



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 890/2018*, **

<i>Communication submitted by:</i>	Lucia Černáková (represented by counsel, Maroš Matiaško, Forum for Human Rights, and Validity Foundation)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Slovakia
<i>Date of complaint:</i>	10 July 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 10 December 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	19 November 2021
<i>Subject matter:</i>	Confinement in a cage bed in social care institution
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; lack of investigation
<i>Articles of the Convention:</i>	1, 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1)

1.1 The communication is submitted by counsel on behalf of Lucia Černáková, a national of Slovakia born on 6 July 1983. The complainant claims that the State party has violated her rights under articles 1, 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention. Slovakia has made the declaration pursuant to article 22 (1) of the Convention, effective from 17 March 1995. The complainant is represented by counsel.¹

1.2 On 13 May 2019, following the State party's objection to the admissibility of the present complaint, the Committee decided to examine the admissibility of the communication together with the merits.

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.

¹ The power of attorney was provided by the complainant's mother. The complainant's original counsel has been replaced by the Forum for Human Rights and the Validity Foundation.



Facts as submitted by the complainant

2.1 The complainant is a woman with combined intellectual disabilities and autism spectrum disorder. On 29 January 2002, the complainant was deprived of her legal capacity by the Nitra District Court, and her mother was appointed as her guardian. Because her mother was not provided with sufficient support to meet the complainant's needs at home, the complainant was placed in the social care facility in Maňa on 3 July 2006. The complainant currently resides in the social care facility in Topolčany.

2.2 When the complainant was placed in the social care facility in Maňa, which was at that time a residential institution for women with intellectual and psychosocial disabilities, the complainant's mother informed the staff of her daughter's behaviour patterns and the difficulties that she had experienced in adapting to collective life in a regulated institution. As a person with intellectual disabilities and autism spectrum disorder, the complainant had specific needs of care. The complainant's mother submitted evidence during the domestic proceedings illustrating that those needs had not been met by the institution and, as a result, had led to an incident on 9 July 2006, during which the complainant was placed and kept in a cage bed.²

2.3 The Nitra Regional Office, the supervising body of the social care facility in Maňa, conducted an inquiry on the basis of the complaint submitted by the complainant's mother and found that the complainant had, over several days, been verbally aggressive, "restless" and, at one point, had thrown a chair at another resident. The Office noted that the complainant needed individual attention from a particular employee who spent all day walking with her. The complainant was injected with sedatives against her will and visited a psychiatrist who adjusted her medication. Shortly before 9 July 2006, the psychiatrist had cancelled the authorization for the complainant's temporary leave to go home. On 9 July, the complainant became more aggressive, and several nurses physically restrained her and placed her in isolation in a cage bed. In addition, the complainant was subjected to forced chemical restraint through the use of repeated doses of sedatives. The use of the cage bed was confirmed in the Office's report, in which it noted that, although the placement in the cage bed had been recorded, the length of time for which she was confined there had not.

2.4 During the domestic proceedings, the State party's authorities did not contest that the complainant had been forcibly placed in a cage bed on the morning of 9 July 2006 and kept there, against her will, for several hours. The complainant notes that, under article 18 (a) of the Act on Social Assistance, it is not permissible to use physical or non-physical restraint against persons with intellectual and psychosocial disabilities who are placed in social care institutions. However, after the incident, the authorities took no remedial measures. The complainant was not offered any therapy or compensation, and no criminal proceedings took place.

2.5 On 18 July 2006, the social care facility in Maňa decided to end the complainant's institutionalization, upon the request of her mother. On 24 July 2006, the complainant's mother filed a complaint against the facility for the use of the cage bed and the alleged ill-treatment of her daughter in the facility. The Nitra Regional Office concluded, on 17 August 2006, that the facility had violated article 18 (a) of the Act on Social Assistance. However, the Office did not inform the police of its findings, and no further investigation was conducted.

2.6 On 5 September 2016, the complainant's mother filed a criminal complaint, claiming that the complainant's placement in the cage bed on 9 July 2006 had violated the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, under the Criminal Code. On 19 October 2016, the District Police Corps Directorate dismissed the criminal complaint, and its decision was upheld by the District Prosecutor in Nové Zámky on 20 January 2017. On 20 March 2017, the complainant's mother filed a complaint with the Constitutional Court, which was dismissed on 4 April 2017. The Court concluded that the social care facility in Maňa was a private entity and that therefore one of the elements of the definition of torture or other ill-treatment had not been met. Moreover, the Court determined that elements of the definition of ill-treatment had not been met either, given that *mens rea*

² The complainant uses the terms "netted cage bed" or "cage bed", whereas the State party uses the term "net bed".

(intent) was missing. The Court noted that the complainant could have sought redress through a civil action under the Civil Code.

2.7 The harm suffered by the complainant stems from the intentional use of a cage bed in the social care facility in Maňa. It is not a question of medical negligence, whereby harm follows as an unintended negative consequence of treatment. The complainant submits that her complaint should be considered as analogous to cases concerning the use of restraints on persons in detention. The State party must be held directly responsible for the use of restraints.³ The use of the cage bed was not a medical treatment or a treatment that she could refuse. In addition, the authorities were under an obligation to conduct a thorough and effective investigation that would have led to the identification and punishment of those responsible and to provide her with adequate reparation. She argues that wilful ill-treatment of persons who are within the control of State agents cannot be remedied exclusively through an award of compensation to the victim thereof.⁴

2.8 The complainant concludes that she has exhausted all available domestic remedies that were effective, adding that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

Complaint

3.1 The complainant claims that, by placing her in a cage bed, she was subjected to a form of violence, which can be considered as torture or other cruel, inhuman or degrading treatment. The use of cage beds in social care and health-care settings is inflicted disproportionately and discriminatorily on persons with intellectual and psychosocial disabilities and on women.

3.2 Being placed in a cage bed caused her severe pain and suffering, including emotional and psychological distress, in violation of her right to health. Such treatment was instigated by public officials in a State-run institution; staff of the social care facility in Maňa provided social assistance and health and social care on behalf of the State, and they exercised complete and effective control over the complainant. In that context, the complainant claims that she was deprived of her liberty by an administrative decision. She was placed in a cage bed intentionally, with the aim of disciplining or intimidating her. Such treatment amounted to a violation of her rights under articles 1 (1) and 16 (1) of the Convention.

3.3 The complainant claims that the State party has an obligation, in accordance with article 2 (1) of the Convention, to take effective legislative, administrative, judicial or other measures to prevent acts of torture and ill-treatment in any territory under its jurisdiction.

3.4 The complainant's rights under article 4 (1) of the Convention were also violated, given that the State party's criminal law does not incorporate adequate provisions criminalizing ill-treatment amounting to torture and other cruel, inhuman or degrading treatment or punishment or ensuring the effective investigation of claims and the prosecution and punishment, where appropriate, of perpetrators of torture and ill-treatment. The definition of the crime under article 420 of the Criminal Code conflates torture and ill-treatment, and it fails to define elements of torture. In addition, it fails to distinguish acts of torture from ill-treatment on the grounds of *mens rea*. Consequently, intent is required even in cases of degrading treatment, which substantively limits the applicability of the criminal provision in practice. It prevents the carrying out of an effective criminal investigation and leads to de facto impunity for acts of torture or ill-treatment, including against the complainant, as a woman with disabilities in an institutional setting.

3.5 The complainant claims that the State party violated article 11 of the Convention, given that it has an obligation to establish an effective and independent system of control over complaints of torture or ill-treatment, and one over external and civil inspections,

³ European Court of Human Rights, *Bureš v. the Czech Republic* (application No. 37679/08), judgment of 18 October 2012, paras. 79 and 81.

⁴ European Court of Human Rights, *Krastanov v. Bulgaria* (application No. 50222/99), judgment of 30 September 2004, para. 60; and *Kopylov v. Russia* (application No. 3933/04), judgment of 29 July 2010, para. 130.

including monitoring and prevention mechanisms, for the protection of persons with disabilities in institutions against any act of ill-treatment.

3.6 The authorities failed to initiate a criminal investigation into the complainant's confinement on 9 July 2006, did not bring the perpetrators to trial and did not impose appropriate penal sanctions, as required under article 12 of the Convention.⁵

3.7 In addition, the complainant has not been provided with adequate, effective or prompt reparation, in violation of her rights under article 14 (1) of the Convention.⁶ She has received no compensation for physical and moral damages, she has not been offered or provided with any rehabilitation or satisfaction, and the authorities have not taken any steps to prevent the use of cage beds in the future against her in particular or against women with intellectual and psychosocial disabilities in general.

3.8 She adds that the use of chemical, physical or mechanical restraints, resulting in the torture and other ill-treatment of women with disabilities, and interfering with a number of their rights, in health-care and social care settings is often motivated by stereotypes about persons with disabilities and wrongfully justified by theories of incapacity and therapeutic necessity.⁷ The State party has failed to introduce adequate safeguards to protect women with disabilities in social care and health-care institutions from abuse. The complainant adds that the use of cage beds is still lawful in such health-care settings and that no general standards of quality of care have been adopted.

3.9 The complainant requests that the State party, inter alia, grant her appropriate redress and compensation, conduct an impartial investigation into her confinement and the deprivation of her protection and ban the use of cage beds and net beds in health-care and social care settings.

State party's observations on admissibility

4.1 In a submission dated 5 February 2019, the State party requested that the admissibility of the communication be considered separately from the merits, arguing that the communication should be considered inadmissible for failure to exhaust domestic remedies.

4.2 The complainant has failed to exhaust all available domestic remedies, by not seeking judicial redress for the violation of personality rights under the Constitution and the Civil Code, given that she limited herself to filing only an administrative complaint. Given the availability of legal aid in civil matters and the nature of civil proceedings, seeking a remedy through court action represents an available and effective remedy. The European Court of Human Rights has considered civil lawsuits to be an effective remedy regarding alleged violations of the right to life, privacy and ill-treatment.⁸ The Nitra Regional Office found that the social care facility in Maňa had breached its obligations under article 18 (a) of the Act on Social Assistance with respect to the complainant. In the light of that finding, the State party submits that the complainant would have been successful had she submitted a civil law action, noting that, in civil proceedings, a liability is objective, i.e. the complainant must only establish interference with personal rights and a damage, without the need to prove intentional or negligent fault. Civil proceedings would provide the complainant with a better prospect of success than would criminal proceedings.

4.3 With regard to the criminal proceedings, torture and other cruel, inhuman or degrading treatment is criminalized under article 420 (1) of the Criminal Code. The State party alleges that its national laws are in full conformity with the Convention. However, the complainant submitted a criminal complaint 10 years after the incident of her confinement in a cage bed,

⁵ Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, para. 34.

⁶ Ibid., para. 5.

⁷ [A/HRC/22/53](#), para. 64.

⁸ European Court of Human Rights, *Furdík v. Slovakia* (application No. 42994/05), decision of 2 December 2008; *V.C. v. Slovakia* (application No. 18968/07), judgment of 8 November 2011; *N.B. v. Slovakia* (application No. 29518/07), judgment of 12 June 2012; and *Baláz and others v. Slovakia* (application No. 9210/02), decision of 28 November 2006.

based on a criminal provision against torture and ill-treatment, for which a statute of limitations does not apply.

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

5.1 In a submission dated 11 March 2019, the complainant argued that her complaint should be considered admissible, and she admitted to having understood the State party's assertion that a civil claim for violation of her rights would be successful.

5.2 She objects, however, to the State party's assertion that all available effective remedies would not have been exhausted in the present case, even if she had sought redress through a civil claim. The State party has misinterpreted the nature of the alleged violations and the role of civil proceedings in providing redress for torture and ill-treatment. She argues that the use of mechanical restraints in her situation of particular vulnerability requires a thorough and effective investigation, which could lead to the identification and punishment of those responsible. Civil proceedings would not afford her an adequate and effective remedy for the violations she suffered, due to several obstacles inherent in civil litigation.

5.3 On 24 July 2006, the complainant's mother filed an administrative complaint with the Nitra Regional Office, as the supervisory organ, which concluded on 17 August 2006 that the social care facility in Maňa had violated article 18 (a) of the Act on Social Assistance.⁹ Although the State party should have begun a criminal investigation on its own initiative, the Office did not inform the police of its findings, no further investigation was conducted and no reparation was offered or provided to the complainant.

5.4 On 5 September 2016, the complainant's mother filed a criminal complaint, stating that the complainant's placement in a cage bed on 9 July 2006 had violated the absolute prohibition of torture or other ill-treatment under criminal law and requesting an effective investigation into the incident and the provision of reparation available. The complaint was rejected on 19 October 2016. On 20 March 2017, the complainant's mother filed a complaint with the Constitutional Court, which was dismissed by the Court on 4 April 2017. The complainant notes that domestic law is in line with the Convention, inasmuch as it requires a public official to be the perpetrator for the classification of the crime of torture. However, it goes beyond the Convention insofar as it requires a public official to be the perpetrator for the classification of ill-treatment. The Court, in the complainant's opinion, erred in law and in fact by finding that the social care facility in Maňa was a private entity. On that basis, it found that neither offence could be established under national law. In addition, the Court found that the elements of the lesser offence of ill-treatment were not established either, on the basis of lack of the necessary *mens rea*.

5.5 The complainant submits that cases of medical negligence are distinct from the circumstances of her case, which involves the unlawful and intentional use of restraint, without any medical justification. She argues that the standard for the exhaustion of domestic remedies in her case should be that which was applied by the European Court of Human Rights in *Bureš v. the Czech Republic*.¹⁰ In that case, the Court assessed the situation of an applicant who had been strapped to a bed in a detoxification centre, without any medical justification for the use of restraints. The Court indicated that, where an individual had an arguable claim under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the notion of an effective remedy required the State to conduct a thorough and effective investigation capable of leading to the identification and punishment of those responsible. In other words, wilful ill-treatment of persons who were within the control of agents of the State could not be remedied exclusively through an award of compensation to the victim. It concluded that an adequate remedy required a criminal investigation. The Court came to the same conclusion in the more recent case of *M.S. v. Croatia*.¹¹

⁹ Act No. 195/1998 Coll.

¹⁰ European Court of Human Rights, *Bureš v. the Czech Republic*.

¹¹ European Court of Human Rights, *M.S. v. Croatia* (No. 2) (application No. 75450/12), judgment of 19 February 2015.

5.6 With regard to the State party's reference to the decisions of the European Court of Human Rights in support of its arguments concerning the adequacy of a civil lawsuit, the complainant objects to the State party's assertion of relevance. She contends that none of the Court's cases to which the State party refers are relevant to the present case and, if they were, they would support the complainant's position. In *V.C. v. Slovakia*,¹² the Court considered the negligent sterilization of Romani women to be medical malpractice, not a wilful infliction of ill-treatment, as in the complainant's case. The applicant in that case had sought only a civil remedy, even though she could have filed a criminal complaint. The question before the Court was not whether she had exhausted all available remedies, but rather whether the only remedy exhausted by her had been an effective one. The Court found that the civil remedy did not redress the violation, holding that the State had violated the prohibition of ill-treatment, awarding the applicant €31,000 in respect of non-pecuniary damages. *Furdík v. Slovakia*¹³ concerned an alleged failure of the Mountain Rescue Service to save the applicant's daughter, because they arrived too late. *Baláz and others v. Slovakia*¹⁴ concerned a situation in which neither of the existing remedies, criminal or civil, were actually exhausted. The complainant submits that she has therefore properly exhausted criminal law remedies, which were the only remedies that she was obliged to exhaust, considering the elements of the violation of 9 July 2006. She also points to the opinion of the Committee in *Osmani v. Serbia*, in which it noted that having unsuccessfully exhausted one remedy, a person should not be required, for the purposes of satisfying the requirements of article 22 (5) (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would not have offered better chances of success.¹⁵

5.7 With regard to filing a civil lawsuit, the complainant notes that article 11 of the Civil Code is aimed at protecting personality rights. It is a civil law instrument that entails obstacles, which make it ineffective for obtaining redress in cases of torture or other ill-treatment. The first barrier is that, under article 106 (1) of the Code, the right to compensation is statute-barred, from two years after the moment when a complainant becomes aware of the damage; when article 106 (3) of the Code is applied, that limit is three years. The Code does not distinguish between acts of torture and other ill-treatment, and the statutes of limitations are applicable generally. The second barrier is that civil law is based on the presumption that the plaintiff must prove the unlawful action, the damage and the causal nexus. The onus would be exclusively on the complainant, whereas crucial information on the violation remained in the exclusive knowledge, possession and control of the State party, through the social care facility in Maňa. A criminal remedy would have rightly placed the onus of investigation and proof on the State party's authorities. The third barrier is that the complainant would be obliged to pay the court fee and costs of legal representation. If she were unsuccessful, she risked facing an order to pay all of the legal costs of the defendant. A civil lawsuit therefore does not constitute an effective remedy for the specific violations of the complainant's rights in the present case.

State party's observations on the merits

6.1 In a submission dated 5 September 2019, the State party reiterated that, following the administrative complaint of 24 July 2006, the Regional Office in Nitra had indicated, on 17 August 2006, that there had been an infringement of article 18 (a) of the Act on Social Assistance, which set out that, when providing care in social services facilities to individuals with intellectual and behavioural disorders, it was not permissible to use physical and non-physical means of restraint, even in the acute stage of manifestations of their disease. Apart from a statement of the violation of the prohibition of placement in a net bed, the Office ordered the social care facility in Maňa to eliminate all net beds from its premises.

6.2 On 5 September 2016, more than 10 years after the incident, the complainant filed a criminal complaint claiming that the action taken by the social care facility in Maňa amounted to the crime of torture or other cruel or inhuman treatment, under article 420 (1) and (2) (a), (b) and (c) of the Criminal Code, and the crime of abuse of a close or entrusted person, under

¹² European Court of Human Rights, *V.C. v. Slovakia*.

¹³ European Court of Human Rights, *Furdík v. Slovakia*.

¹⁴ European Court of Human Rights, *Baláz and others v. Slovakia*.

¹⁵ *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

article 208 of the Code.¹⁶ The District Police Corps Directorate in Nové Zámky, however, took prompt action and rejected the complaint on 19 October 2016, given that the measures taken by the facility did not constitute the crime of torture or any other crime. The complainant filed an appeal against the Directorate's decision, which was rejected by the District Prosecutor's Office in Nové Zámky on 20 January 2017. A complaint to the Committee was submitted nearly 12 years after the incident, which has complicated the establishment of evidence.

6.3 On 22 March 2017, the complainant submitted a constitutional complaint, asserting the right not to be subjected to torture or other ill-treatment, the right to health, the right to an effective investigation and the right to non-discrimination, and she requested the nullification of the decisions of the District Police Corps Directorate and the District Prosecutor's Office in Nové Zámky. On 4 April 2017, the Constitutional Court rejected the complainant's claims as unsubstantiated, arguing that, given the circumstances of her case, no crime of torture or other inhuman or cruel treatment as defined in article 420 (1) and (2) (a), (b) and (c) of the Criminal Code could have occurred. Whereas the placement of a person in a net bed may generally result in a harm amounting to other cruel or inhuman treatment, the individual circumstances in the present case were not considered to constitute elements of the crime of torture. The complainant was in fact placed in a net bed because of the increased level of distress and aggressiveness that she had exhibited and to protect the health and safety of the complainant and other patients at the social care facility in Maňa. The Court also held that the right to judicial protection did not entail an obligation by law enforcement authorities to launch a criminal prosecution or investigation into a specific party on the basis of the fact that a criminal complaint had been filed, and that the positive obligation of the State to conduct effective investigations only applied to very serious infringements of rights. The Court indicated that, because the facility was a private law entity, by placing the complainant in a net bed, it was not exercising any public authority or otherwise acting at its instigation or with its consent. It did not act with the required intent to cause pain, to punish, to humiliate or to cause harm either, and the complaint therefore did not meet the conditions set out in article 420 (1) of the Criminal Code and in article 1 of the Convention. The Court also noted that, if the complainant's rights had been infringed, she had other means of redress available to her, such as a civil action for personal protection¹⁷ under article 11 of the Civil Code.¹⁸

6.4 The complainant failed to exhaust the available domestic remedies that would have secured the protection of her rights and compensation for the damages due to infringement of her personal rights. The civil law proceedings would be the most effective way to do so, compared with administrative or criminal proceedings. The concept of personal rights and their infringement is broader compared with the crime of torture, and the social care facility in Maňa bore objective responsibility for its actions, regardless of culpability or the specific factual basis. The acts concerned do not need to rise to a level or intensity resulting in severe pain or physical or mental suffering. It is sufficient to establish that the law defines a specific obligation and that the prohibited action occurred. It is highly probable that the complainant would be successful in a civil suit, given that she could present available evidence, and she would likely receive compensation. The State party holds that the present complaint was not submitted in good faith and in line with the principle of subsidiarity and that the criminal complaint was submitted more than 10 years after the alleged crime of torture, which is not subject to a statute of limitations. The relatively long period between the incident and the filing of the criminal complaint has complicated further the related investigation.

6.5 The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under the State party's Constitution and Criminal Code, as part of *jus cogens*. Both the Act on Social Assistance in effect until 31 December 2008 and the version currently in effect¹⁹ stipulate the authority of the Ministry of Labour, Social Affairs and Family to exercise control over social services and to ensure compliance with the Act. The

¹⁶ Slovakia, Act No. 300/2005 Coll.

¹⁷ European Court of Human Rights, *Baláž and others v. Slovakia*; *Furdík v. Slovakia*; and *V.C. v. Slovakia*, paras. 125–129.

¹⁸ Czechoslovakia, Act No. 40/1964 Coll.; and article 16 of the Constitution of Slovakia.

¹⁹ Slovakia, Act No. 448/2008 Coll.

violation of its provisions, including the obligations of social service providers, is considered an administrative offence.

6.6 With regard to the alleged non-conformity between the Convention and domestic legislation, the State party refers to article 420 (1) of the Criminal Code, which states that: “Anyone who in the exercise of public authority instigates or gives express or tacit consent to terrorize, torture or otherwise subject someone to inhuman or cruel treatment resulting in physical or mental suffering may be punished by imprisonment for two to six years.” The provision is based on the definition contained in article 1 (1) of the Convention. Torture is defined as any action that causes an individual severe pain or physical or mental suffering. Other inhuman or cruel treatment does not reach the intensity of torture, which is in line with the case law of the European Court of Human Rights.²⁰ Whereas the definition in article 1 of the Convention requires a specific motive for the acts to amount to torture, such a motive is not required to constitute a crime under article 420 (1) of the Criminal Code. A broader set of actions could be considered a crime, without the need to demonstrate subjective elements, including a motive. However, the acts must be linked to the exercise of authority, i.e. making decisions on rights and obligations, and the provision implies intent for the commission of such acts. Apart from the expansion of scope, article 420 (1) of the Criminal Code also defines as crimes other ill-treatment having adverse physical or psychological effects on a person. Criminal responsibility is expanded to acts similar to torture that are of lesser intensity. The commission of proscribed acts against a protected person constitutes aggravating circumstances. As the Committee has noted, the domestic definitions may differ in terms of wording and may be broader and more extensive. The State party’s definition meets the minimum standards of the Convention, while allowing for wider application and increased protection. As required under article 4 (1) of the Convention, acts of torture are considered as deliberate crimes. In its periodic reports submitted to the Committee under the Convention, the State party has identified other crimes which proscribe elements of torture when committed in the context of genocide, involuntary disappearance, bodily harm or extortion.

6.7 The State party objects to the complainant’s assertion that it did not thoroughly differentiate between torture and other ill-treatment, given the distinct levels of culpability and the requirement of intent as an obligatory part of the subjective aspect of the crime. Article 16 (1) of the Convention defines other ill-treatment as an action that does not rise to the intensity of torture. In the commentary to the Convention, the distinction between the definitions in article 1 (1) and article 16 (1) of the Convention is based on the difference in the intensity of the action and the fact that a specific motive is not required for the latter.²¹ A specific motive may not be equated to intent. In article 1 (1) and article 16 (1) of the Convention, culpability in the form of intent is required to constitute the factual basis of a crime (*mens rea*). Therefore, article 420 (1) of the Criminal Code should be considered as in compliance with article 16 (1) of the Convention. As the Committee has expressed, it is almost impossible to make a distinction between obligations to prevent torture and ill-treatment, given that the obligations are indivisible, interdependent and interrelated.²² Article 16 (1) of the Convention also stipulates other provisions of the Convention, in particular articles 10 to 13, that shall apply to prevent ill-treatment, subject to the conditions of article 16 (2) of the Convention. Accordingly, the obligations under article 4 (1) of the Convention primarily apply to torture under article 1 (1) of the Convention, and not to ill-treatment. The State party also claims that the Convention does not require characterizing other ill-treatment as a crime, and refers to paragraphs 9 and 10 of the Committee’s general comment No. 2 (2007) on the implementation of article 2. If article 420 (1) of the Criminal Code did not thoroughly differentiate between torture and ill-treatment, the State party could not have infringed its obligations under article 4 (1) of the Convention in relation to ill-treatment. Conversely, the inclusion of ill-treatment as a crime under article 420 (1) of the Criminal Code expands protection for persons from torture and ill-treatment, as compared with its

²⁰ European Court of Human Rights, *Gäfgen v. Germany* (application No. 22978/05); *Cestaro v. Italy* (application No. 6884/11); *Aksoy v. Turkey* (application No. 21987/93).

²¹ Lene Wendland, *A Handbook on State Obligations under the UN Convention against Torture* (Geneva, APT, 2002), pp. 57–58.

²² Committee against Torture, general comment No. 2 (2007) on the implementation of article 2, para. 3.

obligations under article 16 (1) of the Convention. The State party asserts that its national legislation is therefore in compliance with the Convention, including article 1 (1).

6.8 Moreover, the complainant was not placed in a net bed to discriminate against her on the basis of her gender or disability. A reverse burden of proof is applied in the event of suspected discrimination, and the complainant is obliged to submit evidence that can be used to determine that such discrimination occurred. Given that the complainant was placed in a social care facility exclusively for women at the given time and that no relevant data or details concerning other cases of suspected institutional violence from facilities for men were provided in the complaint, the State party considers such claims as unfounded.

6.9 With regard to alleged violations of articles 2 (1) and 11 of the Convention, the State party asserts that women with physical, intellectual or psychosocial disabilities enjoy sufficient protection from all forms of abuse, given that the use of violence and restrictions of personal freedom in health-care and social services facilities is prohibited under the Act on Social Services in force from 1 January 2009. There are no statistics that would support the complainant's claims in that regard. The prohibition of the use of any form of violence or restriction of personal freedom, including the prohibition on the use of net beds, was also included in the version of article 18 (a) of the Act on Social Assistance in force from 1 July 1998 to 31 December 2008. The legislation in place protected the complainant from infringement of her personal rights through the direct prohibition of the use of net beds as a means of physically restraining an individual. The action by the social care facility in Maňa during the incident represented an infringement of the applicable legislation. However, given that it has updated the legislation that was in place at the time of the incident, the State party considers that it has adopted legislative measures to prevent torture and ill-treatment, in line with its obligations under article 2 (1), read in connection with article 16 (1), of the Convention.

6.10 The legislation in force at the time permitted the performance of controls and supervision over social services facilities, in accordance with the State party's international obligations, by municipalities, self-governing regions, the Ministry of Labour, Social Affairs and Family and the office of the ombudsman. The complainant objected to a violation of her rights through an administrative complaint to an office in the Nitra self-governing region, in which she stated that the social care facility in Maňa had violated article 18 (a) of the Act on Social Assistance and demanded the removal of all net beds from the facility. Given the long period of time between the incident and the submission of the present communication, the State party does not have further information available regarding the incident, due to archiving and data protection rules. It similarly does not possess any data or statistics on the completed controls and surveillance of social services providers. At present, the complainant receives care at a public social services facility Harlekýn, in Topolčany. The complainant's mother has repeatedly submitted complaints concerning alleged abuse and inhuman treatment of the complainant at that facility as well. The Ministry, the Nitra self-governing region and law enforcement authorities have exercised controls, in accordance with article 11 of the Convention, but none of them have found the allegations to be justified, and no infringement of the applicable legislation was identified. The State party reiterates that the complainant did not use the available means of redress pursuant to article 11 of the Civil Code, despite the finding of unlawful interference into her rights by restraining her in the net bed, and initiated criminal proceedings more than 10 years after the incident.

6.11 Regarding the alleged violation of article 12, given that the employees of the social care facility in Maňa have not been investigated and held criminally responsible, the State party argues that not every act can be considered as criminal and a third-party sentenced accordingly. It elaborates on the guarantees of a prompt and impartial investigation under the Criminal Code, the Act on the Police Corps and the Act on the Office of the Public Prosecutor. Following the criminal complaint of 5 September 2016, the competent police investigator requested that the Nitra self-governing region share the evidence collected when processing the administrative complaint. Following its assessments, including the testimonies from the treating physician, the then-director and the subsequent director of the social care facility in Maňa, the District Police Corps Directorate in Nové Zámky rejected the complaint, given that it fell short of the factual basis of the crime of torture under article 420 (1) of the Criminal Code, stating that the action taken by the facility could not be considered to have been any

other crime either. The complainant submitted an appeal against the decision of the Directorate, which was rejected by the District Public Prosecutor in Nové Zámky on 27 October 2016, thereby reaffirming the Directorate's decision. Given the facts of the case, the State party holds that an independent, impartial and prompt investigation was instituted, in accordance with the Criminal Code and as required under article 12 of the Convention.

6.12 With regard to the claims under article 14 of the Convention, the complainant has argued that she has not been offered compensation for the damage caused to her by the social care facility in Maňa in the context of the administrative, criminal or constitutional complaints. Given that the incident did not constitute the crime of torture under the Criminal Code, there is no reason to apply article 14 of the Convention, which the State party could not have violated. Not every action may be classified as torture under article 1 (1) or ill-treatment under article 16 of the Convention. In the case of interference into personal rights, means of redress other than those stipulated in criminal law are available, such as action for personal protection and compensation for damages under civil law. In *Baláz and others v. Slovakia*,²³ concerning alleged mistreatment by the police, the European Court of Human Rights concluded that the complainants had failed to exhaust all available domestic remedies, given that they could seek protection of their personal rights and request compensation for non-pecuniary damages under article 11 of the Civil Code. In *N.B. v. Slovakia*, the applicant requested compensation for forced sterilization under article 11 of the Civil Code. Although the domestic courts considered forced sterilization to be unlawful, but not amounting to a crime, the Court found no violation of the European Convention on Human Rights, having considered that the domestic authorities had effectively examined the applicant's claims by the judicial or police organs. When seeking a remedy for a violation of obligations by a public authority, pursuant to the Act on Complaints,²⁴ the complainant should have initiated the court proceedings. Given that the social care facility in Maňa violated the prohibition under article 18 (a) of the Act on Social Assistance, in line with the decision of the Nitra self-governing region, proceedings at an independent and impartial court under civil law were the most effective and most accessible means of redress available for the damages caused by the action of the facility. The complainant had means by which to obtain compensation that were available, accessible and, if used, effective. However, her claim lapsed by her failing to initiate the proceedings within the statutory period. With regard to the general legal framework for compensation of victims of crimes, in accordance with article 14 of the Convention, it is governed by the Act on Crime Victims,²⁵ which also guarantees psychological counselling and legal assistance.

6.13 The State party concludes by asserting that the action taken by the social care facility in Maňa did not constitute the factual basis of the crime of torture under article 420 (1) of the Criminal Code and that there was no infringement of article 1 (1) or article 16 (1) of the Convention. Given the proper implementation of its obligations under the Convention and the existing mechanisms to prevent torture and ill-treatment, the State party is of the view that it did not violate the provisions of articles 1 (1), 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention.

Additional information from the complainant

7.1 In a submission dated 18 February 2020, the complainant submitted that the State party had not contested the facts of the case, reiterating that the use of the cage bed was unlawful under Slovak law at the time of her restraint in the social care facility in Maňa and that its harmful consequences on persons with disabilities had been recognized by the State party.

7.2 The complainant objects to the argument that she has not exhausted all available domestic remedies because she had not submitted a civil claim for a violation of her personal rights not amounting to torture or ill-treatment. The State party has misinterpreted the nature

²³ European Court of Human Rights, *Baláz and others v. Slovakia*; *Furdík v. Slovakia*; and *V.C. v. Slovakia*, paras. 125–129.

²⁴ Slovakia, Act No. 9/2010 Coll.

²⁵ Slovakia, Act No. 274/2017 Coll.

of the violations concerned and the effectiveness of civil proceedings in providing redress for acts of torture or ill-treatment.

7.3 Given that criminal proceedings were the only remedies that were both available and effective, all available domestic remedies have been exhausted. She would have been disadvantaged, due to her vulnerability, had she resorted to civil proceedings, which would have been ineffective in her case because they were not available in practice; she claims that she lacked both funds and opportunity to obtain a specialized attorney and that she did not have access to the evidence necessary to carry the burden of proof²⁶ or the competence to file a court action. If she had initiated civil proceedings, the defendant could have only been the social care facility in Maňa as a legal entity, which would have led to the impunity of the perpetrators who had violated her human rights.

7.4 According to international human rights law, there is a need to strictly differentiate between the unintended consequences of otherwise legitimate or justifiable medical action, and wilful acts; in the latter case, there is no need to exhaust domestic remedies through action to seek protection of personal rights. In the present case, the harm was caused by the wilful²⁷ and unlawful placement of the complainant in a cage bed, without any medical justification.²⁸ The present case is analogous to the use of restraints on persons in detention or subject to treatment in a psychiatric hospital. The concept of an effective remedy requires the State to conduct a thorough and effective investigation. The wilful ill-treatment of persons subject to the control of State agents cannot be remedied exclusively through an award of compensation to the victim.²⁹ The complainant therefore rejects the argument that she did not act in good faith when submitting the complaint to the Committee without seeking redress through civil law. Considering the wilful and unlawful use of a cage bed against the complainant, in particular given that she is a person with disability, submitting a complaint with the Nitra Regional Office and the subsequent criminal complaint were the only available avenues for seeking an adequate remedy capable of leading to the identification and punishment of those responsible and guarantees of non-repetition and of providing the complainant with satisfaction and compensation.

7.5 The complainant reiterates that all four elements of torture, including severe pain or suffering, intent, purpose and State involvement, were present, and that by placing her in a cage bed, she suffered severe emotional distress. Her rights were violated by the fact that domestic criminal law does not incorporate adequate provisions criminalizing torture and other cruel, inhuman or degrading treatment or punishment. Moreover, the national legislation does not ensure the effective investigation of cases of torture and ill-treatment and the prosecution and punishment, where appropriate, of perpetrators.³⁰ The definition in article 420 of the Criminal Code conflates torture and ill-treatment and fails to define elements of torture. In particular, the law does not define the specific purposes for inflicting torture, including discrimination. It also fails to distinguish acts of torture from ill-treatment on the grounds of *mens rea*. Given that intent is required even for acts of degrading treatment, it limits the applicability of that provision in practice. Although the act committed against the complainant would have been considered torture or other cruel, inhuman or degrading treatment or punishment under international law, it cannot be effectively subsumed under domestic criminal law. It leads to the practical impossibility of carrying out an effective criminal investigation and to de facto impunity for the perpetrators of acts of torture or ill-treatment against the complainant, as a woman with disabilities in an institutional setting.

²⁶ The complainant would be required to prove illegality, harm done and causality. While illegality was proven by the fact that the Nitra Regional Office had stated the illegality of the placement of the complainant in a cage bed, substantiating the harm done to the complainant and the causality thereof would be impossible due to a lack of reasonable and procedural accommodations. The complainant holds that she had a better prospect of success in criminal proceedings, where the burden of proof is shifted.

²⁷ The argument was not contested by the Nitra Regional Office, as supervisory entity, or the State party.

²⁸ European Court of Human Rights, *Bureš v. the Czech Republic*.

²⁹ European Court of Human Rights, *Krastanov v. Bulgaria*, para. 60; and *Kopylov v. Russia*, para. 130.

³⁰ CAT/C/SVK/CO/3, para. 7.

7.6 The complainant argues that the State party violated the obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and to establish an effective and independent system of control over complaints and one over external inspections,³¹ to protect persons with disabilities in institutional settings from any act of ill-treatment. The use of chemical, physical or mechanical restraints, resulting in the violation of the right of women with disabilities to freedom from torture and other ill-treatment, and interfering with a number of their other rights,³² in health-care and social care settings, is motivated by stereotypes about persons with disabilities and wrongfully justified by theories of incapacity and therapeutic necessity.³³ The State party has failed to introduce adequate safeguards to protect women with disabilities in social care and health-care institutions from abuse, arguing that the use of cage beds is still lawful in health-care settings.

7.7 The authorities failed to initiate criminal proceedings after the incident of 9 July 2006, did not bring the perpetrator(s) before a court and did not impose appropriate penal sanctions, as required under article 12 of the Convention. The complainant concludes by recalling that she has not been offered or provided with any reparation for the harm suffered due to being placed in a cage bed and that her efforts to obtain it have been futile. The State party's obligation to provide the complainant with an appropriate remedy under article 14 of the Convention has not been fulfilled.³⁴

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 With regard to article 22 (5) (b) of the Convention, the Committee takes note of the State party's argument that the complainant has not exhausted all domestic remedies, given that she could have submitted a civil claim under article 11 of the Civil Code, through which she would have most likely obtained a remedy for the harm suffered, given the principle of objective responsibility. The State party claimed that the complainant's criminal complaint was submitted only in 2016, 10 years after the decision on her administrative complaint, and that the present communication was not submitted in good faith. The Committee takes note of the complainant's argument that the criminal proceedings were the only remedies that were available and effective, given a reversed burden of proof, and that the civil action would not have been effective.³⁵ As a woman with disabilities, she held that she could not bear the burden of proof while the evidence was in possession of the social care facility in Maña, that her legal capacity was restricted and that the claims were time-barred (see paras. 5.5, 6.3–6.4 and 7.3 above). The complainant claimed that the civil action could not guarantee an effective investigation of the ill-treatment imposed on her unlawfully and wilfully, that it would not ensure compensation for the harm she had suffered, that the State party had violated its obligation to investigate the incident ex officio and that the perpetrators remained unpunished.³⁶ The Committee observes that the Nitra Regional Office found there to have been a violation of the complainant's rights on 17 August 2006, that the complainant's criminal complaint was suspended in 2016, and the appeal against the decision was rejected, and that her constitutional complaint was rejected as unsubstantiated on 4 April 2017. The Committee also observes that the Constitutional Court did not consider the submission of the criminal complaint in 2016 as an abuse of submission and that the present communication was submitted a year after the exhaustion of the last available remedy in 2018. Given the

³¹ A/56/44, para. 114 (d).

³² CRPD/C/SWE/CO/1, para. 37.

³³ A/HRC/22/53, para. 64.

³⁴ Committee against Torture, general comment No. 3 (2012), para. 5.

³⁵ See e.g. *Dar v. Norway* (CAT/C/38/D/249/2004), para. 6.5.

³⁶ *Osmani v. Serbia*, para. 7.1.

circumstances, the Committee considers that a civil action would not have been likely to bring effective relief to the complainant, given that it was not available to her in practice, in particular due to a lack of reasonable and procedural accommodations to assist her in meeting the burden of proof, and that it would not have led to establishing accountability of the perpetrators.³⁷ Accordingly, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the present communication.

8.3 The Committee takes note of the State party's argument that the communication is also manifestly ill-founded, and therefore inadmissible, pursuant to article 22 (2) of the Convention, in particular with regard to the complainant's claims that placing her in restraints amounted to torture, stereotyped abuse and discrimination, in violation of article 1. The Committee also takes note of the State party's objection that the constitutive elements of torture, including the intent, intensity and purpose of disputed acts and the quality of the subject, have not been met, given that the complainant was restrained after she had presented as posing risks to her health and to the health of other patients at the social care facility in Maña. The Committee recalls that the personnel of non-State or even private institutions providing public services are acting in an official capacity, given their responsibility for carrying out a State function, without derogation of the obligation of State officials to prevent torture and ill-treatment.³⁸ The Committee observes that the State party's authorities have inadequately assessed the quality of the subject, given that the social care facility in Maña provided public services on the basis of the Act on Social Assistance, that the facility's role was supervised on the basis of the Code of Administrative Procedure³⁹ and that the Nitra Regional Office, as founder of the facility, found a violation of the Act in exercising the State party's authority. The Committee also observes that the deliberate intent and discriminatory purpose of placing the complainant in restraints have not been established for the act to amount to torture and that no evidence to support the allegations of stereotyped abuse and discrimination has been provided. Given that the claims under article 1 of the Convention, including the allegations of abuse and discrimination on the basis of gender and disability, have not been sufficiently substantiated, the Committee considers those claims as manifestly ill-founded and therefore inadmissible pursuant to article 22 (2) of the Convention.

8.4 The absence of constitutive elements of torture does not prevent the Committee from examining whether placing the complainant in restraints did not constitute ill-treatment. The Committee takes note of the complainant's claims that, having been restrained pending confinement in the social care facility in Maña, and the lack of investigation and absence of redress thereof, amounts to a violation of articles 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention. The Committee considers those claims to be adequately substantiated for the purposes of admissibility. Given that the Committee finds no further obstacles to admissibility, it declares the claims under articles 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information provided to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 In the present case, the issue before the Committee is whether the restraining of the complainant in a cage bed on 9 July 2006 amounted to a form of violence and harm, in breach of her rights under articles 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention.

9.3 With regard to the claims of a violation of the complainant's rights under article 16 (1), the Committee takes note of her argument that having been restrained in a cage bed at the social care facility in Maña was not justified by medical necessity and was analogous to impermissible restraints imposed on persons deprived of their liberty. She argues that she was restrained intentionally, with the aim of disciplining her, that the staff of the social care facility acted in their public capacity and that she was deprived of her liberty by an administrative decision. The Committee also takes note of the claim that such treatment

³⁷ Ibid.

³⁸ Committee against Torture, general comment No. 2 (2007), paras. 7 and 17–18.

³⁹ Act No. 67/1971 Coll.

caused the complainant severe pain and suffering, which amounted to cruel, inhuman or degrading treatment, if not torture, and that similar restraints have been imposed disproportionately on persons with intellectual and psychosocial disabilities and on women. Furthermore, the Committee takes note of the allegation that the use of cage beds is still lawful in health-care settings in the State party and that no general standards of quality of care have been adopted. The Committee also takes note of the State party's argument that not every action may be classified as ill-treatment under article 16, however, it notes that the Constitutional Court admitted that the complainant had possibly suffered degrading treatment. In that context, the Committee recalls that it has, in its jurisprudence and in its general comment No. 2 (2007), addressed the risk of torture and ill-treatment by non-State actors and the failure on the part of a State party to exercise due diligence to intervene and stop the abuses that are impermissible under the Convention, for which it may bear responsibility. It also recalls that ill-treatment can be committed through acts or omissions, not requiring intent, as negligence may suffice. On the basis of the information available, the Committee concludes that the complainant's allegations must be taken fully into account, namely, that the restraints were imposed on her by the staff of the social care facility in Maňa acting in their public capacity, on behalf of the State, and that the act in question reached the intensity, and harmful consequences, amounting to ill-treatment within the meaning of article 16 (1) of the Convention.

9.4 With regard to the claims of a violation of article 2 (1), the Committee takes note of the complainant's claims that the State party has not taken effective measures to prevent acts of torture or ill-treatment, given that she was restrained in a cage bed when deprived of her liberty, without adequate protection from abuse and violence. Although the complainant submitted several complaints with regard to the incident, it has not been effectively investigated. The Committee recalls that the obligation to prevent ill-treatment in practice overlaps, and is largely congruent, with the obligation to prevent torture, that the definitional threshold between ill-treatment and torture is often not clear and that the conditions that give rise to ill-treatment frequently facilitate torture and that therefore the measures required to prevent torture must be applied to prevent ill-treatment.⁴⁰ The Committee observes that the use of a cage bed was unlawful under the Slovak law in force at the time and that the State party admitted that a violation of the Act on Social Assistance had been found in a national court in the complainant's case, including the fact that the duration of the complainant's time in restraints was not recorded in a special register. The Committee considers that confirming that a violation of domestic law had been found by the Nitra Regional Office, without remedying the harmful consequences for the complainant, is not an effective means of addressing ill-treatment in order to prevent its recurrence. Moreover, no information has been provided on the steps taken to rectify the absence of a record of the duration of the complainant's confinement.⁴¹ Accordingly, the Committee concludes that there has been a violation of article 2 (1), read in conjunction with article 16 (1), of the Convention.

9.5 Concerning the claims under article 4 (1), the Committee takes note of the State party's argument that article 420 of its Criminal Code offers wider protection, given that it criminalizes acts of both torture and ill-treatment, while asserting that article 4 of the Convention requires only the criminalization of torture. The Committee, however, takes note of the complainant's objection to that argument, stating that the definition of the crime concerned conflates torture and ill-treatment, given that it does not define elements of torture and fails to distinguish acts of torture from ill-treatment on grounds of *mens rea*, because intent is required even for cases of degrading treatment. The complainant argues that that leads to the impossibility of carrying out an effective criminal investigation and to de facto impunity for acts of torture or ill-treatment perpetrated against women with disabilities in institutional settings. The Committee recalls that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture or ill-treatment to remain unpunished. It also recalls that elements of intent and purpose, as stipulated in article 1 of the Convention, do not involve a subjective inquiry into the motivations of the perpetrators, but must be objective determinations, that ill-treatment differs from torture in the severity of pain and suffering, without requiring a proof of purpose, and that ill-treatment may be caused by

⁴⁰ Committee against Torture, general comment No. 2 (2007), para. 3.

⁴¹ Ibid.

negligence. The Committee observes that, although the complainant's being placed in restraints has been formally examined by the authorities, her complaint was suspended on the basis of formal elements of article 420 of the Criminal Code not having been met, without the conduct of an investigation or the punishment of the perpetrators of the ill-treatment. The Committee concludes that there has been a violation of article 4 (1) of the Convention.

9.6 The Committee takes note of the complainant's claim of a violation of article 11 of the Convention, given that the State party has not met its obligation to establish an effective and independent system of control over complaints of torture or ill-treatment and one over external and civil inspections, including monitoring and prevention mechanisms, to protect persons with disabilities in institutions against any act of ill-treatment. The complainant also argues that article 11 was violated because the State party failed to conduct the necessary oversight of her placement in restraints, the duration of which was not recorded. The Committee recalls that the obligation of monitoring to prevent torture and ill-treatment extends to situations in which violence is inflicted either officially or privately.⁴² In the absence of compelling evidence from the State party that oversight of the conditions of the complainant's being placed in restraints was ensured, the Committee concludes that there has been a violation of article 11 of the Convention by the State party.⁴³

9.7 Regarding the claims of a violation of article 12, the Committee takes note of the complainant's argument that the authorities failed to investigate the incident of 9 July 2006, did not bring the perpetrators to trial and did not impose appropriate penal sanctions. The Committee also takes note of the State party's objection to that argument, indicating that the complainant's criminal complaint was examined, but was suspended. Although an investigation was opened, the State party has not prosecuted the alleged perpetrators of ill-treatment, arguing that the material elements of a crime have not been established. The Committee notes that the State party also objected to the argument, on the basis that the complainant did not seek compensation for immaterial harm. The Committee recalls the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed to conduct a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed.⁴⁴ Such an investigation should be prompt, impartial and effective.⁴⁵ A criminal investigation must be aimed at determining the nature and circumstances of the alleged acts, establishing the identity of the persons who may have been involved,⁴⁶ providing the victim with adequate reparation and combating impunity for violations of the Convention.⁴⁷ The Committee recalls that article 12 applies equally to allegations of cruel, inhuman or degrading treatment or punishment. Accordingly, the Committee considers that the wilful ill-treatment of a person who is within the control of agents of the State or non-State actors acting in a public capacity cannot be remedied exclusively through an award of compensation to the victim. In the circumstances of the present case, the Committee concludes that the State party failed to meet its obligations under article 12 of the Convention.

9.8 With regard to the alleged violation of article 14 (1), the Committee takes note of the State party's argument that an effective remedy has been ensured through the administrative and criminal investigations, whereas redress could not be provided because torture was not established. The Committee observes that the criminal investigation was suspended without the identification of the perpetrators, that the complainant has not received any compensation, rehabilitation or satisfaction for physical and moral harm suffered and that no steps have been taken to prevent the use of cage beds in the future against her in particular and women with intellectual and psychosocial disabilities in general. As the Committee affirmed in paragraph 17 of its general comment No. 3 (2012) on the implementation of article 14, a State party can be in violation of article 14 of the Convention, which requires States parties to ensure that

⁴² Ibid., para. 25.

⁴³ *Gahungu v. Burundi* (CAT/C/55/D/522/2012), para. 7.7.

⁴⁴ *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.4; and *Ramírez Martínez et al v. Mexico* (CAT/C/55/D/500/2012), para. 17.7.

⁴⁵ *E.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 13.2.

⁴⁶ *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.7; and *Djemajl et al v. Yugoslavia* (CAT/C/29/D/161/2000), para. 9.4.

⁴⁷ Committee against Torture, general comment No. 3 (2012), para. 18.

victims of torture or ill-treatment obtain redress, through a failure to effectively investigate, criminally prosecute perpetrators of, or allow civil proceedings related to, allegations of acts of torture or ill-treatment. When acts of torture or ill-treatment are committed by non-State officials or private actors, the State bears responsibility for any failure to exercise due diligence to prevent and investigate such acts or to prosecute and punish such non-State officials or private actors in accordance with the Convention⁴⁸ and for providing redress to the victims.⁴⁹ The Committee recalls that the provision of monetary compensation only is inadequate for a State party to be in compliance with its obligations under article 14,⁵⁰ that the right to redress requires initiating or concluding legal investigations into complaints of torture or ill-treatment without undue delay⁵¹ and that both civil and criminal remedies which are effective should be available to victims.⁵² In the light of the foregoing, the Committee considers that the complainant has been denied her right to effective redress and reparation under article 14 (1) of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it constitute violations of article 2 (1), read in conjunction with article 16 (1), and articles 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention.

11. The Committee urges the State party: (a) to complete the investigation into the act in question with a view to sanctioning all persons who may have been responsible for the complainant's ill-treatment; (b) to provide the complainant with appropriate redress, including compensation for material and non-material damages, rehabilitation, satisfaction and guarantees of non-repetition; (c) to take measures to prevent the repetition of similar acts in the future, including by strictly regulating, in the context of the Convention, the use of physical restraints in psychiatric and related institutions, by restricting the use of physical restraints in all establishments and preventing the use of unlawful or prohibited forms of restraints;⁵³ and (d) to provide relevant training to the staff of social care and psychiatric institutions. In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above findings.

⁴⁸ Ibid.

⁴⁹ Ibid., para. 7.

⁵⁰ Ibid., para. 9.

⁵¹ Ibid., para. 25. See also *Zentveld v. New Zealand* (CAT/C/68/D/852/2017), para. 9.9.

⁵² Committee against Torture, general comment No. 3 (2012), para. 26.

⁵³ CAT/C/DEU/CO/5, paras. 16 and 39; and CAT/C/DEU/CO/6, paras. 34–36. See also CCPR/C/SVK/CO/4, para. 21.