



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 – 27 July 2007

VIEWS

Communication No. 1143/2002

<u>Submitted by:</u>	Mr. Farag El Dernawi (represented by the World Organisation against Torture)
<u>Alleged victims:</u>	The author, his wife, Salwa Faris, and their six children, Abdelmenem, Abdelrahman, Abdallah, Abdoalmalek, Salma and Gahlia
<u>State party:</u>	Libyan Arab Jamahiriya
<u>Date of communication:</u>	15 August 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 December 2002 (not issued in document form)
<u>Date of adoption of Views:</u>	20 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Confiscation of passport - inability of family to depart country and be reunified.

Substantive issues: Freedom of movement - interference with family life - protection of the family unit - protection of the rights of children

Procedural issue: Exhaustion of domestic remedies – absence of co-operation by the State party

Articles of the Covenant: articles 12, 17, 23 and 24

Article of the Optional Protocol: article 5, paragraph 2(b)

On 20 July 2007, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1143/2002.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninetieth session

concerning

Communication No. 1143/2002**

Submitted by: Mr. Farag El Dernawi (represented by the World
Organisation against Torture)

Alleged victims: The author, his wife, Salwa Faris, and their five
children, and their six children, Abdelmenem,
Abdelrahman, Abdallah, Abdoalmalek, Salma
and Gahlia

State party: Libyan Arab Jamahiriya

Date of communication: 15 August 2002 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant
on Civil and Political Rights,

Meeting on 20 July 2007,

Having concluded its consideration of communication No. 1143/2002, submitted to the
Human Rights Committee on behalf of Farag El Dernawi, his wife, Salwa Faris, and their six
children, Salwa Faris, and their six children, Abdelmenem, Abdelrahman, Abdallah,
Abdoalmalek, Salma and Gahlia, under the Optional Protocol to the International Covenant on
Civil and Political Rights,

Having taken into account all written information made available to it by the author of the
communication, and the State party,

Adopts the following:

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji
Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer
Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty,
Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth
Wedgwood.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Farag El Dernawi, a Libyan national born on 1 June 1952 and resident in Olten, Switzerland. He brings the communication on his own behalf and on behalf of his wife, Salwa Faris, born on 1 April 1966, and their six children, Abdelmenem, born 26 July 1983, Abdelrahman, born 21 August 1985, Abdallah, born 27 July 1987, Abdoalmalek, born 4 October 1990, Salma, born 22 January 1993, and Gahlia, born 18 August 1995. He claims violations by the Libyan Arab Jamahiriya of articles 12, 17, 23 and 24 of the Covenant. He is represented by the World Organisation against Torture.

The facts as presented by the author

2.1 The author, a member of the Muslim Brotherhood, was persecuted in Libya on account of his political beliefs. In 1998, he was accompanying his brother and sick nephew to Egypt to seek medical treatment when he was warned that security personnel had been at his home, apparently seeking to arrest him. He decided not to return, separating him from his wife and six children in Libya.

2.2 In August 1998, the author arrived in Switzerland and applied for asylum. In March 2000, the Swiss federal authorities granted the author asylum and approved family reunification. On 26 September 2000, his wife and the three youngest children sought to leave Libya to join the author in Switzerland. She was stopped at the Libyan-Tunisian border and her passport, which also covered the three children, was confiscated. Upon return to her home city of Benghazi, she was ordered to appear before the security services, who informed her that she could not travel because the author's name was on an internal security wanted list in connection with a political case.

2.3 On numerous occasions, the author's wife has personally sought to retrieve her passport, including through friends and family with government influence, without success. Lawyers refuse to act for her on account of her husband's political activities. She, and her six children, have no income and face substantial economic hardship. In addition to the fear and strain, she has lately become ill, requiring medical treatment. Although the three eldest children have their own passports and could theoretically leave the country to join their father, they do not wish to leave their mother in difficulty.

The complaint

3.1 The author claims violations of articles 12, 17, 23 and 24 of the Covenant. He contends that the confiscation of passport and refusal of the State party to permit departure of his wife and the three youngest children amounts to a continuing violation of article 12 of the Covenant. The conditions of necessity and proportionality applicable to a legitimate restriction of the right to movement are clearly absent, as the State party's officials have not even claimed that the author's wife and children represent a risk to national security. On the contrary, they have explicitly admitted that the family are being prevented from leaving solely because the author is accused of a political crime.

3.2 The author contends that the frustration by the State party of his wife and three youngest children joining him in Switzerland does not originate in any legitimate concern for the affected

individuals, but is apparently motivated by a desire to punish the author. The interference with family life is accordingly arbitrary and in breach of articles 17 and 23 of the Covenant. In addition, the State party's action has effectively impeded all six of the children from fully enjoying their right to family life, as even the three eldest children, who have their own passports and could theoretically leave, cannot do so without leaving their mother and younger siblings behind.

3.3 The author also argues that by not permitting family reunification, the State party has placed the children in dire economic need as they have been deprived of their sole means of support. Although they have been able to survive with the assistance of family members, they have been forced to live in increasingly difficult conditions. By arbitrary and unlawful action to this effect that failed to give due consideration to the impact thereof on the well-being of the children under eighteen years of age, the State party violated article 24 of the Covenant.

3.4 As to the exhaustion of domestic remedies, the author argues that his wife has not been able to use any official instances, due to his situation, though her attempts as described to pursue such avenues as have been available to her have been without success. With reference to the material of a variety of international non-governmental organisations, the author contends that, in any event, there are no effective remedies in Libya for human rights violations that are politically motivated. In further support of this proposition, the author cites the Committee's concluding observations in 1998 seriously doubting the independence of the judiciary and freedom of action of lawyers,¹ and argues that the situation has not significantly changed. Instances of politically motivated arrest and trial, as well as harassment of victims' family members, are still routinely reported, and in cases of political persecution, the judiciary will not contradict decisions of the executive.

Absence of State party's cooperation

4. By Notes Verbale of 16 December 2002, 26 January 2006 and 23 April 2007, the State party was requested to submit to the Committee information on the question of admissibility and the merits of the communication. The Committee notes that this information has still not been received. It regrets the State party's failure to provide any information with regard to the author's claims, and recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal.² In the absence of any observations from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

¹ CCPR/C/79/Add.101, at para 14.

² See, *inter alia*, Khomidova v. Tajikistan, Communication No.1117/2002, Views adopted on 29 July 2004; Khalilova v. Tajikistan, Communication No.973/2001, Views adopted on 30 March 2005; and Aliboeva v. Tajikistan, Communication No.985/2001, Views adopted on 18 October 2005.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 As it is obliged to do pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect to the exhaustion of domestic remedies, the Committee notes that the State party has offered no argument to refute the author's contention that all his wife's approaches to the authorities have been futile, and that, in the circumstances of the case, effective remedies are unavailable. Accordingly, the Committee considers that it is not precluded by the provisions of article 5, paragraph 2 (b), of the Optional Protocol from consideration of the communication.

5.4 The Committee considers that the author's claims under articles 12, 17, 23 and 24 are sufficiently substantiated for purposes of admissibility, and therefore proceeds to consider them on the merits, in accordance with article 5, paragraph 2, of the Optional Protocol.

Consideration of the merits

6.1 The Human Rights Committee has considered this communication in the light of all the written information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

6.2 In terms of the claim under article 12, the Committee recalls its jurisprudence that a passport provides a national with the means practicably to exercise the right to freedom of movement, including the right to leave one's own State, conferred by that article.³ The confiscation of the passport of the author's wife, also covering her three youngest children, as well as the failure to restore the document to her, accordingly amount to an interference with the right to freedom of movement which must be justified in terms of the permissible limitations set out in article 12, paragraph 3, concerning national security, public order/ordre public, public health or morals or the rights and freedoms of others. The State party has not sought to advance any such justification, nor is any such basis apparent to the Committee on the basis of the material before it. The Committee accordingly concludes that there has been a violation of article 12, paragraph 2, in respect of the author's wife and three youngest children whom the wife's passport also covered.

6.3 As to the claims under articles 17, 23 and 24, the Committee notes that the State party's action amounted to a definitive, and sole, barrier to the family being reunited in Switzerland. It further notes that the author, as a person granted refugee status under the 1951 Convention on the Status of Refugees, cannot reasonably be expected to return to his country of origin. In the

³ *El Ghar v Libyan Arab Jamahiriya*, Communication No. 1107/2002, Views adopted on 29 March 2004.

absence of justification by the State party, therefore, the Committee concludes that the interference with family life was arbitrary in terms of article 17 with respect to the author, his wife and six children, and that the State party failed to discharge its obligation under article 23 to respect the family unit in respect of each member of the family. On the same basis, and in view of the advantage to a child's development in living with both parents absent persuasive countervailing reasons, the Committee concludes that the State party's action has failed to respect the special status of the children, and finds a violation of the rights of the children up to the age of eighteen years under article 24 of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 12, paragraph 2, of the Covenant in respect of the author's wife and her three youngest children, a violation of articles 17 and 23 in respect the author, his wife and all children, and a violation of article 24 in respect of the children under the age of eighteen as of September 2000.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to ensure that the author, his wife and their children have an effective remedy, including compensation and return of the passport of the author's wife without further delay in order that she and the covered children may depart the State party for purposes of family reunification. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur in future.

9. The Committee recalls that by becoming a State party to the Optional Protocol, the Libyan Arab Jamahiriya has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to ensure an effective and enforceable remedy when a violation has been disclosed. The Committee therefore wishes to receive from the State party, within 90 days following the submission of these Views, information about the measures taken to give effect to them. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
