Case summary:[[1]](#footnote-1) *O.O.J. v Sweden*

Case code: CRPD/C/18/D/28/2015

Communication No. 28/2015

Date of communication (initial submission): 18 March 2015

Date of adoption of Views: 18 August 2017

Invoked provisions of the Convention: [3](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#3), [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [7](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#7), [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [13](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [24](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24), [25](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25), [26](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26) and [28](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28)

Provisions of the Optional Protocol: Articles [1](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#1), [2 (b)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2), [(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2) and [(e)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2)

Keywords: non-discrimination, Equal recognition before the law; access to justice; freedom from cruel, inhuman or degrading treatment; right to education; right to health services; right to habilitation and rehabilitation services;

Decision: The communication is inadmissible under article 2 (d) of the Optional Protocol; the decision may be reviewed under rule 71 (2) of its rules of procedure.

Full decision in HTML format (webpage): [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1Xe36%2buAdL6x9aN91J0q29jBM8ToL40pFc2leMF0ZQpH66QsDgnIHR8m7dFbCA0R1qYXm1QqzkneEbXAqAOLGthiuj0hIdv28osZ%2bOLbiU%2fUvQ%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1Xe36%2buAdL6x9aN91J0q29jBM8ToL40pFc2leMF0ZQpH60dOY1bioPTa9nuosLWJ5Sa0HzYSHBI1SEnsj5LveSkEf0YIDx5xlzRNABeeCQ5GGg%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1Xe36%2buAdL6x9aN91J0q29jBM8ToL40pFc2leMF0ZQpH69dAgvNiDki42GoOIsWoYf9B7M9C41FmypvAhjlA3MFijvxtWO3El9QCmUj1fT1A4Q%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1Xe36%2buAdL6x9aN91J0q29jBM8ToL40pFc2leMF0ZQpH60SzK%2bdLiJpTr6rurVxwY15R9YexvUVry54JvgiLFU98gf1CjiIXHvaowf6Y3ci4mw%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1Xe36%2buAdL6x9aN91J0q29jBM8ToL40pFc2leMF0ZQpH62McplscfWp0XVI7WH4JFm1fqDxCcg3k%2bo8a4aSMQCzUJcqDUZ1prnVDFtvKHQ2jlg%3d%3d)

For full decision in PDF and/or Word format in UN official languages search in <https://documents.un.org>, fill the blank space after ‘Symbol’ with the CRPD case code mentioned above and then click on ‘Details’.

Facts

The author, a Nigerian national, held a temporary residence permit in the State party. On 25 January 2012, the author’s and his wife’s application for residence permits was rejected by the Swedish Migration Agency and a deportation order was issued. Subsequent appeals to the Migration Court and the Migration Court of Appeal were rejected. Owing to the insecurity in Nigeria, the family filed an application for asylum in the State party on January 2013. In autumn 2013, their son E.O.J. was diagnosed with autism, and other “unspecified psychosocial disabilities.” The author submitted this information to the Migration Agency together with a medical report from a psychologist and a report from a welfare officer in support of the family’s asylum application. The author was informed that his son’s health case would be handled separately, independent of the asylum application.

On April 2014, the family’s two applications for asylum and for residence permits based on E.O.J.’s medical needs were rejected, based on the consideration that it had not been demonstrated that they would personally be at risk of harm if returned to Nigeria. For the health case, the Agency stated that information obtained through the Medical Country of Origin Information (MedCOI) site showed that two hospitals offering treatment and services for autistic children there, together with preschools that accepted autistic children. The author contacted the hospitals referred and was informed that they did not offer services for children with autism and that the government had no health services for them. On October 2014, the rejection of the family’s application for asylum was upheld by the Migration Court. The author and his wife appealed the decision to the Migration Court of Appeal on 2 December 2014. In that submission, the author’s counsel addressed the issue of the separation of E.O.J.’s health case from the family’s asylum case. The family’s application was rejected by the Migration Court of Appeal on 22 December 2014.

In November 2014, the author and his wife applied for the expulsion order not to be enforced under an impediment of enforcement procedure and for them to be granted residence permits on the grounds of their son’s disability. On 9 January 2015, the Migration Agency issued a negative decision, reiterating its first decision of June 2014, stating that medical care and schools for children with autism were available in Nigeria. On 30 January 2015, the author filed another application for impediment of enforcement of the deportation order and provided evidence that the public health system in Nigeria did not provide autism-specific services, and that there was no governmental initiative on autism. On 26 February 2015, the application was rejected by the Migration Agency on the grounds that assistance was available in Nigeria.

The complaint submitted to the Committee

The author claims that State has breached its obligations under Articles [7 (2)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#7), [12 (4)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [15 (2)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [24](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24), [25 (a)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25), [26](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26) and [28 (2) (a)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28) of the CRPD.

Regarding Article 7(2), the author argues that the Migration Agency consistently maintained its stance to deport E.O.J. and his family to Nigeria without considering the severe health consequences. Further, the author notes that the medical report from the doctor states that his son is in need of continuous care and support from specially trained personnel.

Regarding Article 12 (4), the author claimed that the domestic authorities did not ensure that all measures were taken to enable E.O.J. to exercise his legal capacity and respect E.O.J.’s rights, will and preferences. The author submits that the fact that no hearing took place is also a violation of article 12 of the Convention and that the measures taken by the authorities were not proportional and tailored to E.O.J.’s circumstances.

Regarding article 15 (2), the author claimed that the deportation to Nigeria would amount to inhuman and degrading treatment, considering the nature of E.O.J.’s disability. The author joins a letter describing: (a) that E.O.J. sometimes has injuries and they do not know the cause; (b) the difficulties faced daily as parents; (c) their need for support to deal with unexpected behaviours; (d) their fear of exclusion from Nigerian society because of his disability.

Regarding article 24, the author argues that deporting E.O.J. to Nigeria, where there is no access to the kind of education and support he requires would amount to a violation of his son’s rights under article 24, as it would automatically interrupt the support and treatment he is currently receiving. Regarding article 25 (a) and 26**,** the author considers that deportation of the family to Nigeria would deprive his son of access to adequate health care and to the habilitation and rehabilitation programmes he has been attending, which have had positive results.

State party’s observations on admissibility

The State submits that the communication should be declared inadmissible *ratione personae* under article 1 and 2 (e) of the Optional Protocol as being manifestly ill-founded for lack of substantiation. The State party notes that the author’s complaint has been examined by the Migration Agency and the migration courts. The health reasons invoked were considered by the domestic authorities, stating that they were not of such a nature that the deportation of the author and his family would amount to inhuman or degrading treatment.

Regarding articles 7, 12, 24, 25, 26 and 28 of the CRPD, the State party submits that the complaint should be declared inadmissible *ratione personae*, noting that the author argues that the rights would be violated in Nigeria, being the complaint outside the State`s jurisdiction. The State party requests the Committee to consider whether article 15 of the Convention encompasses the principle of non-refoulement. Regardless of that point, the State party submits that the complaint should be held inadmissible for lack of substantiation.

The author’s comments on the State party’s observations

The author maintains that the communication is admissible. He noted that their application for asylum was assessed by the Migration Agency without consideration of the application for residence permits based on his son’s disability, and the decision was not subject to appeal. He submitted that this in itself amounts to a violation of articles 3 (a)-(b) and (e)-(i), 4 (a)-(e), 5 (l)-(4), 7 (l)-(2), 12 (4), 13 (l)-(2), 24, 25, 26 (1) and 28 of the Convention. The author also argued that it was foreseeable that Nigeria will not be able to protect E.O.J.’s rights under the Convention if he were to be deported and this would cause harm to his health and will amount to inhuman treatment, being the State party’s responsibility to prevent such harm.

On 21 August 2015, the Special Rapporteur on new communications and interim measures, on behalf of the Committee, rejected the State`s request for admissibility to be examined separately from the merits.

State party’s observations on the merits and additional observations on admissibility

The State party submits that the claims under articles 3, 4, 5, 7, 12, 13, 24, 25, 26 and 28 of the Convention should be declared inadmissible under article 1 of the Optional Protocol. Regarding article 15, It reiterates its position and states that should the Committee find that the communication is admissible, the State party submits that it is without merit.

Regarding article 7(2), the State party noted that the Aliens Act stipulates consideration to the best interests of the child in general. The State party further notes that, if a residence permit is not granted under chapter 12, section 18, of the Aliens Act, the Migration Agency may decide to re-examine the matter under chapter 12, section 19. According to the Migration Court of Appeal`s jurisprudence, a new examination may be granted if an applicant’s life- threatening disease can lead to the view that expulsion would constitute inhuman or degrading treatment in contravention of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and would thereby constitute grounds for protection.

Regarding articles 7, 12, 24, 25, 26 and 28, the State party maintains its previous observations, notably that the claims are based on treatment the author`s son will suffer in Nigeria and thus the Committee lacks jurisdiction in respect of Sweden, being those claims inadmissible *ratione personae*. Regarding articles 3, 4, 5, 7, 12, 13, 24, 25, 26 and 28 of the Convention, The State party submits that the author failed to substantiate his claims for the purposes of admissibility.

Regarding the merits of the case

The State Party considers that the enforcement of the decision to return the author and his family to Nigeria does not constitute a violation of the Convention, referring to its previous observations on the jurisprudence and general comment No. 1 of the CAT Committee.

Regarding the impediments to enforcement of an expulsion order, the State party notes that there are relevant provisions in the Aliens Act, and reiterates that, under certain conditions, an alien may be granted a residence permit even if a refusal-of-entry or expulsion order has gained legal effect. It further notes that the question of whether E.O.J.’s disability could be considered to constitute an impediment to enforcement was examined by the Migration Agency under chapter 12, section 18, on four separate occasions. Regarding the author claims that the decision was non-appealable, the State party argues that chapter 12, section 18, is applicable if new circumstances should emerge after an expulsion order has become final.

The State party notes that, while residing in Sweden, the author’s son has equal access to health care and special support as other children, therefore there is no reason to conclude that the outcome of the domestic proceedings amounted to denial of justice. The State party notes the author’s claim that the deportation of his son to Nigeria would subject him to inhuman treatment as he will not have the same services as he does in Sweden. The State party refers to the jurisprudence of the European Court of Human Rights[[2]](#footnote-2), in which the Court has consistently held that contracting States have the right to control the entry, residence and expulsion of aliens. However, in exercising their rights in this respect, contracting States must have regard to article 3 of the European Convention.

Regarding article 15, the State party notes that, in its jurisprudence, the Committee against Torture has held that the aggravation of an individual’s health condition by virtue of deportation is generally insufficient to amount to degrading treatment. Accordingly, whether the needs of the author’s son in terms of health care would constitute an impediment to enforcement of the expulsion order, the State party argues that the grounds invoked in the case at hand do not reach the high threshold set by other international courts and committees. The State party also notes that the Migration Agency did not consider the fact that an accurate diagnosis for the author’s son had not been established, but accepted the information provided in that regard and adequately investigated the availability of required service in Nigeria.

State party’s further observations

Regarding chapter 12, section 22, of the Aliens Act, the State party noted that, a refusal of entry or an expulsion order that has not been issued by a general court expires four years after the order became final and non-appealable. The decision to expel the complainants became final and non-appealable on 13 November 2012. **Therefore, this decision is statute-barred as of 13 November 2016 and it is no longer enforceable**. Consequently, the State party submitted that the communication should be declared inadmissible as incompatible *ratione personae* with the Convention, under article 1 of the Optional Protocol.

Under article 2 (d) of the Optional Protocol, the State party submitted that the communication should be declared inadmissible for non-exhaustion of domestic remedies. It noted that, as the expulsion order has become statute-barred, the author and his family may submit a new application to the Migration Agency, with the possibility of subsequent appeals. The State party referred to the jurisprudence of the Committee against Torture.[[3]](#footnote-3)

Additional observations from the author

The author confirms that the decision on expulsion has become statute-barred and that a new application can be submitted before the Migration Agency. He, however, argues that at the time of the submission of the communication, the State party was in violation of the Convention, and that all domestic remedies had been exhausted. The relevant time for determining whether domestic remedies have been exhausted refers to the time of occurrence of the alleged violation of the Convention. The outcome of a new proceeding initiated before the Migration Agency will be greatly affected by the previous decisions and only information pertaining to events that have occurred after the last decision was issued will be relevant. He also submits that, owing to new legislative amendments, the possibility of receiving a positive outcome after submitting a new application is worse than before.

Committee’s consideration of admissibility

The Committee has ascertained, as required under article 2 (c) of the OP, that the same matter has not already been examined by the Committee, and has not been and is not being examined under another procedure of international investigation or settlement.

Regarding the author’s claims under articles 7, 12, 15, 24, 25, 26 and 28**,** the Committee notes the State party’s argument that the Committee lacks jurisdiction to consider these claims under the Optional Protocol, as the State party cannot be held responsible for violations of the Convention that are likely to be committed by another State. However, the Committee is of the view that the removal by a State party of an individual to a jurisdiction where he or she would risk facing violations of the Convention may, under certain circumstances, engage the responsibility of the removing State under the Convention which has no territorial restriction clause. The Committee therefore considers that the principle of extraterritorial effect would not prevent it from examining the present communication under article 1 of the OP.

The Committee notes the State party’s argument that the expulsion order of 13 November 2012 became statute-barred on 13 November 2016 and is no longer enforceable, and that the author and his family have the possibility of reapplying for residence permits, with subsequent possibilities of appeals. In this line, the Committee noted the jurisprudence of the Committee against Torture,[[4]](#footnote-4) which concerned the deportation of the complainants to their country of origin in cases where the expulsion orders against the complainants had become statute-barred at the time of the examination by that Committee. The Committee against Torture found the complaints to be inadmissible owing to non-exhaustion of domestic remedies, as the decisions to expel the complainants had become statute-barred, they were therefore no longer at risk of being expelled from the State party, they had the possibility of submitting new asylum applications, which would be examined in full by the migration authorities and there was nothing to indicate that the new procedure would be ineffective in the complainants’ case. The Committee also noted similar jurisprudence of the European Court of Human Rights.[[5]](#footnote-5)

The Committee notes the author’s argument that it is unlikely that the family would be granted residence permits if they were to reapply, given the outcome of the previous proceedings. In that respect, the Committee recalls its jurisprudence, according to which, mere doubts about the effectiveness of a remedy do not absolve a person from seeking to exhaust such a remedy,[[6]](#footnote-6) and notes that there is nothing to indicate that a new application submitted by the author and his family to the State party authorities would not bring effective relief. Further, under rule 71 (2) of its rules of procedure, a decision declaring a communication inadmissible under article 2 (d) of the OP may be reviewed upon receipt of new information indicating that the reasons for inadmissibility no longer apply.

The Committee concludes that the author’s claims that deporting his family to Nigeria would constitute a violation by the State party of his son’s rights under articles 7, 12, 15, 24, 25, 26 and 28 of the Convention are inadmissible under article 2 (d) of the Optional Protocol.

Conclusion

The Committee therefore decided that:

1. The communication is inadmissible under article 2 (d) of the Optional Protocol,
2. The decision may be reviewed upon receipt of information indicating that the reasons for inadmissibility no longer apply; under rule 71 (2) of its rules of procedure.
1. This summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, visit [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/es/node/105)  [↑](#footnote-ref-1)
2. See ECHR, Soering v. the United Kingdom, application No. 14038/88, 7.7.1989, paras. 88 and 113 [↑](#footnote-ref-2)
3. See CAT Committee, communications No. 58/1996, *J.M. U.M. v. Sweden,* 15.5.1998; No. 170/2000, *A.R. v. Sweden,* 23.11.2011; and No. 365/2008, *S.K. and R.K. v. Sweden,* 21.11.2011. [↑](#footnote-ref-3)
4. See B.M.S. v. Sweden, S.K. and RK. v. Sweden, A.R v. Sweden, and J.M.U.M. v. Sweden. [↑](#footnote-ref-4)
5. See ECHR, Atayeva and Burman v. Sweden, application No. 17471/11, 19.2.2013; P.Z. and others v. Sweden, application No. 68194/10, 18.12.2012; and RZ. v. Sweden, application No. 74352/11, 18.12.2012. [↑](#footnote-ref-5)
6. See communication No. 31/2015, D.L. v. Sweden, 24.3. 2017, para. 7.3. [↑](#footnote-ref-6)