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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 39/2017*,**

Communication submitted by:	Iuliia Domina and Max Bendtsen (represented by Eddie Kawaja)
Alleged victims:	The authors
State party:	Denmark
Date of communication:	6 January 2017 (initial submission)
Document references:	Special Rapporteur's rule 64 and 70 decision, transmitted to the State party on 9 January 2015 (not issued in document form)
Date of adoption of views:	31 August 2018
Subject matter:	Family reunification
Procedural issues:	Substantiation of claims
Substantive issues:	Respect for home and the family; disability-based discrimination
Articles of the Convention:	5 and 23
Article of the Optional Protocol:	2 (e)

* Adopted by the Committee at its twentieth session (27 August – 21 September 2018).

** The following members of the Committee participated in the examination of the communication: Ahmad Al Saif, Munthian Buntan, Imed Eddine Chaker, Theresia Degener, Jun Ishikawa, Samuel Njuguna Kabue, Hyung Shik Kim, Robert George Martin, Martin Babu Mwesigwa, Coomaravel Pyaneandee, Jonas Ruskus, Damjan Tatić and Liang You. Pursuant to Rule 60 (1) (c) of the Committee's rules of procedure Stig Langvad did not participate in the examination of the present communication.

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1.1 The authors of the communication are Iuliia Domina, a national of Ukraine, and Max Bendtsen, a national of Denmark, both born in 1989. The authors are a married couple and they have a son born in 2015. The male author suffers from brain damage following a car accident in 2009. The authors' application for family reunification in the State party and a residence permit for the female author has been denied by the domestic authorities. The authors claim that the rejection of their application for family reunification violates their rights under articles 5 and 23 of the Convention. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 23 October 2014.

1.2 On 9 January 2017, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, issued a request for interim measures under article 4 of the Optional Protocol, requesting the State party not to deport the female author to Ukraine while the authors' case was under consideration by the Committee. On 11 January 2017, the Immigration Appeals Board suspended the time limit for the female author's departure from Denmark until further notice.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the authors

2.1 On 30 May 2013, the authors applied for family reunification and a residence permit for the female author in Denmark based on their marriage that they celebrated on 13 April 2013**.** Documentation and information about the male author's physical and mental health was included in the application submitted to the immigration authorities. The information documented that in 2009 he was involved in a severe car accident which left him with permanent brain damage and that he had, on this basis, received social benefits from May 2009, as he could not support himself through employment. The authors' application was rejected on 29 August 2013 by the Immigration Service on the basis that the male author had received social benefits within a period of three years prior to the date on which family reunification could be granted. Reference was made by the authorities to section 9 (5) of the Danish Alien Act according to which a residence permit based on family reunification cannot be granted if the applicant's spouse has received social benefits within a period of three years prior to the application. The decision was upheld by the Immigration Appeals Board on 3 December 2014.

2.2 On 22 December 2015, the Eastern High Court found that the decision of the Immigration Appeals Board violated the Convention on the Rights of Persons with Disabilities, noting that the requirement that the spouse who lives in Denmark is able to support himself financially could not be upheld if under the Convention such a requirement should be waived. It found that this would be the case if the person could not fulfil the financial requirement because of a disability. It further noted that the male author had been offered early retirement because of his disability, and that he would have been exempt from the requirement of being able to support himself financially if he had accepted this offer. The Court found that based on an assessment of the circumstances regarding the male author's health, there was no prospect that he could support himself financially. It therefore concluded that the male author should not be requested to fulfil the requirement of being able to support himself financially, as on the basis of his disability, this requirement prevented him from enjoying his right to family life on equal terms with other persons.

2.3 On appeal, in a decision of 22 December 2016, the Supreme Court overturned the decision of the High Court, noting that the male author had at one stage participated in a program to "uncover his employment" and education options and had the option to be granted special flexible employment. Based on the option to be granted special flexible employment, the Court concluded that the male author had a reasonable chance to fulfil the requirement of being able to support himself financially. It also found that he was in a position comparable to persons without a disability who had received social benefits, and that he had therefore not been subject to discrimination in violation of the European Convention on Human Rights or the Convention on the Rights of Persons with Disability.

The complaint

3.1 The authors note that under section 9 (5) of the Danish Alien Act the granting of a residence permit to an applicant married to a Danish citizen, is conditioned upon the spouse living in Denmark not having received social benefits within a period of three years prior to the application. The authors claim that this policy violates their rights under articles 5 and 23 of the Convention. They argue that the approach taken by the Danish authorities applies a wrong definition of discrimination in that it neither recognises the duty to provide reasonable accommodation or the protection against indirect discrimination on the grounds of disability. They argue that the Supreme Court recognised that the male author received social benefits due to his disability, but that it did not take into account that persons with disabilities are placed in a significantly different situation than others in access to the labour market and that the male author's disability therefore placed him at an unreasonable disadvantage. The authors argue that the requirement of being able to support oneself financially in order to be granted family reunification constitutes a barrier for a person with a disability to enjoy the right to family life on equal terms with persons without disability.

3.2 The authors further note that their young child is fully dependent on the female author as the male author is – due to his disability – not able of taking care of him without assistance. The deportation of the female author to Ukraine would therefore irreparably harm the family life of the authors and their child.

State party's observations on admissibility and merits

4.1 On 7 July 2017, the State party submitted its observations on the admissibility and merits of the communication. It considers that the communication should be declared inadmissible under article 2 (e) of the Optional Protocol for failure to substantiate the claims for purposes of admissibility. In the alternative, should the Committee find the communication to be admissible, the State party submits that the complaint is without merit.

4.2 The State party provides information on the organisation and jurisdiction of the Immigration Appeals Board, as well as applicable domestic law. The Immigration Appeals Board is an independent, collegial, quasi-judicial administrative body. It considers appeals of first-instance decisions relating to immigration, including decisions on family reunification, decisions on visas, decisions on permanent residence and decisions on administrative expulsion or refusal of entry made by the Danish Immigration Service, and appeals of first-instance decisions relating, *inter alia*, to residence on the basis of occupation and employment, studies or an au pair position made by the Danish Agency for International Recruitment and Integration. Section 9 (1) (i) (a) of the Aliens Act provides that, upon application, a residence permit may be issued to an alien over the age of 24 who cohabits at a shared residence, either in marriage or in regular cohabitation of prolonged duration, with a person permanently resident in Denmark over the age of 24 who is a Danish national. Under section 9 (5) of the Aliens Act, a residence permit can only be granted if the person living in Denmark who is obliged to maintain the applicant has not received any assistance under the Act on an Active Social Policy or the Integration Act for the last three years before the decision on residence is made. However, assistance in the form of small amounts of isolated benefits not directly related to maintenance, or benefits that are comparable to wages, salaries or pension payments or replace such income, are not included in the list of financial assistance. It is possible to disregard the condition that the person living in Denmark must not have received assistance under the Act on an Active Social Policy or the Integration Act if exceptional reasons conclusively make it appropriate, including with regard to the family unity. This will only be the case if spousal reunification must be granted owing to Denmark's international obligations.

4.3 The State party notes that the conditions for acquiring permanent residence were modified by Act No. 572 of 31 May 2010 amending the Aliens Act. The general notes on the Bill (Bill No. L 188 of 26 March 2010) include the following relating to the Convention: "As provided by the Convention, aliens who cannot meet one or more of the conditions for acquiring permanent residence due to disability will not face such requirements. An exemption will be granted only from the conditions that the alien cannot meet because of his or her disability. Other requirements not related to the alien's disability must be satisfied like they have to be satisfied by other aliens." The State party notes that other examples of

exceptional reasons are if the spouses are otherwise required to live as a family in a country which the person living in Denmark cannot enter and in which he or she cannot take up residence together with the applicant. Exceptional reasons may furthermore exist if the person living in Denmark has custody of, or the right of access to under-age children living in Denmark.

4.4 The State party also provides information on the domestic proceedings. It notes that the female author held a residence permit in Denmark from 21 November 2011 to 2 July 2013 as an agricultural trainee under the Aliens Act. The authors got married on 13 April 2013. The female author applied for family reunification in Denmark on 30 May 2013 based on her marriage to the male author. On 29 August 2013, the Immigration Service refused the female author's application for residence pursuant to section 9 (5) of the Aliens Act because the male author had received assistance under section 25 of the Act on an Active Social Policy from 14 May 2009 until the date of the decision of the Immigration Service and because no exceptional reasons made it appropriate to make an exception from the requirement of self-support under section 9 (5) of the Aliens Act. On 3 December 2014, the Immigration Appeals Board upheld the decision made by the Immigration Service to refuse the female author's application for residence. The Immigration Appeals Board found that the condition in section 9 (5) of the Aliens Act had not been satisfied as the male author had received assistance under the Act on an Active Social Policy within the last three years, for which reason the female author could not be granted residence under section 9 (1) (i) of the Aliens Act. The Immigration Appeals Board further found that no information had been provided on personal circumstances, including information on health issues, which could justify the conclusion that the authors could not be required to enter and take up residence in Ukraine and enjoy family life together there. The Immigration Appeals Board found that the fact that the male author was disabled could not independently justify an exemption from the rules on spousal reunification. The Board therefore found that the authors had not been discriminated against, either directly or indirectly, as compared with persons applying for spousal reunification who are not disabled and who receive maintenance benefits under the Act on an Active Social Policy. The Board found that it had not been substantiated that the male author could not satisfy the conditions of section 9 (5) of the Aliens Act, for which reason the Board concluded that it was not possible to make an exemption from the condition in section 9 (5) of the Aliens Act with reference to the health of the male author.

4.5 On 10 December 2014, the authors instituted legal proceedings against the decision of the Immigration Appeals Board before the District Court of Roskilde. The District Court referred the case to the High Court of Eastern Denmark on 11 February 2015. On 22 December 2015, the High Court quashed the decision made by the Immigration Appeals Board and remitted the case to the Immigration Appeals Board for reconsideration. On 19 January 2016, the Immigration Appeals Board appealed the judgment of the High Court to the Supreme Court. By its judgment of 22 December 2016, the Supreme Court found for the Immigration Appeals Board and set aside the High Court judgment. The Court noted that at the time of the decision made by the Immigration Appeals Board, the male author received social security benefits under section 11 of the Act on an Active Social Policy, pursuant to which individuals are granted assistance, whether or not they have a disability, if they have experienced changes in their circumstances, such as illness, unemployment or cessation of cohabitation, and they cannot support themselves due to those changes. It noted that according to the *travaux préparatoires* of the Aliens Act, the condition in section 9 (5) of the Aliens Act has to be disregarded if required due to Denmark's international obligations. In this connection the Court noted that article 14 of the European Convention on Human Rights prohibits differential treatment for reasons such as disability when the differential treatment is attributable to a circumstance falling within the scope of the other provisions of the Convention, including article 8 on the right to respect for family life. The Court noted that the question to be determined was therefore whether the situation of the male author at the date of the decision made by the Immigration Appeals Board was comparable to the situation of persons without a disability who had received social security benefits for the last three years, or to the situation of persons without disability who had not received any social security benefits for the last three years. It noted that under section 70 of the Act on Active Employment Measures, job centres offer jobs under the wage subsidy programme to individuals younger than the standard retirement age whose capacity for work is permanently

reduced and who do not receive disability pension and cannot find or hold on to employment on usual terms. Wage subsidies do not fall within the scope of section 9 (5) of the Aliens Act and therefore do not disqualify the recipient from being granted family reunification. The same applies to disability pension under the Act on Social Pensions. The Court further noted that it must be deemed to be an assumption in the *travaux préparatoires* that this requirement must be disregarded if a person is not able to satisfy the requirement of section 9 (5) of the Aliens Act due to his or her disability. The Court found that, consequently, persons disqualified from family reunification for a period of time due to the provision of section 9 (5) are assumed to have a possibility of finding work irrespective of whether they have a disability, including a job under the wage subsidy programme, and accordingly meet the condition of not having received any social security benefits for the last three years. It noted that at the time of the decision made by the Immigration Appeals Board, the male author was undergoing evaluation and clinical assessment to determine his future potential for finding employment and undergoing training. It found that even though it was probably a consequence of the male author's disability that he could not find employment on usual terms, there was a reasonable prospect of satisfying the requirement of self-support in section 9 (5) of the Aliens Act because of his possibility of finding a job under the wage subsidy programme. The Court therefore found that, at the time of the decision made by the Immigration Appeals Board, the male author was in a situation comparable to that of persons without a disability who have received social security benefits within the last three years and that he had therefore not been subjected to differential treatment contrary to the Convention or the European Convention on Human Rights.

4.6 The State party notes the authors' claim that the decision made by the Immigration Appeals Board on 3 December 2014 to refuse the female author's application for residence in Denmark was contrary to articles 5 and 23 of the Convention. It submits that the authors have failed to establish a *prima facie* case for the purpose of admissibility and that the communication should therefore be considered inadmissible. It refers in this respect to the fact that the authors' claims have been heard by the Immigration Appeals Board, the High Court and the Supreme Court. It argues that the Supreme Court expressly considered the fact that the male author is a person with a disability, but that it found that he was in a situation comparable to that of persons without a disability who have received social security benefits within the last three years. In that connection, the Supreme Court emphasised that the male author had undergone evaluation and clinical assessment, and because of his enrolment in a wage subsidy programme, he had a reasonable potential for satisfying the requirement of self-support.

4.7 As concerns the merits of the author's claims, the State party submits that the authors have not sufficiently established that it has breached its obligations under articles 5 and 23 of the Convention by refusing the female author's application for residence in Denmark. It argues that the male author has not been discriminated against, either directly or indirectly, as compared with a person without disability applying for spousal reunification who has also received maintenance benefits under the Act on an Active Social Policy. It further argues that the fact that benefits were awarded as a direct consequence of the male author's disability is irrelevant to the case. It argues that the relevant issue in the case is whether it is possible for the male author to comply with the provisions of section 9 (5) of the Aliens Act on an equal basis with others who have received assistance under the Act on an Active Social Policy. It submits that the Supreme Court therefore rightly held that the existence of a disability cannot, when viewed in isolation, justify an exemption from the condition set out in section 9 (5) of the Aliens Act, as the relevant assessment to be made is whether the existence of a disability prevents a person from becoming employed at a later point and accordingly meeting the condition in section 9 (5) of the Aliens Act. It notes that the Supreme Court and the Immigration Appeals Board found that the male author had a reasonable prospect of satisfying the requirement of self-support in section 9 (5) of the Aliens Act at the time of the Board's decision, because of his possibility of finding a job under the wage subsidy programme. The fact that the spouse living in Denmark has a disability is therefore not sufficient in and of itself to warrant an exemption from the condition of section 9 (5) of the Aliens Act, in so far as for such an exemption to be made, the disability of the person concerned must constitute a barrier to his or her possibility of satisfying the requirement of self-support.

4.8 The State party also notes that the male author refused a disability pension because he wanted to maintain links to the labour market through work. It argues that it would thus have been possible for him to have satisfied the requirement in section 9 (5) of the Aliens Act at an earlier point, had he accepted the offer of the disability pension. It submits that consequently the male author has not been discriminated against in respect of his right to marriage and family life.

4.9 The State party further argues that the finding by the Immigration Appeals Board that the authors could enjoy family life in Ukraine does not constitute a violation of their rights under article 5 of the Convention. It notes that article 8 of the European Convention on Human Rights does not impose on States a general duty to accept family reunification, that is, to accept a couple's own choice of country in which they prefer to enjoy family life, as States have the right according to established case law to control aliens' access to their territories and in this context to lay down rules on family reunification.[1] To this end, States have a wide margin of appreciation and may, as a general rule, require an alien to enjoy family life in his or her country of origin. There will be a violation of rights only where the alien would face an insurmountable barrier if required to enjoy family life in his or her country of origin. The State party notes that in the present case, the Immigration Appeals Board made an assessment of whether the authors could enjoy family life in Ukraine. The State party argues that the circumstance that the male author has a disability cannot independently have as a consequence that no assessment should be made of the authors' possibility of enjoying family life in the female author's country of origin, which assessment would have to be made in case the spouse resident in Denmark did not have a disability. In that case, the male author would have been placed in a better position than a person without disability.

Authors' comments on the State party's submission

5.1 On 11 September 2017, the authors submitted their comments on the State party's submission. They maintain that the communication is admissible. They argue that the domestic authorities did not make any real and substantial assessment of their rights under the Convention.

5.2 As concerns the merits of the communication, the authors argue that the relevant assessment in order to determine whether the male author was discriminated against due to his disability is the connection between him having been granted social benefits due to his disability and the subsequent rejection of the authors' application for family reunification on the basis of said benefits. They note that in its decision the Supreme Court compared the male author's situation to that of persons without disability who had received social benefits for other reasons than disability. They consider that this approach is contrary to the Convention as a person with disability and receiving social benefits is not in a comparable situation to a person without a disability also receiving social benefits. They further argue that the approach taken by the Supreme Court is not proportional as even if the male author had been granted employment under the wage subsidiary program, this would still have meant that they would have had to wait for an additional three years after getting the employment before a decision on granting family reunification could be made. The authors further argue that the granting of employment under the program is not automatic but within the prerogative of the social services.

State party's additional observations

6.1 On 24 November 2017, the State party submitted additional observations on the admissibility and merits of the communication. The State party refers to and reiterates its observations of 10 July 2017 and it maintains that the authors have failed to establish a prima facie case for the purpose of admissibility.

[1] The State party refers to the judgments by the European Court of Human Rights on in applications Nos 9214/80, 9473/81 and 9474/81 *Abdulaziz, Cabales* and *Balkandali v. The United Kingdom*, 28 May 1985.

6.2 Should the Committee find the communication admissible, the State party maintains that the decision made by the Immigration Appeals Board of 3 December 2011 to deny the female author's application for a residence permit was not contrary to articles 5 and 23 of the Convention.

B. Committee's consideration of admissibility and merits

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

7.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 2 (d) of the Optional Protocol have been met.

7.4 The Committee notes the State party's submission that the authors' claims should be found inadmissible for lack of substantiation, under article 2 (e) of the Optional Protocol. The Committee however notes the authors' argument that the requirement of being able to support oneself financially in order to be granted family reunification constitutes a barrier for a person with disability to enjoy the right to family life on an equal basis with others. It further notes their claims that in their decisions on the application for family reunion, the domestic authorities did not take into account that persons with disabilities are placed in a significantly less favourable situation than others in access the labour market and that the male author's disability therefore placed him at an unreasonable disadvantage. The Committee also notes the authors' claims that the deportation of the female author to Ukraine would irreparably harm the established family life between the authors and their child. The Committee therefore considers that the authors have sufficiently substantiated their claims for the purposes of admissibility.

7.5 Accordingly, and in the absence of any other obstacles to admissibility, the Committee declares the communication admissible and proceeds to the consideration of the claims on the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure.

8.2 The Committee takes note of the authors' allegations of discrimination in view of the rejection by the State party's competent authorities of their application for family reunification. It notes their argument that the requirement under section 9 (5) of the Aliens Act constitutes a barrier for a person with a disability to enjoy the right to family life on an equal basis with others. The Committee also notes the State party's argument that the male author had a reasonable prospect of satisfying the requirement of self-support in section 9 (5) of the Aliens Act because of his possibility of finding a job under the wage subsidy programme, and that he therefore has not been discriminated against, either directly or indirectly, as compared with a person without disability applying for family reunification who has received maintenance benefits under the Act on an Active Social Policy.

8.3 The Committee recalls that under article 2, paragraph 3, of the Convention, disability-based discrimination is defined as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation." The Committee

further recalls that a law which is applied in a neutral manner may have a discriminatory effect when the particular circumstances of the individuals to whom it is applied are not taken into consideration. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention can be violated when States, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different.[2] The Committee recalls that disability based indirect discrimination means that laws, policies or practices appear neutral at face value but have a disproportionate negative impact on a person with a disability. It occurs when an opportunity that appears accessible in reality excludes certain persons owing to the fact that their status does not allow them to benefit from the opportunity itself.[3] The Committee notes that a treatment is indirectly discriminatory if the detrimental effects of a rule or decision exclusively or disproportionately affect persons of a particular race, colour, sex, language, religion, political or other opinion, national or social origin, financial status, birth or other status.[4] Being a person with disability falls within such status. The Committee further observes that article 5, paragraphs 1 and 2, imposes on the State party the general obligations to recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law; and to prohibit all discrimination on the basis of disability; and to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

8.4 The Committee notes that in the present case, the authors' application for spousal reunification was rejected as the male author did not meet the requirement under section 9 (5) of the Aliens Act of not having received social security benefits in the period of three years prior to the application being made. It further notes that the male author received benefits under the Act on an Active Social Policy from 14 May 2009, and that he continued to receive these benefits until mid-October 2015, when he was employed under the wage subsidy program.[5] The Committee notes that it is undisputed that the author received these benefits due to his disability. The Committee notes the State party's argument that the existence of a disability cannot, when viewed in isolation, justify an exemption from the condition set out in section 9 (5) of the Aliens Act, as the relevant assessment to be made is whether the existence of a disability prevents a person from becoming employed at a later point and accordingly meeting the condition in section 9 (5) of the Aliens Act. It also notes the State party's argument that the Supreme Court and the Immigration Appeals Board found that the male author had a reasonable prospect of satisfying the requirement of self-support in section 9 (5) of the Aliens Act because of his possibility of finding a job under the wage subsidy programme. The Committee further notes the authors' argument that the relevant assessment in order to determine whether the male author was discriminated against due to his disability is the connection between him having been granted social benefits due to his disability and the subsequent rejection of the authors' application for family reunification on the basis of said benefits.

8.5 In the present case, the Committee notes that at the time of the authors' application for family reunification the male author was receiving social benefits on the basis of his disability and he was not in a position to take up employment. The Committee notes that the domestic authorities rejected the author's application for family reunification as they concluded that the male author had a reasonable prospect of satisfying the requirement of self-support in section 9 (5) of the Aliens Act because of his possibility of finding a job under the wage subsidy programme. The Committee however notes that when the authors made their application for family reunification the male author had not yet qualified for the wage subsidy program and could therefore not fulfil the requirement in section 9 (5) for family reunification under the Aliens Act. The Committee also notes that at this point in time family reunification was already a priority for the authors and their son. The Committee further notes that the assessment as to whether the male author could qualify for employment under the wage subsidy program was not finalised until March 2015 and that he was not employed under the program until October 2015, six years after he first started to receive social benefits

[2] *H.M. v. Sweden* (CRPD/C/7/D/3/2011), para 8.3.
[3] General comment No. 6 (2018) on equality and non-discrimination, para. 18 (b).
[4] See for example *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2.
[5] As per the decision of the High Court of Eastern Denmark of 22 December 2015.

under the Act on an Active Social Policy, and two and a half years after the authors had filed their application for family reunification. The Committee further notes the authors' undisputed claim that in order to fulfil the requirement of section 9 (5) of the Aliens Act once the male author had qualified for the wage subsidy programme in October 2015, they would have faced an additional waiting period of three years before they would have been eligible for family reunification under the Act. The Committee therefore concludes that in the present case the requirement of self-support under section 9 (5) of the Aliens Act disproportionally affected the male author as a person with disability and subjected him to indirectly discriminatory treatment.

8.6 The Committee therefore finds that the fact that the relevant domestic authorities rejected the authors' application for family reunification on the basis of criteria that was indirectly discriminatory for persons with disability had the effect of impairing or nullifying the authors' enjoyment and exercise of the right to family life on an equal basis with others, in violation of their rights under article 5 (1-2) read alone and in conjunction with article 23 (1) of the Convention.

Conclusion and recommendations

9. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 5 (1-2) read alone and in conjunction with article 23 (1) of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the authors, the State party is under an obligation to:

(i) Provide them with an effective remedy, including adequate compensation for any legal costs incurred in filing the present communication;

(ii) Refrain from expelling the female author to Ukraine and to ensure that the authors' right to family life in the State party is respected;

(iii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party to ensure that under the domestic laws of the State party, barriers to the enjoyment of persons with disabilities to family life on an equal basis as others are removed.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including any information on action taken in the light of the present Views and recommendations of the Committee