Case summary:[[1]](#footnote-1) N.L. v Sweden

Case code: CRPD/C/23/D/60/2019

Communication no 60/2019

Date of communication (initial submission): 10 May 2019

Date of adoption of Views: 28 August 2020

Invoked provisions of the Convention: Articles [6,](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx) [10](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx), [12](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx) and [15](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx)

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

Keywords: Right to life; freedom from cruel, inhuman or degrading treatment; discrimination based on gender; equal recognition before the law

Decision: Violation of Articles 15 of the Convention

Full decision in PDF format: [Arabic](https://undocs.org/ar/CRPD/C/23/D/60/2019), [English](https://undocs.org/en/CRPD/C/23/D/60/2019), [French](https://undocs.org/fr/CRPD/C/23/D/60/2019), [Russian](https://undocs.org/ru/CRPD/C/23/D/60/2019) and [Spanish](https://undocs.org/es/CRPD/C/23/D/60/2019)

**Facts**

The author is N.L., a national of Iraq, born in 1961, represented by counsel. The author has been diagnosed with depression with psychotic features. She claims that there would be a serious risk to her life and health if she were to be removed to Iraq, as she would be unable to access essential medical care. She also has been diagnosed with diabetes and high blood pressure. The author arrived in Sweden for asylum on 13 March 2013. She needed international protection since she had received death threats from her relatives because of her relationship with an Iraqi man. The Migration Agency denied her application for asylum on 14 February 2017, finding her statements to be lacking in credibility. The Migration Court of Appeal rejected her application for leave to appeal on 29 June 2017. After the expulsion order against the author became final, she applied for impediment of enforcement of the deportation order against her to the Migration Agency. She claims her health condition`s deterioration. The Migration Agency denied her application on 15 January 2018. The Migration Court also dismissed the appeal in 2018.

On 25 April 2018, the author submitted a second application for impediment of enforcement of the deportation order against her to the Migration Agency. She submitted a medical certificate from a psychologist according to which her mental health had deteriorated further, including due to the previous rejections. The Migration Agency denied this author’s second application. The Migration Agency noted that the author did not invoke mental illness when her case was assessed in her initial asylum process, but only after the expulsion order against her had become final. The Agency did not question that the author had a mental illness, but it found that the medical documentation submitted by her did not support the assumption that her illness was serious enough to grant her a residence permit. The author appealed the decision to the Migration Court. According to additional medical certificates, the author was diagnosed with a deep depression with serious suicide attempts, following which she was committed to hospital for almost two months. In her appeal to the Migration Court, the author argued that her condition was life-threatening and that she would not be able to receive adequate treatment for it in Iraq. The author’s appeal was denied based on the conclusion that presented documents did not support the assumption that the author’s mental condition was lasting. The decision was upheld by the Migration Court of Appeal on 21 January 2019.

**The complaint**

Regarding articles 10 and 15, the author claims that, her deportation to Iraq would lead to a grave risk of suicide and to other risks to her life and health. She claims that the medical certificates submitted by her before domestic authorities establish that she is diagnosed with a long-term mental health condition, and the probability that she would be able to receive treatment for her conditions in Iraq is very low. In addition, the author claims her mental health condition constitutes a long-term mental impairment, and her mental health has deteriorated during her stay in the State. She notes that her condition has been described as life-threatening in the medical certificates she submitted before State’s authorities. She has also been diagnosed with diabetes and high blood pressure, which aggravate the risk to her life and health.

Regarding article 12, the author argues that, as the proceedings before the State were more focused on the reasons underlying her condition rather than what real risk of treatment in violation of the CRPD her disability poses, it can be questioned if she has received equal recognition before the law.

Regarding article 6, since she does not have a family network in Iraq, her vulnerability as a woman with disabilities should be recognized.

**State ’s observations on admissibility and the merits**

Regarding articles 10 and 15, the State claims that the author had not referred to her mental health before the expulsion order became final. It notes that the author herself connected her cited mental health condition to her fear of returning to Iraq. The State argues that it had not been substantiated that the author’s cited health condition was not of a temporary nature.

The Migration Court rejected the author’s appeal because the submitted medical evidence did not provide sufficient support for the assumption that the author’s mental health condition was of a permanent nature and therefore found no reason to further assess her possibilities of receiving psychiatric care in Iraq. Although psychosocial support services in Iraq are limited and expensive, the State notes some examples of hospitals and clinics that provide treatment and medication for mental health conditions.

The State questions whether articles 10 and 15 of the CRPD, invoked by the author, encompass the principle of *non-refoulement*. If the Committee takes the view that article 15 of the Convention includes an obligation with regard to *non-refoulement*, the State considers that this obligation should apply only to claims relating to an alleged risk of torture.

Regarding articles 6 and 12, the State argues that its responsibility under the CRPD for acts or omissions contrary to the CRPD on another State’s territory is to be considered an exception to the main rule that a State’s responsibility for CRPD obligations is limited to its territory, thus requiring certain exceptional circumstances. Although treatment contrary to articles 10 and 15 of the Convention in another State could give rise to such exceptional circumstances, acts or omissions contrary to other articles cannot. Accordingly, it submits that the author’s claims under articles 6 and 12 should be declared inadmissible *ratione materiae* and *ratione loci*.

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

The author notes the State ’s argument that the migration authorities in their decisions found that she had not substantiated that she suffers from any long-term mental impairment or that care was not available to her in Iraq. She argues that she has presented several medical certificates that substantiate that she has been diagnosed with a long-term mental condition. She notes that in the domestic proceedings, the migration authorities did not assess whether she would be able to access health care if removed to Iraq. She refers to the European Court of Human Rights judgment in *Paposhvili v. Belgium* and notes that the Court has found that if an applicant has brought forward evidence showing that there are substantial grounds for believing that he or she would be exposed to a real risk of being subjected to treatment contrary to article 3 of the European Convention on Human Rights, then it is for the authorities of the returning State to dispel any doubts raised by the applicant. She further notes that in *Paposhvili v. Belgium*, the Court concluded that, as the applicant in that case had been able to substantiate the serious impacts a removal to his country of origin would have on his health, the burden of proof for showing that he would have actual access to health care shifted to the State.

**Committee’s consideration of admissibility and the merits**

**Consideration of admissibility**

Regarding to articles 10 and 15, the Committee claims that the principle of extraterritorial effect would not prevent it from examining the present communication under article 1 of the Optional Protocol. In this connection, the Committee further notes the author’s claims that her removal to Iraq would lead to a grave risk to her life and health, as she would be unable to access necessary and life-saving medical care in that country. The Committee considers that the author has sufficiently substantiated these claims raised under articles 10 and 15 of the CRPD for purposes of admissibility.

Regarding articles 6 and 12, the Committee notes that the author has not provided any additional specific information or argumentation to justify her claims under articles 6 and 12 of the CRPD, nor has she explained how these claims would amount to a real and personal risk of irreparable harm if she were to be removed to Iraq. It therefore finds that the author has failed to substantiate, for purposes of admissibility, her claims under articles 6 and 12 of the CRPD.

**Consideration of the merits**

Regarding article 15, after having cited jurisprudence by the Human Rights Committee[[2]](#footnote-2) and the European Court of Human Rights,[[3]](#footnote-3) the Committee notes that it is undisputed between the parties that the author has been diagnosed with depression. It notes that in several medical certificates submitted by the author before the domestic authorities she was noted as undergoing treatment for severe depression, which was assessed to include a risk of severe or life-threatening complications, with the medical treatment she was undergoing described as “essential” and the risk of relapse assessed to be “grave without adequate care”. The Committee notes the parties’ disagreement on the severity of the author’s health condition and whether it is lasting in nature, and it notes the State`s argument that the domestic authorities assessed her ill health to be primarily linked to her disappointment at her asylum process and her fear of being expelled.

The Committee claims that, taking into account that the author submitted several medical certificates before domestic authorities in which her health condition was assessed as severe and life-threatening without the treatment she is receiving in the State, in the light of the information available during the domestic proceedings, the State’s authorities should have assessed whether the author would in fact be able to access adequate medical care if removed to Iraq. The Committee further observes that it is undisputed that the domestic authorities did not assess whether the author would be able to access such medical care in Iraq. The Committee therefore considers that the failure by the domestic authorities to assess this risk faced by the author in the light of the information available to them concerning the author’s state of health amounted to a violation of her rights under article 15 of the Convention.

Regarding article 10, the Committee considers it not necessary to separately consider the author’s claims under article 10 of the CRPD.

**Recommendations**

The Committee, acting under article 5 of the Optional Protocol, is of the view that the State has failed to fulfil its obligations under article 15 of the Convention. The Committee therefore makes the following recommendations to the State:

(a) Regarding the author, (i) to provide her with an effective remedy, including compensation for any legal costs incurred in filing the present communication; (ii) to review the author’s case, taking into account the State ’s obligations under the Convention and the Committee’s present Views; (iii) to publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) As general measures, the State is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State to ensure that the rights of persons with disabilities, on an equal basis with others, are properly considered in the context of asylum decisions.

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. Human Rights Committee, general comment No. 31 (2004) (recalling the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant) and *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark* (recalling “that States parties should give sufficient weight to the real and personal risk that a person might face if deported, and it also considered that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors in that case would face if removed, including access to adequate medical care”). [↑](#footnote-ref-2)
3. European Court of Human Rights, *Paposhvili v. Belgium*, Application No. 41738/10, judgment, 13 December 2016. [↑](#footnote-ref-3)