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. 61/2019**, ***

Communication submitted by:	S.M. (not represented)
Alleged victim:	The author
State party:	Denmark
Date of communication:	12 September 2017 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 3 July 2019 (not issued in document form)
Date of adoption of Views:	25 August 2023
Subject matter:	Forced psychiatric interventions; deprivation of freedom based on psychosocial disability
Procedural issue:	Substantiation of claims
Substantive issues:	Deprivation of liberty; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from exploitation, violence and abuse; integrity of the person; health
Articles of the Convention:	14, 15 and 16, read in conjunction with article 4, and 17 and 25
Article of the Optional Protocol:	2 (e)

1. The author of the communication is S.M., a national of Denmark born in 1974. He claims that the State party has violated his rights under articles 14, 15 and 16, read in conjunction with article 4, and articles 17 and 25, of the Convention. The Optional Protocol entered into force for the State party on 23 October 2014. The author is not represented by counsel.

* Reissued for technical reasons on 13 October 2023.

** Adopted by the Committee at its twenty-ninth session (14 August–8 September 2023).

*** The following members of the Committee participated in the consideration of the communication: Muhannad Salah Al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Amalia Eva Gamio Ríos, Laverne Jacobs, Samuel Njuguna Kabue, Rosemary Kayess, Alfred Kouadio Kouassi, Abdelmajid Makni, Sir Robert Martin, Markus Schefer and Saowalak Thongkuay.

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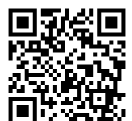

A. Summary of the information and arguments submitted by the parties

Facts as submitted by the author

2.1 The author describes himself as a human rights activist who has been subjected to forced psychiatric interventions since 2011, as a result of which the author took an interest in the treatment of psychiatric patients in Denmark. In 2012, the author began sending threatening emails to various doctors and public officials responsible for psychiatric treatment. As a result, the author was charged for making multiple threats, and he was forcibly hospitalized. The author continued sending such emails thereafter.

2.2 On 11 March 2015, by order of the District Court of Hillerød, a psychiatric examination of the author was carried out. The conclusions of the examination were that he had been "of unsound mind" when he committed the alleged violations. On 23 June 2016, a supplementary examination was conducted, and the conclusions were that the author's condition had not changed conclusively and that he exhibited clear symptoms of chronic paranoid psychosis. On 30 June 2016, the District Court found the author guilty in relation to 31 counts of violations of sections 119 (1) and 121 of the Penal Code, on offences against public authority, section 266 of the Penal Code, on threats to commit a punishable act likely to induce serious fear concerning life, health or welfare, and section 21 (1) of the Act on Restraining Orders, Exclusion Orders and Expulsions. The District Court ordered the psychiatric treatment of the author, without indicating a time limit. As of 12 September 2017, the author had been subjected to three years of forced psychiatric interventions and had been in pretrial detention for six months.

2.3 The author argues that, pursuant to the State party's legislation, persons considered "unfit to stand trial" on account of their impairment are not punished, but are instead sentenced to treatment. The author argues, however, that forced treatment is a "social control sanction" and should be replaced by formal criminal sanctions for offenders. In the present case, the author's psychosocial condition was the only reason presented to explain why he had sent the emails. The author claims that he was not given an opportunity to respond to the charges in writing before the start of the trial, likely because he was regarded as "mentally ill". The procedure applied to determine whether he should be sentenced was therefore not in accordance with the safeguards of a criminal trial, including the presumption of innocence. Psychiatrists investigated his emails for signs of "mental illness", because of his long history in that regard, and the public prosecutor was therefore not obliged to criminally investigate the matter.

2.4 On 26 September 2016, the Eastern High Court confirmed the judgment of the District Court. On 16 November 2016, the Board of Appeal to the Supreme Court decided not to grant the author leave to appeal. The author submits that he has therefore exhausted all available domestic remedies.

Complaint

3.1 The author submits that the State party has breached his rights under article 14 of the Convention, as, given the considerations of the High Court, he was deprived of his liberty on the basis of his psychosocial disability. His sentence to forced treatment is without a time limit, whereas persons convicted of the same crime who do not have a psychosocial disability receive a much shorter prison sentence. The gravity of the violation is compounded by the author's opposition to forced medical treatment. The indictment covers charges dating back to 2012, whereas the author was initially sent to undergo forced psychiatric interventions by the police, instead of being charged.

3.2 The author claims that the State party violated article 15 of the Convention, given that, during his time in the psychiatric system, he was forced to take certain medication without his consent. According to the author, the forced medical treatment is experimental and without any proven health effects.

3.3 The author argues that the way that psychiatric patients in the State party are subjected to forced treatment is in breach of article 16, read in conjunction with article 4, of the

Convention. The author notes that he does not pose any threat and that forceful treatment of a patient who does not pose any threat cannot be tolerated.

3.4 The author claims that he has been forced to take medication without his free consent, in violation of article 17 of the Convention. The absence of a time limit to the forceful medical treatment in the sentence against the author was also in breach of his rights under article 17.

State party's observations on admissibility and the merits

4.1 In its observations of 20 December 2019, the State party noted that, between 2012 and 2016, the author committed several violations of the Penal Code and the Act on Restraining Orders, Exclusion Orders and Expulsions. By judgment of 30 June 2016, the District Court of Hillerød found that the author had committed the following offences: 13 counts of threats of violence, sent by email, against someone with a duty to act by virtue of a public function or office on the occasion of the performance of their function or office, in contravention of section 119 (1) of the Penal Code; one count of a threat of violence made in person in contravention of the same provision; 14 counts of death threats, sent by email, qualified to create serious fear in another person for his or her, or other people's, life, health or welfare, in contravention of section 266 of the Penal Code; one count of accusing a police officer of being a paedophile and a murderer, in contravention of section 121 of the Penal Code; two counts of emailing two people whom he was prohibited from contacting pursuant to a restraining order, in violation of section 21 (1) of the Act on Restraining Orders, Exclusion Orders and Expulsions; and one count of violating a restraining order, in contravention of the same provision. The District Court found that the author had been "of unsound mind" at the time of committing the acts. On the basis of section 16 (1) of the Penal Code, the Court therefore considered that he could not be punished. Instead, pursuant to section 68 of the Penal Code, the author was sentenced to commit himself to treatment at or under the supervision of a psychiatric ward, giving the chief physician the authority to decide on readmission, if necessary. In line with section 68A of the Penal Code, the Court did not prescribe a maximum period for this measure.

4.2 On 26 September 2016, the Eastern High Court of Denmark upheld the judgment and sentence pronounced by the District Court, but acquitted the author of the charges based on section 266 of the Penal Code. On 2 November 2016, the author was admitted to the Psychiatric Centre Glostrup. On 16 November 2016, the Appeals Permission Board decided not to grant the author leave to appeal the judgment of the Eastern High Court.

4.3 From 2 November 2016 to 3 January 2017, following a decision by the chief physician at Psychiatric Centre Glostrup, the author was subjected to forced medication with the drug Abilify and, from 6 January 2017 to 13 March 2017, with Cisordinol. On 26 February 2018, the author lodged a complaint of the decisions to initiate forced medication with the Psychiatric Patients Complaint Board. On 23 March 2018, the Board decided against the author's complaint. On 10 October 2019, the Psychiatric Patients Appeals Board upheld that decision on appeal.

4.4 The State party notes that, contrary to the author's submissions, the Eastern High Court did not prescribe his forced medication or the indefinite application thereof. The Eastern High Court ordered the author's admission to a psychiatric facility or his supervision by a psychiatric facility. The Eastern High Court assessed whether admission to such a facility would be appropriate for the purpose of deterring the commission of future crimes, but it did not assess whether the author should receive medication or any other specific treatment. Decisions regarding forced medication are made by the chief physician on a case-by-case basis and such decisions are separate from judgments sentencing an offender to admission to or supervision by a psychiatric facility. They are appealable separately and subject to specialized expeditious review, in addition to judicial review.

4.5 The State party submits that the part of the communication concerning the author's forced treatment is inadmissible pursuant to article 2 (d) of the Optional Protocol, given that the author has not exhausted domestic remedies. The State party understands this part of the communication to relate to the author's claims under articles 15, 16 and 17 of the Convention. The State party observes that the author does not specify to which decision to initiate forced medication he refers, but that he has appended medical protocols concerning the initiation of

forced medication on 6 November 2016, 24 November 2016 and 6 January 2017. The State party is unaware of any complaints regarding the decision of 6 November 2016. The author filed a complaint against the decisions of 24 November 2016 and 6 January 2017 to the Psychiatric Patients Complaint Board and an appeal to the Psychiatric Patients Appeals Board. However, the author did not appeal the latter's decision of 10 October 2019 to the courts. Therefore, according to the State party, the author has not obtained a final judgment assessing the compatibility of the forced medication with the relevant national rules and the State party's human rights obligations.

4.6 The State party submits that the author has failed to establish a prima facie case for the admissibility of his argument concerning the judgment of the Eastern High Court of 26 September 2016 under article 14 of the Convention. The State party also submits that this part of the communication is, in any case, without merit. In this regard, the State party observes that Danish criminal law does not contain options for declarations of unfitness to stand trial that exempt persons with a psychosocial disability from criminal proceedings when suspected of a crime or mandate a separate track of law when convicting or acquitting persons in such cases. What distinguishes criminal proceedings involving persons with a psychosocial disability from other criminal proceedings is the mens rea assessment. If a defendant is medically assessed to have a psychosocial illness, Danish law provides for a legal assessment of whether the defendant was "of unsound mind" at the time of the commission of the crime. In the affirmative, an alternative sanction can be tailored to the defendant's needs. However, the question of whether the defendant was "of unsound mind" does not influence the procedural aspects of investigating a crime, filing charges or conducting the trial. The same general procedural guarantees apply to all criminal cases, whether or not the defendant is "of unsound mind". The standard of proof is the same, the defendant has the same right to a lawyer and the presumption of innocence applies. According to the State party, the author's assertions that persons with psychosocial illness are not presumed innocent and that the Prosecution Service does not have to criminally investigate the matter are incorrect and unfounded.

4.7 The State party observes that Danish law provides for the possibility of sentencing an offender "of unsound mind" to an alternative sanction, the nature of which depends on a specific assessment of the offender. Pursuant to section 68 of the Penal Code, the courts assess which measure is expedient to deter the commission of future crimes. Admission to a hospital facility is warranted only where less intrusive measures are considered unfit. Due to the nature and purpose of such measures, it is not necessarily expedient for the courts to fix a nominated time for which the offender is to serve the sentence. Section 68A (1) of the Penal Code provides for maximum prescribed times, but section 68A (2) provides that courts can abstain from prescribing a maximum time in case of particularly serious and dangerous crimes giving rise to a particular need to ensure that the measure is not lifted before the risk of recidivism is minimized. The State party submits that the possibility of alternative sentencing, and therefore the distinction between punishment and treatment, is grounded in the needs of the group of offenders covered by section 16 of the Penal Code. According to the State party, its human rights obligations oblige it to treat offenders with a history of psychosocial illness differently from other offenders and to offer specialized detention facilities and psychiatric treatment, in recognition of the fact that punishment may not serve the purpose of deterrence.[1]

4.8 The State party observes that the need for treatment is continuously monitored and assessed individually and that such measures are subject to continuous judicial review. Furthermore, the Prosecution Service must bring the matter of relaxing or lifting the measure to court, if treatment or detention is no longer required. In addition, the offender may request that the measure be relaxed or lifted.

4.9 In the present case, the State party submits that the author's deprivation of liberty was not grounded in his disability, but in the judicial findings that he had committed very serious crimes, that he was "of unsound mind" and that punishment would be ineffective to deter

[1] European Court of Human Rights, *Dybeku v. Albania*, Application No. 41153/06, Judgment of 18 December 2007, paras. 48 and 49; and *Klinkenbuss v. Germany*, Application No. 53157/11, Judgment of 25 February 2016, paras. 47 and 48.

recidivism. The nature of the deprivation of liberty was required by the author's circumstances, given the need to minimize the risk of further offences. The State party argues that legislation providing for tailored individual measures appropriate for the purpose of deterrence, rather than imprisoning persons with psychosocial illnesses under the same conditions as offenders without a psychosocial illness, does not render such alternative measures discriminatory, arbitrary or unlawful within the meaning of article 14 of the Convention. The absence of a maximum prescribed time for the measure does not entail the author's indefinite detention; he is entitled to continuous judicial and medical review, ensuring that his admission to a psychiatric facility is not prolonged beyond what is required to ensure the betterment of his condition and to deter future crimes. The State party therefore submits that the author has been afforded all necessary procedural guarantees and extensive access to judicial review, ensuring that the deprivation of liberty of the author is lawful and proportionate, considering his specific circumstances.

Author's comments on the State party's submission

5.1 In his comments of 24 March 2020, 9 June 2020, 20 June 2020 and 21 June 2020, the author reiterated his claims and argues that the facts presented amount to violations of article 25 of the Convention. In this regard, he notes that he has continued taking the prescribed medication voluntarily, after 13 March 2017, because the psychiatrist would not let him leave the psychiatric ward otherwise. He was therefore released to an outpatient programme. If he stops taking the medication, he will be obliged to return to the ward, where the psychiatrist would force him to take it. He has developed akathisia, a movement disorder, owing to taking Cisordinol, which he describes as the worst feeling he has ever had. The akathisia continued from March to September 2017. The author indicates that all he did daily was move around constantly and that it was so painful that he became suicidal. Given those side effects, the psychiatrist prescribed Olanzapin for the author to take instead.

5.2 The author argues that he brought claims against the forced medication to the courts. On 20 June 2017, the District Court of Glostrup dismissed the author's claim. On 4 October 2017, the Eastern High Court dismissed his appeal. On 14 December 2017, the Appeals Permission Board denied leave to appeal to the Supreme Court. In those proceedings, the author argued that forced treatment with psychiatric drugs was in breach of the Convention.

5.3 The author argues that psychiatrists in the State party who forcibly administer psychiatric medication are "human rights criminals". The author argues that his psychiatrist refuses to follow the recovery-oriented and rights-based mental health policy of the World Health Organization. In this regard, the author refers to the QualityRights toolkit and the QualityRights core training of the World Health Organization. He also recalls that the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,, indicated that power and decision-making in mental health were concentrated in the hands of "biomedical gatekeepers", in particular those representing biological psychiatry. Those gatekeepers, supported by the pharmaceutical industry, maintained that power by adhering to two outdated concepts: that people experiencing mental distress and diagnosed with "mental disorders" were dangerous and that biomedical interventions were medically necessary in many cases.[2] Moreover, the author disputes the State party's claim that his prospects of recovery would deteriorate significantly without forced psychiatric treatment, referring to the Committee's concluding observations on the initial report of the State party.[3]

5.4 The author reiterates that, by sending the threatening emails, he tried to ensure that the police would take his complaints against forced treatment seriously. The author argues that the police took him to a psychiatric ward several times, between 2012 and 2014, because of his emails. However, the police officers were not interested in his written explanations for sending the threats and told him he could explain himself to a judge. The author was therefore

[2] Office of the United Nations High Commissioner for Human Rights, "World needs 'revolution' in mental healthcare – UN rights expert", 6 June 2017, press release, available at https://www.ohchr.org/en/press-releases/2017/06/world-needs-revolution-mental-health-care-un-rights-expert?LangID=E&NewsID=21689.

[3] CRPD/C/DNK/CO/1, para. 39.

not given an opportunity to be heard, in breach of fair trial standards and article 14 of the Convention. According to the author, the police should have pressed charges and provided him with an attorney and a fair trial. The author first sent a threat on 27 November 2012, and he sent another threat, after nearly a year had passed. The author argues that the time taken to press charges against him, and the failure of the police to investigate forced psychiatric treatment following his emails, were in violation of article 14 of the Convention.

5.5 The author argues that the District Court of Hillerød breached article 14 of the Convention by sentencing him to a forced mental examination in a closed facility in preparation for the trial. According to his medical journal, he was detained from 15 December 2014 to 24 February 2015 based on his actual or perceived disability. The author's claims against forced medical examination, in which he referred to the Committee's concluding observations on the initial report of the State party, were dismissed by the District Court, on 29 October 2014, and by the Eastern High Court, on 6 November 2014. His lawyer did not argue that the existence of a disability could not justify the deprivation of liberty or that there was a breach of article 14 of the Convention. The author explains that he refused to participate in subsequent medical examinations, so their conclusions were weak.

5.6 Concerning the finding of the District Court of Hillerød that the author threatened a social education worker, the author argues that he does not remember the situation. If the police, the prosecution and the court had asked him properly and allowed him to state his views, he would have explained that, with regard to the incident of reference, he had wanted to refer to the Committee's concern that persons with psychosocial disabilities had a life expectancy that was 15 to 20 years shorter than that of persons without psychosocial disabilities.[4] The police, the prosecution and the court's failure to allow him to do so, and the District Court's failure to consider the Committee's concluding observations on the initial report of the State party, was in breach of article 14 (2) of the Convention. Moreover, the author had emailed a member of the delegation of the State party that had participated in the constructive dialogue with the Committee during the consideration of the State party's initial report. The author argues that, in her statement to the police, that member should have relayed the Committee's concern at the number of cases of coercive treatment of persons admitted to psychiatric institutions.[5] Her failure to do so resulted in a breach of article 14 of the Convention. Likewise, the failure of the Danish Nurses' Organization, TV2, the Executive Vice-President of the Capital Region of Denmark, a prosecutor from the North Zealand Police, the Director of Public Prosecution and his lawyer during the proceedings before the District Court to raise the breaches of the Convention in court, following his emails to them, was in violation of article 14 of the Convention.

5.7 The presiding judge of the District Court stated that it was not the responsibility of the author's lawyer to determine whether coercive psychiatric treatment was contrary to the Convention, in violation of the presumption of innocence. Moreover, the District Court gave the author only 10 minutes to make a statement, which was insufficient. The author's emails were investigated only by psychiatrists and not by the police. He was consequently sentenced to forced treatment, also in violation of the presumption of innocence. In addition, the author was not afforded an opportunity to defend himself in writing, the form he prefers. The author reiterates that the Committee has expressed its concern about the procedure applied in criminal proceedings in the State party that leads to sentencing to treatment.[6]

5.8 The author argues that the North Zealand police did not want to conduct a criminal investigation in respect of the psychiatrists. To avoid such an investigation, according to the author, the police claimed that the author has a mental illness. The author argues that the decision of the Eastern High Court of 26 September 2016 to sentence him to psychiatric treatment because of the declaration of non-responsibility was in violation of article 14 of the Convention in the light of the Committee's guidelines on the right to liberty and security of persons with disabilities.[7] He notes that, under article 14 (1) (b) of the Convention, the existence of a disability should in no case justify the deprivation of liberty and that said

[4] CRPD/C/DNK/CO/1, para. 56.
[5] Ibid., para. 38.
[6] Ibid., paras. 34 and 35.
[7] A/72/55, annex, para. 16.

provision prohibits the deprivation of liberty on the basis of impairment, even if additional factors or criteria are also used to justify the deprivation of liberty.[8] The author argues that, even if there was another reason by way of the criminal matter to deprive him of his liberty, his deprivation of liberty in a psychiatric ward was therefore still in violation of article 14 (1) (b) of the Convention. He had requested instead to be punished with an ordinary criminal sanction.

5.9 The author refers to letters from the police dated 13 February 2017 and 22 March 2017 stating that the charges against him for sending two threatening emails had been dropped. The author argues that the letters show that his conviction was unfair and in breach of article 14 of the Convention. The author notes that the persons whom he threatened in the emails, from the Psychiatric Patients Complaint Board and from the Patient Ombudsman, were not summoned to court and asked about the compatibility of forced treatment with psychiatric drugs with the Convention. Following a threat made to the Head of the Psychiatric Centre Nordsjælland in Hillerød on 27 November 2012, the police took the author to a psychiatric ward, irrespective of his request that charges be pressed and that he be provided with a lawyer. After he was provided with a lawyer, the latter did not argue for respect of his human rights before the District Court. The author considered that his case had been handled badly and that he needed another case of forced treatment for which to lodge a complaint. Following more threats, the author was again taken to a psychiatric ward, from where he escaped, after handing the psychiatrist a complaint about the forced treatment and a subpoena to sue the psychiatric system. The police then returned him to the ward for forced treatment. However, the psychiatrist did not transmit the subpoena to the Psychiatric Patients Complaint Board. The author's lawyer provided to him by the psychiatric system argued a breach of the Mental Health Act, but not of the Convention. To the author's disappointment, the police did not press charges, and he lost the subsequent civil lawsuit. In the third quarter of 2014, the author therefore sent another round of threats, which led the police to file charges against him. However, the author did not attend the trial, because he wanted to avoid forced treatment with psychiatric drugs; he therefore left and travelled to Poland, Canada and then back to Poland, where he was arrested in the second quarter of 2016 and returned to Denmark.

5.10 The author calls for the abolishment of declarations of non-responsibility and the sentencing to treatment based thereon in the State party. He requests that he be provided with compensation for the costs of litigating his criminal case.

Additional observations from the State party

6.1 In its additional observations of 17 August 2020, the State party observed that, following his admission to the Psychiatric Centre Glostrup on 2 November 2016, the author was encouraged to take Abilify, from 21 to 24 November 2016, but that, upon decision the of the chief physician, he was subject to take the drug forcibly from 24 November 2016 to 3 January 2017, as his condition had deteriorated. He was described as having delusions and paranoia. In addition, the author had made a "death list", with the names of all the doctors who had administered the drugs. Also on 3 January, the author refused the staff's suggestion to take Cisordinol. On 6 January 2017, the chief physician decided to submit the author to forced treatment with Cisordinol. On 13 March 2017, the author was no longer subject to forced medication, but instead took it voluntarily. On the same day, he stated his wish to begin treatment with the prolonged-release administration of Cisordinol, for which he was asked to give his consent.

6.2 The State party acknowledges that the author has exhausted all available domestic remedies.

6.3 The State party submits that Danish legislation regulating forced medication is based on the premise that patients have a right to be treated equally as human beings, that compulsion must not be used as a means of punishment and that degrading treatment is prohibited. In the present case, the chief physician's decision to use forced medication with Abilify was motivated by the author's delusional thoughts of grandeur and persecution, severe disturbance of the mind and numerous digressions. The chief physician therefore

[8] Ibid., para. 7.

found that it would be medically irresponsible not to begin medical treatment. The chief physician decided to use forced medication with Cisordinol, following the author's refusal to take medication owing to the author's fear that he would be killed. The State party notes that section 4 (4) of the Mental Health Act provides that coercion, including forced medication, must not be used to a wider extent than necessary to achieve the sought purpose. If the chief physician found it medically responsible in any way to stop the treatment, the chief physician had an obligation to do so. Under section 15 of the Health Act, health-care professionals must provide the necessary information for the patient to make an autonomous decision and to ensure that the patient adequately understands the information provided. In the present case, the medical staff attempted to inform the author accordingly, but he refused to listen to the information. The State party argues that the requirements of the Mental Health Act and the Health Act were consequently met in the author's case.

6.4 The State party notes that, on appeal, the Psychiatric Patients Complaint Board hears the patient and the hospital staff and considers the medical journal. The members of the Board are experts appointed on the recommendation of the Danish Medical Association and have the necessary knowledge to assess the correctness of the treatment. The decision of forced medication was also scrutinized by the Psychiatric Patients Appeals Board, the District Court and the High Court. The State party argues that the examinations conducted were thorough and that the Committee should give considerable weight to the findings of the domestic authorities, which are better placed to assess the circumstances of the author's case.

6.5 Regarding the criminal proceedings, the State party emphasizes that the question of whether a person was "of unsound mind" at the time of committing a crime, and whose case therefore falls within section 16 of the Penal Code, does not influence the procedural aspects of criminal proceedings. Accordingly, the author was not treated differently because of his psychiatric condition. The Eastern High Court did not refer to the Convention in its judgment of 26 September 2016, given that the State party's courts characteristically render brief decisions that may not reflect all their considerations. However, the courts are required to consider the State party's international obligations. The judgment therefore does not reflect that the court did not hear the author's argument regarding the Convention. The State party reiterates that the trial only concerned the sentence of psychiatric treatment, and not involuntary medical treatment. The State party concludes that the communication is manifestly ill-founded, because the author has failed to establish a prima facie case for the purposes of admissibility under articles 14 to 17 and 25 of the Convention.

Additional comments from the author

7. In his comments of 30 November 2020, 1 December 2020 and 5 December 2020, the author claims to be a refugee and argues that he has been subjected to gender-based violence as a heterosexual male. He also argues that the Danish police refuse to inform the public of his communication before the Committee and that he has asked them to stop replying to him.

B. Committee's consideration of admissibility and the merits

Consideration of admissibility

8.1 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.

8.2 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.

8.3 The Committee notes that the State party does not dispute that the author has exhausted domestic remedies. The Committee also notes that the author brought claims against the decisions to submit him to forced medication to the Psychiatric Patients Complaint Board and the Psychiatric Patients Appeals Board, as well as to the District Court of Glostrup, the Eastern High Court and the Appeals Permission Board. The Committee further notes that the author contested the decision to sentence him to psychiatric treatment

before the District Court of Hillerød, the Eastern High Court and the Appeals Permission Board. In the light of the foregoing, the Committee considers that article 2 (d) of the Optional Protocol does not preclude it from examining the communication.

8.4 The Committee takes note of the author's claims that he was forced into involuntary psychiatric treatment by the police, between 2012 and 2014, before any charges had been brought against him. The Committee notes that the Optional Protocol entered into force for the State party on 23 October 2014. In the absence of further specifications by the author as to the dates of said treatment, the Committee concludes that this part of the communication is inadmissible under 2 (f) of the Optional Protocol.

8.5 The Committee takes note of the State party's submission that the author's communication is inadmissible under article 2 (e) of the Optional Protocol as being manifestly ill-founded. The Committee considers that the author's claims under articles 15 and 16, read in conjunction with article 4, of the Convention do not contain sufficient elements to enable it to assess to what extent the forced psychiatric treatment of the author breached his rights under the Convention. Consequently, the Committee is of the view that these claims are insufficiently substantiated under article 2 (e) of the Optional Protocol. In addition, the Committee considers that the author's claim of his detention from 15 December 2014 until 24 February 2015 being based on his disability, given that it is without further explanation or substantiating documentation, is insufficiently substantiated under article 2 (e) of the Optional Protocol. The Committee considers that the author's claims regarding the alleged failure of the police to conduct a criminal investigation into forced psychiatric treatment and the alleged failure to ensure that those who were threatened by the author were heard during the latter's trial about alleged breaches of the Convention constituted breaches of his rights under article 14 of the Convention are manifestly ill-founded under article 2 (e) of the Optional Protocol. The Committee also considers that the author has insufficiently substantiated his claims that he is a refugee and that he was subjected to gender-based discrimination. The Committee therefore declares these parts of the communication inadmissible under article 2 (e) of the Optional Protocol.

8.6 The Committee considers, however, that the author has sufficiently substantiated his claim based on articles 14, 17 and 25 of the Convention and relating to his forced psychiatric treatment and medication for the purposes of admissibility. The Committee therefore declares this part of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 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.

9.2 With regard to the author's allegations under article 14 of the Convention, the Committee reaffirms that liberty and security of person is one of the most precious rights to which everyone is entitled. In particular, all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, are entitled to liberty, pursuant to article 14 of the Convention.[9] The Committee notes that, on 30 June 2016, the District Court of Hillerød sentenced the author to psychiatric treatment and that it found him to have been "of unsound mind" at the time of the commission of the crimes. The Committee notes that the District Court applied section 16 (1) of the Penal Code, which provides that persons of unsound mind due to a mental disorder or a comparable condition at the time of committing the act are not punished. The Committee notes that the District Court therefore applied section 68 of the Penal Code, which expressly provides for sentencing a person to a hospital "for the mentally ill or to an institution for the severely mentally impaired". The Committee takes note of the State party's argument that the possibility of sentencing offenders to alternative measures, and thereby the distinction between punishment and treatment, is grounded in the needs of the group of offenders covered by section 16 of the Penal Code. However, the Committee

[9] A/72/55, annex, para. 3; *Noble v. Australia* (CRPD/C/16/D/7/2012), para. 8.7; *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015), para. 10.8; *Doolan v. Australia* (CRPD/C/22/D/18/2013), para. 8.8; and *Leo v. Australia* (CRPD/C/22/D/17/2013), para. 8.8.

recalls that treatment is a social control sanction and should be replaced by formal criminal sanctions for offenders whose involvement in crime has been determined.[10] The procedure applied when determining whether a person should be sentenced to treatment is not in accordance with the safeguards that a criminal procedure should have if it may result in a sanction being imposed on a person.[11] Sentencing a person to treatment is therefore incompatible with article 14 of the Convention.[12] In addition, the Committee notes that, whereas the State party argues that the author was entitled to continuous judicial and medical review and that the District Court chose not to set a maximum time on the treatment, with a view to prevention pursuant to Section 68A (2) of the Penal Code, the State party has not contested the author's argument that the decision not to establish a maximum time exposed him to the possibility of a much lengthier sanction than would be imposed on an offender not found to be "of unsound mind". The Committee considers that the jurisprudence of the European Court of Human Rights invoked by the State party does not establish that the decision to sentence the author to forced psychiatric treatment was compatible with his rights under the Convention. The Committee therefore finds that the imposition of forced psychiatric treatment on the author was in breach of his rights under article 14 of the Convention.

9.3 The Committee considers that the author has not substantiated his assertion that he was not presumed innocent or how the time taken to file charges against him, the decision to sentence him despite the prior decision to drop certain charges, the alleged failure of the District Court of Hillerød to consider the Committee's concluding observations in breach of his rights under article 14 of the Convention. The Committee notes that although the author argues that he was not heard "properly" and was not afforded a possibility to submit his views in writing, the judgment of the District Court of Hillerød contains a detailed and extensive reflection of his submissions, including his argument that the reasons for sending the emails originated in his conviction that forced psychiatric treatment was incompatible with the Convention. The Committee also notes that the author was represented by counsel before the District Court, the High Court and the Appeals Permission Board. Therefore, the Committee cannot conclude, on the basis of the information in the file, that the author's rights under article 14 of the Convention were violated.

9.4 The Committee takes note of the author's argument under article 17 of the Convention that he was forced to take medication without his consent. The Committee recalls that it has previously expressed its concerns about the use of forced treatment under articles 17 and 25 of the Convention.[13] The Committee also recalls that forced treatment by psychiatric and other health and medical professionals is an infringement of the right to personal integrity.[14] In the present case, the Committee notes that the forced administration of Cisordinol on the author from March to September 2017 caused him to develop akathisia. The Committee also notes that this caused the author to move around constantly and that it was so painful that it made him suicidal, which led to the physician changing the medication. In the light of the foregoing, the Committee finds that the forced administration of medication on the author, which caused him pain to the point of rendering him suicidal, was in violation of his rights under article 17, read in conjunction with article 25, of the Convention.

10. 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 articles 14 and 17, read in conjunction with, article 25 of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) With respect to the author, the State party is under an obligation:

[10] CRPD/C/DNK/CO/1, para. 34.

[11] Ibid.

[12] Ibid.

[13] CRPD/C/PER/CO/1, paras. 30 and 31; CRPD/C/HRV/CO/1, paras. 23 and 24; CRPD/C/TKM/CO/1, paras. 31 and 32; CRPD/C/DOM/CO/1, paras. 30 and 31; CRPD/C/SVK/CO/1, paras. 49 and 50; CRPD/C/SWE/CO/1, paras. 37 and 38; and A/72/55, annex, para. 10.

[14] General comment No. 1 (2014) on Article 12: Equal recognition before the law, para. 42.

(i) To provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;

(ii) To make a public acknowledgement of the violation of the author's rights in accordance with the present Views and adopt any other appropriate measure of satisfaction;

(iii) To publish the present Views and circulate them widely, in accessible formats, so that they are available to all sectors of the population;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future and to ensure effective access to justice for persons with disabilities on an equal basis with others; in this regard, the Committee refers to the recommendations contained in its concluding observations on the initial report of the State party[15] and the Committee's guidelines on the right to liberty and security of persons with disabilities[16] and requires that the State party:

(i) Adopt a policy to initiate a structural review of the procedures used to sanction persons with disabilities when they commit criminal offences; the system should comply with the general safeguards and guarantees established for all persons accused of a crime in the criminal justice system, inter alia, the presumption of innocence and the right to defence and to a fair trial;

(ii) Take all measures necessary, including the revision of the Mental Health Act, to ensure that persons with disabilities enjoy the right to liberty and security of person; the Committee recommends that the State party ensure that no one will be detained in any facility on the basis of actual or perceived disability;

(iii) Amend laws and regulations in order to abolish the use of physical, chemical and other medical non-consensual measures, with regard to persons with psychosocial disabilities in institutions; the Committee recommends in particular that the State party provide training on treatment in accordance with the Convention to medical professionals and personnel in care institutions and other similar institutions on preventing torture and other cruel, inhuman or degrading treatment or punishment.

11. 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 information on any action taken in the light of the present Views and recommendations of the Committee.

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[15] CRPD/C/DNK/CO/1, paras. 35, 37 and 39.

[16] A/72/55.