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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3639/2019*, **

Communication submitted by:	E.I.G.R. (represented by counsel, Electra Leda Koutra and Marta Busquets Gallego)
Alleged victim:	The author
State party:	Spain
Date of communication:	30 July 2019 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 August 2019 (not issued in document form)
Date of adoption of decision:	6 November 2020
Subject matter:	Involuntary induction of labour
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Integrity; autonomy; privacy; dignity
Articles of the Covenant:	7, 9 and 17
Articles of the Optional Protocol:	3 and 5 (2) (b)

1.1. The author of the communication is E.I.G.R., a national of Spain. She claims that the State party has violated her rights under articles 7, 9 and 17 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The author is represented by two lawyers.

1.2 On 3 June 2020, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, granted the State party's request for the admissibility of the communication to be examined separately from the merits.

The facts as submitted by the author

2.1 On 29 July 2019, the author, who was 41 weeks and 1 day pregnant, went to the Rey Juan Carlos University Hospital in Móstoles for some routine check-ups. She claims that, on that occasion, the birth plan that she presented was rejected and that the hospital staff told

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

her that she had to sign an informed consent form. The author stated that she wished to undergo procedures such as artificial rupture of membranes only if they were specifically necessary in her case and not as a matter of routine. However, the hospital staff told her that, if she did not sign the informed consent form as requested, the hospital would no longer accept her as a patient and she would be unable to undergo fetal examinations.

2.2 According to the author, she was subsequently informed that, at the hospital in question, the practice was to induce labour at 41 weeks and 5 days of gestation. In that regard, she was asked to sign another form stating that she consented to this procedure. She was told that, if she did not do so, the hospital would no longer accept her as a patient and that its legal department would have to report her. The author then informed the staff that, since she and her baby were healthy, she preferred to undergo "expectant management"[1] until she went into labour naturally.

2.3 The author also points out that women in Spain have the legal right to hire a midwife to assist them in childbirth; however, she states that she had to resort to the public health system as she could not afford a midwife.

The complaint

3.1 While the author wished to give birth in the hospital, she also wished, to the extent possible, for her pregnancy to be allowed to run its natural course. She claims that the hospital prevented this from the outset.

3.2 The author claims that two similar cases recently occurred in Barcelona and Oviedo, where two women were detained by emergency court order and forcibly taken to hospital to have their labour induced. In view of the warning issued by the hospital staff, the author was worried that she too would be detained and later forced to undergo unwanted physical and chemical procedures. She adds that this would amount to a violation of her dignity and autonomy as a pregnant woman and of her rights to integrity and privacy under articles 7 and 17 of the Covenant.

3.3 The author argues that it is for her, and not the State party, to determine the circumstances in which she gives birth to her child. The alternative would amount to a disproportionate violation of her family life, private life and autonomy, not to mention her fundamental dignity and moral integrity, reducing her to a mere instrument and depersonalizing her and her choices.

3.4 The author claims that the available domestic remedies would have been ineffective because a court order requiring her to go to hospital to have her labour induced was about to be issued and she would not have been able to contest it, since she would not have been notified of the order until the day of her arrest. The author therefore applied to the Committee for protective measures in order to avoid being forced to go to hospital to have her labour induced.

State party's observations on admissibility

4.1 In its observations of 7 August 2019, the State party rejects the author's version of events and gives its own account: on 31 July 2019 (at 41 weeks and 3 days of gestation), the author went to the hospital for a check-up. At the hospital, the staff informed her of the risks of not inducing labour from week 42 onward and gave her two options: to schedule an induction for 1 August or to have another check-up on 2 August (at 41 weeks and 5 days of gestation). The author chose the latter option. On 2 August 2019, the author submitted a "birth plan", which the hospital rejected. This plan was reviewed by a midwife, who explained her doubts about it to the author. Two gynaecologists explained once again the reasons for inducing labour at 41 weeks and 6 days of gestation and the risks of not doing so. The author refused to have her labour induced and signed a document stating that she withdrew her consent for induction, which she had given by signing a form during her visit of 29 July. The doctors explained that, in view of the risks to which that decision would

[1] The term "expectant management" refers to a period of watchful waiting during which no active intervention takes place.

expose the baby, the author would have to assume responsibility for it, in keeping with the patient's right to autonomy. The author's lawyer issued a document requesting that the author undergo continual check-ups until she went into labour naturally or decided to have her labour induced. The doctors consulted the hospital's legal department and refused to sign the document, as it contravened the medical directive according to which labour should be induced at 41 weeks and 6 days of gestation. The doctors also informed the author that, although her autonomy took precedence, they would be required to notify the judicial authorities if they considered the health or life of her baby to be at serious risk.

4.2 On 5 August 2019, the author returned to the hospital after her waters had broken. Once there, she was told that, in view of the risks, it would be necessary to induce labour. She agreed and later requested epidural anaesthesia. When her son was born on 6 August 2019, he required some newborn resuscitation care. However, this was a common eventuality about which the author had been informed previously. The baby's condition was stabilized and he was returned to the author.

4.3 In the light of the above, the State party argues that the communication has been devoid of purpose from the outset and that no protective measures are necessary, since the author gave birth after going to the hospital voluntarily.

4.4 The State party affirms that the author was never subjected to forced induction of labour. Her wish not to have her labour induced was respected until her waters broke prematurely (a possibility that had been explained to her), at which point she went to the hospital of her own accord and agreed to have her labour induced. The State party notes that no implements were used and no episiotomy was performed on her.

4.5 The State party alleges that the author has not exhausted all the domestic remedies available to her. According to the State party, there is not a single piece of evidence to suggest that, prior to giving birth, she approached the Spanish judicial authorities to request a measure that would enable her to avoid the alleged risk to which the author claimed to be exposed. The Spanish legal system provides for a legal remedy by which what are known as "simple de facto actions" may be initiated. This remedy involves the adoption of protective measures and highly protective measures in accordance with Act No. 29/1998 on administrative jurisdiction. Under article 135 of the Act, highly protective measures allow for an immediate judicial response (within two days) without the administrative authorities even having to be notified.

4.6 The State party therefore requests that no protective measures be adopted and that the communication be discontinued because it clearly serves no purpose and domestic remedies have not been exhausted.

State party's additional observations on admissibility

5.1 In its observations on admissibility of 28 October 2019, the State party reiterates that the communication serves no purpose and that the author has not exhausted domestic remedies. The State party adds that the author's reluctance to follow medical guidelines put her baby's health at risk.

5.2 Moreover, the State party alleges that the author has abused the "right of submission" under article 3 of the Optional Protocol.

Author's comments on the State party's observations on admissibility

6.1 The author's comments of 30 January 2020 contain her account of the events from the point when she went into labour on 5 August 2019: having already been admitted to hospital, she was asked to sign a consent form for induced labour, which surprised her because her cervix was already dilating and she was in labour. The hospital staff told her that this was necessary in case her cervix stopped dilating and so she signed the document. Later, to the author's surprise, a midwife gave her oxytocin. The author stated that she had not agreed to the use of this drug and that she had signed the consent form because she had been told that it was necessary in case her cervix stopped dilating. The author then said that her amniotic sac had broken only an hour beforehand and that she therefore wished to give birth as naturally as possible, provided that it was safe for her and the baby. She was told that the

delivery was overdue and that she was going to be induced anyway. The author claims that she was naked at this time and that the hospital staff had been pressurizing her for several days. She says that she felt mentally exhausted and was conscious of the fact that, as her and her baby's well-being were in the doctors' hands, she could no longer contradict them. For this reason, she gave in and stopped protesting.[2]

6.2 The author adds that she requested epidural anaesthesia because she began to feel faint. She also needed other medication. The author states that there were many people in the room who had not introduced themselves or explained their role, which violates article 5 (c) and (e) of Act No. 44/2003 on the organization of health professions and runs counter to the case law of the European Court of Human Rights.[3]

6.3 The author claims that, after her baby had been born, the staff pulled out her placenta in a way that caused her pain despite her having asked them to stop, in response to which they told her to be quiet. The umbilical cord was also cut as soon as the baby was born, which was against her will and the guidelines issued by the Ministry of Health.[4]

6.4 The author maintains that, as the baby was exhibiting high levels of bilirubin, the staff took him away from her instead of finding a way for the two of them to remain together, in violation of article 4 (a) and (c) of the European Charter for Children in Hospital (1986) and the case law of the European Court of Human Rights.[5] The author adds that she was not told what tests were being performed on the baby, in violation of article 4 (g) of the above-mentioned Charter. According to the author, the doctor said that she was to blame for her baby's problems because she had decided to have a late delivery.

6.5 The author adds that, as a result of being given uterotonic drugs, she had a haemorrhage and was given a blood transfusion, although no mention is made of this in her medical records.

6.6 With regard to the exhaustion of domestic remedies, the author affirms that the State party has not specified which domestic remedies were available to her or why, and to what extent, they would have been effective. In this regard, the author notes that there are no domestic remedies designed to safeguard against alleged violations of human rights. She adds that she should not be required to exhaust domestic remedies when there is no real prospect of success.[6] The remedy of *amparo* is a subsidiary mechanism that does not pertain to the ordinary courts and protects only certain fundamental rights and freedoms set out in the Spanish Constitution. In this case, there were only four days between the author's last gynaecological examination (on 29 July 2019, when she was at 41 weeks and 1 day of gestation) and the date on which she was supposedly scheduled to have her labour induced (41 weeks and 5 days of gestation). In that short period, she would have had to hire a lawyer and a legal representative, pay some of their fees in advance and grant them power of attorney. The author claims that, since she lacked the necessary financial means, she would have had to apply for free legal aid, which can take up to 10 days to be arranged. Furthermore, most courts in the State party are closed in August. In the light of the circumstances described, the author argues that, even if she had had time to file some kind of appeal against the alleged forced induction, that appeal would have been ineffective by the time a court had ruled on it, as she would have already given birth and her rights would already have been violated as a result.

[2] The author submits information indicating that synthetic oxytocin should be used only in exceptional circumstances as it could cause fetal suffering, asphyxiation or even death. Available at www.elpartoesnuestro.es/informacion/parto/administracion--de--oxitocina--sintetica.

[3] The author cites European Court of Human Rights, *Konovalova v. Russia* (application No. 37873/04), judgment of 9 October 2014.

[4] The author cites *Guía de Práctica Clínica sobre la Atención al Parto Normal*, p. 29. Available at https://portal.guiasalud.es/wp-content/uploads/2018/12/GPC_472_Parto_Normal_Osteba_compl.pdf#_blank.

[5] The author cites European Court of Human Rights, *Johansen v. Norway* (application No. 17383/90), judgment of 7 August 1996; and *P., C. and S. v. United Kingdom* (application No. 56547/00), judgment of 16 July 2002.

[6] The author cites the Human Rights Committee, *T.K. v. France*, communication No. 220/1987; and *M.K. v. France*, communication No. 222/1987.

6.7 With regard to the abuse of the right of submission, the author claims that she was subjected to ill-treatment and/or torture from the moment that she was admitted to the hospital. In this regard, she refers to paragraph 22 of general comment No. 2 (2007) of the Committee against Torture, which includes "medical treatment" as an area in which women may be at risk of being tortured. The author states that she submitted this communication as it concerns a clear case of obstetric violence. Her treatment at the hands of the medical staff illustrates the prevailing injustice and systemic prejudices that women face when they attempt to exercise their reproductive rights and right to health, and also serves as an example of the prevailing tendency to medicalize childbirth.

6.8 The author cites the case law of the European Court of Human Rights,[7] which establishes that every woman has the right to choose the circumstances in which she gives birth. She adds that this case law cites the guidelines of the World Health Organization, which stress the importance of approaching each Caesarean section independently, on a case-by-case basis, taking into account each woman's personal situation and circumstances.[8] The author argues that, in the area of health, ill-treatment can occur in different contexts: therefore, the right to grant consent must also include the right to withdraw it for each medical procedure requested. Health-care staff must see women in labour as persons rather than patients and avoid instrumentalizing childbirth, which places women in situations where their autonomy is reduced and they are highly vulnerable. She adds that abuse in health-care settings (along with physical and mental anguish) is discriminatory and may amount to torture when there is a pattern of subordinating women's bodies and needs to the all-powerful demands of science.[9]

6.9 The author concludes by stating that verbal, physical and psychological violence were used to coerce her, which traumatized her and caused her to abandon her attempts to obtain what she really wanted, which was set out in her birth plan. She was injected with drugs that she had explicitly refused and was subjected to an accelerated procedure, all of which she considers to be unethical, unlawful and based on a skewed perception of her role as a mother and a woman. She was also blamed for her baby's problems (secondary victimization) despite the fact that they only started after he had been separated from her. The author also believes that unnecessary procedures were performed on her baby.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's allegations that the available domestic remedies have not been exhausted, as well as the author's claim that these remedies would not have been effective. The Committee recalls its jurisprudence to the effect that authors of communications must avail themselves of all domestic remedies in order to fulfil the

[7] European Court of Human Rights, *Ternovszky v. Hungary* (application No. 67545/09), judgment of 14 December 2010.

[8] World Health Organization, "Caesarean sections should only be performed when medically necessary" (10 April 2015).

[9] The author cites the observations made by the Special Rapporteur on violence against women, its causes and consequences in her report on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence (A/74/137); general recommendation No. 35 (2017) of the Committee on the Elimination of Discrimination against Women; and the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53).

requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[10]

7.4 The Committee notes the author's arguments concerning the State party's failure to identify the effective remedies that she could have pursued and the feasibility of doing so within the short time available, since her last gynaecological examination in July took place only days before the date on which she was allegedly scheduled to have her labour induced, against her will. The Committee also notes the State party's argument that the author could have requested highly protective measures under article 135 of Act No. 29/1998 on administrative jurisdiction, by initiating a simple de facto action before any Spanish public authority. It also notes that a decision on such measures must be taken within two days and that they allow action to be taken immediately without the authority receiving the request having to be notified beforehand. The Committee notes the author's argument that taking legal action would have required her to pay out a considerable amount of money in a short period of time in order to meet the costs of her legal representation and defence, and that, failing that, she would have had to apply for free legal aid, which could have taken up to 10 days to be arranged. The Committee recalls its jurisprudence according to which financial considerations do not, in general, absolve the author from exhausting domestic remedies.[11] The Committee also notes that the author submitted her complaint to the Committee on 2 August 2019, four days after her birth plan had been rejected by the hospital, and that she was represented by two lawyers, one of whom practises in Spain. All the above indicates that the author could have pursued domestic remedies in order to prevent the alleged involuntary induction of her labour. The Committee is of the view that the author has not exhausted available domestic remedies and that her claims are inadmissible under article 5 (2) (b) of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

[10] *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; and *A.P.A. v. Spain*, communication No. 433/1990, para. 6.2.

[11] *P.S. v. Denmark*, communication No. 397/1990, para. 5.4; *Faurisson v. France* (CCPR/C/58/D/550/1993), para. 6.1; *Kly v. Canada* (CCPR/C/95/D/1576/2007), para. 6.4.