Copenhagen, 30 May 2023

CCPR Communication No. 2754/2016
J.S.K.N. v. Denmark
Follow-up observations of the Government of Denmark

1. Introduction

By letter of 30 November 2022, the Human Rights Committee (hereinafter 'the Committee') transmitted its views adopted on 25 October 2022 in the above case to the Government of Denmark (hereinafter 'the Government').

In its views, the Committee found that Denmark has violated the author's rights under Article 26 of the International Covenant on Civil and Political Rights (hereinafter 'the CCPR') by failing to demonstrate that the refusal to grant an exemption from the language proficiency requirement and the citizenship test was based on reasonable and objective grounds as the author was not provided with any information about the reasoning in the decision on his application or on the grounds for refusing his application, see para. 8.7 of the Committee's views.

Pursuant to the request made in para. 11 of the Committee's views, the Government was requested to inform the Committee, within 180 days, about the measures taken to give effect to the Committee's views.

2. The views adopted by the Committee

As regards the admissibility of the communication, the Committee initially considered that it was not precluded by article 5 (2) (b) of the Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter 'the Optional Protocol'), which stipulates that an author must exhaust all available domestic remedies before submitting a communication, from considering the communication, see para. 7.5.

The Committee emphasised in this regard, *inter alia*, that the author had been explicitly informed by the Danish Ministry of Immigration, Integration and Housing (*Udlændinge- Integrations- og Boligministeriet*) (today the Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*)) that the negative decision on his application for naturalisation could not be appealed to 'any other authority'. The Committee also emphasised the lack of reasoning behind the decision of the Parliamentary Naturalisation Committee (*Indfødsretsudvalget*) (hereinafter 'the Naturalisation Committee') to deny an exemption from the requirements that the author must meet to be listed in a naturalisation bill. In the opinion of the Committee, the author was thus left with no actual and reasonable possibility to argue discrimination based on his disability. Hence, the Committee considered that a judicial review under section 63 of the Danish Constitution of the Naturalisation Committee's negative decision was not an effective remedy for the author *in concreto*, see paras 7.4 and 7.5.

In relation to its consideration on the merits, the Committee found that Denmark has violated Article 26 of the CCPR. The Committee considers that by failing to provide the author with any reasoning in the Naturalisation Committee's decision or any information on the grounds for refusing the author's application for an exemption from the language proficiency requirement and the citizenship test based on his medical health status, Denmark

failed to demonstrate that the refusal to grant the exemption was based on reasonable and objective grounds, see paras 8.7 and 9.

Consequently, the Committee also found that Denmark is under an obligation to provide the author with full reparation for the violation incurred, including adequate compensation and a reconsideration of the author's application, taking into consideration the Committee's findings, see para. 10. The Committee further held that Denmark is under an obligation to avoid similar violations in future, see para. 10. Finally, the Committee requested Denmark to publish its views in the present case and to have them widely disseminated in the official language of the State party, see para. 11.

3. The Government's follow-up observations

In these follow-up observations, the Government will first address the issue of admissibility of the communication in para. 3.1.

Secondly, the Government will comment on the Committee's findings in relation to the merits of the communication in para. 3.2.

Subsequently, the Government will comment on the Committee's finding that the Government should provide the author with full reparation and reconsider his application in para. 3.3.

Finally, the Government will address, in para.3.4, the Committee's request that Denmark have the Committee's views widely disseminated.

3.1. Inadmissibility due to non-exhaustion of domestic remedies

The Government respectfully maintains that the communication should have been considered inadmissible due to non-exhaustion of domestic remedies, see Article 5 (2) (b) of the Optional Protocol.

The Government submits that it follows from Article 5 (2) (b) of the Optional Protocol that the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Government observes that the requirement that an individual must have exhausted all available national remedies for the Committee to reach a decision on admissibility is also stipulated in Rule 99 (f) of the Committee's Rules of Procedure.

The Government emphasises that the requirement of the CCPR that all national remedies must be exhausted is a fundamental rule within the Covenant system[1], the purpose being to allow the respondent State party to a case an opportunity to remedy an alleged harm if a violation of the CCPR is established. The Government is therefore of the opinion that the requirement of exhaustion of domestic remedies should not be disregarded unless compelling evidence shows that the national remedies available are ineffective and would not offer any reasonable prospect of redress.

As appears from paras 4.1 and 6.1 of the Committee's views, the Government respectfully maintains that effective remedies were available to the author at the time of the Naturalisation Committee's refusal of 27 October 2015 to grant the author an exemption from the requirement to provide evidence of his Danish language skills.

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[1] See, *inter alia*, *Daniel Billy et al. v. Australia* (CCPR/C/135/D/3624/2019), para. 7.3

As appears from para. 4.9 of the Committee's views, the Government has submitted that the Danish Supreme Court (*Højesteret*) established in its judgment of 13 September 2013[2] that according to section 63 of the Danish Constitution, an applicant who has not been included in a naturalisation statute can request the courts to review whether obligations under international law were breached when Parliament and the Naturalisation Committee exercised their discretion as to whether Danish nationality should be granted to the applicant and whether the applicant has a claim for damages or compensation in that connection. However, no applicant can seek a judicial review of claims to the effect that the applicant must be listed in a naturalisation bill or must be granted nationality by statute.

Accordingly, the decision not to list the author in a naturalisation bill cannot be appealed, however, the author is not precluded from bringing claims before the domestic courts alleging discriminatory treatment by the Naturalisation Committee, or any other national authority, contrary to Denmark's international legal obligations, which was established in the above Supreme Court judgment, notwithstanding that it appears from the negative decision on the author's application that the decision could not be appealed to 'any other authority'.

In the Government's opinion, the Government has therefore sufficiently demonstrated and specified the available and effective remedy that the author has failed to exhaust, see para. 5 of the Committee's General Comment No. 33 on Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights. Furthermore, the Government observes that it is undisputed that a national remedy was available at the time of Naturalisation Committee's decision on refusal and consequently also at the time of the author's submission of his communication to the Committee.

The Government therefore respectfully maintains that the author should have made use of the above remedy before filing a complaint with the Committee as set out in Article 5 (2) (b) of the Optional Protocol as there were effective domestic remedies in place allowing the author redress for an alleged breach of Article 26 of the CCPR at the time of the author's communication to the Committee.

3.1.1. Comparable case-law from the European Court of Human Rights

Further to the above, the Government reiterates the submission reproduced in para 6.2 of the Committee's views. The Government refers in this respect to the decision delivered by the European Court of Human Rights (hereinafter 'the ECtHR') on 13 October 2016 in *Nazari v. Denmark* (application No. 64372/11), which also concerned a decision made by the Naturalisation Committee. In that case, the ECtHR took note of the Supreme Court's judgment of 13 September 2013. Consequently, the ECtHR declared the application inadmissible for non-exhaustion of domestic remedies as the applicant of that case could have requested a judicial review by the domestic courts under section 63 of the Danish Constitution before lodging an application with the ECtHR.

The Government observes that the ECtHR explicitly said in para. 34 of *Nazari v. Denmark* that had the applicant of that case brought his complaint before the domestic courts, the domestic courts would have had jurisdiction to assess the merits of his complaint, which were whether the refusal to put the applicant on the list for naturalisation without providing any reasons amounted to a breach of obligations under international law. The ECtHR further held in para. 34 that although the said Supreme Court judgment was the first judgment on judicial review under Article 63 of the Constitution in relation to the process of granting nationality, the

[2] Weekly Law Reports (UfR) for 2013, p. 3328

ECtHR was satisfied, in the particular circumstances of the case, that a court review under Article 63 of the Constitution is a remedy which is sufficiently certain not only in theory but also in practice.

Against this background, the Government respectfully urges the Committee to reconsider its findings on the admissibility of the present case, taking into account the issues raised above.

3.2. Merits

Without prejudice to the above, the Government will also comment on the Committee's findings on the merits of the present case, namely that the Government violated Article 26 of the CCPR by failing to demonstrate that the refusal to grant an exemption from the language proficiency requirement and the citizenship test was based on reasonable and objective grounds as the author was not provided with any information about the reasoning or the grounds in the refusal, see para. 8.7 of the Committee's views. In this connection, the Committee also considers that the lack of information about the reasoning behind the decision and the ensuing lack of transparency of the procedure make it very difficult, if not impossible, for the author to submit further evidence or reapply for nationality through naturalisation.

As regards the above, the Government refers to the Supreme Court judgment of 9 May 2017.[3] Like the case at hand, that case concerned three refusals of applications for naturalisation due to the lack of Danish language skills. The petitioners of that case had also asked the Naturalisation Committee to grant an exemption from the requirement of Danish language skills, including by referring to the circumstance that they suffered from post-traumatic stress disorder (PTSD) and that it was therefore not possible for them to enhance their Danish language skills to the level required. In particular, the petitioners had submitted to the domestic courts that it was contrary to Denmark's international obligations not to grant an exemption from the requirement of Danish language skills because of their mental disorders and that the reasonings for the refusals were insufficient relative to Denmark's international obligations.

As regards the duty to provide a reason for a refusal of an application for nationality, it appears from the Supreme Court judgment that Article 11 of the European Convention on Nationality of 6 November 1997, which requires reasons in writing, applies to refusals of naturalisation by the Ministry of Immigration and Integration and the Naturalisation Committee, but that based on the wording of that Convention, read in conjunction with the contents of the Explanatory Report to the European Convention on Nationality, it is not clear what the specific contents of such reasoning for a refusal of an application for nationality must be. The Supreme Court found in this regard that, except in cases of national security, the contents of any reasoning must give the applicant a legal and factual background for determining the reason for the refusal of naturalisation.

In the above case, the Supreme Court found that the requirement of reasoning had not been disregarded in the refusals at issue. In making its assessment, the Supreme Court took into account that it appeared from the letters of refusal that the reason for refusing the applications was that the requirements of Danish language skills, etc., had not been met, including that no evidence had been provided of Danish language skills, etc. The Supreme Court also took into account that it appeared from the reasoning behind the decisions made by the Naturalisation Committee and/or the Nationality Division (*Indfødsretskontoret*) of the Ministry of Immigration and Integration that they had found that the conditions for granting an exemption due to very serious physical

[3] Weekly Law Reports (UfR) for 2017, p. 2469

or mental illness had not been met. Finally, the Supreme Court emphasised that the relevant persons had been notified of the rules forming the basis of the refusal of their applications.

Against this background, the Supreme Court found, based on an overall assessment, that in view of the context of the cases, the reasoning given in the refusals constituted a reasonable basis for determining the reason for the refusal of naturalisation. The Supreme Court said in that connection that the decisions must be construed to mean that it was the assessment of the Naturalisation Committee and/or the Nationality Division that the health information, including the information on PTSD, was not sufficient evidence to prove that the relevant persons were not able to meet, nor had any prospect of meeting the requirements of Danish language skills, etc.

Against this background, the Supreme Court found that the requirement of reasoning set out in Article 11 (the requirement of reasons in writing in decisions relating to, *inter alia*, the acquisition of nationality) of the European Convention on Nationality had not been disregarded. Accordingly, Danish case law on the requirement of reasoning has developed since the Government submitted its observations on the communication on 23 May 2016 and 3 March 2017.

As regards the case at hand, the Government observes that the author had been informed that he did not meet the conditions of section 24(1)-(2) of Circular Letter No. 9253 of 6 June 2013, which contains the guidelines for naturalisation that define the required evidence of Danish language skills and the required evidence of the citizenship test. The author was thus informed of the reason for the refusal, namely that the requirement of submitting evidence of Danish language skills and other requirements had not been met, and the author was also informed of the rules forming the basis of the refusal of his application.

Furthermore, the Government observes that the author had been informed that his application for an exemption from the requirements of Danish language skills, etc., had been submitted to the Naturalisation Committee in accordance with the guidelines for naturalisation set out in the Circular Letter and that, following a specific assessment, the Naturalisation Committee had found that it was not possible on the current basis to grant an exemption to the author from the requirement of Danish language skills and the requirement of evidence of the citizenship test set out in the Circular Letter with reference to very serious physical or mental illness.

Taking that into account, the Government respectfully submits that the reasoning given to the author is sufficient to provide the author with a reasonable basis for determining the reason for the refusal of naturalisation. Accordingly, it is the opinion of the Government that, in view of the context, this reasoning must be construed to mean that it was the assessment of the Naturalisation Committee that the health information was not sufficient evidence to prove that he was not able to meet, nor had any prospect of meeting the requirements of Danish language skills, etc.

It is thus the opinion of the Government that the reasoning given in the case at hand is in accordance with Denmark's international obligations. Therefore, the Government respectfully maintains there has been no violation of the author's rights under Article 26 of the CCPR.

Finally, the Government wishes to draw the attention of the Committee to the circumstance that the Supreme Court judgment of 9 May 2017 provides *yet* another example of the fact that the author has access to national remedies through the domestic courts of Denmark, including of the specific issue whether the applicant has received a sufficient reason for the refusal of his application for nationality and of his application for an

exemption from the requirements of Danish language skills, etc. The Government emphasises in this regard that the national judicial authorities are, in principle, significantly better placed to fully assess all the information and evidence in individual cases.

Thus, whether the specific reasoning given in the case at hand is sufficient in view of Denmark's international obligations, including Article 26 of the CCPR, should first and foremost be considered by the domestic courts, which has not happened in the present case.

3.3. The Government's observations on the granting of reparation and the reconsideration of his application

The Government observes that it follows from para. 10 of the Committee's views that the State party is under an obligation to provide the author with an effective remedy. Furthermore, it follows that this requires the State party to provide the author with full reparation, including adequate compensation and a reconsideration of his application, taking into consideration the Committee's findings. The State party is also under an obligation to prevent similar violations from occurring in future.

The Government observes that the Ministry of Immigration and Integration has found no reason to allow a reconsideration of the author's application at issue in the case at hand on the present basis. The Government observes in this regard that it is possible for the author to request that the Ministry of Immigration and Integration reopen the case if the author is of the opinion that there are new material circumstances of relevance to the case.

Based on the above and in particular the reasoning in paras 3.1 and 3.2 of these follow-up observations, the Government has respectfully decided not to award the author compensation.

3.4. Dissemination of the Committee's views

As requested by the Committee in its views, the Government will have the views widely disseminated.

The Government will make the Committee's views publicly available on the website of the Ministry of Immigration and Integration (www.uim.dk).

Finally, the Government informed Parliament of the views adopted by the Committee on 16 March 2023 in its annual memorandum to the Danish Parliament on judgments and decisions of the European Court of Human Rights and views of UN committees in cases against Denmark.

In light of the prevalence of English language skills in Denmark, the Government sees no reason for a full translation of the Committee's views into Danish.

4. Conclusion

With reference to the above observations, the Government maintains that the Committee should have deemed the communication inadmissible under Article 5 (2) (b) of the Optional Protocol to the CCPR due to non-exhaustion of domestic remedies.

Secondly, the Government maintains that no violation of Article 26 of the CCPR has occurred.

The Government therefore respectfully urges the Committee to reconsider its views in the present case, taking into account the above observations of the Government.

The Government remains at the disposal of the Committee should any further information or observations be required.