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Progress in Azerbaijan? Not Without Human Rights

January 3, 2019
by Samira Elhosary

On September 20, 2018, the European Court of Human Rights (ECtHR) ruled in the case of *Aliyev v. Azerbaijan* against Azerbaijan for the unjust detention of lawyer and human rights advocate, Intigam Aliyev. Mr. Aliyev brought his case against Azerbaijan on October 16, 2014 alleging several violations of the European Convention of Human Rights (ECHR). The ECtHR unanimously found violations of most of the articles alleged in the complaint. In punishment, the ECtHR sanctioned Azerbaijan several thousand Euros and issued injunctive orders for structural reforms within the country. Despite the result in this case and several cases similar to it, there has been very little change in the human rights condition in Azerbaijan in the twenty-seven years since its independence from the Soviet Union. Going forward, if Azerbaijan hopes to cement its place in the international community, the Azerbaijani leadership must make structural changes in how human rights organizations and activists are treated.

Walking through the bustling capital of Baku, Azerbaijan's rapid economic and cultural development stands in stark contrast with its Soviet Union-style attitude to human rights and human rights advocates. International organizations have criticized the ruling party's detention of human rights activists and journalists as a means of controlling the official narrative and pushing for progress. Azerbaijan, party to the European Convention on Human Rights (ECHR), is ostensibly committed to enforcing the ECHR's standards through national law. In reality, several human rights actors have brought cases against Azerbaijan in the ECtHR. Despite international criticism and with rulings and sanctions from the ECtHR, the government has not changed the way it treats its critics.

In the present case, Mr. Aliyev is a prominent and well-respected human rights lawyer in Azerbaijan. He served as the chairman of the Legal Education Society (LES), a national non-profit with more than sixty lawyers who educated both civil society and other lawyers on human rights issues, published reports exposing human rights abuses in the country, and provided legal services. Having provided legal assistance and resources in Azerbaijan for decades, Mr. Aliyev also represented applicants in front of the ECtHR. In his work as chairman of LES, he provided training seminars in the isolated Nakhichevan province, where there were only ten defense attorneys for the whole region in 2003.

In June 2014, Mr. Aliyev participated in a side event at the Parliamentary Assembly of the Council of Europe by speaking on an LES-produced report regarding human rights abuses in Azerbaijan. Shortly after, in August, Azerbaijani authorities arrested Mr. Aliyev and charged him with illegal entrepreneurship, large-scale tax evasion, and aggravated abuse of power for allegedly failing to register LES and some of its grants with the correct government institutions. In December, the Azerbaijani Prosecutor General's Office further charged Mr. Aliyev with abuse of power and forgery, allegedly for financial inconsistencies in LES's work. Azerbaijani

authorities detained Mr. Aliyev for four months pending the start of his trial in December 2014. Starting a sequence of appeals on August 11, 2014, Mr. Aliyev saw four subsequent appeals dismissed without consideration. While in detention, his health quickly deteriorated as his needs for medical attention were not met. In April 2015, the Baku Grave Crimes Court sentenced Mr. Aliyev to seven years of imprisonment. The next March, the Azerbaijani president signed an order releasing Mr. Aliyev and other human rights activists who were detained.

Mr. Aliyev's case before the ECtHR hinged on four main complaints: lack of consideration for his appeals, his detention conditions, the lack of appropriate medical care he received while detained, and the search of his home and private papers. His lawyers argued that these activities by the State violated the following articles of the ECHR: Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 5 §§ 1 and 3 (right to liberty and security, lack of relevant and sufficient reasons for continued detention), Article 5 § 4 (review of detention), Article 8 (right to respect for privacy and family life), Article 18 (limitation on use of restriction on rights), and Article 11 (freedom of assembly and association). The ECtHR unanimously found violations of Article 3 as it pertained to his pre-trial detention, Article 5 §§ 1 and 4, Article 8, and Article 18. The judgment ordered the state to pay damages in the amount of 20,000 Euros and 6,150 Euros for the cost of litigation to Mr. Aliyev. The ECtHR also ordered Azerbaijan to take steps to “ensure the eradication of retaliatory prosecutions and misuse of criminal law” against human rights defenders.

The ECtHR injunctive order mirrors others condemning Azerbaijan for the troubling use of national law to detain activists and human rights promoters. The ECtHR has ruled on other cases brought by people who were unjustly detained. One victim, vindicated by the ECtHR, was former presidential hopeful Ilgar Mammadov. Azerbaijani authorities charged Mr. Mammadov with mass disorder for his political activities and protest organizing in 2013. In 2014, the ECtHR held unanimously that his detention violated Articles 5, 6, and 18 of the ECHR. Similarly, in Jafarov v. Azerbaijan, Rasul Jafarov was arrested and detained because of his human rights activism through his organization, Human Rights Club. Mr. Jafarov and his colleagues compiled reports on the rights of prisoners in Azerbaijan and submitted shadow reports to UN treaty bodies. In Mr. Jafarov's case before the ECtHR, just like in Aliyev and Mammadov, the ECtHR found violations of Articles 5 and 18. Together, these cases illustrate Azerbaijan's repeated violation of the same articles of the ECHR.

In response to Mr. Aliyev's case, the Azerbaijani government argued to the ECtHR that the detention conditions as described by Mr. Aliyev were not as bad as he claimed and that his health was closely monitored. They further argued that his detention was justified based on the national court's consideration of the charges. In August of 2014, the Azerbaijani head of the Department of Social and Political Issues stated in an interview that several NGOs in Azerbaijan, including Mr. Aliyev's NGO, were relying on foreign money to place themselves above national law by avoiding proper registration of their organizations, paying their taxes, and filing false financial statements. Other Azerbaijani officials believed that these groups were “betray[ing] their motherland” in an attempt to embarrass Azerbaijan and take down the leadership.

Given the Azerbaijan's history in front of the ECtHR, sanctions and injunctive orders are not effective in deterring the leadership's treatment of human rights defenders. The abuses suffered

by Mr. Aliyev are well documented and the government's arguments, while galvanizing, are not supported in fact, as supported by his deteriorating health while in prison and the lack of evidence provided for his conviction. In their ruling, the ECtHR also criticized the government's regulation that governs non-profit organizations and their operation. The ECtHR stated that the stringent nature of these rules and requirements is clearly an attempt to limit the viability of national human rights organizations. However, as in other similar cases and in *Aliyev*, the monetary sanctions and directives have not deterred the state from continuing to detain activists. If the court continues to subject the government of Azerbaijan to similar sanctions going forward, it will prove to be only a symbolic gesture with no substantial effects.

Social and geopolitical dynamics also contribute to the ineffective nature of the ECtHR ruling. The ECtHR's decision likely will not make any difference in the human rights conditions that Azerbaijani nationals face. Media in the country is tightly controlled by the state. My search of several English language news site resulted in articles highlighting international praise for Mr. Aliyev's release with no mention of his arrest, trials, or charges. Searches of Azerbaijani language websites returned only informational articles about his trial and conviction. Besides those tied to the international human rights community, Azerbaijani citizens likely do not know about his case or others like it. There is likely limited awareness that human rights are an issue and thus likely limited widespread public pressure to make changes to the human rights violations facing activists and journalists in the country. The lack of journalistic freedom creates hurdles to addressing human rights issues within the country.

Despite Azerbaijan's history of unjust prosecution of media and activists, the United States has historically cooperated with Azerbaijan on security issues as well as on economic projects. In an effort to limit Russian and Iranian influence, the United States and European countries are hesitant to alienate Azerbaijan, which serves as an important ally. European leaders would like to establish Azerbaijan as a source of energy, as an alternative to Russia and would like to limit growing Iranian power. Specifically, Azerbaijan plays a role in tempering Russian and Iranian regional aspirations from a security perspective.

Though Azerbaijan is a growing power in terms of combatting terrorism and producing oil, its strategic value stands in contrast with its treatment of human rights advocates. Going forward the Azerbaijani government must allow for diversity of opinion in the media. It must also end the unjust arrest and conviction of those who speak out against the government and release all of those who have been unjustly imprisoned. Additionally, criminal law cannot justify detentions in ways that blatantly violate the ECHR. Finally, the government should relax the extremely restrictive regulations faced by the non-profit sector and make it easier for organizations to provide the services and training to civil society.

If Azerbaijan seeks to forge alliances with other European nations and other international allies, these States should stipulate that Azerbaijan respect and uphold international human rights norms, especially their commitments to the ECHR. As long as Azerbaijan's allies continue to downplay violations in order to enhance their interests in security or oil access, there is little incentive for Azerbaijan to rectify the human rights situation. Blatant abuses continue despite the result in the *Aliyev* case and others. Azerbaijan has shown they will simply pay sanctions and move forward, without the intention to implement change. Just as Azerbaijan's leaders advance

from their Soviet Union past in economic and cultural arenas, they must also stop silencing activists, lawyers, and journalists working to advance human rights.

The Ongoing Plight of the Roma Minority in Bulgaria

March 3, 2019

by Kate Morrow

Throughout history, European states have consistently discriminated against the Roma, the largest ethnic minority in Europe. To improve the situation of the Roma across Europe, the European Union (EU) recommended a framework for National Roma Integration Strategies (NRIS Framework) in 2013. The NRIS Framework addresses four primary policy areas: education, employment, healthcare, and housing. Under EU Law, this framework is a non-binding recommendation that establishes state objectives and sets forth strategies to achieve them.

Bulgaria had adopted twenty-eight regional strategies and 220 municipal strategies from the NRIS Framework, according to the 2015 Report of the Working Group for the UN Human Rights Council’s Universal Periodic Review. Following this report, Bulgaria made commitments to forbid ethnically segregated schools. The Bulgarian government also implemented immunization and check-up clinics, along with health mediators, in Roma settlements to address healthcare accessibility issues. However, in 2017, hospitals were still segregating maternity wards between Roma and other Bulgarians. Roma communities in Bulgaria have high rates of poverty and unemployment; they are also increasingly targets of ethnically-motivated violence. Further, the Roma in Bulgaria are disproportionately subject to forced evictions and unfair housing practices. Recently, the village mayor in Voyvodinovo advised the local Roma community to flee after an officer was allegedly assaulted by two men from the Roma community. After they fled, authorities began to demolish their homes at the edge of the village. Despite national commitments to improve the situation of the Roma, discrimination and ethnically-motivated violence against the Roma continue—and they have been on the rise.

Aside from the NRIS Framework, other binding international legal instruments may provide recourse for the Roma in Bulgaria. Bulgaria ratified both the ICCPR and the ICESCR in 1970. Articles 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) establish the rights of equal protection of all persons and ethnic groups’ right to enjoy their culture. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) also establishes the right to an adequate standard of living (Article 11), highest attainable standard of physical and mental health (Article 12), and education (Article 13).

Taken together, these binding international legal instruments protect the human rights of the Roma. Therefore, discrimination against the Roma in education, healthcare, and housing is a violation of these human rights. Even after the Bulgarian government prioritized access to education (National Report) for the Roma as a key policy concern, the UN’s Fourth Periodic Report on the ICCPR (2018) found that “Roma children increasingly attended de facto segregated schools.” School segregation, forced evictions, and ethnically-motivated violence are

violations of established human rights. To uphold its obligations under the ICCPR and ICESCR, Bulgaria needs to take steps to protect the human rights of its Roma communities.

Bulgaria's most recent action in the name of "integration" and protecting human rights for the Roma community is to propose a draft bill that grants free abortions to Roma women who already have three children. This bill openly discriminates against the Roma community, and it fails to provide any improvement in the accessibility of health care. The government seemingly believes that controlling the birth rate of the Roma community, but no other group, is an effective way to promote integration. This bill may violate the inherent right to life, codified in Article 6 of the ICCPR, but, more clearly, this bill violates Article 17's prohibition on arbitrary interference with privacy, family, or home because the purpose of the program, according to Deputy Prime Minister and Defense Minister Krasimir Karakachanov, is to control the birth rate of the Roma community. Bulgaria, in aiming to control the birth rate of an ethnic group within its territory, is putting itself in a position to use access to abortion as a cover for greater human rights violations against the Roma and their right to personhood, equal protection, and the right to enjoy their own culture.

Despite strong anti-Roma sentiment from national leaders, local communities are working with organizations, like the EU Agency for Fundamental Rights (FRA), to improve access to education and healthcare. The FRA, through the Local Engagement for Roma Inclusion Program (LERI) has worked in two Bulgarian communities to include Roma in the discussion regarding the best ways for the Roma to integrate into broader Bulgarian communities. In Pavlikeni, LERI and the local Roma community have worked together to create a common action plan to address the lack of health insurance among the Roma population there. LERI has worked with the Roma community in Stara Zagora to map evicted families' needs and to support the Roma community in working with the municipal council to shape local housing policy. While national sentiments are not looking bright for protecting and furthering human rights of the Roma, there are local community groups that are working to improve the situation of Bulgaria's Roma.

Review of Belarusian Legislation in Combating and Preventing Trafficking in Women and Children

March 24, 2019

by Olga Emelyanovich*

Introduction

For the past decade, the Belarusian agenda has largely focused on the issue of combating trafficking in women and children by actively implementing its international obligations. Specifically, Belarus passed preventive legislative and practical measures as a basis to reduce the number of trafficking victims. Statistically, the number of victims solely from trafficking offenses reduced from 236 victims in 2008 to only twenty victims in 2018.[1] This dramatic shift attracts interest to review and analyze Belarus' efforts in combating and preventing trafficking in women and children.

Belarus became a participant and signatory of the United Nations Convention Against Transnational Organized Crime[2] and its accompanying Protocols of 2000.[3] To date, Belarus has ratified a number of international agreements to combat trafficking in women and children, including: the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000; the United Nations Convention on the Rights of the Child of 1989;[4] and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000.[5] Regionally, Belarus has ratified the Agreement on Cooperation of States-Members of the Commonwealth of Independent States in Combating Human Trafficking, Organs and Tissues of 2005 (in the framework of the Commonwealth of Independent States, which is a regional, intergovernmental organization),[6] and the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (in the framework of the Council of Europe, another regional, intergovernmental organization).[7]

This article reviews the national legislation in this field by focusing on the state's administrative and criminal responses to those in violation of trafficking in women and children, as well as some of the state's preventive measures, such as licensing of certain activities, awareness-raising campaigns, training of competent personnel, implementing special labor rules, international adoption issues, and ensuring gender equality.

Administrative Responsibility

The Code of Administrative Offenses of the Republic of Belarus (hereinafter "the Administrative Code")[8] provides the administrative responsibility of legal entities for offenses related to trafficking in women and children. The Administrative Code also introduces the administrative responsibility of legal entities and individual entrepreneurs for violating the order. Specifically, in Article 9.23, the Administrative Code envisages responsibility for breaching the conditions of

employment for Belarusian citizens outside the country, as well as foreign citizens and stateless persons permanently residing in the Republic of Belarus. Moreover, the Administrative Code addresses violations regarding advertising under Article 12.15 and further addresses the issue of illegal casting in Article 23.65. Importantly, the Administrative Code also provides an exemption from administrative responsibility of victims of trafficking in human beings under Article 8.7.

Criminal Responsibility

In turn, the Criminal Code of the Republic of Belarus (hereinafter “the Criminal Code”)[9] outlines the general rules and circumstances that exempt victims of trafficking in women and children from criminal responsibility through Article 34, “Necessary defense,” and Article 36, “Extreme necessity.” Additionally, the Criminal Code proscribes criminal responsibility for human trafficking and related offenses through Article 181, “Trafficking in Human Beings” and the “Use of slave labor” under Article 181-1, among others.

Under Article 181, the current version defines “human trafficking” as: “recruiting, transporting, transferring, harboring or receiving a person for the purpose of exploitation, committed by deception, or abuse of trust, or use of violence not dangerous to the life or health of the victim, or with the threat of such violence.”[10] This definition is consistent with the international obligations under the following ratified agreements: Article 3(a) of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000; Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005; and Article 1 of the Agreement on Cooperation of States-Members of the Commonwealth of Independent States in Combating Human Trafficking, Organs and Tissues of 2005.

Further, Article 181 of the Criminal Code contains a definition of exploitation, which includes the “unlawful forcing a person to work or provide services (including actions of a sexual nature, surrogate motherhood, the taking of organs and (or) tissues from a person) if a person cannot refuse to perform work for reasons beyond his/her control (services), including slavery or customs similar to slavery.”[11] It is worth noting that the current definition of exploitation complies with the provisions of Article 3(a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000.

In addition, Article 6, Part 3, Paragraph 8-1 of the Criminal Code establishes an extraterritorial jurisdiction for trafficking in women and children, among other crimes, regardless of the place where the crime was committed. This complies with Article 15(2) of the UN Convention against Transnational Organized Crime of 2000, wherein trafficking is considered a transnational organized crime. Article 6, Part 3, Paragraph 8-1 of the Criminal Code is not solely applied to individuals who are part of transnational organized criminal groups; rather, it is broader, since it is also applied to individuals acting personally and accomplices.

Prevention of Trafficking in Women and Children

In 2012, Belarus adopted the Law of the Republic of Belarus on Combating Trafficking in Human Beings.[12] Under Article 13, this law stipulates a list of measures to prevent trafficking in women and children and related offenses as follows: licensing the activities that may provide conditions for trafficking in women and children and/or their exploitation; setting requirements

for model agencies; regulating issues on preventing trafficking in the sphere of information and education; and other measures according to the national legislation.

In accordance with Article 14 of the Law of the Republic of Belarus on Combating Trafficking in Human Beings and the Law of the Republic of Belarus on External Labor Migration through Article 11,^[13] there is an authorization procedure (licensing) for the activities of legal entities and individual entrepreneurs associated with Belarusian citizens' employment abroad and foreigners permanently residing in the territory of Belarus. Model agencies that provide employment services abroad also should have a special permit (license).

Moreover, Article 14 of the Law on External Labor Migration guarantees the protection in the state of employment for stateless migrant workers permanently residing in Belarus. Thus, from the standpoint of observing international standards for the protection of the rights of stateless persons and foreigners, the national legislation accommodates the interests of migrant workers, whether stateless persons or foreign citizens, permanently residing in its jurisdiction (i.e., some of these standards are set forth under Articles 7 and 11 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,^[14] despite Belarus not ratifying this specific agreement).

Awareness-Raising Activities

In addition to legislative regulation, it is worth mentioning the practical contribution of non-governmental organizations (NGOs) in this regard. "Gender Perspectives," an international public association, provides a national, toll-free hotline on safe traveling and staying abroad.^[15] Hotline specialists provide anonymous, confidential, and detailed information on the following topics: employment and relevant procedures abroad, issues of permanent residence abroad, entry and stay rules for foreign citizens in the Republic of Belarus, study abroad issues, and safety traveling rules for vacations.^[16] By cooperating with state bodies, "Gender Perspectives" make a significant contribution towards strengthening national coordination mechanisms in preventing trafficking in women and children. These practical measures correspond and meet the following international obligations proscribed in Article 9, Paragraph 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 and Article 5, Paragraphs 1 and 2 of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005.

Advanced Training of Competent Personnel

According to Article 17, Paragraph 1.3 of the Law on Combating Trafficking in Human Beings, the educational policy in the field of preventing trafficking in women and children is carried out through, *inter alia*, the advanced training for personnel of state bodies and other related organizations working in the area. This provision corresponds to Article 10, Paragraph 2 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, Article 8, Paragraph 4 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000, Article 5, Paragraph 2 of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 by fulfilling the requirements for the employees of competent authorities to receive necessary training in combating and preventing trafficking in women and children.

A significant contribution to the combating and prevention of trafficking in women and children was the opening of the International Training Center for Migration and Combating Trafficking in Human Beings on the basis of the Minister of the Interior (MoI) Academy of the Republic of Belarus in 2007.[17] The MoI Academy of the Republic of Belarus has the status of the main organization of the Commonwealth of Independent States for the training and professional development of personnel in the field of migration and counteracting trafficking in human beings.[18] The International Training Center for Migration and Combating Trafficking in Human Beings is a good base for compiling good practices, exchange of experience, statistics, and data, which practically contributes to the conscious approach of competent specialists to preventing and combating the crime in question.

Labor Legislation

In accordance with International Labor Organization (ILO) standards, the Labor Code of the Republic of Belarus (hereinafter “the Labor Code”)[19] prohibits the use of forced labor under Article 13 and discrimination in the sphere of labor relations under Article 14.

Since domestic workers are at risk of labor exploitation as a result of trafficking in women and children, the legal regulation of the working conditions of domestic workers is of interest. In accordance with the Labor Code, domestic workers are persons who work under the employment contract in the household of individuals, providing them with assistance and other types of services envisaged by the law.

Further, an employment contract with a domestic worker must be registered in the local executive office not later than seven days after signing by the parties. Pursuant to the Labor Code, domestic workers are guaranteed: a) the duration of working hours per week is not more than 40 hours under Articles 112 and 312; b) labor leave not less than 24 calendar days under Articles 155 and 312; and c) state social insurance under Article 314. Thus, the national legislation fixes general guarantees of working conditions for domestic workers.

Multistage Mechanism of International Adoption

With regard to the prevention of trafficking in women and children, the national legislation regulates in detail the procedure of international adoption. Additionally, there is a special procedure for monitoring the living conditions of orphans and children without parental care during the process of obtaining education abroad, as well as during receiving treatment in health organizations of foreign countries. In general, the legislation is harmonized with international standards in the field of international adoption and aimed at minimization of the risks of trafficking in children, which are particularly outlined in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000 and the Convention on Protection of Children and Co-operation in respect of intercountry adoption.[20]

Gender Issues

Since the unequal status of men and women is one of the causes of trafficking in women and children, it is necessary to ensure gender equality in various spheres of public life. It worth saying that achieving gender equality and empowering all women and girls is the Goal 5 of the

2030 Agenda for Sustainable Development[21]. Gender issues in the prevention and combating trafficking are in the heart of initial purposes of international instruments: Article 2(a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, Article 1(a) of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005. Belarus takes appropriate measures for gender mainstreaming in the related field. Currently, the Fifth National Action Plan for Ensuring Gender Equality for 2017–2020 is in force (hereinafter “the National Action Plan”). The National Action Plan envisages the following directions: 1) development of the institutional mechanism for ensuring gender equality; 2) economic empowerment of women; 3) ensuring gender-oriented health care; 4) ensuring gender equality in family relations; 5) combating domestic violence and trafficking in persons; and 6) gender education and awareness.

The National Action Plan’s focus on preventing and combating trafficking in women is based on gender issues, counteracting domestic violence, rendering assistance to victims of such violence and victims of trafficking in women and children. In this direction, the National Action Plan envisages awareness-raising work with young people on the training of non-violent communication skills, as well as the prevention of domestic violence.

Conclusion

In summary, there is a comprehensive anti-trafficking legislative framework in Belarus. However, to strengthen preventive measures, it is important to identify new trafficking trends to adequately react against new challenges in this field. It is crucial to proceed and update anti-trafficking awareness-raising campaigns, while also taking into consideration the particular interests of vulnerable groups. Finally, it is worth mentioning that the current implementation process is continuing to bring the national legislation in compliance with the international standards regarding combating and preventing trafficking in women and children.

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[3] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime Nov. 15, 2000, No. 39574 U. N. T. S. 2241, p.507

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[4] United Nations Convention on the Rights of the Child, Nov. 20, 1989, No.27531, U. N. T. S. 1577, p. 3

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[10] *Id.* at Art. 181.

[11] *Id.*

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Identifying Holes in the Scandinavian Model: The Case of J.I. and Gender Discrimination in Finland

April 15, 2019
by Samira Elhosary

In March 2018, the United Nations Committee on the Elimination of Discrimination against Women (the Committee), ruled in the matter of J.I., finding violations of the U.N. Convention on the Elimination of All Forms of Discrimination against Women (the Convention). J.I. is a Finnish national who presented her case and request for interim measures to the Committee on behalf of herself and her minor son, E.A. She outlined a history of abuse by J.A., her ex-husband and son's father and claimed the Finnish authorities did not sufficiently address the pattern of violence. Furthermore, she claimed her treatment at the hands of the Finnish law enforcement and court systems constituted a violation of multiple articles of the Convention. She asked the Committee for two things: first, require Finland take steps to give relief to herself and her son and second, make reforms regarding the prejudicial attitudes by national systems. The Committee agreed with her and ordered Finland to take certain steps to ensure the safety of E.A. and J.I., grant J.I. the proper reparations, and adopt measures to eliminate pervasive stereotypes against women in Finland. J.I.'s case highlights domestic stereotypes, which punish women who are perceived as not being able to fulfill their assigned roles as mothers and caregivers.

J.I. was able to bring her case to the Committee because Finland is party to the Convention and to the Optional Protocol, which authorizes the Committee to hear and rule on cases. The Convention aims to protect and bolster women's rights internationally by addressing the pervasive ways in which discrimination affects women's lives. The Convention established the Committee to oversee the Convention's implementation and enforcement. Finland has been cooperative with the Convention's reporting and evaluation structures which require the state parties periodically report to the Secretary-General on all of the measures they have employed to implement the Convention. A state party must submit an initial report within a year after the Convention enters into force in that state, and every four years after that. The Committee examined Finland's last three reports in 2001, 2008, and 2014.

J.I.'s Complaint paints a troubling history of abuse at the hands of J.A. When she became pregnant with the couple's child in 2011, he told her to get an abortion, but she refused and gave birth to their son, E.A. After a particularly brutal incident that sent J.I. to the hospital, child welfare authorities placed E.A. in protective care based on concerns about "the ability of the parents to provide for the safety and age-appropriate care of the child against the background of their continual disagreements." Law enforcement framed the incident as a situation of equal violence between partners. When J.I. was released from the hospital, child welfare authorities did not release E.A. to J.I.'s care because of concerns about her mental state, though no psychological evaluation was performed. At the end of 2012, J.I. filed for sole custody of her son, a social services report was completed and, ultimately, custody of the child went to the J.A.

During this time, a state prosecutor filed an indictment against J.A. for the incident which sent J.I. to the hospital. The Varsinais-Suomi District Court convicted J.A. and ordered him to pay restitution to J.I. for pain and cosmetic harm. Despite his conviction, the Turku Court of Appeals upheld the decision to award sole custody of E.A. to J.A. The Supreme Court denied J.I. leave to appeal this decision. Following E.A. entering his father's custody, he has repeatedly reported to his mother that his father is physically and emotionally abusive toward him. J.I. and child welfare authorities filed criminal reports throughout 2015 and 2016, but nothing has resulted. Additionally, in July 2015, J.A. again assaulted J.I. while she was visiting their child.

Based on her experiences, in J.I.'s present case before the Committee, she argued Finland violated multiple articles of the Convention by failing to address the violence inflicted by J.A. Specifically, she pointed to violations of Articles 1; 2 (a), (c), (d), and (f); 15 (1); and 16 (1) (d), (e), and (f), which condemn discrimination against women in national law, marriage, and family life. She argued that Finland's failure to prevent domestic violence and effectively prosecute perpetrators is disproportionality harming women over men. Existing domestic legislation aimed at protecting children in Finland is ineffectively applied to protect victims of domestic violence when these victims interact with child welfare authorities. She further claimed Finland's judicial system failed to do enough to protect her and her child against violence from her partner, especially in the decision to award custody to J.A., despite his conviction for domestic abuse.

Finland's legal process in this case constituted gender-based discrimination because stereotypes about the role of a mother permeated the government's decisions in regard to J.I. Finnish society holds traditional ideas about the woman's role as a mother and caregiver, which permeates both the home and the type of jobs seen to be appropriate for women. Oftentimes, women are punished if they are considered unable to effectively fulfill these roles by maintaining a peaceful household with their spouse. The culture perceives violence in intimate partner relationships as private and concerning only the parties involved. This perception leads the government to treat victims of domestic abuse as if they are equally culpable for the violence as the perpetrator. Authorities regularly pose mediation between parties as an alternative to prosecuting abusers, which assumes equality of power between the victim and her abuser, rather than acknowledging the reality.

Finland argued that J.I.'s case is preempted by her pending domestic appeals for visitation rights. Until that appeal is decided, they argued, there is still a domestic remedy available to J.I. They also stated that she sought to use the Committee as a fourth instance to challenge a final decision by the Supreme Court on the custody matter. Fourth instance doctrine states that international law bodies should not address errors of fact or law made by national courts, unless the errors constitute a violation of the Convention. Finland suggested that its domestic procedures properly investigated J.I.'s complaints. At every stage of J.I.'s her interaction with authorities, Finland suggested that law enforcement agencies did their best to protect E.A. from the violence between his parents.

The Committee considered whether Finland performed due diligence to protect J.I. from violence by J.A. and took reasonable steps to ensure, without gender-based discrimination, that J.I. and E.A. were safe. The Committee noted the plethora of legislation Finland has passed to protect women and children. However, it found that law enforcement implemented these laws in a discriminatory manner. Finally, they noted concern regarding child protective authorities'

repeatedly questioning of the mental state of a victim of domestic violence. The Committee was concerned that despite J.A.'s record of violence against J.I., his mental state was never questioned.

Though Finland has a reputation as an extremely gender equitable country, it has struggled to control domestic violence and combat the negative stereotypes which have allowed such violence to flourish. Through legislation reform, the government strengthened the protections available to victims of violent abuse and restricted the use of conciliation in regard to violence in close relationships. In a parallel report to the Committee in 2010, eighteen Finnish NGOs outlined some of the issues they saw in Finland. They argued that the government focuses on cases individually rather than looking at the structural issues. By focusing on a case-by-case approach, the legal system justifies punishing abusers less severely without recognizing their patterns of violence.

J.I.'s case fits squarely in this context, caught in the struggle between individualized and structural concerns. Finland tried to focus on all the ways her case was heard and supported in the judicial system, without considering all the stereotypes which permeate that system. The courts viewed J.I. solely as a mother incapable of maintaining a peaceful home and punished her instead of holding her abuser accountable for instigating violence. Law enforcement questioned her sanity and competence throughout the proceedings, though no consideration was given as to the competence or mental state of her abuser. The Committee made recommendations at the end of their report which target these structural issues in Finland and encourage better support and protection for women like J.I. when they interact with law enforcement agencies and the judicial system,

The Committee ruled that Finland violated multiple provisions of the Convention by failing to protect J.I. and her son from violence perpetuated by J.A. The national systems allowed stereotypes to control how J.I. was viewed in the justice system, which constituted discrimination on the basis of gender. After fighting for justice for herself and protection for her son for more than seven years, J.I. will hopefully see some relief in her case following the Committee's ruling. However, without effective domestic structural changes, the kinds of harmful cultural norms which caused the issue will continue to permeate Finland's system. Finland must take the Committee's recommendations seriously and move forward to create a truly equitable society.

Russia, a Graveyard for Ethnic Languages

April 24, 2019
by Gina Uyghur

Russia is home to around 185 ethnic groups or nationalities and more than 100 languages. It is lamentably also a country where indigenous ethnic languages are going extinct. According to UNESCO's Map of Endangered Languages, 135 ethnic languages on the territory of the Russian Federation are currently either totally extinct, critically endangered or vulnerable. In other words, virtually all ethnic languages in Russia are under threat of imminent demise except the Russian language.

Instead of making efforts to preserve indigenous languages, on June 19, 2018, Russia's federal assembly adopted a bill that would only hasten the disappearance of those languages by preventing regions from requiring the study of and teaching in minority languages and making such study strictly voluntary. Simultaneously, the study of Russian language and culture would remain part of the required curriculum and would benefit from the federal target program "Russian Language" designed to promote the Russian language with the financing of 7.6 billion rubles. Long before the bill became law, thousands of ethnic language teachers were left out of the profession, school principals were forced to change the educational program abruptly, and the prosecutor's office intervened in the educational process by interrogating those school principals who refused to abolish ethnic language classes. All political activities designed to shore up minority identities were under pressure as well. The bill is perceived as a form of Russification, especially since President Putin openly proclaims himself as an ethnic Russian nationalist and is increasingly pursuing a program of cultural homogenization in order to restore centralized control over ethnic republics. The move triggered protests in Russia's North Caucasus, Tatarstan, Siberia, and the Far East, where local languages have official status alongside Russian. Russian authorities have long been living in an alternate reality in which the Russian Federation finally turned into the nineteenth century's Russian empire, the colonial "prison of nations," pursuing a hard line on assimilating ethnic minorities. Russia today is essentially a unitary state with a fictitious federal device that was ultimately destroyed by the Kremlin's notorious "vertical of power."

Nevertheless, in the real world, the linguistic and cultural rights of minorities are protected by international law. Specifically, those rights are enshrined in the Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) – all ratified by Russia. Russia's formal, legal, and intentionally designed system that was written into the Language Bill to block the study and teaching of indigenous languages in ethnic republics arguably violates each of these covenants. Firstly, as a party to the Convention against Discrimination in Education, Russia must comply with Article 5(c) which expressly recognizes "the right of members of national minorities to carry on their educational activities, including the maintenance of schools and . . . the use or the teaching of their own language." Secondly, as a party to the CERD, Russia must not engage in "racial discrimination," defined by Article 1 of the Convention as any exclusion or restriction based on race, national or ethnic origin which has the purpose of nullifying or

impairing the recognition, enjoyment or exercise, of human rights and fundamental freedoms in any other field of public life.

Furthermore, Article 4 of the CERD obligates the State Parties to condemn all propaganda which is “based on ideas or theories of superiority of one race or group of persons of . . . or ethnic origin.” Yet, Russia has violated Articles 1 and 4 of the CERD by placing its preference on Russian language and *ipso facto* promoting its superiority over ethnic languages in its effort to impair the recognition of their right to enjoyment of their culture. Relatedly, under Article 7 of the CERD, Russia must “adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.” Thirdly, Article 27 of the ICCPR emphasized that ethnic minorities “not be denied the right . . . to use their own language.” Lastly, by ratifying the CRC, Russia agreed, pursuant to Article 29, that the education of the child shall be directed to “[t]he development of respect for the child’s . . . own cultural identity, language and values.”

Most importantly, the bill sparked protests, online petitions, and awareness campaigns across the ethnic regions. Hence, in a country as vast and diverse as Russia, linguistic and cultural onslaught is not the best policy to unify a nation. As protests and outrage unravel across the country, it is apparent that turning away from multiculturalism, and obligations under the aforementioned treaties Russia has signed would only be counter-productive.

What Far-Right Populism Means for Human Rights in Europe

August 27, 2019
by Nicholas Ripley

“Across Europe, populists are saying that [it’s not democracy they aim to discard, but liberalism.](#)” This was the consensus reached by [New York Times reporters](#) in their investigation of rising far-right populist movements in Europe. But, as [we have seen](#) in Europe, sacrificing individual civil liberties for nationalist cultural values has had the effect of [eroding longstanding democratic norms and institutions.](#)

Over the past ten years, Hungary, Lithuania, Poland, and Slovakia have all [lost their status as liberal democracies](#) and “transitioned downward.” In these countries, freedom of expression, assembly, and the free press have been especially [vulnerable to democratic backsliding](#), while purely electoral factors determining “free and fair elections” have actually improved. And while institutionalized civil rights do not necessarily guarantee human rights, the prospect for human rights under new authoritarian far-right regimes is not good.

Human rights, while not explicitly or exclusively based in liberalism, are founded on the theory of individual liberties; that there are “[rights inherent to all human beings](#), regardless of race, sex, nationality, ethnicity, language, religion, or any other status.” This recognition of the “[equal and inalienable rights of all members of the human family](#)” is [fundamentally incongruous with the far-right populist’s views](#) of legal rights, where civil liberties are constructed and enforced to uphold nationalist cultural narratives. Most often, these [nationalist cultural narratives](#) involve state-sponsored religious hegemony, conservative social values regarding gender and sexuality, and xenophobic or racist views on immigration. Nationalist cultural narratives may also involve a [collective historical mythology](#) that nationalists attempt to preserve at the exclusion of dissonant contemporary realities involving minorities and evolving moral and social norms.

While many European far-right political groups are still vying for political representation, some have already taken control and their policies have come into [direct conflict with human rights law](#). Most glaringly in conflict is the practice of excluding, detaining, and abusing migrants and asylum seekers. [Article 14](#) of The Universal Declaration of Human Rights states that everyone has the right to seek and enjoy asylum from persecution in other countries. [Article 33](#) of the 1951 UN Refugee Convention and the 1967 Protocol [protect refugees](#) from being returned to countries where they risk being persecuted, and it protects their right to ask for asylum when they are persecuted by their own country, regardless of how and where they arrive in a country. Meanwhile, the rhetoric of far-right movements across Europe [threaten nearly all of the civil liberties and anti-discrimination provisions](#) contained in The European Convention on Human Rights, The Universal Declaration of Human Rights, and subsequent binding human rights conventions.

In Hungary and Poland, these trends are especially clear. In 2018, a Hungarian constitutional amendment [went into force threatening functional access to asylum](#) by explicitly banning the

“settlement of foreign populations” and “refusing protection to any asylum seekers arriving in Hungary via any transit country that Hungarian authorities deem safe.” Asylum seekers are “[detained indefinitely in substandard border camps](#)” without judicial means to challenge their detention. They also face [violence during deportation raids](#) to force them back to the border. Hungary’s ruling party, Fidesz, and its Prime Minister Viktor Orban have effectively criminalized civilian support for the rights of migrants, in part by persecuting “[civil society organizations and universities receiving funding from abroad](#).”

Meanwhile, in Poland, the ruling Law and Justice Party (PiS) has [escalated authoritarian tendencies](#) by dissolving judicial independence and selectively enforcing Polish Supreme Court rulings. Much like Hungary, Poland has a record of [hostile treatment toward migrants](#), with asylum seekers routinely facing expulsion and being denied entry without due process. With new laws that curb free expression and assembly, Poland has [sought to encroach](#) on environmental rights, reproductive rights, as well as the rights of women and LGBTQ people.

All across Europe, far-right populist movements have provided ideal conditions for [neo-Nazi movements](#) to thrive. In the shadow of the original Nazi movement, European nationalist and xenophobic politics have aided in the discrimination and even violence against a [broad spectrum of minorities](#), including women, LGBTQ people, Muslims, Jewish people, migrants, and people of color. France, Britain, Germany, and Italy are all dealing with [far-right extremism as a growing threat](#) with [white-nationalist](#) inspired attacks on the rise. Following the recent rise of neo-fascist violence in Europe, the European Union [passed a resolution](#) on October 25, 2018, designed to protect the EU’s “values of respect for human dignity, freedom, democracy, equality, the rule of law, and [respect for human rights](#), including the rights of persons belonging to minorities.”

When individual states fail, the responsibility of human rights enforcement falls first on the European Union, which has [struggled to exercise control](#). [Article 7](#) of the Treaty on European Union may be leveraged to suspend certain rights from a member state found to be persistently breaching the EU's founding values. However, this procedure [requires unanimous voting](#). In the [case of Hungary](#), the EU has not been able to exercise punitive measures through Article 7 because Poland remains an ally in far-right authoritarian governance. With increasing far-right representation in both domestic and EU government bodies, enforcement of human rights law is likely to become even more scarce.