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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. 110/2016*,**,***

Communication submitted by:	L.A. et al (represented by counsel, European Roma Rights Centre)
Alleged victims:	The authors
State party:	North Macedonia
Date of communication:	21 December 2016 (initial submission)
References:	Transmitted to the State party on 29 December 2016 (not issued in document form)
Date of adoption of views:	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 Mohamed 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.

*** An individual opinion (dissenting) by Committee member Gunnar Bergby is annexed to the present document.

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Background

1.1 The authors of the communication are L.A., D.S., R.A. and L.B., who are nationals of North Macedonia of Roma ethnicity, born in 1990, 1999, 1996 and 1994, respectively. They claim to be victims of violations, by North Macedonia, 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. The Optional Protocol entered into force for the State party on 17 January 2004. The authors are represented by counsel, the European Roma Rights Centre.

1.2 On 29 December 2016, 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 maternal health-care services, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

Facts as submitted by the authors

2.1 L.A. is 26 years of age and is a homeless single mother in her fourth month of pregnancy. This is her fourth pregnancy and she has three minor children. She has never visited a gynaecologist during her pregnancy, as she cannot afford the cost of transportation to the nearest gynaecological centre. She is unemployed and receives a monthly social allowance for her children in the amount of 8,000 North Macedonia denars (about €130). She is unable to maintain basic hygiene practices because of lack of access to clean water.

2.2 D.S. is 17 years of age and a mother in the first month of her second pregnancy. She is currently living on the street with her child. She does not receive social support. She has never visited a gynaecologist during her pregnancy, because she cannot afford medical fees or medicine. She does not have access to clean water and therefore cannot maintain basic hygiene practices.

2.3 R.A. is 20 years of age and in the first month of her pregnancy. She is living on the street with her partner and relatives. She is unemployed and does not receive social support. She has visited a gynaecologist twice, including at the nearest gynaecological clinic in the municipality of Chair, where she paid 200 North Macedonia denars (about €3.25) for a basic medical examination and 500 North Macedonia denars (about €8.10) in transportation costs. She lives in extreme poverty and lacks access to clean water for maintaining basic hygiene practices.

2.4 L.B. is a mother of five minor children. She gave birth to a baby on 24 November 2016. She visited a gynaecologist only on the day on which she gave birth. Both L.B. and her baby have health issues, because of their exposure to extremely low temperatures and lack of proper nutrition or access to clean water.

2.5 Until 1 August 2016, the authors lived in a settlement known as "Polygon" near the Vardar River under the *Kale* (Fortress) in Skopje. The community comprised about 130 people of Roma descent, including about 70 children, most of whom had been living there for between five and nine years, but with no tenure to the land. Most of them were living in houses that they had constructed out of available materials, and the living conditions were poor.

2.6 The Ministry of Transport and Communications of the State party previously owned the land on which the community was located. In November 2011, the Ministry privatized the land, and it is now owned by a private company. From time to time over the years, the authorities had removed the inhabitants' property and/or destroyed their homes, without offering them alternative accommodation. The inhabitants of the

community, including the authors, had rebuilt their homes using available materials. Some inhabitants had applied for social housing, but their applications had been rejected. The authors have never applied for social housing, given that they do not have the documents required by law to do so.

2.7 On 11 July 2016, the Inspectorate of the City of Skopje made a decision to "clean up" the settlement, because, under the urban plan in place, the construction of a road was allegedly envisaged there. Members of the community never received formal notice that they would be evicted, although some had been given oral warnings that they should move their belongings from the site. The decision of 11 July was not addressed or delivered to any member of the community. An appeal against the decision of the Inspectorate would not have had an automatic suspensive effect, meaning that the authorities could have proceeded with the eviction notwithstanding any appeal having been lodged.

2.8 On the morning of 1 August 2016, without prior notice, the police entered the settlement and destroyed its only water source. Later that day, bulldozers arrived and demolished all the homes. The municipality did not offer the authors alternative accommodation and referred them to the municipality of Šuto Orizari. Following the eviction, the Centre for Social Work, a public entity that serves the city of Skopje, informally offered to some of the evicted people accommodation in the Čičino Selo shelter for refugees, internally displaced persons and homeless persons. No member of the community accepted it, owing to security concerns and poor living conditions in the shelter.

2.9 The authors and many others remained on the site of their former homes, with no shelter and no access to water. The situation posed a direct threat to their lives and health. Many of the community members have suffered from bronchitis and other illnesses caused by the poor living conditions. The women, especially those who are pregnant, including the authors, are in an extremely vulnerable situation and at serious risk of harm to their health and the health of their babies. They have no access to maternal health-care assistance.

2.10 The authors are covered under the State party's compulsory health insurance system. They argue, however, that they have insurance only in theory and not in practice. Compulsory health services are not entirely free of charge, and the insured must pay up to 20 per cent of the reference price as a co-payment for treatment, which the authors cannot afford. They also claim to have inadequate access to gynaecological services, in particular because of their Roma identity; there are cases in which gynaecologists refused to register Roma women as patients, owing to the misperceptions, stereotypes and stigma surrounding Roma communities. Women who are not registered with a gynaecologist, even if they are covered by compulsory health insurance, must pay full price for all medical treatments (i.e., 100 per cent of the cost, instead of the 20 per cent co-payment). Therefore, given that they are not registered with a gynaecologist, L.A., D.S. and L.B. would have to pay the full cost of treatment at their gynaecologist visit.

2.11 The authors claim that, for the past eight years, the authorities have not allocated sufficient funds to maternal and child health-care programmes, especially for Roma women. In practice, many Roma women have limited access to reproductive health services. For example, there has been no gynaecologist for the past nine years in Šuto Orizari, although the authorities have attempted to hire a specialist, in vain.[1] The authors further submit that housing is the main problem for Roma people and that

[1] The authors refer to the Committee's concluding observations on the combined fourth and fifth periodic reports of the State party (CEDAW/C/MKD/CO/4-5), paras. 33–34 and 38, and the concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second to fourth periodic reports of the State party (E/C.12/MKD/CO/2-4), para. 23.

many live in makeshift dwellings without electricity, heating, water or adequate sanitation.[2]

2.12 With regard to the exhaustion of domestic remedies, the authors claim that there was no available effective domestic remedy against the eviction of 1 August 2016. The eviction was carried out on the basis of a decision to "clean up" the settlement, which was addressed to a third party. The authors had no access to a remedy that would suspend the implementation of the decision. In particular, the decision to "clean up" the settlement was not addressed to the authors, and national law does not provide for an appeal against such a decision with automatic suspensive effect. In addition, the authors submit that there are no legal procedures to secure free medical care or accommodation and that, even if such means existed in theory, given that they are pregnant, and therefore time is of the essence, they could not be expected to pursue those remedies before having recourse to the Committee. They also allege that, in the past, people in their position have not obtained relief of any kind.

2.13 The authors note that other former residents of the settlement submitted a complaint to the European Court of Human Rights, claiming that the eviction of 1 August 2016 and the failure by the State party to provide them with alternative accommodation or other form of support amount to a violation of the European Convention on Human Rights.[3] Since the authors of the present communication are not applicants in that application, they contend that the same matter is not pending before another procedure of international investigation or settlement.

Complaint

3.1 The authors claim that they are victims of an ongoing violation by the State party of articles 2 (d) and (f), 4 (1) and (2), 12 (1) and (2) and 14 (b) and (h) of the Convention. They claim to have suffered intersecting forms of discrimination on the basis of their gender, ethnicity, age, class and health status.

3.2 The authors argue that forced evictions in the State party are relatively rare, that when they take place they appear to target Roma communities and that their eviction therefore amounts to indirect discrimination against Roma communities. Furthermore, the State party failed to consider either the authors' vulnerable situation as young, single and pregnant mothers or the specific forms of support that they needed, in violation of article 2 (d) of the Convention.[4]

3.3 The authors claim that the State party also failed to pursue a policy that would have modified, abolished or remedied any law, regulation, custom or practice that constituted discrimination against them, in violation of article 2 (f) of the Convention.[5] The State party failed to take appropriate measures to eliminate the discriminatory practice of forced evictions targeting Roma communities, including Roma women, and its particularly discriminatory effect on young pregnant Roma women. In addition, the State party did not provide the authors with appropriate remedies, including compensation or social support.

[2] The authors refer to the recommendations contained in the concluding observations of the Committee on Economic, Social and Cultural Rights, in relation to the provision of affordable social housing for Roma families and the adoption of legal procedures to be followed in cases of eviction (E/C.12/MKD/CO/2-4, paras. 45–46).

[3] The authors indicate that the European Court of Human Rights has already communicated that case to the State party, registered as *Bekir and others v. North Macedonia* (application No. 46889/16).

[4] The authors refer to paragraph 31 of the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

[5] Ibid.

3.4 The authors submit that the State party violated their rights under article 4 (1) and (2) of the Convention by not taking special measures aimed at fulfilling the specific needs of young pregnant Roma women in the context of evictions. That the authors are Roma women, pregnant, homeless, living in poverty and in conditions equivalent to those of women in a rural setting indicates that they are likely to become victims of multiple and intersecting forms of discrimination and are therefore in need of special preventive and protective measures, however, the State party has taken no such measures. The Committee's recommendations in this respect notwithstanding,[6] the State party's failure to, inter alia, ensure access for Roma women to housing and health-care services has led to the current situation of the authors.

3.5 The authors claim that the State party subjected them to discrimination by limiting their access to health-care services, including reproductive health, in breach of article 12 (1) and (2) of the Convention.[7] Even though they were particularly vulnerable, as homeless, young and pregnant Roma women without social benefits, the authors had no access to free-of-charge health services. The eviction further exacerbated their situation, causing additional stress and anxiety and placing their health in critical danger. Their nutritional situation has also deteriorated, owing to the eviction, because they are less likely to have access to an appropriate food supply. The authors indicate that they have never received sexual and reproductive health education and have never been involved in family planning or contraception programmes, which, considering their ages, could have significantly improved their situation.[8]

3.6 The authors consider that their living conditions and the challenges that they face are identical to those of women living in rural areas.[9] By failing to provide access to free health-care services for them, as members of a marginalized community living in conditions akin to a rural setting, and especially in the circumstances following the eviction, the State party has violated their rights under article 14 (2) (b) of the Convention.

3.7 In addition, the authors allege that, by evicting them without offering timely and appropriate alternative housing and failing to ensure that they had access to food, clean water for personal and domestic use, sustainable energy and adequate sanitation and hygiene, the State party has violated article 14 (2) (h) of the Convention.

State party's observations on admissibility and the merits

4.1 On 20 May 2019, the State party submitted its observations. The State party notes that the authors were located under the *Kale* (Fortress) and that the Ministry of Labour and Social Policy took measures to urgently provide them with adequate temporary accommodation to ensure their protection.

4.2 The State party also submits that the measures were divided into specific activities aimed at providing accommodation to the following target groups: families with pregnant women and infants up to 3 years of age, whereby further priority was assigned to families with more than three children; families with children between 4

[6] The authors refer to paragraph 19 of the Committee's concluding observations (CEDAW/C/MKD/CO/4-5).

[7] The authors refer to paragraph 33 of the Committee's concluding observations (CEDAW/C/MKD/CO/4-5), paragraph 6 of the Committee's general recommendation No. 24 (1999) on women and health and paragraph 47 of the concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/MKD/CO/2-4).

[8] The authors refer to paragraph 18 of the Committee's general recommendation No. 24.

[9] The authors refer to paragraph 14 of the Committee's general recommendation No. 34 (2016) on the rights of rural women.

and 7 years of age and with children who have developmental disabilities; and older persons over 65 years of age who are “ailing and decrepit”.

4.3 The State party observes that, as a result, 123 individuals, including the authors, were provided with accommodation at public social care centres. All were enrolled in the social reintegration programme, “Supported living”, which was set up and implemented with the support of two Roma non-governmental organizations.

4.4 The State party submits that the authors remained at the social care centres until October 2018, whereupon they were offered unsupported accommodation in a container settlement. The State party notes that L.A. and R.A. continue to reside there but, according to the civil society organizations involved in their cases, D.S. and L.B. have left the State party and currently live abroad.

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

5.1 By a letter of 14 June 2019, the authors provided comments on the State party’s observations.

5.2 The authors note that, the initial deadline of 29 June 2017 notwithstanding, the State party submitted its observations only on 20 May 2019 and provided no reason for the delay. They contend that the Committee should disregard those observations, as to do otherwise would mean that the Committee accepts the State party’s abuse of the procedure.

5.3 The authors claim that 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 deadlines. Furthermore, the quality of the State party’s reply is such that it does not appear to take its obligations under the Optional Protocol seriously.

5.4 The authors further indicate that the Committee should not invite the State party to submit further observations regarding the present comments. Should the Committee decide to do so, the time frame given should not exceed one month.

5.5 The authors allege that the State party is estopped from making objections to the admissibility of the present communication, given that it failed to raise arguments concerning admissibility in its observations of 20 May 2019 and within the initial six-month time frame.[10]

5.6 The authors further contend that the State party did not accede to the Committee’s request for interim measures, and such a failure amounts to a separate violation of human rights.[11] They maintain that the Committee should therefore find a separate violation by the State party of article 5 of the Optional Protocol.

5.7 The authors provide up-to-date information about their situations. L.A. was provided with accommodation in the Ranka Milanovik centre, where the living conditions were very poor and inadequate for pregnant women and women who had recently given birth. In November 2018, she moved to a container settlement in Vizbegovo, where the conditions were also poor. Residents of those containers are not allowed to receive visits, 14 families share two bathrooms and food is provided only on Sundays. In addition, a sewerage problem has caused wastewater to leak, leaving noxious odours. The authorities have refused to pay for the necessary repairs, which would cost €4,000. Although the Prime Minister visited the settlement in the

[10] The authors refer to rule 69 (6) of the Committee’s rules of procedure.

[11] The authors invoke the decision of the Human Rights Committee in *Weiss v. Austria* (CCPR/C/77/D/1086/2002), para. 7.1.

first quarter of 2019 and promised to provide social housing, the authors and others have low expectations. L.A. and her two children have now been threatened with eviction by 15 June 2019 because of her husband's alcohol abuse. She is not being offered alternative housing and will be forced to return to the Polygon site, where she lived before the eviction. The authors' counsel is supporting L.A. in obtaining an injunction to stop her eviction.

5.8 R.A. also stayed at the Ranka Milanovik centre until November 2018, when she moved to the container settlement in Vizbegovo, where she still resides. R.A. is unable to visit a gynaecologist because she cannot afford a taxi ride, which is the only way to reach the nearest gynaecologist.

5.9 The authors note that D.S. and L.B. sought asylum in France, because they believed that they were facing persecution on the basis of their ethnicity in the State party.

5.10 The authors claim that they were homeless during their pregnancies, as a result of the eviction of 1 August 2016. They gave birth either while living in the open space at the Polygon site or at the Ranka Milanovik centre. In both scenarios, the State party exposed the authors, during a late stage of pregnancy or in the postnatal period, to a situation that is incompatible with the Convention.

5.11 The authors reiterate that they have not brought any national level proceedings in respect of their claims under the Convention (see para. 2.13 above). They also note that the State party has not objected to the admissibility of the communication.

5.12 The authors emphasize that either there were no effective remedies available to them or that those that were available were unlikely to bring effective relief. The reproductive rights of pregnant women cannot be safeguarded through ordinary court proceedings, given that time is of the essence. There must be an urgent remedy in order to protect the rights under article 12 (2) of the Convention to appropriate prenatal services and adequate nutrition during pregnancy and the period of lactation. Any ex post facto remedy, such as civil claims, cannot be considered effective, because damages in this context are irreparable. In the present case, the authorities deprived the authors of access to an effective remedy, given that the eviction occurred without prior notice or right to appeal. The authors were left homeless, compromising their reproductive health and nutrition during pregnancy, in violation of their rights under article 12 (2) of the Convention, among other instruments.

5.13 The authors further submit that no national level procedures exist for ensuring that a pregnant woman can secure urgent access to the necessary social and medical support when her rights under article 12 (2) of the Convention are violated. They also note that the State party has made no submission to the contrary and that its failure to comply with the request for interim measures demonstrates that, in practice, there was no hope of securing effective relief for the authors.

5.14 The authors note that the European Court of Human Rights has not declared inadmissible the case before it, which concerns the same decision of eviction affecting the authors, and that that indicates that the Court has found no issue concerning the non-exhaustion of domestic remedies.

State party's additional observations

6.1 By note verbale of 10 September 2019, the State party provided additional observations. It reiterates that the Ministry of Labour and Social Policy, in cooperation with the Intermunicipal Centre for Social Work in Skopje, provided accommodation at the centre for homeless people, Čičino Selo, in Skopje, which was refused by all families. It submits that the families instead wished to be accommodated at the Ljubanci children's institution or in Kalanovo, or to receive

"welfare apartments". The State party notes that the Ljubanci children's institution is a rundown facility with no basic services and that the Ministry of Labour and Social Policy does not have any "welfare apartments" for the homeless. By contrast, Čičino Selo provides necessary medications and medical examinations and does not require co-payment from residents. In addition, the centre provides three meals per day, daily activities for social integration and a "regular guard service" for the safety of its residents.

6.2 The State party indicates that the Ministry of Transport and Communications is in charge of allocating welfare apartments, which is conducted through a public call for applications and decided by a commission for the allocation of welfare apartments. The State party also 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 further submits that, on 5 January 2017, 11 families (60 persons) were accommodated at two facilities for social protection, whereas 12 families refused this accommodation. The number of individuals who had previously resided under the *Kale* (Fortress) and were accommodated at these facilities eventually reached 83. Food, hot drinks, hygiene products, blankets, mattresses and clothing were provided to them. On 8 January 2017, they received medical examinations and medication. 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 a non-governmental organization named Ambrela. Furthermore, all of them 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 the social integration programme, "Programme for supported living and reintegration of cared persons" (see paras. 4.2–4.3 above). It adds that, by the end of 2018, the funds provided by the Government for this programme amounted to 1,200,000 North Macedonia denars (approximately €19,000). Furthermore, it notes that children between 5 and 13 years of age participated in the activities of the daily centre for street children, and that, in May,[12] children of appropriate ages were enrolled in a primary school referred to as "Brothers Ramiz and Hamid". It adds that children also took advantage of "free summer and winter vacations" in 2018.

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 a further six months. The individuals had a contractual obligation to maintain the settlement in the manner of a "good housekeeper", and some of them accordingly repaired part of the damages done to the toilets and bathrooms. They were also required to regularly report 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 of them continued with their jobs, whereas 5 "had given up. In addition, because the residents were obliged to "include the children in the educational process", children of appropriate ages attended classes at primary or evening schools. Transportation services, school supplies and assistance for studying were provided.

6.6 The State party submits that health care is provided for all the individuals accommodated in the container settlement and that they were issued State health-care

[12] [The State party indicated "in May", but did not specify the year.]

cards and their children vaccination cards. Newborns were provided with birth certificates and State health-care insurance.

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 that is part of the public institution for the care of children with educational and social problems and conduct disorders in Skopje. Twelve children of 6 to 13 years of age attended the day centre for street children. The families underwent medical examinations conducted 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, given that, since 2016, it has taken all urgent and timely measures necessary to protect the Roma families, and the measures are ongoing. It invites the Committee not to establish a violation of article 5 of the Optional Protocol for the above reason.

6.9 Furthermore, the State party maintains that remedies for the protection of women's rights exist under the Law on Equal Opportunities for Women and Men, of 2012, and the Law on Prevention of and Protection against Discrimination, of 2010, in which the related protection mechanisms and court procedures are set out. The State party also refers to the Office of the Ombudsman, a protection mechanism that can be used in such cases. The State party specifies that both procedures before the Commission for Protection against Discrimination and the Office of the Ombudsman are 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 as not substantiated and that there are no consequences for the persons arising out of 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. They contend that the State party's "unsolicited" submission provided 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 raising a new claim, that it had offered accommodation 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", because there were no places available at that shelter, which was nearly full and was being "run at a limited capacity following a fire". In this 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. Even if there had been room to accommodate more people, the shelter was not suitable for anyone including the authors. In 2013, the Office of the Ombudsman found the living conditions of the shelter to be inadequate, noting, inter alia, the insufficient supply of food, low level of hygiene and problems with waste collection, health care, personal safety and access to education for Roma children. The authors submit that criminal gangs used the shelter and targeted its residents for violence, inter-ethnic violence targeting Roma was notorious and parents feared that their daughters were at risk of sexual abuse and exploitation at the shelter. The State party provided no evidence that it had offered any such accommodation specifically to the authors.

7.2 The authors submit that the State party's efforts that were allegedly made months and years after their eviction are irrelevant, because time was of the essence in the present case. They reiterate that all the authors were left homeless, without any access to social or medical assistance. When it became unbearably cold, two of the authors fled North Macedonia to seek asylum in France, while the remaining two lived under poor and unhygienic conditions at the Ranka Milanovik centre. 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 documents were provided for all the accommodated persons", the State party admits that the authors did not have health insurance 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 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 the Čičino Selo shelter, which had capacity for five or six persons as of 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 With regard to the State party's claim that the authors have not exhausted domestic remedies and that the Office of the Ombudsman could have provided an effective remedy, the authors argue that the Ombudsman "does not have the power to do anything more than making recommendations, proposals and indications".[13] With regard to the Commission for 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 the present case – be reviewed before it takes place. However, given that the authorities provided no advance notice of the eviction to the authors, there was no remedy that they could have exhausted. In this 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] In addition, in paragraph 11 of its general recommendation No. 33 (2015) on women's access to justice, the Committee indicated that States parties have further treaty-based obligations to ensure that all women have equal access to "effective and timely" remedies.[15] Accordingly, the authors maintain that the State party must ensure that women have 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 statement that there are "no consequences for the persons arising out of a delayed reply to the Committee" demonstrates its disrespect for the Committee, the Convention and the Optional Protocol thereto and the authors. Having waited several years for a reply from the State party, the authors claim to have lost "hope of securing justice" under the Optional Protocol.

7.6 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.

[13] The authors refer to information available from the website of the Office of the Ombudsman (http://ombudsman.mk/upload/documents/2013/Izvestaj-Cicino selo.pdf).

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

[15] See *O.G. v. Russian Federation*.

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 procedures, 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 of and Protection against Discrimination, of 2010, but the authors have not submitted a complaint 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 that they could have been able to bring effective relief in the particular circumstances of the complainants. The Committee observes that the State party does not provide any detail or relevant case law that could have been applied to this specific case, to show that the remedies invoked could indeed provide the authors with effective relief. Instead, the State party 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 the 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 the present 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 that 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 communication.

8.9 Therefore, the Committee declares the communication admissible, insofar 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 the information made available to it by the author and the State party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The questions before the Committee are as follows: whether the State party took the measures necessary to address the discrimination faced by the authors as members of a marginalized ethnic minority group in the context of their eviction on 1 August 2016; and whether the State party fulfilled its duty to ensure the authors' access to adequate health care, including reproductive health care, in accordance with article 12 of the Convention.

9.3 The Committee notes that, at the time of eviction, the authors were in a particularly vulnerable situation, given that they were single, young women and/or minors of Roma ethnicity who were pregnant or had recently given birth, and some of them had minor children. It also notes the authors' contention that, those conditions notwithstanding, the authorities decided to demolish the authors' homes, failed to communicate that decision to them in advance, destroyed their only water source and evicted them without providing them with alternative housing. The Committee further notes the information provided by the authors that, although subsequently and following the eviction, they were offered accommodation in a shelter designated for refugees, internally displaced persons and homeless persons, the authors refused the offer because of security concerns and poor living conditions and instead chose to remain living in the open space at the settlement site. The Committee takes note of the State party's observations indicating that: the authors were subsequently provided with accommodation in a social centre and in a container settlement; the State party categorized those affected into groups depending on their needs; and pregnant women were included in the target groups (see para. 4.2 above). The Committee observes, however, that the living conditions at the social centre and the container settlement remained unfit, owing to the sewerage problems, insufficient toilet facilities and scarce food.

9.4 In the light of the foregoing, the Committee considers that the State party has not given due consideration to the pre-existing conditions of the authors so as to refrain from engaging in discrimination against them in the context of the eviction of 1 August 2016. The State party instead implemented a decision to evict the entire community without due notice, resulting in the authors' giving birth while on the street or residing in a social centre, where their particular needs as young pregnant Roma women were not adequately addressed.

9.5 The Committee further notes the authors' claims under articles 12 (1) and (2) and 14 (2) (b) and (h) of the Convention. In this connection, the Committee recalls its general recommendation No. 24 and refers to the obligation of States parties to ensure access to health-care services in connection with pregnancy, confinement and the postnatal period, granting free services if necessary, as well as adequate nutrition during pregnancy and lactation. The Committee also recalls that, in the context of its

concluding observations on the sixth periodic report of the State party (see CEDAW/C/MKD/CO/6, paras. 37 and 38), it identified the barriers faced by Roma women when they endeavoured to gain access to health services and recommended that the State party ensure access to affordable and high-quality health care and prevent stigmatization against Roma women among medical practitioners.

9.6 The Committee notes the contentions of the authors that, under the State party's compulsory insurance plan, they are still required to pay a significant portion of the medical fees, which they cannot afford. In addition, the amount that they should pay depends on whether a doctor chooses to register them as patients, and gynaecologists have refused to register Roma women as patients. Before and after the eviction, most of the authors could not afford to see a doctor. During their pregnancies, L.A. and D.S. never visited a gynaecologist, R.A. managed to visit a gynaecologist twice and L.B. only once, for the delivery. The Committee also notes that the eviction exacerbated the difficult health conditions faced by the authors as young pregnant women in that context, given that their access to food, clean water and nutrition was further compromised. In addition, the authors claim never to have received education on sexual and reproductive health and rights, which remained unchallenged by the State party.

9.7 In the light of the above considerations, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the authors' rights under articles 2 (d) and (f); 12 (1) and (2) and 14 (2) (b) and (h) of the Convention.

9.8 The Committee therefore makes the following recommendations to the State party:

(a) Concerning the authors of the communication:

(i) Provide adequate reparation, including recognition of the material and moral damages that they suffered owing 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) General:

(i) Adopt and pursue specific 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) on temporary special measures, 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 Roma women and girls illegal fees for public health services;

(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, 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 and human rights and women's organizations representing Roma women and girls, to strengthen advocacy against intersectional forms of discrimination on the grounds of 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 of Roma women and girls is carried out if no alternative housing has been provided to those affected.

9.9 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.

Annex

Individual opinion of Committee member Gunnar Bergby (dissenting)

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

2. In my view, the communication should have been found to be inadmissible under article 4 (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 be unreasonably prolonged or would be unlikely to bring effective relief.

3. Secondly, I find the communication to be inadmissible also under article 4 (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 on Human Rights (*Bekir and others v. North Macedonia*), even though the authors of communication No. 110/2016 are not parties to the case before the European Court of Human Rights.