

UN Human Rights Committee (CCPR): Views and interim measures in cases of forced return.

The International Covenant on Civil and Political Rights ([ICCPR](#)) counts 169 state parties, out of which 115¹ have fully adhered to its first Optional Protocol. This protocol enables the [Human Rights Committee](#) (CCPR) to receive and consider complaints from individuals who allege to be victims of violation of one or more rights set forth in the ICCPR. All European states, with the exception of the Vatican City, are bound by both the ICCPR and its first protocol. They have, therefore, the legal obligation under international law to respect the provisions of the Covenant and to perform them in good faith (as established by the [Vienna Convention on the Law of Treaties](#)).

The Human Rights Committee is a quasi-judicial body, entrusted with the legitimacy of supervising and monitoring the implementation of the Covenant obligations by its states parties. The members of the Committee are “persons of high moral character and recognised competence in the field of human rights”². States are active in the election procedure of the Committee and each state party can nominate one of its nationals to participate in the election.³ The CCPR has four main monitoring functions: (1) examining periodic reports submitted by states parties; (2) elaborating general comments to assist states in giving effect to the Covenant provisions; (3) assessing inter-state complaints, and; (4) considering individual complaints under the Optional Protocol.

The decisions on individual complaints by the CCPR, often referred to as “Views”, are drawn under the principles of impartiality and independence, and are authoritative as the Committee is tasked with the interpretation of the treaty. The CCPR has developed, in a spirit of cooperation with the states parties, a comprehensive jurisprudence that guides states on what the obligations under the Covenant require in concrete circumstances.

An increasingly important stream of jurisprudence is that ruling on violations of Article 7 (*right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment*), Article 6 (*right to life*) and Article 2 (*right to an effective remedy and obligation to give effect to the Covenant*) in relation to cases of forced returns. As unambiguously put by the Committee’s General Comment no. 31, “Article 2 [...] entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”. As explained below, a number of European countries have demonstrated full respect for the CCPR Views on such cases.

¹ As of February 2017.

² ICCPR, Article 28 ([link](#)).

³ Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.10, 11 January 2012 ([link](#)).

In urgent circumstances, such as it is often the case for imminent deportation and removals, the Committee may request interim measures⁴ to avoid irreparable damage to the victim before a conclusion is reached by the Committee. For example, in [R.A.A. and Z.M. v. Denmark](#), the CCPR requested the state party to refrain from deporting the applicants to Bulgaria while their case was under consideration by the Committee. The non-respect of a request for interim measures is taken with particular gravity by the Committee, which considers it a “grave breach of [the] obligations under the Optional Protocol” for it frustrates the examination of the case and makes “the expression of its Views nugatory and futile” ([Maksudov v. Kyrgyzstan](#)).

The Committee has given authority to the *Special Rapporteur on New Communications and Interim Measures*⁵ to decide on the necessity of interim measures prior to the Committee’s Views. An interim measure does not imply a decision on the merits of the communication. The Special Rapporteur can also call for “provisional” interim measures when there are doubts regarding the credibility, imminence or irreparability of harm. In such cases, the interim measure can be revised at any stage of the proceedings, after careful consideration of the state’s and the applicant’s arguments for or against the need of interim measures. Thus, interim measures have proved to be an essential part of the Committee’s work, allowing it to cast its Views before irreparable damage is made. The Special Rapporteur can also call for protection measures vis-à-vis the applicant or close family members when there are grounds to believe that they would be in risk of violence or intimidation for filing an application before the Committee.

The Special Rapporteur has given particular weight to potential violations of Articles 2, 6 and 7⁶ when deciding to grant interim measures on forced return cases. Yet, to a lesser extent, the Rapporteur has also granted interim measures to avoid imminent violations of Articles 17, 18, 19 or 27.⁷ It must be noted, however, that, as evidenced by the concurring individual opinion in [X. v. Denmark](#), it is unclear whether violations of articles other than Articles 6 and 7 are to be considered of such gravity as to entail a non-refoulement obligation under the ICCPR. Therefore, claims based on Articles 2, 6 and 7 are likely to be more successful before the CCPR, both for issuing interim measures and deciding on a violation of the Covenant rights in cases of forced return.

⁴ Rule 92, Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.10, 11 January 2012 ([link](#)).

⁵ CCPR/C/110/3: The mandate of the Special Rapporteur on New Communications and Interim Measures ([link](#)). Moreover, in July 2013, the Committee decided to appoint an alternate to the Special Rapporteur who should deal with urgent matters when the Rapporteur is not available or is unable to act in the application of his/her duties.

⁶ Article 7 (*right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment*), Article 6 (*right to life*) and Article 2 (*right to an effective remedy and obligation to give effect to the Covenant*). Please check the full provisions under these articles on the ICCPR:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁷ Article 17 (*right not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence*), Article 18 (*right to freedom of thought, conscience and religion*), Article 19 (*right to freedom of expression*) and Article 27 (*rights of ethnic, religious or linguistic minorities*). Please check the full provisions under these articles on the ICCPR:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

The level of compliance of the Views of the Committee by European states depends on different factors such as the general commitment of a state party with its human rights obligations, the relations between different sources of international law and each state's domestic law, and the nature of the cases in question. The compliance with previous Views can be considered a good "thermometer" of a state's willingness to follow the Committee's appraisal. The majority of states take the explicit or implicit position that the Views of the Committee do not impose legal obligations, while also recognising an obligation to at least review their position on the basis of the conclusions.

The jurisprudence of the CCPR shows that countries including **Denmark**, **Norway**, the **Netherlands** and **Bosnia and Herzegovina** have respected interim measures on cases of forced returns - regardless of the final outcome of the case.⁸ **Denmark**, particularly, has ceased removals to Bulgaria, Nigeria, Iran, Sri Lanka, Egypt, Armenia, Italy, Afghanistan, Russia and Eritrea after interim measures were requested by the Special Rapporteur until a decision was reached by the CCPR on each case. In the majority of the cases interim measures are granted after the Committee's request. The abundance of jurisprudence concerning Denmark can be explained, inter alia, by its good record of complying with interim measures and CCPR Views. Two European states, however, have recently denied interim measures: **Spain** in *Ali Aarrass v. Spain*⁹, which concerned the return to Morocco of a suspect of terrorism, and **Russia** on two cases of extradition to Kyrgyzstan¹⁰.

However, the question remains as to the consequences of non-compliance with the CCPR Views. Practice in different states suggests that the Views can have considerable weight before domestic courts and public authorities, being used as a source of law¹¹ or as a tool for policy change. Moreover, since the CCPR Views are publicly available and receive ample attention for being considered an authoritative interpretation of the treaty, non-compliance with the Views can negatively affect states parties' reputation regarding the respect for human rights.

Another feature of the individual complaints procedure is the existence of a *Special Rapporteur on Follow-up to Views*¹², who is responsible for communicating with states parties with a view of achieving satisfactory results following a View. The purpose of its mandate is to assess the parties' efforts to comply with the Committee's views, while following-up with the applicants on their situation. Follow-up reports are submitted periodically for CCPR sessions. The Committee tasks the Special Rapporteur on Follow-up to Views with assessing the degree of

⁸ See the document attached for a non-exhaustive list of cases before the CCPR related to forced returns, or read the list of jurisprudence at the CCPR's website:

<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx>

⁹ CCPR/C/111/D/2008/2010 Communication No. 2008/2010: Aarrass v. Spain:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/111/D/2008/2010&Lang=en

¹⁰ See CCPR/C/113/D/2192/2012 Communication No. 2192/2012: N.S. v. Russian Federation ([link](#)) and CCPR/C/116/D/2193/2012 Communication No. 2193/2012: K.B. v. Russian Federation ([link](#)).

¹¹ ACIL Research Paper No 2011-02, 'The Legal Status of Decisions by Human Rights Treaty Bodies in National Law', available here: https://pure.uva.nl/ws/files/1263198/109408_SSRN_id1817532_1_.pdf

¹² CCPR /C/3/Rev.10: Rules of Procedure of the Human Rights Committee [Rules 101-103]. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f3%2fREV.10&Lang=en

implementation of every View by a state party. Four different implementation criteria are assessed: (a) Individual measures taken; (b) Legislative review; (c) Publication of the Views, and; (d) Non-repetition of violation. They are graded from A to E, where A indicates a “reply largely satisfactory” and E indicates that measures were taken “against the recommendations of the Committee”.¹³ Between 2012 and 2014, only 1% of grades were E.¹⁴ The follow-up reports are also referred to in the Annual Reports of the Human Rights Committee. Therefore, it can be said that not respecting the Committee’s Views results in consecutive public exposure of a violation of the Covenant rights.

¹³ Check here for more information on the grade assessment for follow-up on communications and views as adopted by the CCPR: <http://ccprcentre.org/doc/2015/03/G1347689.pdf>

¹⁴ Centre for Civil and Political Rights, Follow Up and Assessment. Available at: <http://ccprcentre.org/follow-up-and-assessment>

In light of the above, the following points substantially explain why states should abide by the requests for interim measures and the Views of the Human Rights Committee (CCPR):

- *As signatory to both the ICCPR and its first Optional Protocol, which sets out a system by which the Human Rights Committee can receive and consider complaints from individuals who allege that their human rights have been violated, a state undertakes the obligation to fully respect their provisions and to uphold the interpretation following from it. States voluntarily undertook the obligations under the ICCPR and its Optional Protocol and agreed to abide by them.*
- *The ICCPR is one of the cornerstones of the international human rights framework. The CCPR is tasked with the interpretation of the treaty on concrete cases, and this competence is recognised by states parties' accession to the first Optional Protocol. Thus, non-compliance with a CCPR View is considered a serious and flagrant breach of a State's human rights obligations.*
- *According to the Vienna Convention on the Law of Treaties (VCLT), every treaty must be performed in good faith (principle of "pacta sunt servanda", which is also recognised as customary international law). Therefore, non-compliance with the CCPR Views indicates a breach of state's obligation to apply the ICCPR and its Optional Protocol in good faith.*
- *Provisions of domestic law cannot justify a failure to perform obligations under an international treaty, as established by Article 27 VCLT. On the contrary, states parties are bound to give effect to the provisions of a treaty (Article 2(2) ICCPR). Hence, acting in accordance with the CCPR Views is an opportunity to demonstrate a state's commitment towards the ICCPR.*
- *The CCPR is a quasi-judicial body that reaches its Views with impartiality and independence. States participate in the election of the members of the Human Rights Committee and have the opportunity to submit candidates for the election procedure. States are also active parts in the assessment of Views and are given considerable space to challenge allegations of human rights violations. Non-compliance with the CCPR Views is a breach of the spirit of cooperation between state parties and the CCPR.*
- *Lack of compliance with CCPR interim measures and Views on cases of forced return can also be interpreted as a breach of the principle of non-refoulement (widely recognised as a peremptory norm of international law). Such a violation can have particular weight before national courts and authorities, depending on a state's domestic legislation.*
- *The extent of states parties' legal obligation to abide by the Covenant is reinforced by the CCPR's General Comment no. 31. There, the Committee also elucidates that Articles 2, 6 and 7 entail an obligation not to deport, expel or remove a person where there are grounds for believing that the person would have such rights violated in that country or any country the*

person would be subsequently removed. In addition to the negative obligations under these articles, states parties also have the positive obligation to establish appropriate legislative and policy frameworks to prevent the violation of these rights. In cases related to forced returns or detention, this might entail not only the obligation not to return, but also the obligation to ensure effective legal remedies, access to justice, humane conditions in detention centres, etc. Thus, besides the CCPR Views, General Comment no. 31 is also an authoritative source of states parties' obligations in that regard.

- The CCPR Views and the follow-up reports by the competent Special Rapporteur are publicly available. Cases of non-compliance are particularly raised on these reports and on the CCPR Annual Reports. Therefore, states parties are exposed to consecutive public disapproval for not complying with a CCPR View.

In addition to the points above, the following arguments can be raised to argue in favour of the respect for an interim measure requested by the Human Rights Committee:

- The CCPR has taken a firm stand against non-respect of its requests for interim measures, particularly in cases of forced returns. It considers it an alarming breach of the obligation to cooperate with the CCPR in good faith, as non-compliance frustrates the consideration of a communication by the CCPR and “render examination by the Committee [...] nugatory and futile” ([Maksudov v. Kyrgyzstan](#)).
- Apart from a violation of the articles in question in the case, non-compliance with an interim measure could also result in a violation of Article 1 of the Optional Protocol (recognition of the Committee's competence to receive and consider individual communications - see e.g. [N.S. v. Russian Federation](#)).
- According to the CCPR, interim measures are respected in the majority of cases.¹⁵ Therefore, by not complying with an interim measure a state is put under special scrutiny by the Human Rights Committee (e.g. consecutive references to cases of non-compliance of interim measures in the Committee's reports).
- In the majority of recent cases, a request for interim measures was followed by a decision that forced return would entail a violation of the relevant provisions of the Covenant.

¹⁵ CCPR/C/113/4: Consideration by the Human Rights Committee at its 111th, 112th and 113th sessions of communications received under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 59. Available here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F113%2F4&Lang=en

Appellants could also rely on relevant national law and jurisprudence on the interactions between domestic and international law. A state party's legal system normally entails a duty to follow obligations deriving from international treaties, including the ICCPR. Additional arguments can be made based on a state's previous compliance with CCPR Views and requests for interim measures. The non-exhaustive list of CCPR Views brought against European states and related to forced returns annexed to this document can be a useful tool for assessing the general compliance/non-compliance to the CCPR Views and requests for interim measures (see [Annex 1](#)).

We hope that the background information and the arguments above can be helpful to the preparation and follow-up of individual communications, which gives proper value to the available mechanisms at the UN level.

Annex 1

CCPR Views related to forced returns - European countries

NB: This list is not exhaustive. Priority has been given to most recent Views of the Committee.
 NB: The respect for interim measures is based on the information made available by the Committee.
 NB: You can find all jurisprudence from UN Treaty Bodies by following [here](#).

Case Number:	Case Name:	Articles:	Short summary:	Interim measures?	Result:	Source:
CCPR/C/118/D/2608/2015 - Communication No. 2608/2015	R.A.A. and Z. M. v. Denmark	CCPR: Article 7 OP-CCPR: Article 2	Deportation to Bulgaria	Granted and respected.	Views: violation	Link
CCPR/C/114/D/2288/2013 - Communication No. 2288/2013	Omo-Amenaghawon et al. v. Denmark	CCPR: Articles 2, 3, 6, 7, 13, 14, 18, 26 and 27 OP-CCPR: Articles 2 and 3	Deportation to Nigeria	Granted and respected.	Views: violation	Link
CCPR/C/114/D/2329/2014 - Communication No. 2329/2014	Z v. Denmark	CCPR: Article 7, 18, 19 / OP-CCPR: Article 2, 3	Deportation to Iran	Granted and respected.	Views: non-violation	Link
CCPR/C/116/D/2347/2014 - communication No. 2347/2014	K.G. v. Denmark	CCPR: Article 7 / OP-CCPR: Article 2	Deportation to Sri Lanka	Granted and respected.	Views: non-violation	Link
CCPR/C/116/D/2193/2012 - communication No. 2193/2012	K.B. v. Russian Federation	CCPR: Article 7 // OP-CCPR: Article 3 and 5 (2) (b)	Extradition to Kyrgyzstan	Granted but not respected.	Views: non-violation of Article 7, violation of Article 2	Link
CCPR/C/114/D/2343/2014 - Communication No. 2343/2014	H.E.A.K. v. Denmark	CCPR: Articles 1; 2; 7; 9; and 19 OP-CCPR: Articles 1; 2; and 3	Deportation to Egypt	Granted and respected.	Views: violation	Link
CCPR/C/115/D/2474/2014 - Communication No. 2474/2014	X v. Norway	Articles 2(3) and 7 // OP-CCPR: Articles 2 and 5(2)(a)	Deportation to Afghanistan	Granted and respected.	Views: non-violation	Link
CCPR /C/116/D/2422/2014 - communication No. 2422/2014	Z v. Denmark	CCPR: Articles 7 and 26 OP-CCPR: Article 2 and 3	Deportation to Armenia	Granted and respected.	Views: non-violation	Link

CCPR/C/114/D/2360/2014 - Communication No. 2360/2014	Jasin et al. v. Denmark	CCPR: Article 7 OP-CCPR: none	Deportation to Italy	Granted and respected.	Views: violation	Link
CCPR /C/115/D/2258/2013 - Communication No. 2258/2013	Rasappu v. Denmark	CCPR: Article 7 OP-CCPR: 2	Deportation to Sri Lanka	Granted and respected.	Views: violation	Link
CCPR/C/114/D/2363/2014 - Communication No. 2363/2014	S.S.Z. v. Denmark	-	Deportation to Afghanistan	(no longer at risk of deportation)	Discontinuance	Link
CCPR/C/114/D/2370/2014 - Communication No. 2370/2014	A.H. v. Denmark	CCPR: Articles 6, 7 and 14 OP-CCPR: Articles 2, 3 and article 5 (2) (b)	Deportation to Afghanistan	Author had already been deported. Request for interim protection granted.	Views: violation	Link
CCPR/C/114/D/2389/2014 - Communication No. 2389/2014	X v. Denmark	CCPR: Articles 7 and 26 OP-CCPR: Articles 2, 5.1, 5.2 and 5.4	Deportation to Iran	Granted and respected.	Views: violation	Link
CCPR/C/114/D/2393/2014 - Communication No. 2393/2014	K v. Denmark	CCPR: Articles 7 and 19 OP-CCPR: Article 2	Deportation to Afghanistan	Granted and respected.	Views: non- violation	Link
CCPR/C/114/D/2426/2014 - Communication No. 2426/2014	N v. Denmark	CCPR: Article 7 / OP-CCPR: Article 2	Deportation to Iran	Granted and respected.	Inadmissibility	Link
CCPR/C/114/D/2428/2014 - Communication No. 2428/2014	I.A.A. et al. v. Denmark	CCPR: Article 7 // OP-CCPR: Article 5 (2) (b)	Deportation to Italy	Granted and respected.	Inadmissibility	Link
CCPR/C/113/D/2050/2011 - Communication No. 2050/2011	E.L.K. v. Netherlands	CCPR: Article 17 // OP-CCPR: Article 2	Expulsion to Angola	(not requested)	Inadmissibility	Link
CCPR/C/113/D/2192/2012 - Communication No. 2192/2012	N.S. v. Russian Federation	CCPR: Articles 7; 9 OP-CCPR: Articles 2 and 5 (2 (b))	Extradition to Kyrgyzstan	Granted but not respected.	Views: non- violation	Link

CCPR/C/113/D/2272/2013 - Communication No. 2272/2013	P.T. v. Denmark	CCPR: Article 7 OP-CCPR: Articles 2 and 5 (2 (b))	Deportation to Sri Lanka	Granted and respected.	Views: non- violation	Link
CCPR/C/113/D/2369/2014 - Communication No. 2369/2011	N.S. v. Denmark	-	Deportation to Afghanistan	(no longer at risk of deportation)	Discontinuance	Link
CCPR/C/113/D/2497/2014 - Communication No. 2497/2014	M.N. v. Denmark	-	Deportation to Afghanistan	(duplicate registration)	Discontinuance	Link
CCPR/C/113/D/2515/2014 - Communication No. 2515/2014	X v. Denmark	CCPR: Articles 7, 18, and 26; OP- CCPR: Article 2	Deportation to Afghanistan	Not granted.	Inadmissibility	Link
CCPR/C/113/D/2523/2015 - Communication No. 2523/2015	X v. Denmark	CCPR: Article 7 // OP-CCPR: Article 2	Deportation to Greece	Not granted.	Inadmissibility	Link
CCPR/C/112/D/2126/2011 - Communication No. 2126/2011	Kesmatulla v. Russian Federation	CCPR: Articles 7 and 17 OP-CCPR: Articles 2, 3 and 5 (2 (b))	Deportation to Afghanistan	Granted and respected.	Views: violation	Link
CCPR/C/112/D/2186/2012 - Communication No. 2186/2012	Mr. X, Ms. X v. Denmark	CCPR: Articles 6; 7; 14 and 26 // OP-CCPR: Article 2 and 3	Deportation to the Russian Federation	Granted and respected.	Views: non- violation	Link
CCPR/C/112/D/2243/2013 - Communication No. 2243/2013	Husseini v. Denmark	CCPR: Articles 2; 7; 13; 23(1); and 24 OP-CCPR: Articles 2; 3; 5 (2 (b))	Expulsion to Afghanistan	Granted and respected.	Views: violation	Link
CCPR/C/112/D/2341/2014 - Communication No. 2341/2014	N.U. v. Norway	CCPR: Article 7 OP-CCPR: Article 5 (2(b))	Deportation to Myanmar	Granted and respected.	Inadmissibility	Link
CCPR/C/112/D/2126/2011 - Communication No. 2126/2011	Khakdar v. Russian Federation	CCPR: Articles 7, 17 // OP-CCPR: Articles 2, 3, 5 (2 (b))	Deportation to Afghanistan	Granted and respected.	Views: violation	Link

CCPR/C/111/D/2008/2010 - Communication No. 2008/2010	Aarrass v. Spain	CCPR: Articles 2 (3); 7; 9 (1, 2 & 3); 10; 14 (3 (a) & 7); 23 and 26 // OP-CCPR: Articles 2 and 5 (2 (a) & (b))	Extradition to Morocco (suspected terrorist)	Granted but not respected.	Views: violation	Link
CCPR/C/110/D/2007/2010 - Communication No. 2007/2010	X. v. Denmark	CCPR articles 7, 14, 18. // OP-CCPR article 5 (2(b))	Deportation to Eritrea	Granted and respected.	Views: violation	Link
CCPR/C/109/D/1955/2010 - Communication No. 1955/2010	Al-Gertani v. Bosnia and Herzegovina	CCPR articles 6; 7; 9(1, 2, 4);13; 14; 17; 23; 24; 26 // OP-CCPR articles 2; 5(2(b))	Deportation to Iraq	Granted and respected.	Views: violation	Link
CCPR/C/108/D/2149/2012 - Communication No. 2149/2012	M.I. v. Sweden	CCPR article 7 // OP-CCPR article 2	Deportation to Bangladesh (sexual orientation)	Not granted (insufficient information)	Views: violation	Link
CCPR/C/104/D/1801/2008 - Communication No. 1801/2008	G. K. v. The Netherlands	CCPR articles 7;2(3) read in conjunction with 7	Deportation to Armenia	Granted and respected.	Views: non-violation	Link
CCPR/C//99/D/1554/2007 - Communication No. 1554/2007	Mohamed El-Hichou v. Denmark	CCPR article 23 and 24 // OP-CCPR article 2	Order to leave the country	Granted and respected.	Views: violation	Link