



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. Communication No. 107/2016^{*,**,*}

<i>Communication submitted by:</i>	S.N. and E.R. (represented by counsel, Adam Weiss, European Roma Rights Centre)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	North Macedonia
<i>Date of communication:</i>	27 October 2016 (initial submission)
<i>References:</i>	Transmitted to the State party initially on 31 October 2016 (not issued in document form)
<i>Date of adoption of views:</i>	24 February 2020

* Adopted by the Committee at its seventy-fifth session (10 – 28 February 2020).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Gunnar Bergby, Marion Bethel, Esther Eghobamien-Mshelia, Naéla Gabr, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.

*** The text of an individual opinion (dissenting) by Committee member Gunnar Bergby is appended to the present document.

Background

1.1 The authors are Ms. S.N. and Ms. E.R.,¹ nationals of North Macedonia² of Roma ethnicity, born in Skopje, in 2001 and 2000, respectively. Both authors were pregnant at the time of the submission of the communication. On 1 August 2016, they were evicted from the settlement they were living in and left homeless, without access to shelter or health care. They claim that they are victims of a violation of their rights under article 2 (d) and (f), article 4 (1) and (2), article 12 (1) and (2) and article 14 (2) (b) and (h) of the Convention on the Elimination of all Forms of Discrimination Against Women owing to the failure of the State party to take all appropriate positive measures to protect their right to health, including their right to maternity care, their right to adequate living conditions and their right to be free from discrimination. They are represented by counsel. The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women entered into force for the State party on 17 October 2003.

1.2 On 31 October 2016, when registering the communication, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the rules of procedure of the Committee on the Elimination of Discrimination against Women, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to provide the authors with suitable emergency accommodation, nutrition, clean water and immediate access to health-care services, including to maternal health-care services.

Facts as submitted by the authors

2.1 At the time of the submission of the communication, both authors were minors and living on the site of their former homes with their partners. Each was pregnant with her first child.

2.2 S.N. was in her sixth month of pregnancy. She has never had any identity documents. Her understanding is that her mother is a citizen of North Macedonia but has no documents and, as a result, S.N. is unable to secure her own identity documents. S.N. visited a doctor two or three times during her pregnancy. She had to pay for the examinations.

2.3 E.R. was in her third month of pregnancy and she expected to give birth in a hospital. E.R. had identity documents and a birth certificate, but when the authorities demolished her home two years earlier, her documents were lost. She has not been able to obtain new documents owing to the fee she would need to pay for them. She visited a doctor only once during her pregnancy, thanks to a non-governmental organization (NGO).

2.4 The authors do not have public or private health insurance, as far as they are aware, and they are therefore not entitled to free-of-charge primary health-care services in public hospitals. Under national law, anyone who is covered under the public health insurance system is entitled to free maternity care, and children are covered until the age of 18 if one of their parents is covered. It does not appear that the authors' parents were covered. Under the Law on Social Protection, people accommodated in social care institutions are also covered under the public health insurance system; however, the authors are not accommodated in such an institution and do not receive any social support. In accordance with the Law on the Protection of Health, anyone giving birth may do so by presenting herself at the emergency room of a public hospital; however, if the person is not covered under the public health

¹ Counsel requested anonymity.

² The authors note that they have no identity documents.

insurance system, she will be required to pay for the services she received in hospital while giving birth.

2.5 Until 1 August 2016, the authors lived in a settlement known as “Polygon” near the Vardar River, below the “Kale” Fortress in Skopje. The community was inhabited by about 130 people, including some 70 children. All of the inhabitants were Roma. Most of them had been living on the site for five to nine years. They did not have land tenure, and were living mostly in dwellings they had made themselves out of available materials. The living conditions were poor.

2.6 The Ministry of Transport and Communications formerly owned the land on which the Roma community was settled. In November 2011, the land was privatized and sold to a private company. From time to time over the years, the authorities have removed the inhabitants’ property and/or destroyed their homes and property without offering the inhabitants any alternative accommodation. The inhabitants, including the authors, have rebuilt their homes using available materials. Some of the inhabitants have occasionally applied for social housing, but their applications have been rejected. The authors themselves have never applied for social housing as they have no identity documents.

2.7 On 11 July 2016, the Department of the Inspectorate of the City of Skopje made a decision to “clean” the settlement, as the city’s urban plan allegedly envisaged the construction of a road there. Members of the community never received any formal notice that they would be evicted from their homes, although some of them had been given oral warnings that they should move their belongings away from the site. The decision of 11 July was not addressed to any member of the community nor delivered to any of them. An appeal against the decision of the Inspectorate would not have had an automatic suspensive effect, meaning that the authorities could have gone ahead with the eviction notwithstanding any appeal lodged.

2.8 On the morning of 1 August 2016, without any previous notice, the police entered the settlement and destroyed the only water source (a single water pump). Later that day, bulldozers arrived and demolished all the homes. The municipality did not offer the victims any alternative accommodation and referred them to the Municipality of Šuto Orizari, despite the fact that the victims did not own or have any title to property there.³ After the demolition took place, the Centre for Social Work, a public body that serves the city of Skopje, made an informal offer of accommodation to some of the inhabitants of the site. They were offered places in Čičino Selo, a shelter centre for refugees, internally displaced people and homeless people. All of those offered accommodation there refused to accept it owing to security concerns and the poor living conditions in the shelter. The authors were not offered any accommodation, apparently because they lacked identity documents.

2.9 Following the eviction, the authors and most of the other residents of the community remained on the site of their former settlement.⁴ They had no shelter, no access to water and nowhere to go. The situation represented a direct threat to their lives and health. Many of them suffered from health problems, such as bronchitis and skin diseases, caused by their poor living conditions. The women, especially those

³ The authors note that Šuto Orizari is another municipality in Skopje which is widely known as a Roma municipality, because of its Roma-majority population and the fact that its elected officials are Roma.

⁴ Other former residents of the evicted settlement submitted an application to the European Court of Human Rights, claiming that the eviction of 1 August 2016 and the failure to provide them with alternative accommodation or any other form of support amounts to a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court has already communicated the case to the Government. The authors in the present case were not applicants in the complaint to the Court.

who were pregnant, including the authors, were in an extremely vulnerable position, and faced serious risks of harm to their health. They were left without access to their basic needs and without any maternal health-care assistance.

2.10 The authors submit that there was no available effective domestic remedy against the eviction on 1 August 2016. The authorities based the eviction, which came entirely unexpectedly, on a decision, addressed to a third party, to “clean” the settlement in which they were living. The authors had no access to a remedy that would suspend the eviction. In particular, the decision to “clean” the settlement was not addressed to the authors and national law does not provide an appeal against such a decision with automatic suspensive effect.

2.11 The authors submit that the Committee has jurisdiction to consider the claim, regardless of the eviction, because the authors have no access to any other remedy for the violations. Given that they cannot prove that they are citizens of North Macedonia or that they fall into any other category of people eligible for public health insurance, they are ineligible for such insurance. They note that there are no implementing regulations or procedures to guarantee that all citizens of North Macedonia are eligible for health insurance, and that consequently the situation cannot be challenged before domestic courts. The authors are not aware of any legal procedures to secure free medical care or accommodation by any other means. Even if such means existed in theory, because the authors were pregnant and therefore time was of the essence, they could not be expected to pursue those remedies before having recourse to the Committee, given the lack of any past practice of people in their position securing relief of any kind. In addition, they were undocumented, and would not be able to initiate legal proceedings in any court within the State party.

2.12 Finally, the authors request the Committee to invite the State party to take interim measures to avoid irreparable harm to the authors and to provide them with suitable emergency accommodation, nutrition, clean water and immediate access to health-care services, including to maternal health services.

Complaint

3.1 The authors claim a continuing breach of their rights under articles 2 (d) and (f), 4 (1) and (2), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention, due to the authorities’ failure to take all appropriate measures to respect, protect and fulfil their right to health, including maternal care, their right to adequate living conditions and their right to be free from discrimination, during and following their eviction.

3.2 The authors contend that they have suffered intersectional discrimination based on their gender, their ethnicity and their health status. They argue that forced evictions in the State party are relatively rare and that when they happen, they seem to target Roma and that consequently the eviction of the authors amounts to indirect discrimination. The authors also argue that the State party did not consider the authors’ vulnerable situation and the specific forms of support they were in need of, in violation of their rights under article 2 (d) of the Convention.

3.3 The authors also claim that the State party violated article 2 (f) of the Convention by failing to pursue by all appropriate means a policy which would have modified, abolished or remedied the discrimination against the victims. They argue that the State party failed to undertake any appropriate measures to eliminate the discriminatory practice of forced evictions targeting Roma communities, including Roma women, and its particularly discriminatory effect on Roma adolescents who are pregnant. In addition, the authors claim that the State party did not provide any kind of appropriate remedies, including compensation or social support, to the authors.

3.4 The authors further claim that the State party violated their rights under article 4, as it did not undertake any special measures aimed at fulfilling the specific needs of minor Roma pregnant women in the particular case of eviction. They argue that, because they are women, Roma by ethnic origin, pregnant, minors, homeless and living in poverty and in conditions that are equivalent to those of women in a rural setting, that represents a mix of several attributes which means they are likely to become victims of multiple and intersecting forms of discrimination. They are therefore in need of special measures to prevent and protect them from such situations, yet no such measures were taken. The authors are of the opinion that, in a situation in which the Committee has indicated specific positive measures that need to be taken,⁵ and the State party concerned flagrantly fails to take those measures, resulting in a situation such as the one the authors face, there is a violation of article 4 (1) and (2) of the Convention.

3.5 The authors further claim that the State party subjected them to discrimination by limiting their access to health-care services, including reproductive health services, in violation of their rights under article 12 (1) and (2) of the Convention. The authors note that they lack insurance, identity documents and the means to pay for maternity care, and that they do not receive any social benefits which would have allowed them to pay for at least part of the medicines and treatments or afford the necessary food for meeting their nutritional needs during their pregnancy.

3.6 The authors consider that the settings under which they lived and the challenges that they faced are identical to those of women living in rural areas. The authors claim that, by not providing accessible and free-of-charge health-care services to them as members of a marginalized community living in a rural setting, the State party discriminated against them in violation of their rights under article 14 (2) (b) of the Convention, especially with regard to the circumstances following the eviction.

3.7 The authors also claim that, by evicting them without offering them timely and appropriate alternative housing, leaving them in fear and anxiety and directly exposing them to specific threats posed by floods, and by failing to ensure them access to adequate living conditions, notably in relation to appropriate housing and nutrition, clean water for personal and domestic use, sustainable energy and adequate sanitation and hygiene, the State party violated their rights under article 14 (2) (h) of the Convention.

State party's observations on admissibility and the merits

4.1 The State party provided its observations in a note verbale dated 9 April 2019. The State party noted that the Ministry of Labour and Social Policy undertook measures for the protection of the families, including the authors, who resided under the "Kale" Fortress. Experts from a public institution in Skopje, the Inter-municipal Centre for Social Work, visited the families on several occasions. The families were offered accommodation at the Centre for Homeless Persons in Skopje and priority was given to families with pregnant women and babies. However, all families rejected that service.

4.2 The State party observed that the number and composition of the families residing in the informal settlement was constantly changing, which made the situation difficult to track. Owing to the low temperatures during January 2017, the Ministry accommodated some of the families in a shelter for homeless people; however, after a couple of days they left the facility on their own initiative, and some did not accept the accommodation at all.

⁵ The authors refer to the Committee's 2013 concluding observations on the former Yugoslav Republic of Macedonia (CEDAW/C/MKD/CO/4-5).

4.3 The State party explained that following the Government sessions of 5 and 15 October 2017, the measures undertaken for urgent and temporary accommodation were aimed at prioritizing the following groups: (a) families with pregnant women/newborns (0 to 3 years old), with further priority given to families with many children; (b) families with children aged 4 to 7 and children with disabilities; and (c) elderly people over the age of 65, the sick and the frail. The State party observed that as a result of the measures taken, some 100 individuals were provided with accommodation in the social facilities.

4.4 All the accommodated individuals were provided with a warm meal, clothes, footwear and personal hygiene items. Younger children were enrolled in the Day Centre for children in Gazi Baba Street, to which they were transported daily by a vehicle from the Inter-municipal Centre for Social Work. Older children (aged 15 to 18) were included in a procedure for enrolment in the educational process at the Elementary School for Adult Education in Skopje. With regard to pregnant women in 2016, the State party provided information about J.Dj. and the minor S.M., claiming that the former refused the accommodation offered to her and was no longer seen to be residing in the informal settlement in 2017, while the latter was accommodated at a facility for children who had educational/social problems and disturbed behaviour.⁶

4.5 The State party further explained that all individuals provided with accommodation were enrolled in a “Supported Living Programme” aimed at enabling them to acquire life and work skills to facilitate their reintegration into society. Two Roma non-governmental organizations have been engaged in identifying the situation and the needs of each family in order to conduct specific activities based on individual plans.

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

5.1 The authors provided their comments on 14 June 2019. Counsel notes that the State party’s reply came after more than two years had passed, exceeding the six-month deadline for a reply specified by the Optional Protocol. The State party provided no explanation for the delay. The failure to abide by the deadline means, according to counsel, that the Committee should disregard the reply, as otherwise it would mean accepting an abuse of the procedure. The State party’s delay requires a separate finding of a violation of article 6 of the Optional Protocol. Access to justice for victims requires that States parties respect the deadlines. In addition, the quality of the State party’s reply is such that it appears that the authorities do not take their obligations under the Optional Protocol seriously enough.

5.2 Counsel also finds it inappropriate for the Committee to give an opportunity to the State party to provide observations on the present comments and if it does so, the deadline for reply should not exceed one month.

5.3 In addition, the State party did not accede to the Committee’s request for interim measures. The failure to respect requests for interim measures amounts to a separate violation by the State party under article 5 of the Optional Protocol.

5.4 Counsel notes that the State party has affirmed that all concerned families rejected offers of accommodation. That does not correspond to the reality, according to counsel, and contradicts the State party’s affirmation that victims had accepted some form of housing. This observation simply illustrates the reflexive reference to

⁶ According to the initials, it appears that the individuals mentioned are not the authors of the present communication.

stereotypical tropes of anti-gypsyism, blaming Roma for the disadvantaged situation in which they find themselves.

5.5 In response to the State party's general observations, counsel notes that his colleagues regularly visit the victims of the 2016 eviction. The measures taken by the authorities were inconsistently applied and remain ineffective. There is no effort to provide a sustainable solution to the problems of those evicted. While there is a transport service for children to the day-care centre in Gazi Baba Street, for example, the driver has harassed the children in a racist manner. The European Roma Rights Centre is currently supporting families in a criminal complaint about the matter, which is pending before the Basic Public Prosecutor's Office in Skopje. No services are available to the evicted individuals living at the Polygon site, who include some of the victims in the present case.

5.6 The State party also contended that the authorities were working together with two non-governmental organizations to improve the situation at the Polygon site. Counsel is in touch with the grass-roots organizations ("Ambrela" and "LIL") and affirms that they are underfunded and cannot deal with basic problems faced by the community, including lack of sufficient food and access to medicine.

5.7 Counsel further notes that the State party has only referred to two other pregnant women, J.Dj. and S.M., without addressing the situation of the authors of the present communication, known as S.N. and E.R. Counsel clarifies that S.N. received temporary accommodation at the Ranka Milanovik for some six to seven months. The conditions there were extremely poor and inadequate for pregnant women or women who had recently given birth. The only bathroom available for nine families was barely in working order, and the families, at their own expense and effort, painted it and installed a new tap. The hygiene conditions made the environment almost unliveable. S.N. and the others received almost no food or clothes. S.N. was offered no alternative housing. The facility has open sewage, so there is a constant foul odour. The environment is dangerous for children: there are no doors, there are sharp surfaces and there are many obstacles over which children can fall. There is no kitchen or other place to cook. Once her husband obtained a job in a factory, S.N. was ordered to leave the Ranka Milanovik. As she had nowhere to go, she returned to the Polygon site.

5.8 E.R. was also eventually housed at the Ranka Milanovik, and lived in the same conditions S.N. did. She felt compelled to leave because she no longer felt safe as a result of thefts among those living there. She also returned to the Polygon site. The authorities refused to rehouse her, as she left the Ranka Milanovik voluntarily.

5.9 Counsel explains that the victims were living on the street during their pregnancies as a result of the 1 August 2016 eviction. One gave birth while living in the open at the Polygon site following the eviction; the other gave birth at the Ranka Milanovik. In both cases, the situation the authorities exposed them to while in the late stages of pregnancy and immediately after birth was in breach of the Convention.

5.10 Regarding the exhaustion of domestic remedies, counsel clarifies that the authors did not bring any domestic complaint, instead raising their claims under the Convention. Counsel refers to his initial comments in that regard (see para. 2.10) and notes that the State party did not object on those grounds. Counsel emphasizes again that there were no effective remedies available to the authors or that the remedies available were unlikely to bring effective relief to the authors.

5.11 Regarding the reproductive rights of the pregnant women, counsel notes that time is of essence. Remedies through courts which come months or years later are useless to safeguard the rights enshrined in the Convention. In order to safeguard the right to appropriate services in connection with pregnancy, and the right to adequate

nutrition during pregnancy and lactation (article 12 (2) of the Convention), there must be a remedy in the moment that can provide relief; pregnancy and childbirth will not wait for ordinary court proceedings. Any ex post remedy such as a civil claim cannot be considered likely to bring effective relief. The damage from failing to provide appropriate services and adequate nutrition during pregnancy cannot be remedied later on.

5.12 There was no such remedy available in the present case, as the eviction occurred with no notice and no right to appeal: the victims were left homeless, compromising their reproductive health and nutrition during pregnancy in a way which violated their rights under, inter alia, article 12 (2) of the Convention. By conducting the eviction in that way, the authorities deprived the victims of access to a remedy likely to bring effective relief.

5.13 Counsel notes that even if a remedy had existed after the eviction that could be considered likely to bring effective relief, there was no remedy open to the authors through which they could claim a violation of their rights under the Convention. No procedure exists in domestic law in the State party to ensure that a pregnant woman whose rights under article 12 (2) of the Convention were violated can urgently secure access to the social and medical support she needs. The State party has made no submission to the contrary. Such a remedy, in any event, would have to take into account the highly vulnerable position of the victims: pregnant Roma women living in severe poverty, with no access to legal or other support.

5.14 In that connection, counsel adds that there is a case pending before the European Court of Human Rights regarding the very same eviction of 1 August 2016, *Bekir and Others v. North Macedonia*. The Court dismisses a vast majority of the applications submitted as inadmissible without communicating them to the States concerned. However, the case of *Bekir and Others* has been communicated to the authorities of North Macedonia and the judgment is expected soon. If exhaustion of domestic remedies was at issue in the case, the Court would not have hesitated to declare the application inadmissible. Counsel is confident that the European Court of Human Rights will agree that there were no effective remedies to be exhausted, and no remedy would have been able to bring effective relief to the victims.

5.15 The failure of the State party to comply with the Committee's request for interim measures also indicates that, in practice, there was no hope of securing effective relief.

5.16 In the light of those considerations, counsel invites the Committee to conclude that a violation of articles 5 and 6 of the Optional Protocol occurred, as the State party failed to comply with the Committee's request for interim measures and to respect the deadline for reply. Counsel also requests that the State party be stopped from making any objection to admissibility, as it failed to do so initially, and to disregard the State party's late reply.

State party's additional observations

6.1 In a note verbale date 10 September 2019, the State party provided additional observations.⁷ The State party reiterates that the Ministry of Labour and Social Policy, in cooperation with the Intermunicipal Centre for Social Work in Skopje, offered the evictees accommodation at a homeless centre in Čičino Selo Skopje, which was refused by all of the families. It submits that, instead, the families wished to be accommodated at the Ljubinci children's home, or in Kalajanovo, or to receive "welfare apartments". The State party states that the Ljubinci children's home is a

⁷ The State party submitted its observations on both this case and communication No. 110/2016, which arises out of the same factual background, in a single document.

run-down facility with no basic conditions and that the Ministry of Labour and Social Policy does not have any “welfare apartments” for the homeless. On the contrary, the homeless centre in Čičino Selo in Skopje provides the necessary medications and medical examinations without any co-payment by its residents. Also, the centre provides three meals per day, daily activities for social integration and “regular guard service” for the safety of its residents.

6.2 The State party also indicates that the Ministry of Transport and Communications is in charge of allocating welfare apartments through a public call for applications, with decisions made by the Commission for Welfare Apartments Allocation. It further submits that the Intermunicipal Centre for Social Work in Skopje made efforts to provide support to the affected families and that a large number of the families were beneficiaries of financial assistance.

6.3 The State party submits that, on 5 January 2017, 11 families comprising 60 persons were accommodated at two facilities for social protection, while 12 families refused this accommodation. Eventually, the number of individuals who had previously resided under the “Kale” Fortress and were accommodated at the facilities reached 83. They were provided with food, hot drinks, hygiene products, blankets, mattresses and clothing. On 8 January 2017, they received medical examinations and medications. According to the Intermunicipal Centre for Social Work, the majority of the individuals had identification documents and, for those who did not, the procedure for obtaining one was initiated in cooperation with an NGO called Ambrela. Furthermore, all of the individuals were insured under the State health-care system.

6.4 The State party submits that, following the Government sessions of 5 and 15 October 2017 and 24 July 2018, temporary accommodation was provided to about 120 individuals, who also benefited from a social integration programme for supported living and reintegration (see para. 4.5 above). It also submits that, by the end of 2018, the funds provided by the Government for that programme amounted to MK 1,200,000 (approximately 19,000 euro). Furthermore, children aged between 5 and 13 participated in the activities of the “day centre for street children”, and, in May,⁸ children of appropriate ages were enrolled in the “Brothers Ramiz and Hamid” primary school. In 2018, children also took advantage of “free summer and winter vacations”.

6.5 The State party further submits that 14 families were moved to a “container settlement” as provisional independent housing. They signed a contract to reside in the settlement for six months initially, which was extended for another six months. The individuals had a contractual obligation to maintain the settlement in the manner of a “good housekeeper” and some, accordingly, repaired part of the damages done to the toilets and bathrooms. They were also required to report regularly to the employment agency as active job seekers. Unfortunately, the training courses offered by the agency were not accepted by the residents. As at 8 February 2019, 11 individuals had found employment, but only 6 out of the 11 had continued with their jobs, while the remaining 5 had given up. In addition, as the residents were obliged to “include the children in the educational process”, those of appropriate ages attended classes at primary or evening school. Transportation services, school supplies and study assistance were provided.

6.6 The State party submits that all of the individuals accommodated in the “container settlement” have been provided with health care and issued with State health-care cards, and their children have been issued with vaccination cards. Birth certificates and State health-care insurance have been provided for newborns.

⁸ The State party did not specify the year.

6.7 In November 2018, the Ministry of Labour and Social Policy and the Intermunicipal Centre for Social Work in Skopje conducted a remapping of the informal settlement below the “Kale” Fortress. In December 2018, 85 individuals were accommodated in a facility for social protection, part of the Skopje public care institution for children with educational and social problems and contact disorders. In total, 12 children aged 6 to 13 attended the day centre for street children. The families were given medical examinations by medical staff, and children were vaccinated. A day-care visiting nurse visited the families with newborns.

6.8 The State party disagrees with the allegation that it failed to comply with the request for interim measures as, since 2016, it has taken all urgent and timely measures necessary to protect the individuals (the Roma families) and those measures are still ongoing. It invites the Committee not to decide on a violation of article 5 of the Optional Protocol for that reason.

6.9 Furthermore, the State party maintains that remedies for the protection of women’s rights exist under the 2012 Law on Equal Opportunities for Women and Men and under the 2010 Law on the Prevention of and Protection against Discrimination, which set out the relevant protection mechanisms and court procedures. The State party also refers to the Ombudsperson’s office as a protection mechanism that can be used in such cases. The State party specifies that cases brought before the Commission for the Protection against Discrimination and the Ombudsperson’s Office are heard free of charge, and that the authors could also use the “judicial protection mechanism”. The State party requests the Committee to declare the communication inadmissible in accordance with article 4 of the Optional Protocol.

6.10 With regard to its excessive delay in submitting observations to the Committee, the State party considers the allegations not substantiated, as there have been no consequences for the persons in question arising from a delayed response to the Committee.

Authors’ comments on the State party’s additional observations

7.1 On 25 October 2019, the authors submitted their comments on the State party’s additional observations.⁹ They contend that the State party’s “unsolicited” submission provides no specific details about the personal situation of the victims, including in response to the details provided in the authors’ previous submission. The Committee should therefore consider the authors’ factual submissions as being uncontested. They also point out the State party’s delay in offering a new claim that it had provided accommodations at the Čičino Selo shelter to those whose homes had been destroyed on 1 August 2016. The authors contend that such a claim is “implausible”, as there were no places available at that shelter, which was nearly full and was being “run at a limited capacity following a fire”.¹⁰ In that regard, the authors take note of the State party’s letter of 24 August 2016, addressed to the European Court of Human Rights, indicating that 55 persons were living in that shelter.¹¹ The authors submit that, even if there had been room to accommodate more people in the shelter, it was not suitable

⁹ The authors submitted their comments in a single document concerning both the present case and communication No. 110/2016.

¹⁰ The authors state that there was a fire at the shelter in 2015 and only 36 rooms could accommodate up to 60 people. They thus argue that there was no room at the shelter to accommodate the 120 people who used to live in the “Polygon” camp.

¹¹ Submitted as annex 1.

for anyone, including the authors.¹² In 2013, the Ombudsperson's Office found the living conditions of the shelter to be inadequate, noting, inter alia, the insufficient supply of food, the low level of hygiene and the problems concerning waste collection, health care, personal safety and access to education for Roma children. The authors submit that criminal gangs have gained access to the shelter and have committed acts of violence against its residents, that inter-ethnic violence targeting Roma in the shelter was notorious, and that parents feared the sexual abuse and exploitation of their daughters at the shelter. The authors submit that the State party has provided no evidence that it had offered any such accommodation specifically to the authors.

7.2 The authors submit that the efforts the State party claims to have made, months and years after the authors' eviction, are irrelevant, because time was of the essence in the present case. They repeat that the authors were left homeless without any access to social or medical assistance. The State party's belated efforts to keep the authors from "freezing to death six months after the eviction" cannot be considered to be sufficient to ensure the protection of their rights under the Convention. The authors also contend that, by stating that health insurance documentation was provided for the accommodated persons, the State party admits that the authors did not have health insurances during and after their pregnancies, in violation of article 12 (2) of the Convention.

7.3 The authors further contest the State party's statement that it had complied with the Committee's request for interim measures. They maintain that the only measure taken by the State party was to offer the accommodation at Čičino Selo, the capacity of which was for five or six persons as at 1 August 2016. Moreover, there is no indication that the authors were given priority or that the living conditions were adequate for pregnant women or those who had recently given birth.

7.4 As regards the State party's claim that the authors have not exhausted domestic remedies and that the Ombudsperson could have provided an effective remedy, the authors argue that the Ombudsperson does not have the power to do anything other than make recommendations, proposals and indications.¹³ With regard to the Commissioner for the Protection against Discrimination or judicial remedies, the authors submit that, when a positive action by the authorities puts a woman's reproductive rights at risk, article 2 of the Convention requires that the action at issue – the eviction in this case – be reviewed before it is taken. However, given that the authorities provided the authors with no advance notice of the eviction, there was no remedy that they could have exhausted. In that regard, the Committee has held that, when a remedy is ineffective because of the passage of time, it is "unlikely to bring effective relief" and therefore does not have to be exhausted.¹⁴ The Committee also has indicated in paragraph 11 of its general recommendation No. 33 (2015) on women's access to justice that States parties have further treaty-based obligations to ensure that all women have equal access to "effective and timely" remedies. Accordingly, the authors maintain that the State party must ensure that women have

¹² The authors refer to page 63 of "Status Report: Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2010)" of the Organization for Security and Cooperation in Europe, available at www.mtsp.gov.mk/WBStorage/Files/Status_Report-FINAL2.doc; and the Amnesty International report "Macedonia 2010", available at www.refworld.org/docid/4c03a8182b.html. They also refer to the Ombudsperson's report (available in Macedonian only at <http://ombudsman.mk/upload/documents/2013/Izvestaj-Cicino%20selo.pdf>) and several news articles.

¹³ The authors refer to the website of the Ombudsman, available in Macedonian at http://ombudsman.mk/upload/documents/2013/Izvestaj-Cicino_selo.pdf.

¹⁴ See *O.G. v Russian Federation* (CEDAW/C/68/D/91/2015), paras. 5.8 and 7.4.

access to the remedies before any “serious and planned interference with their rights”. This is “particularly pressing” when pregnancy and childbirth are concerned.

7.5 The authors submit that the State party’s submission that there have been no consequences for the persons in question arising from a delayed response to the Committee demonstrates its disrespect for the Committee, the Optional Protocol and the authors. Having waited several years for a response from the State party, the authors claim to have lost “hope of securing justice” under the Optional Protocol.

7.6 Lastly, having not respected the deadlines, the State party is estopped from claiming that the authors have failed to exhaust domestic remedies, in accordance with rule 69 (6) of the Committee’s rules of procedure.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4) of the Committee’s rules of procedure, it is to do so before considering the merits of the communication.

8.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

8.4 In that connection, the Committee notes the authors’ contention that at the material time, there were no available effective domestic remedies with a suspensive effect, able to bring effective relief to the circumstances of the authors’ case, in particular against the demolition and eviction on 1 August 2016, and that, in any event, they were not notified of the planned demolition. The Committee further notes the authors’ argument that in any event, in the alternative, regardless of the eviction, the authors have no access to any other remedy for the violations of which they complain, given that they cannot prove that they are citizens of the State party or that they fall into any other category of people eligible for public health insurance. The Committee notes the authors’ assertion that, even if legal procedures to secure free medical care or accommodation existed in theory, given the fact that they were pregnant and time was of the essence, they could not be expected to pursue those remedies; in addition, they are undocumented, and would not be able to initiate legal proceedings in any court.

8.5 The Committee reaffirms its subsidiary role with regard to national legal systems. An author is therefore required to exhaust all domestic remedies for a communication to be admissible. In that regard, the Committee notes the State party’s claim that remedies for the protection of women’s rights existed under the Law on Equal Opportunities for Women and Men, of 2012, and the Law on Prevention and Protection against Discrimination, of 2010, but the authors have not complained thereunder.

8.6 The Committee considers that it is up to the States parties to the Optional Protocol to adduce evidence to the effect that specific remedies are relevant to a given case and they could have been able to bring effective relief to the particular circumstances of the complainants. The Committee observes that the State party does not provide any detail or relevant case law, which could have been applied to this

specific case, to show that the remedies invoked could indeed provide the authors with an effective relief. The State party rather merely explains that the remedies exist in law, but does not provide explanations or examples to show that the remedies in question were both relevant and could have been effective in the circumstances of the case.

8.7 In light of the above considerations, and in the absence of any further information of relevance on file regarding the effectiveness of the domestic remedies in this case, the Committee considers that, in the particular context of the authors' eviction and pregnancy, at the material time of the infringement of their rights, the State party has not adduced evidence to show that any remedies which could immediately provide them with alternative housing and access to reproductive health care and other necessary social services, and which could be considered effective existed but were not exhausted by the authors.

8.8 Accordingly, in the particular circumstances of the present case, the Committee considers that it is not precluded, under the requirements of article 4 (1) of the Optional Protocol, from considering the merits of the present communication.

8.9 Therefore, the Committee declares the communication admissible, as far as it raises issues under articles 2(d) and (f), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention, and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The Committee notes that in the present case the authors claim that they have suffered intersectional discrimination based on their gender, ethnicity, age and health status in violation of article 2 (d) and (f) of the Convention. It takes note of their contention that the State party, by evicting them without taking measures to ensure appropriate alternative housing, health and maternal care, did not consider their extremely vulnerable situation and the particularly disproportionate and discriminatory effect on Roma pregnant adolescents.

9.3 The Committee further notes the authors' assertion that forced evictions are relatively rare in the State party and tend to disproportionately target the Roma community. The Committee also notes the authors' claim that, apart from not refraining from forced evictions, which amounts to indirect discrimination against Roma, the State party failed to undertake appropriate positive measures for the elimination of the discriminatory practice of the eviction of Roma, including Roma pregnant women, and failed to provide any adequate remedy to the authors. In that connection, the Committee recalls paragraph 12 of its general recommendation No. 25 (2004), in which it refers to the obligation of States parties to take temporary special measures to eliminate multiple forms of discrimination against women who may suffer from discrimination based on, inter alia, race, ethnic or religious identity. It also recalls that in its concluding observations regarding the State party's combined fourth and fifth periodic reports (CEDAW/C/MKD/CO/4-5, para. 19), it recommended that the State party adopt special measures, inter alia, in situations in which women from ethnic minorities are disadvantaged. The Committee observes that, despite being minors and pregnant, the authors were treated no differently than other evicted persons and were left homeless and in a condition of extreme destitution. The Committee also observes that the right to be free from discrimination entails not

only treating people equally when they are in similar situations, but also treating them differently when they are in different situations.

9.4 The Committee also notes the State party's general affirmation that the Ministry of Labour and Social Policy has taken measures to ensure, with urgency, temporary accommodation while prioritizing families with pregnant women/newborns. However, the Committee observes that the State party refers to other anonymized individuals and does not address the concrete situation of the two pregnant authors of the present communication. In the absence of further information on file, the Committee therefore observes that the State party did not respect, protect and fulfil the right of the authors to non-discrimination and did not undertake temporary special measures aimed at addressing the specific urgent needs of minor Roma pregnant women in the particular case of eviction, and concludes that a breach of the authors' rights under articles 2 (d) and (f) of the Convention occurred.

9.5 The Committee further notes of the authors' claims that they faced serious obstacles to assuring their health and reproductive rights during their pregnancies, while time was of the essence, in breach of articles 12 (1) and (2) and 14 (2) (b) of the Convention. The Committee notes the undisputed fact that despite her extreme poverty, the first author had to pay for the few examinations she received from a doctor, while the second author was visited by a doctor only once thanks to a non-governmental organization. In that connection, the Committee recalls that States parties' compliance with article 12 of the Convention is central to the health and well-being of women and that special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, and the girl child. State parties should report on measures taken to eliminate barriers that women face in access to health-care services and what measures they have taken to ensure women timely and affordable access to such services, in particular those related to reproductive health.¹⁵

9.6 The Committee notes that neither the authors nor their parents hold identity documents, nor are they covered by the public (or private) health insurance system of the State party. As the authors are undocumented and without insurance, they have no access to adequate health-care facilities and are not entitled to any free primary, secondary or maternal health care. Furthermore, they had no income and no means to pay for maternity care and for the necessary food to meet their nutritional needs during the reproductive period. The Committee further notes that both authors gave birth not in a specialized hospital but out in the open at the Polygon or at the Ranka Milanovik. The Committee observes that the State party did not contest those facts and failed to provide any concrete information as to whether the authors were offered access to any health services and whether appropriate measures were taken to secure the authors' access in particular to reproductive health care. In the absence of further information on file, the Committee concludes that the authors' rights under articles 12 (1) and (2) and 14 (2) (b) of the Convention were violated.

9.7 As to the authors' enjoyment of adequate living conditions, the Committee takes note of their contentions that following the eviction, they first lived in the open during their pregnancies. In addition to not being offered sustainable alternative accommodation after the eviction, the authors have never applied for nor have been offered social housing or any other social support, apparently owing to their undocumented status. The Committee notes as well that during and after the eviction, the two pregnant authors were exposed to extremely poor living conditions, and lacked drinkable water and water for maintaining personal hygiene. In that connection, the Committee observes that all of those elements contributed to the

¹⁵ See paras. 2, 6 and 21–23 of general recommendation No. 24 (1999).

extremely vulnerable and precarious position of the authors, who were under a serious risk of harm to their health.

9.8 The Committee notes that eventually both authors were temporarily accommodated at the Ranka Milanovik, where the conditions were extremely poor and inadequate for pregnant women. The Committee also takes note that once her husband obtained a job, S.N. was ordered to leave the Ranka Milanovik, while E.R. also left owing to safety and security reasons. The Committee further notes that both authors had no alternative but to return to the Polygon site, and that the authorities refused to rehouse E.R., as she had left the Ranka Milanovik voluntarily. Furthermore, the Committee notes that as a result both authors were de facto homeless during their pregnancies and gave birth either while living in the open at the Polygon site or at the Ranka Milanovik.

9.9 The Committee also notes the State party's general assertion that about 100 individuals were provided with alternative accommodation, that young children were enrolled in a day-care facility and that a procedure for the schooling of older children was initiated. However, the Committee observes that the State party failed to provide concrete information with regard to the two authors' living conditions during and following the demolition of their dwellings, and to the measures taken to alleviate their housing situation by providing sustainable and appropriate alternatives. The Committee observes that the State party has neither contested the description of the facts by the authors nor provided concrete information as to any appropriate measures taken to ensure the authors' access to adequate health-care facilities and enjoyment of adequate living conditions. Accordingly, the Committee considers that the facts as presented reveal a violation of the authors' rights under article 14 (d) of the Convention, taking into consideration general recommendation No. 28 (2010) of the Committee.

9.10 In the absence of further information of pertinence on file, the Committee gives due weight to the authors' allegations. Accordingly, the Committee considers that the facts as submitted reveal a violation of the authors' rights under articles 2 (d) and (f), 4 (1) and (2), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention, taking into consideration general recommendation Nos. 24 (1999), 25 (2004), 28 (2010) and 34 (2016) of the Committee.

10. In accordance with article 7 (3) of the Optional Protocol to the Convention and taking into account the foregoing considerations, the Committee is of the view that the facts before it reveal a violation of the rights of the authors under articles 2 (d) and (f), 4 (1) and (2), 12 (1) and (2) and 14 (2) (b) and (h) of the Convention, taking into consideration general recommendation Nos. 24 (1999), 25 (2004), 28 (2010) and 34 (2016) of the Committee.

11. In the light of the above conclusions, the Committee makes the following recommendations to the State party:

- (a) With regard to the authors:
 - (i) Provide an adequate reparation, including the recognition of the material and moral damages they suffered due to inadequate access to housing and health care during their pregnancies aggravated by their eviction;
 - (ii) Provide suitable accommodation, access to clean water and proper nutrition and immediate access to affordable health-care services.
- (b) In general:
 - (i) Adopt and pursue concrete and effective policies, programmes and targeted measures, including temporary special measures, in accordance with

article 4 (1) of the Convention and general recommendation No. 25 (2004), to combat intersecting forms of discrimination against Roma women and girls;

(ii) Ensure effective access to adequate housing for Roma women and girls;

(iii) Ensure access to affordable and high-quality health care and reproductive health services and prevent and eliminate the practice of charging illegal fees for public health services for Roma women and girls;

(iv) Develop specific poverty alleviation and social inclusion programmes for Roma women and girls;

(v) Reinforce the application of temporary special measures, in line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, in all areas covered by the Convention in which women and girls belonging to ethnic minority groups, in particular Roma women and girls, are disadvantaged;

(vi) Engage actively, including through the provision of financial support, with civil society (human rights and women's) organizations representing Roma women and girls, in order to strengthen advocacy against intersectional forms of discrimination based on sex, gender and ethnicity, and promote tolerance and the equal participation of Roma women in all areas of life;

(vii) Ensure that Roma women and girls, as individuals and as a group, have access to information about their rights under the Convention and are able to effectively claim those rights;

(viii) Ensure that Roma women and girls have recourse to effective, affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate, or by other public institutions;

(ix) Ensure that no forced eviction against Roma women and girls takes place if no alternative housing is previously provided to those affected.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is requested to have the Committee's views and recommendations translated into the State party's language, to publish them and to have them widely disseminated, in order to reach all sectors of society.

Individual opinion of Committee member Gunnar Bergby (dissenting)

I cannot agree with the view of the majority regarding admissibility.

In my view, the communication should have been found to be inadmissible under article 4, paragraph 1, of the Optional Protocol to the Convention on the ground of failure to exhaust domestic remedies - in fact such remedies have not been tried at all. I do not agree that application of such remedies would unreasonable prolong or would be unlikely to bring effective relief.

Secondly, I find the communication to be inadmissible also under article 4, paragraph 2(a), of the Optional Protocol, on the ground that the very same eviction of 1 August 2016 is being examined by the European Court of Human Rights under the European Convention of Human Rights (*Bekir and Others v. North Macedonia*), even though the women in communication no 107/2016 are not a party of the case before the European Court of Human Rights.

Gunnar Bergby (signed)