



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2683/2015*, **, ***

<i>Communication submitted by:</i>	S.A., on behalf of herself and her minor daughter, Z (represented by counsel, W.G. Fischer)
<i>Alleged victims:</i>	The author and Z
<i>State party:</i>	The Netherlands
<i>Date of communication:</i>	4 September 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 20 November 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	17 July 2019
<i>Subject matter:</i>	Access to child benefits
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Best interests of the child; children's rights; discrimination; discrimination on other grounds; family rights; measures of protection; stateless person
<i>Articles of the Covenant:</i>	23 (1); 24 (1); and 26, read in conjunction with 23 (1) and 24 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is S.A., a stateless individual of Roma origin born on 6 March 1987 in the former Yugoslavia. She submits the communication on behalf of herself and her minor daughter, Z, a national of the Netherlands born on 15 February 2012. The author claims that the State party has violated her rights under articles 23 (1) and 26,

* Adopted by the Committee at its 126th session (1–26 July 2019).

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

*** A joint opinion by Committee members Tania María Abdo Rocholl, José Manuel Santos Pais, Hélène Tigroudja and Gentian Zyberi (dissenting) is annexed to the present Views.



read in conjunction with article 23 (1). The author also claims that the State party has violated the rights of Z under articles 23 (1), 24 (1) and 26, read in conjunction with articles 23 (1) and 24 (1), of the Covenant. The Optional Protocol entered into force for the State party on 11 March 1979. The author is represented by counsel.

The facts as presented by the author

2.1 The author is stateless and has no claim to any nationality. She was born in present-day North Macedonia and, at the age of 14, moved with her parents to the Netherlands, where she is considered an illegal migrant. She suffered from mental health problems, including post-traumatic stress disorder and borderline personality disorder, and began living on her own in the town of Groningen in 2009. The author's daughter, Z, has the nationality of the Netherlands because of her father, who is also a national of the State party. Soon after Z's birth in 2012, the father became violently abusive. As a result, on 3 April 2012, the author fled with Z, who was 2 months old, to a shelter where the author's parents were living, since she had nowhere else to go. The shelter, in Katwijk, is operated by the Central Agency for the Reception of Asylum Seekers.

2.2 Upon arrival, the author stated to the staff at the shelter that she wished to stay there temporarily with Z. However, the staff expelled them the same evening at 11 p.m., giving them a handwritten note with the address of a hotel and a reception facility for drug users. The staff made no other attempts to provide emergency shelter, or to contact child protection services or local crisis shelters. An unnamed individual called a privately-operated women's shelter in Leiden to notify its staff about the author's situation. Staff members of the women's shelter came to collect the author and Z and offer them temporary emergency shelter. The author and Z stayed there without any income for survival.

2.3 To obtain minimal subsistence benefits, the author sought legal assistance to file various administrative applications. In the Netherlands, the minimal living standard for families is established under different benefit schemes. General benefits may be supplemented with both child benefit and the child budget. The child budget is paid to eligible low-income parents and is intended to serve as compensation for the costs of rearing children. However, the author has no access to a work permit or social benefits due to a law establishing the so-called linkage principle, according to which access to social services is contingent on the possession of a residence permit.

2.4 Under national law, either parent can apply for child benefit, but only one parent may receive it. On 3 May 2012, the author applied for child benefit. On 11 May 2012, the Social Insurance Bank denied her application on the ground that she was not a lawful resident. On 5 September 2014, the District Court of Noord-Nederland rejected her appeal of the decision on the same ground. Thereafter, Z's father applied for and was granted child benefit. However, he did not provide for Z, and the author did not wish to take legal action against him.

2.5 Z's father did not apply for or receive the child budget. On 20 April 2012, the author applied for the child budget, stating in her application that she had no income and was temporarily living in a shelter for women, and that Z had the nationality of the Netherlands. On 2 August 2012, the Tax Administration denied her application on the grounds that she was not a lawful resident and had not demonstrated the requisite "very special circumstances" that allowed payment of the child budget to an illegal alien. On 15 October 2012, the Tax Administration dismissed the author's formal objection to the decision. On 21 February 2014, the District Court of Noord-Nederland rejected as ill-founded the author's appeal of the decision to dismiss her objection. On 14 May 2014, the Tax Administration denied the author's appeal of the decision of the District Court. On 17 September 2014, the Administrative Jurisdiction Division of the Council of State rejected the author's further appeal on the ground that it was ill-founded.

2.6 On 16 October 2012, the Municipality of Groningen began to offer the author and her daughter certain general benefits to survive. However, these benefits did not suffice and, as a result, the author and her daughter, who is a vulnerable child, live in extreme poverty, significantly below the minimum standard of living.

2.7 On 21 March 2013, the author applied for a temporary regular residence permit based on the “children’s pardon”, a transitional scheme introduced to regularize the residence status of children and families who have been residing in the Netherlands for a long period.¹ On 18 June 2013, the Minister of Justice and Security denied the author’s application. On 26 March 2014, the Immigration and Naturalization Service declared ill-founded the author’s objection to the decision of 18 June 2013. On 28 May 2014, the District Court deemed inadmissible the author’s application for judicial review of the decision on her objection.²

2.8 On 14 July 2014, the author was informed by the Immigration and Naturalization Service that she had been granted a residence permit on the basis of “non-temporary humanitarian grounds” due to exceptional individual circumstances.³ The permit is valid from 6 June 2014 until 6 June 2019.

2.9 The author maintains that she has exhausted all domestic remedies and has not submitted the same matter for examination by another procedure of international investigation or settlement.

The complaint

3.1 The author submits that, by denying her application for a child budget on the basis of her statelessness, the State party violated her rights under articles 23 (1) and 26, read in conjunction with article 23 (1), of the Covenant. It also violated Z’s rights under articles 23 (1), 24 (1) and 26, read in conjunction with articles 23 (1) and 24 (1), of the Covenant.

3.2 With respect to article 23 (1), the author asserts that, in conformity with the jurisprudence of the European Court of Human Rights,⁴ the courts of the Netherlands have found that payment of the child budget may be regarded as a discharge of the State’s positive obligation to protect family life under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Thus, the child budget is similarly protected under article 23 (1) of the Covenant, and the denial of the author’s application amounts to a violation of the right to family life. The linkage principle should not be rigidly applied to stateless individuals, especially when minors are involved, as is the case here. It is well established under national law that the linkage principle is not set in stone and cannot prevail when violations of human rights are at stake.⁵ An assessment of the individual circumstances of each case is required. The author is a stateless mother, and the State party’s authorities have erroneously placed the burden of her statelessness on the shoulders of her daughter, who is a national of the State party. In the present case, the application of the linkage principle harms a child who is a national of the State party on the basis of factors that are beyond the control of the mother and the child. Because the author and Z have no real or effective opportunity to change their situation, the application of the linkage principle has resulted in hardship amounting to a violation of their right to family life.

3.3 Regarding the claim under article 24 (1) of the Covenant, whereas the State party maintains that children lack legal standing with regard to the child budget because it is paid to the parent, the child budget should in fact be regarded as a measure of protection required by Z’s status as a minor. Children are afforded protection because they are considered to be vulnerable on account of their age. As a result, when a claim for a child budget is at stake, the interests and rights of the child should be taken into account. Indeed, the Supreme Court has acknowledged that family benefits, such as general child benefit, are intended to improve the position of the child.⁶ This reasoning should also apply to the child

¹ The date of the application was specified by the State party in its initial observations on the merits.

² This information was provided by the State party in its initial observations on the merits.

³ The information on the nature of the permit was provided by the State party in its initial observations on the merits.

⁴ The author cites European Court of Human Rights, *Niedzwiecki v. Germany* (application No. 58453/00), judgment of 25 October 2005, para. 31.

⁵ The author cites a judgment of 24 January 2006 (ECLI: NL: CRVB: AV 0197).

⁶ The author cites the Supreme Court of the Netherlands, 23 November 2012, section 3.5.10, ECLI:NL:HR:BW7740.

budget and, by deeming that the budget accrued to the author and not to Z, the authorities of the Netherlands failed to consider Z's rights as a child with the nationality of the State party and no influence over the migratory status of her mother. Z's best interests should have been paramount in the assessment of the claim.

3.4 Concerning the claim under article 26, read in conjunction with article 23 (1), of the Covenant, the denial of the child budget was discriminatory with respect to the family life of the author and Z. Due to the author's status as an irregular migrant, the State party treated her and Z differently from its own citizens. However, Z has no choice regarding the author's statelessness, and the author has no claim to any nationality. Thus, there is no "weighty reason" that could justify their different treatment.

3.5 In violation of article 26, read in conjunction with article 24 (1), of the Covenant, the denial of the child budget on the basis of the author's lack of a residence permit was discriminatory with regard to Z, because the State party's authorities did not make any distinction between the situation of the author and that of Z. This distinction is crucial, because the interests of the parent differ from the interests of the child. Children, especially very young children, are unable to influence their parents' choices.⁷ At the time the author applied for the child budget, Z was not old enough to influence her father's decision to exhibit violent behaviour or her mother's subsequent decision to leave her abusive partner.

3.6 The relevant decisions issued by the State party's authorities were flawed, because they permitted the author and Z to live in extreme poverty, significantly below the minimum poverty threshold for single mothers and their children. The administrative and judicial authorities should not have accepted the reasoning of the Tax Administration that, because the author and Z received some benefits, they were not deprived of a means of existence and had not been forced de facto to leave the State party's territory. Moreover, the State party's authorities failed to consider the matter from the perspective of children's rights.

State party's observations on admissibility

4.1 In its observations on admissibility dated 19 January 2016, the State party considers that the communication is inadmissible under article 5 (2) (b) of the Optional Protocol because the author has not exhausted all domestic remedies. Specifically, she did not appeal the judgment of the District Court of Noord-Nederland dated 5 September 2014.

4.2 Moreover, the communication is inadmissible because it is insufficiently substantiated and clearly does not reveal any violation of articles 23, 24 or 26 of the Covenant. Entitlement to child benefit accrues only once to parents for the purpose of caring for a minor child, regardless of the parents' civil status. According to the author's submissions, Z's father was granted child benefit during the second, third and fourth quarters of 2012. According to the judgment of the District Court, this benefit was transferred to the bank account that the author provided in her application forms. Therefore, the author gained the requested contribution to the costs of her daughter's upbringing.

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

5.1 In comments dated 15 February 2016, the author maintains that the judgment dated 17 September 2014 of the Administrative Jurisdiction Division of the Council of State is final. Thus, she exhausted all domestic remedies concerning the child budget. The State party mistakenly refers to facts relating to her application for child benefit, which is not the subject of the present communication. The District Court judgment dated 5 September 2014 does not concern the child budget. The procedure concerning child benefit is separate from that for the child budget and involves different courts.

5.2 Concerning the State party's observation that the communication is not substantiated, the author argues that the child budget was not paid to Z's father. The father could not apply for it, nor did he initiate a procedure concerning it. The State party's observations concerning the author's application for child benefit are therefore irrelevant.

⁷ The author refers to *Derksen v. Netherlands* (CCPR/C/80/D/976/2011).

State party's observations on the merits

6.1 In observations dated 17 May 2016, the State party provides additional information on the two types of child allowance provided for under national law: (a) the child budget, which is means tested; and (b) child benefit. Neither type of allowance is intended to serve as a general income support scheme. Child benefit was established under the General Child Benefit Act of 1963. Under this Act, insured persons who care for or support minor children are entitled to child benefit. This benefit is paid to households and represents a contribution towards costs related to raising children; it is not meant to fully reimburse such costs. Child benefit is not awarded on the basis of the parents' income.

6.2 On the other hand, the child budget, which was established under the Child Budget Act of 2007, is means tested, meaning that the amount of the budget is inversely related to the parents' ability to pay the costs of raising and caring for children. The child budget may be paid to parents earning a low annual income. The level of the child budget also depends on the number of children and their ages. It accrues to the parent, not to the child. It was introduced as part of a social security provision after it had become apparent that many low-income families did not owe the minimum income tax required to benefit from the existing child tax credit. Aliens who have not been admitted to the Netherlands are not eligible for child benefit or the child budget due to the principle of linking social entitlements to residence status.

6.3 This linkage principle, established under the Social Entitlements (Residence Status) Act, aims primarily to ensure that an alien without an unconditional residence permit cannot claim an entitlement to public provisions. Contrary to the author's claim, the application of the linkage principle is not rigid, "since aliens who have not (or not yet) been admitted to the Netherlands are not denied benefits, services, licences or exemptions regardless of the circumstances". As a rule, however, entitlements are determined by residence status. The Act provides for three exceptions to this rule, in that public provisions relating to education, health care and legal aid are available to all aliens, including those without a residence permit.⁸

6.4 The State party adds to the factual background of the complaint and states that, on 29 September 2001, the author's parents applied for asylum for her. The application was denied. Since then, the author has remained in the Netherlands and has pursued several legal procedures. The Immigration and Naturalization Service determined that the author was not eligible for an asylum residence permit or a regular residence permit, either on the basis of the "no fault" policy or on the basis of an acute humanitarian need. This decision was upheld by a district court and by the Administrative Jurisdiction Division of the Council of State.

6.5 The State party acknowledges that Z has the nationality of the Netherlands because she was born to a father with that nationality. The father recognized Z as his daughter. The State party also states that the relationship between the author and Z's father ended shortly after Z's birth due to domestic violence.

6.6 Z's father was awarded the child budget for the months of November and December 2012. The State party therefore assumes that the communication relates to the refusal to grant the author the child budget for the period from March 2012 up to and including October 2012.

6.7 The communication is without merit. Article 23 (1) of the Covenant does not require provision of a child budget. Since the refusal to grant the child budget is not an obstacle to family life, the issue of government interference or failure to act with respect to the life of the author and Z as a family unit does not arise. Contrary to the author's argument, the Covenant does not create a positive obligation to protect the family unit by providing financial assistance, let alone any specific child budget or child benefit. Neither child benefit nor the child budget is a general income support scheme paid to families with children as minimum subsistence income. Article 23 of the Covenant relates more to

⁸ The State party also states that several additional exceptions to the rule exist for various categories of persons, including suspected victims of trafficking in women.

measures to protect family unity and family reunification than to any obligation to provide financial assistance.

6.8 It is clear from the Committee's general comment No. 17 (1989) on the rights of the child that article 24 of the Covenant concerns protecting children against harm to their physical or psychological well-being, and that parents have the primary responsibility, including financial responsibility, for their children. It is emphasized that neither type of child benefit constitutes an entitlement of the child. The State party operates other schemes to meet basic needs.

6.9 Regarding article 26 of the Covenant, distinctions based on residence status are by no means unusual in the context of human rights treaties.⁹ Moreover, article 26 matches the scope and content of article 14 of the European Convention on Human Rights. These provisions do not prohibit all forms of unequal treatment, but rather only those forms of unequal treatment that qualify as discrimination. Discrimination arises in the absence of a sufficiently objective and reasonable justification, a legitimate aim, and reasonable and proportionate means to achieve that aim.

6.10 According to the jurisprudence of the European Court of Human Rights, it is only in situations in which discrimination is based exclusively on nationality that very "weighty reasons" must exist to establish an objective and reasonable justification. In the author's case, the distinction is based on residence status and is sufficiently justified, given the objective and reasonable justification for treating a country's own nationals differently from unlawfully resident aliens with regard to social entitlements. Indeed, an unqualified obligation to treat unlawfully resident aliens equally with a country's own nationals and lawful residents would deprive a State of the possibility to pursue an immigration policy to protect the country's economic well-being. The linkage principle is intended to prevent unlawfully resident aliens from prolonging their residence in the Netherlands through, inter alia, receipt of the child budget and from establishing a semblance of lawful residence and such a strong legal position that it becomes virtually impossible to expel them. It is therefore both objective and reasonable that the State party limits entitlement to child benefit and the child budget to lawful residents. According to the European Court of Human Rights, States have the right to control the entry, residence and expulsion of aliens, and measures aimed at ensuring effective immigration control may serve the legitimate aim of preserving the economic well-being of a country.¹⁰

6.11 Concerning the argument that, due to the author's statelessness, no legitimate aim is served by the distinction made in the eligibility criteria for child benefits, the State party observes that national law allows for the granting of residence permits to individuals who have demonstrated that they have become stateless through no fault of their own. The author did not have such a residence permit when she applied, in 2012, for the child budget. Thus, at that time, her situation did not differ from that of other unlawfully resident aliens.

6.12 In response to the author's argument that Z has suffered indirect discrimination because the child budget, while paid to her parents, is intended for her, the State party reiterates that the budget is granted to the parents. The national social system does not allow children to claim social benefits. Moreover, the Netherlands made a reservation to article 26 of the Convention on the Rights of the Child, to the effect that the provision does not imply an independent entitlement of children to social security, including social insurance. Both child benefit and the child budget fall within the scope of this reservation.

6.13 In further observations dated 14 September 2016, the State party indicated that its position remained unchanged.

6.14 In further observations dated 21 February 2018, the State party comments on a recent ruling of the Court of Justice of the European Union¹¹ that was invoked by the author

⁹ The State party cites, inter alia, article 1 of the European Convention on Social and Medical Assistance, and article 1 (1) of Protocol No. 7 to the European Convention on Human Rights.

¹⁰ The State party cites European Court of Human Rights, *Nacić and others v. Sweden* (application No. 16567/10), judgment of 15 May 2012, para. 79.

¹¹ *Chavez-Vilchez and others v. Raad van bestuur van de Sociale verzekeringsbank and others*, case C-133/15, judgment of 10 May 2017.

in support of her arguments. The State party observes that the Court's judgment relates to the manner of assessing whether a right of residence can be denied in a specific situation. Specifically, it concerns the situation in which a dependent child is a national of a European Union member State, whereas the child's parent is not. According to the judgment, if the child were obligated to leave the territory of the European Union as a whole, he or she would be deprived of the genuine enjoyment of the substance of the rights attached to European Union citizenship. Following the issuance of this judgment, the State party modified its policies. Henceforth, a right of residence is granted to a parent who is not a national of a European Union member State, but whose child is a national of such a State, if refusing the right to residence would oblige the child to leave the territory of the European Union due to the child's dependency on the parent. The State party considers that the details provided in the communication, combined with the details available to the State party, do not provide a sufficiently clear understanding of the relevant facts and circumstances so as to enable the State party to ascertain whether the author's situation is similar to the situation referred to in the judgment of the Court of Justice of the European Union.

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

7.1 In comments dated 17 June 2016, the author asserts that payment of the child budget is an essential building block to reach the minimum level of subsistence necessary for raising a child in society. This minimum level is higher for a mother and a child than for a single woman, and such differences are reflected in the difference between child benefit and the means-tested child budget. The author disputes the State party's claim that need is not a criterion for the child budget; on the contrary, the budget is assessed on the income of the child's parents. For child benefit, the need is assumed. The author also argues that the State party disregards Z's nationality.

7.2 In further comments dated 14 August and 29 September 2017, the author states that in the aforementioned ruling, the Court of Justice of the European Union held that children in the Netherlands should be treated equally regardless of the residence status of their parents.¹² As a result of this ruling, the State party's practice has changed. Now, in cases in which children of the Netherlands are concerned, the Government issues residence permits to the carer-parent. Because this type of residency is established in fact rather than by law, benefits can be (and are) granted retroactively, back to the time when the residency was first established. The author argues that, because the Court's decision goes to the heart of the present communication, and because the State party has already amended its practice accordingly, the State party should alter its position in the case of the author.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It is therefore not precluded from considering the communication.

8.3 The Committee notes that the State party considers that the author has not exhausted all available domestic remedies because she did not appeal the judgment of the District Court of Noord-Nederland dated 5 September 2014. However, the Committee observes that this judgment related to the author's application for child benefit, which is not at issue in the present communication. While the State party asserts that it has already provided the remedy the author seeks in the present communication by granting her application for child benefit, the Committee notes that child benefit and the child budget are separate social

¹² Ibid.

benefits and are determined through different procedures. The Committee also notes that the State party has not contested the author's assertion that the denial of her application for the child budget became final when the Administrative Jurisdiction Division of the Council of State denied her appeal on 17 September 2014. Accordingly, the Committee considers that article 5 (2) (b) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

8.4 The Committee also takes note of the State party's position that the communication is inadmissible under article 2 of the Optional Protocol because it is insufficiently substantiated. The Committee notes the author's claims that, as the stateless mother of a child of the Netherlands, denial of her application for the child budget was discriminatory, violated her right to family life and contravened Z's best interests. According to the author, this constituted a violation of her rights under articles 23 (1) and 26, read in conjunction with article 23 (1); and a violation of Z's rights under articles 23 (1), 24 (1) and 26, read in conjunction with articles 23 (1) and 24 (1), of the Covenant. The Committee notes that the author, who was born in present-day North Macedonia, has not substantiated the claim that, when her child budget application was assessed, she had no claim to any nationality or residence status elsewhere or provided evidence to the State party of her inability to change her situation of statelessness so as to demonstrate that she could not access financial assistance to which she would be entitled as a national or resident of another country. In this regard, the Committee observes that the author has not responded to the State party's assertion that her application for a residence permit on the basis of the "no fault" policy was denied. The Committee also notes that the author has not shown that she had no access to financial assistance for Z through Z's father, who is a national of the Netherlands. On this issue, the Committee notes the author's statement that she did not attempt to pursue legal action against the father for failing to provide child support. The Committee observes that, according to the decision of the Immigration and Naturalization Service dated 26 March 2014, the author and Z's father were co-parenting. Noting the State party's position that the Committee's general comment No. 17 limits article 24 protections to those relating to the physical and psychological well-being of children, the Committee recalls that the absence of social protection for children may, in certain circumstances, adversely affect their physical and psychological well-being.¹³ However, the Committee notes that, while the author essentially argues that payment of the child budget was a necessary measure to protect Z and safeguard her right to family life, she has not substantiated her allegations of financial need during the relevant time. On this issue, the Committee takes note of the State party's uncontested claim that, during three quarters of 2012, Z's father was granted child benefit, which was deposited in the bank account indicated by the author. Moreover, while the author asserts that Z's father did not apply for the child budget, to which only one parent is entitled, the Committee observes that the author has not responded to the State party's competing assertion that Z's father applied for and was granted the child budget during November and December 2012. In addition, the author has not indicated whether she applied for and received other social benefits that could have, vis-à-vis the child budget, provided a similar level of support for her family life and for Z's protection. The Committee therefore finds that for the purpose of admissibility, the author has not sufficiently substantiated her claims of a violation of her rights and those of Z under the articles of the Covenant that she invoked.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

¹³ *Abdoellaevna and Y v. Netherlands* (CCPR/C/125/D/2498/2014), para. 7.4.

Annex

Joint opinion of Committee members Tania María Abdo Rocholl, José Manuel Santos Pais, Hélène Tigroudja and Gentian Zyberi (dissenting)

1. We regret not being able to join the majority of the Committee in finding the communication inadmissible under article 2 of the Optional Protocol.
2. The Committee recently decided two communications on the merits (CCPR/C/125/D/2498/2014 and CCPR/C/125/2489/2014), which, although not necessarily identical to the present communication in all details, have the same overall legislative framework as their background. In one of those communications, the Committee concluded that there had been a violation of certain rights under the Covenant, while in the other it concluded that there had not been, although there was a dissenting opinion. We think the communication should have also been decided on the merits and led to the conclusion that there was a violation of the articles of the Covenant raised by the author.
3. The communication concerns the non-payment, in a particular period (from March 2012 up to and including October 2012 – para. 6.6), of a social benefit known as the child budget, which is means tested, meaning that the amount of the budget is inversely related to the parents' ability to pay the costs of raising and caring for children (para. 6.2). However, the State party considers that it accrues to the parents and therefore does not constitute an entitlement of the child (paras. 6.2, 6.8 and 6.10). In contrast, we believe that such a benefit accrues to the child, who is the ultimate holder of such a right, not the parents, who are merely entitled to receive and use the benefit to raise their children.
4. The communication relates to a complaint by a mother (a stateless individual) on behalf of herself and her daughter (a national of the Netherlands – para. 6.5). However, the Committee did not assess, in its Views, the monetary value of the benefit claimed by the author on behalf of her daughter. Or, for that matter, the monetary value of other social or general benefits that they might otherwise have received. We have, therefore, no possibility to assess whether the means test was correctly conducted by the State party, in order to ascertain the need to award or not the child budget. To blame this exclusively on the authors, who are already in a very vulnerable position, when the State party has carefully avoided giving any specific details on the matter, raises serious concerns, particularly in the light of the principle of ensuring the best interests of the child – a fundamental principle that seems to be absent from the Views adopted by the Committee. In addition, we must also take into account the fact that the State party did award the child budget in the end (para. 6.6), thus recognizing the underlying need invoked by the authors.
5. One of the reasons for the decision of non-admissibility concerns the fact that the author has not substantiated the claim that, when she applied for the child budget, she had no claim to any nationality or residence status elsewhere. We have, however, to understand that she was born in present-day North Macedonia, did not have papers when she came to the Netherlands as a minor and could not return to her country without such papers. Indeed, for these very reasons, she was unable to obtain a residence permit in the Netherlands. As a consequence, the author had no access to a work permit or social benefits due to a law establishing the so-called linkage principle since, under this principle, access to social services is contingent upon the possession of a residence permit (para. 2.3). To ask a person in such a situation to substantiate that she is stateless seems, indeed, disproportionate. Especially, since the State party readily acknowledges that the author was not eligible for an asylum residence permit or a regular residence permit, either on the basis of the “no fault” policy or on the basis of an acute humanitarian need (para. 6.4).
6. The Committee also notes that the author has not shown that she had no access to financial assistance for her daughter through the child's father, who is a national of the State party. It also notes that the author did not attempt to pursue legal action against him for failing to provide child support. However, the author did state that, soon after her

child's birth in 2012, the father became violently abusive and, as a result, on 3 April 2012, she had to flee with her daughter, who was 2 months old at the time, to a shelter where the author's parents were living (para. 2.1). The situation of domestic violence was acknowledged by the State party (para. 6.5). Moreover, although he applied and was granted child benefit, the father did not provide for his daughter (para. 2.4) or apply for the child budget (para. 2.5). Under these circumstances, given that the author was a victim of domestic violence, no negative inferences should be drawn from her initial reluctance to approach her husband to support his daughter. The majority of the Committee did not address the physical or economic harm suffered by the author (see article 3 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence) and, instead of paying attention to the real situation of fear and dependence that existed between the mother and the father, drew significant legal consequences from the fact that the father, albeit violent, did receive some financial assistance for the child. Even if the father and mother were later co-parenting, this is only acknowledged by the State party's authorities in 2014, two years after the author's request for the child budget.

7. Finally, the Committee considers that the author has not substantiated her claim of being in financial need at the relevant time. But, as previously stated, neither party has provided specific information in this regard. At the same time, it is a fact that the author had no access to a work permit or social benefits due to the linkage principle. Although being the sole carer-parent for her daughter, she could not work, had no income and was temporarily living in a shelter for women when she applied for the child budget, in April 2012 (para. 2.5). The Municipality of Groningen only began to offer her certain general benefits to survive in October 2012 (para. 2.6). Child benefit was granted to her husband only after September 2014 (para. 2.4). We can, therefore, conclude with certainty that the author and her daughter were indeed living in extreme poverty, significantly below the minimum standard of living, when the author applied for the child budget in April 2012.

8. According to general comment No. 17 (1989) on the rights of the child, article 24 of the Covenant protects children against harm to their physical or psychological well-being, and parents have the primary responsibility, including financial responsibility, for their children. However, contrary to the State party's position (paras. 6.7–6.8), it is for society and the State to intervene whenever parents fail to discharge this primary responsibility, particularly when they are unable to provide their children with minimum financial support (general comment No. 17, para. 6). This entails the need for States to adopt the relevant protection measures, including economic, social and cultural measures (*ibid.*, paras. 1 and 3), and to avoid any type of discrimination (*ibid.*, para. 5).

9. The relation between the best interests of the child and the duties of States, especially when the child has the nationality of a European Union member State and, as a consequence, European Union citizenship, was recently confirmed by the Grand Chamber of the Court of Justice of the European Union in a significant judgment that raised similar, although not exactly the same, legal issues (*Chavez-Vilchez and others v. Raad van bestuur van de Sociale verzekeringsbank and others*, case C-133/15, judgment of 10 May 2017). The author did mention this judgment in her response to the State party's arguments (paras. 6.14 and 7.2) and we regret that the majority of the Committee did not even refer to it in its decision on admissibility. In particular, the analysis provided by the Court of Justice on the "day-to-day" care of the child (para. 71 of the judgment) would have been useful to address properly the relationship among the violent father who could ask for financial assistance (and who indeed did receive financial assistance), the mother, who is the day-to-day carer-parent, and the child. Despite being a national of the State party and therefore a citizen of the European Union, the author's daughter was indeed discriminated against for having a stateless person as a mother, thus preventing her from accessing, during the period concerned, the child budget.

10. For these reasons, we would therefore have considered the communication admissible and concluded that there had been a violation of the author's rights under articles 23 (1) and 26, read in conjunction with article 23 (1); and those of her daughter's under articles 23 (1), 24 (1) and 26, read in conjunction with articles 23 (1) and 24 (1), of the Covenant.
