



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-second session
18 October-5 November 2004

VIEWS

Communication No. 1107/2002

Submitted by: Loubna El Ghar (not represented by counsel)

Alleged victim: The author

State party: Socialist People's Libyan Arab Jamahiriya

Date of Communication: 14 June 2002 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted to the State party on 5 August 2002 (not issued in document form)

Date of adoption of Views: 2 November 2004

On 2 November 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 1107/2002. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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**

Eighty-second session

concerning

Communication No. 1107/2002*

Submitted by: Loubna El Ghar (not represented by counsel)
Alleged victim: The author
State party: Socialist People's Libyan Arab Jamahiriya
Date of communication: 14 June 2002 (initial submission)

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

Meeting on 29 March 2004,

Having concluded consideration of communication No. 1107/2002 submitted by Loubna El Ghar 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:

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

1.1 The author of the communication is Loubna El Ghar, a Libyan citizen born on 2 September 1981 in Casablanca and residing in Morocco. She claims to be a victim

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski.

of violations by the Socialist People's Libyan Arab Jamahiriya. She does not refer to any particular provisions of the Covenant, but her allegations would seem to give rise to questions under article 12 thereof. She is not represented by counsel.

1.2 The Covenant and its Optional Protocol entered into force for the Socialist People's Libyan Arab Jamahiriya on 23 March 1976 and 16 August 1989 respectively.

The facts as submitted by the author

2.1 The author, of Libyan nationality, has lived all her life in Morocco with her divorced mother and holds a residence permit for that country. As a student of French law at the Hassan II University faculty of law in Casablanca, she wished to continue her studies in France and to specialize in international law. To that end, she has been applying to the Libyan Consulate in Morocco for a passport since 1998.

2.2 The author claims that all her applications have been denied, without any lawful or legitimate grounds. She notes that although she is an adult, she attached to her application form an authorization from her father, who is resident in the Libyan Arab Jamahiriya, that was certified by the Libyan Ministry of Foreign Affairs in order to obtain any official document required. She adds that in September 2002 the Libyan consul stated, without giving any details, that on the basis of the pertinent regulations he could not issue her a passport, but could only provide her with a temporary travel document allowing her to travel to the Libyan Arab Jamahiriya.

2.3 The author also contacted the French diplomatic mission in Morocco to ascertain whether it would be possible to obtain a laissez-passer for France, a request which the French authorities were unable to comply with.

2.4 Since she had no passport, the author was unable to enrol in the University of Montpellier I in France.

The complaint

3. The author claims that the refusal by the Libyan Consulate in Casablanca to issue her with a passport prevents her from travelling and studying and constitutes a violation of the Covenant.

State party's observations

4.1 In its observations of 15 October 2003, the State party provides the following information. Having been informed of the author's communication, the Passport and Nationality Department contacted the Brotherhood Bureau in Rabat, which indicated that as at 1 September 1999 it had not received any official application for a passport from the author.

4.2 On 6 September 2002, the Passport and Nationality Department asked the Consulate-General to inform it whether the author had submitted an application for a passport, given that it had no record of any information concerning Ms. El Ghar.

4.3 On 13 October 2002, the Passport and Nationality Department sent a telegram to the Consulate-General in Casablanca requesting that the author's application should be forwarded, in the event it had been received, together with all the documents required for the issuing of a passport.

4.4 The State party alleges that it is clear from the foregoing that the Libyan authorities concerned are giving the matter due attention and that the delay is caused by the fact that the author did not go to the Brotherhood Bureau in Morocco at the proper time. The State party points out that there is nothing in the legislation in force to prevent Libyan nationals from obtaining travel documents when they meet the necessary requirements and submit the documents requested.

4.5 Lastly, the State party explains that instructions were sent on 1 July 2003 to the Brotherhood Bureau in Rabat to issue a passport to Ms. Loubna El Ghar. Moreover, the author was contacted at home by telephone and told that she could go to the Libyan Consulate in Casablanca to collect her passport.

Comments of the author on the State party's observations

5.1 In her comments of 24 November 2003 concerning the official date of the submission of her passport application, the author points out that she had initiated procedures as early as 1998, when her mother went to Libya to seek her father's permission to obtain a passport (see para. 2.2). She adds that the actual date of her official application for a passport was 25 February 1999.

5.2 With regard to the Passport and Nationality Department and the date of 6 September 2002 mentioned by the State party (see para. 4.2), the author recalls that on 18 September 2002, during one of her visits to the Libyan Consulate-General to find out the status of her application, the Libyan officials had indicated that they were unable to give her a passport but would give her a laissez-passer for Libya. The laissez-passer, which was issued that very day and has been submitted by the author, clearly states that "in view of the fact that she is a native of Morocco and has not obtained a passport, this travel document is issued to enable her to return to national territory".

5.3 The author confirms that she received a telephone call on 1 August 2003 from the Libyan Ambassador to the United Nations Office at Geneva informing her that she could go to the Libyan Consulate-General in Casablanca to collect her passport, a communiqué to that effect having been sent by the Passport Department. On the same day the author went to the Consulate with all the documents likely to be needed for the collection of her passport. However, the Libyan officials denied having received the above-mentioned communiqué. Upon her return home, the author called the Libyan Ambassador to the United Nations in Geneva to tell her what had happened, and two days later returned to the Consulate. The author explains that the consul himself told her that there was no need for her to go there each time, and that she would be contacted as soon as the communiqué in question was received. Since then the author has been unable to obtain a passport and thus go abroad to continue her studies.

5.4 The author adds that it is impossible for her to request legal aid with a view to bringing court proceedings against the Libyan authorities from Morocco, and that she cannot lodge an appeal alleging an abuse of authority.

Consideration of admissibility

6.1 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.

6.2 As it is obliged to do so 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.

6.3 Having taken note of the author's arguments concerning the exhaustion of domestic remedies, namely the obstacles standing in the way of any request for legal aid and of an appeal against the decision of the Libyan authorities from Morocco, and given the absence of any relevant objection to the admissibility of the communication by the State party, the Committee considers that the provisions of article 5, paragraph 2 (b), of the Optional Protocol do not preclude it from considering the communication.

6.4 The Committee considers that the author's claim may give rise to issues under article 12, paragraph 2, of the Covenant and therefore proceeds to consider them on the merits, in accordance with article 5, paragraph 2, of the Optional Protocol.

Consideration of the merits

7.1 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.

7.2 The Committee notes that to date the author has been unable to obtain a passport from the Libyan consular authorities even though, according to the authorities' own statements, her official application dates back at least to 1 September 1999. Moreover, it is clear that initially, on 18 September 2002, the Libyan consul had indicated to the author that it was not possible to issue her a passport but that she could be given a *laissez-passer* for Libya, by virtue of a regulation that was explained neither orally nor on the *laissez-passer* itself. The passport application submitted to the Libyan Consulate was thus rejected without any explanation of the grounds for the decision, the only comment being that since the author "is a native of Morocco and has not obtained a passport, this travel document [*laissez-passer*] is issued to enable her to return to national territory". The Committee considers that this *laissez-passer* cannot be considered a satisfactory substitute for a valid Libyan passport that would enable the author to travel abroad.

7.3 The Committee notes that subsequently, on 1 July 2003, the Passport Department sent a communiqué to the Libyan consular authorities in Morocco with a view to granting the author a passport; this information was certified by the State party, which produced a copy of the document. The State party alleges that the author was contacted personally by telephone at

home and told to collect her passport from the Libyan Consulate. However, it appears that thus far, despite the author's two visits to the Libyan Consulate, no passport has been issued to her, through no fault of her own. The Committee recalls that a passport provides a national with the means "to leave any country, including his own", as stipulated in article 12, paragraph 2, of the Covenant, and that owing to the very nature of the right in question, in the case of a national residing abroad, article 12, paragraph 2, of the Covenant imposes obligations both on the individual's State of residence and on the State of nationality, and that article 12, paragraph 1, of the Covenant cannot be interpreted as limiting Libya's obligations under article 12, paragraph 2, to nationals living in its territory. The right recognized by article 12, paragraph 2, may, by virtue of paragraph 3 of that article, be subject to restrictions "which are provided by law [and] are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". Thus there are circumstances in which a State may, if the law so provides, refuse to issue a passport to one of its nationals. In the present case, however, the State party has not put forward any such argument in the information it has submitted to the Committee but has actually assured the Committee that it issued instructions to ensure that the author's passport application was successful, a statement that was not in fact followed up.

8. 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 insofar as the author was denied a passport without any valid justification and subjected to an unreasonable delay, and as a result was prevented from travelling abroad to continue her studies.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to ensure that the author has an effective remedy, **including compensation**. The Committee urges the State party to issue the author with a passport without further delay. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur in future.

10. The Committee recalls that by becoming a State party to the Optional Protocol, the Socialist People's 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.

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