 'real and personal' risk of torture or other proscribed ill-treatment. The Committee relied upon evidence of the human rights abuse of the Machupe people (her people) and of her family. The Committee rejected the state's internal resettlement argument.

3. CEDAW

The CEDAW cases cover a variety of topics, with several adding to the Committee's interpretation of CEDAW.

Same sex discrimination. *O.N. and D.P. v Russia* (2019) is the first case in which the CEDAW Committee ruled upon same sex discrimination. The claim was that the authorities had failed to investigate diligently a case of physical violence against a lesbian couple in a public place as a consequence of stereotypical attitudes. The Committee's confirmation that CEDAW states parties' due diligence obligation with respect to private acts of indirect discrimination extends to violence in a same sex context as well as in other contexts of violence against women is welcome.

Extra-territorial application of CEDAW. *O.M. v Ukraine* (2019) concerned a state's obligation to protect its citizens from gender based discrimination abroad. The Committee upheld the author's complaint that the Ukrainian Embassy in Amman had not complied with its CEDAW obligations in its response to the domestic violence suffered by the author in Jordan and in connection with child custody proceedings in the Jordanian courts.

Eviction of pregnant Roma women. In *S.N. and E.R. v North Macedonia* (2020) the Committee found that the eviction of single, young pregnant Roma women from the settlement where they lived was a discriminatory violation of their rights to health and adequate living conditions. The Committee held that domestic remedies need not be exhausted because of the urgency of the situation. *L.A. and Others v Macedonia* (2020) was a very similar case.

Domestic violence. *S.L. v Bulgaria* (2019) was the latest in a line of cases against Bulgaria concerning domestic violence. In the Committee's words, the national law 'lacks' gender sensitivity in that it reflects the

preconceived notion that...domestic violence is, to a large extent, a private matter falling within the private sphere, which, in principle, should not be subject to State control’.

Undercover police; entry into sexual relations by deceit. In *A.J. v UK* (2019) the Committee declared inadmissible a communication brought by seven environmental protestors who had been deceived into long term sexual relationships with undercover police officers allegedly in violation of CEDAW (discrimination, stereotyping). The communication was declared inadmissible as the women were no longer ‘victims’ as they had accepted final compensation payments from the state.

4. CERD

Discrimination against Russian ethnic group in Estonia. In *M.T. v Estonia* (2020), a member of the Russian ethnic minority in Estonia, more particularly a member of the ‘Old Believers’ dissenters from the Russian Orthodox Church, claimed that the absence of their patronym on their identity card violated CERD. The Committee declared the communication inadmissible for lack of evidence of discriminatory consequences.

5. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Guantanamo. *Ameziane v US* (2020) was the first contentious case in which the Commission accepted that its territorial jurisdiction extended to human rights violations perpetrated by the US in its military base of Guantanamo Bay. In its report, the Commission held that the US systematic policies and practices permitting acts of torture and inhumane treatments in Guantanamo Bay, as well as its deliberate failure to comply with the precautionary measures granted in favour of the victim, amounted to an aggravated form of international responsibility.

6. INTER-AMERICAN COURT OF HUMAN RIGHTS

Gender-based violence and femicide. In *Velásquez-Paiz et al v Guatemala* (2015) a student was sexually assaulted and murdered. The importance of the case lies in the further clarification of a State’s specific obligations in situations of violence against women—particularly of a ‘strict due diligence’ obligation where femicide is prevalent—as well as in the recognition of intersectional discrimination, based on gender and assumed poverty.

7. AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

Election procedures. In *Suy Bi Gohore et al Côte D’Ivoire* (2020) the Court required implementation of the state’s law concerning the composition of its local electoral commissions in accordance with its 2016 judgment on the same subject.