



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 890/2018^{*,**}**

<i>Communication submitted by:</i>	Lucia Černáková (represented by counsels, Forum for Human Rights and Validity Foundation)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Slovakia
<i>Date of complaint:</i>	10 July 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 10 December 2018 (not issued in document form)
<i>Date of present decision:</i>	19 November 2021
<i>Subject matter:</i>	Confinement in a cage-bed in social care institution
<i>Procedural issues:</i>	Admissibility – level of substantiation of claims; admissibility – exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; lack of investigation
<i>Articles of the Convention:</i>	1, 2(1), 4(1), 11, 12, 14(1) and 16(1)

* Adopted by the Committee at its seventy-second session (8 November – 3 December 2021).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdogan Iscan, Liu Huawen, Peter Kessing, Ilvija Puce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

1.1 The communication is submitted on behalf of Ms. Lucia Černáková, a national of Slovakia, born on 6 July 1983. The complainant claims a violation by the State party of her rights under articles 1, 2(1), 4(1), 11, 12, 14(1) and 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). Slovakia recognized the competence of the Committee against Torture to receive and consider communications from individuals pursuant to article 22 of the Convention on 17 March 1995. The complainant is represented by counsel of the Forum for Human Rights, Mr. Maroš Matiaško.¹

1.2 On 13 May 2019, following the State party’s objection to the admissibility of the present complaint, the Committee decided to examine the admissibility of the complaint together with its merit.

Facts as presented by the complainant

2.1 The complainant is a woman with combined mental disabilities, namely intellectual disability and autistic spectrum disorder. On 29 January 2002, the complainant was deprived of her legal capacity by the Nitra District Court, and her mother was appointed as her guardian. As her mother was not provided with sufficient support to meet the complainant’s needs at home, the complainant was placed in the Social Care Facility in Maňa on 3 July 2006 (“the Facility”). The complainant currently resides in the Social Care Facility in Topolčany.

2.2 When placed in the Facility in Maňa, a residential institution for women with mental disabilities at that time, the complainant’s mother informed the staff about her behaviour and the difficulties she had experienced adapting to the collective life of a regulated institution. As a person with intellectual disability and autistic spectrum disorder, the complainant had specific needs of care. The complainant’s mother submitted evidence during the domestic proceedings that those needs were not met by the institution and, as a result, led to an incident on 9 July 2006, during which the complainant was placed and kept in a cage-bed.²

2.3 The Nitra Regional Office, the supervising body of the Facility, after having conducted an inquiry on the basis of the complainant mother’s complaint, found that the complainant had over several days been verbally aggressive, “restless” and, at one point, had thrown a chair at another resident. The Office noted that the complainant needed individual attention from a particular employee who spent all day walking with her. The complainant was injected sedatives against her will, and visited a psychiatrist who adjusted her medication. Shortly before 9 July 2006, the psychiatrist cancelled the complainant’s permission for temporary leave to go home. On 9 July, the complainant became more aggressive and several nurses physically restrained her and removed her into isolation in a cage-bed. In addition, the complainant was subjected to forced chemical restraint by the use of repeated doses of sedatives. The use of the cage-bed was confirmed by the Nitra Regional Office’s report, which noted that, while the placement in the cage-bed was recorded, the length of time for which she was confined there was not.

2.4 During the domestic proceedings, the State party’s authorities did not contest that she was forcibly placed in the cage-bed in the morning of 9 July 2006 and kept there, against her will, for several hours. The complainant notes that under article 18a of the Act on Social Assistance, it is not permissible to use physical or non-physical restraint against persons with mental impairments who are placed in social care institutions. Yet, after the incident, the authorities took no remedial measures. She was not offered any therapy or compensation and no criminal proceedings took place.

2.5 On 18 July 2006, the Facility decided to end the complainant’s institutionalisation upon request of her mother. On 24 July 2006, the complainant’s mother filed a complaint against the use of the cage-bed and alleged ill-treatment in the Facility. The Nitra Regional

¹ The power of attorney has been provided by the complainant’s mother. The original counsel has been replaced by the Forum for Human Rights and the Validity Foundation.

² The complainant uses the term of a netted cage-bed or cage-bed, while the State party’s submissions and decisions refer to a net-bed.

Office concluded on 17 August 2006 that the Facility had violated article 18a of the Act on Social Assistance. However, the Office did not inform the police authority and no further investigation was conducted.

2.6 On 5 September 2016, the complainant's mother filed a criminal complaint, claiming that the complainant's placement in the cage-bed on 9 July 2006 violated the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) under the Criminal Code. On 19 October 2016, the District Police Directorate dismissed the criminal complaint, and its decision was upheld by the District Prosecutor in Nové Zámky on 20 January 2017. On 20 March 2017, the complainant's mother filed a complaint to the Constitutional Court, which was dismissed on 4 April 2017. The Constitutional Court concluded that the Facility was a private entity and therefore one of the elements of torture or other ill-treatment had not been met. Moreover, elements of ill-treatment were not met either, as *mens rea* (the intention) was missing. The Constitutional Court also noted that the complainant could have sought redress through a civil action under the Civil Code.

2.7 The harm suffered by the complainant stems from the intentional use of a cage-bed. It is not a question of medical negligence where harm follows as an unintended negative consequence of treatment. Her complaint should be considered as analogous to cases concerning the use of restraints on persons in detention. The State party must be held directly responsible for the use of restraint.³ The use of the cage-bed was not a medical treatment or a treatment that she could refuse. The authorities were under an obligation to conduct a thorough and effective investigation that would lead to the identification and punishment of those responsible and provide her with adequate reparation. She further argues that a wilful ill-treatment of persons who are within the control of State agents cannot be remedied exclusively through an award of compensation to the victim.⁴

2.8 The complainant concludes that she has exhausted all available domestic remedies that were effective, adding that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

Complaint

3.1 The complainant claims that by placing her in the cage bed, she was subjected to a form of violence, which can be considered as torture or cruel, inhuman or degrading treatment. The use of cage-beds in social and health care settings is disproportionately and discriminatorily inflicted upon persons with mental disabilities and also on women.

3.2 The placement in a cage-bed caused her severe pain and suffering, including emotional and psychological distress, in violation also of her right to health. Such treatment was instigated by public officials in a state-run institution – staff of the Facility providing social assistance, health and social care on behalf of the State, who exercised complete and effective control over her. In this context, the complainant claims that she was deprived of her liberty by an administrative decision. She was placed in a cage-bed intentionally, with the aim of disciplining or intimidating her. Such treatment amounted to a violation of her rights under articles 1 (1) and 16 (1) of the Convention.

3.3 The complainant further claims that the State party has an obligation, in accordance with article 2 (1) of the Convention, to take effective legislative, administrative, judicial or other measures to prevent acts of torture and ill-treatment in any territory under its jurisdiction.

3.4 The complainant's rights under article 4(1) of the Convention were also violated as the State party's criminal law does not incorporate adequate provisions criminalising torture and other cruel, inhuman or degrading treatment or punishment ("ill-treatment") and ensuring effective investigation, prosecution and punishment, where appropriate, of

³ The European Court of Human Rights (ECHR) jurisprudence concerning the use of restraint against a person with mental disability, *Bureš v. the Czech Republic* (no. 37679/08), judgment of 18 October 2012, paras. 79 and 81.

⁴ ECHR, *Krastanov v. Bulgaria* (no. 50222/99), judgement of 30 September 2004, para. 60, and *Kopylov v. Russia* (no. 3933/04), judgement of 29 July 2010, para. 130.

perpetrators of torture and ill-treatment. The definition of the crime under article 420 of the Criminal Code mixes up torture and ill-treatment, and fails to define elements of torture. In addition, it fails to distinguish acts of torture from ill-treatment on grounds of *mens rea*. Consequently, the intent is required even for cases of degrading treatment, which substantively limits the applicability of the criminal provision in practice. It prevents carrying out effective criminal investigation and leads to *de facto* impunity for acts of torture or ill-treatment, including against the complainant as a woman with disabilities in institutional setting.

3.5 She further claims that the State party violated article 11 of the Convention, since it has an obligation to establish an effective and independent system of control over complaints of torture or ill-treatment, and external and civil inspections, including monitoring and prevention mechanisms, protecting persons with disabilities in institutions against any act of ill-treatment.

3.6 The authorities also failed to initiate criminal investigation of the complainant's confinement on 9 July 2006, did not bring the perpetrators to trial and did not impose appropriate penal sanctions, as required by article 12 of the Convention.⁵

3.7 In addition, the complainant has not been provided with adequate, effective and prompt reparation, in violation of her rights under article 14(1) of the Convention.⁶ She has received no compensation for physical and moral damage, she has not been offered or provided with any rehabilitation or satisfaction and the authorities have not taken any steps to prevent the use of cage-beds in the future against her in particular, and women with mental disabilities in general.

3.8 She adds that the use of chemical, physical or mechanical restraints, resulting in torture and other ill-treatment of women with disabilities, and interfering with number of their rights in health and social care settings, is often motivated by stereotypes about persons with disabilities and wrongfully justified by theories of incapacity and therapeutic necessity.⁷ The State party has failed to introduce adequate safeguards to protect women with disabilities in social and health care institutions from abuse. The complainant adds that the use of cage-beds is still lawful in the health care settings and no general standards of quality of care have been adopted.

3.9 She requested that the State party, inter alia, grant her appropriate redress and compensation, conduct an impartial investigation into her confinement and the deprivation of her protection, and ban the use of cage-beds and net-beds in health care and social care settings.

State party's observations on the admissibility

4.1 On 5 February 2019, the State party submitted a request for separate consideration of admissibility of the complaint, arguing that it should be considered inadmissible for failure to exhaust domestic remedies.

4.2 The complainant has failed to exhaust all available domestic remedies by not seeking judicial redress for violation of personality rights under the Constitution and the Civil Code, as she limited herself to filing only an administrative complaint. Given the availability of legal aid in civil matters and the nature of civil proceedings, seeking a remedy through court action represents an available and effective remedy. The European Court of Human Rights has considered civil lawsuit as an effective remedy regarding alleged violations of the right to life, privacy and ill-treatment.⁸ The Nitra Regional Office found that the Facility in Maňa had breached its obligations under article 18(a) of the Act on Social Assistance with respect to the complainant. In light of this finding, the State party submits that the complainant would have been successful had she submitted civil law action,

⁵ CAT/C/GC/3, para. 34.

⁶ *Ibid.*, para. 5.

⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013 (A/HRC/22/53), para. 64.

⁸ ECHR, *Furdík v. Slovakia* (no. 42994/05), *V.C. v. Slovakia* (no. 18968/07), *N.B. v. Slovakia* (no. 29518/07), and *Baláz and others v. Slovakia* (no. 9210/02).

noting that in civil proceedings a liability is objective, i.e. the complainant only has to establish interference with personal rights and a damage, without a need to prove intentional or negligent fault. Civil proceeding would provide the complainant with better prospects of success than criminal proceedings.

4.3 As regards the criminal proceedings, torture and other cruel, inhuman or degrading treatment is criminalized under article 420 (1) of the Criminal Code. The State party alleges that the national laws are in full conformity with the Convention. However, the complainant submitted a criminal complaint only ten years after the incident of her confinement in a cage-bed, based on a criminal provision against torture and ill-treatment, for which a statute of limitations does not apply.

Complainant's comments on the State party's observations

5.1 On 11 March 2019, the complainant argued that her complaint should be considered admissible, and admitted to have understood the State party's assertion that a civil claim for violation of her rights would be successful.

5.2 She objects, however, that all available effective remedies would not have been exhausted in the present case. The State party has misinterpreted the nature of the alleged violations and the role of civil proceedings in providing redress for torture and ill-treatment. She argues that the use of mechanical restraints in her situation of particular vulnerability requires a thorough and effective investigation, which could lead to the identification and punishment of those responsible. Civil proceedings would not afford her an adequate and effective remedy for the violations she suffered, due to several obstacles inherent in civil litigation.

5.3 On 24 July 2006, the complainant's mother filed an administrative complaint with the Nitra Regional Office, as supervisory organ, which concluded on 17 August 2006 that the Facility had violated Section 18a of the Act on Social Assistance.⁹ Although the State party should have begun a criminal investigation at its own initiative, the Nitra Regional Office did not inform the Police about its findings and no further investigation was conducted, nor any reparation offered or provided to the complainant.

5.4 On 5 September 2016, the complainant's mother filed a criminal complaint, stating that the complainant's placement in a cage-bed on 9 July 2006 violated the absolute prohibition of torture or other ill-treatment under criminal law. She requested an effective investigation into the incident and the provision of reparation available under criminal law. The complaint was rejected on 19 October 2016. On 20 March 2017, the complainant's mother filed a constitutional complaint, which was dismissed by the Constitutional Court on 4 April 2017. She notes that domestic law is in line with the Convention as it requires a public official as perpetrator of the crime of torture. However, it goes above the Convention insofar as it requires a public official as perpetrator of ill-treatment. The Constitutional Court, in the complainant's opinion, erred in law and fact in finding that the Facility was a private entity. On this basis, it found that neither offence could be established under the national law. In addition, the Court found that the elements of the lesser offence of ill-treatment were not established either as the necessary *mens rea* was missing.

5.5 The complainant submits that cases of medical negligence are distinct from circumstances of her case involving unlawful and intentional use of restraint, without any medical justification. She argues that the standard for exhaustion of domestic remedies in her case should be that applied by the European Court of Human Rights in *Bureš v. the Czech Republic*.¹⁰ In that case, the European Court assessed the situation of an applicant who was strapped to a bed in detoxication centre, without any medical justification for the use of restraint. The European Court stated that, where an individual has an arguable claim under article 3 of the European Convention, the notion of an effective remedy requires the State to conduct a thorough and effective investigation capable of leading to the identification and punishment of those responsible. In other words, wilful ill-treatment of persons who are within the control of agents of the State cannot be remedied exclusively

⁹ No. 195/1998 Coll.

¹⁰ Fn. 2.

through an award of compensation to the victim. It concluded that an adequate remedy required a criminal investigation. The European Court came to the same conclusion in the more recent case of *M.S. v. Croatia*.¹¹

5.6 Concerning the State party's reference to the decisions of the European Court to support its arguments concerning the adequacy of a civil lawsuit, the complainant objects that none of these cases are relevant and, indeed, if they are, they support the complainant's position. The first case, *V.C. v. Slovakia*,¹² concerned the negligent sterilisation of Romani women, which the Court considered as a medical malpractice, not a wilful infliction of ill-treatment as in the complainant's case. The applicant in that case had sought only a civil remedy, even though she could have filed a criminal complaint. The question before the Court was not whether she had exhausted all available remedies but rather whether the only remedy exhausted by her had been an effective one. The Court found that the civil remedy did not redress the violation, holding that the State had violated the prohibition of ill-treatment, awarding the applicant 31,000 EUR in respect of non-pecuniary damage. The facts of the second case, *Furdík v. Slovakia*,¹³ concerned an alleged failure of the Mountain Rescue Service to save the applicant's daughter because they arrived late. The third case, *Baláž and Others v. Slovakia*,¹⁴ concerned a situation when neither of the existing remedies, criminal or civil, were actually exhausted. The complainant hence submits that she has properly exhausted criminal law remedies, which were the only remedies that she was obliged to exhaust, considering the elements of the violation of 9 July 2006. She also points to the opinion of the Committee in *Osmani v. the Republic of Serbia*, where it was stated that "having unsuccessfully exhausted one remedy, a person should not be required, for the purposes of article 22 (5)(b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success."¹⁵

5.7 As concerns the filing of a civil lawsuit, the complainant notes that article 11 of the Civil Code aims to protect personality rights. It is a civil law instrument that entails obstacles, which make it ineffective for obtaining redress in cases of torture and other ill-treatment. First, under article 106(1) of the Civil Code, the right to compensation is statute-barred from two years after the moment when a complainant becomes aware of the damage; when article 106(3) of the Civil Code is applied, that limit is three years. The Civil Code does not distinguish between acts of torture and other ill-treatment, and the statutes of limitations are applicable generally. Second, the civil law is based on the presumption that the plaintiff must prove the unlawful action, the damage and the causal nexus. The onus would be exclusively on the complainant, while crucial information on the violation remained in the exclusive knowledge, possession and control of the State party (through the Facility in Maňa). A criminal remedy would have rightly placed the onus of investigation and proof on the State party's authorities. Third, the complainant would be obliged to pay the court fee and costs of legal representation. If she were unsuccessful, she risked an order to pay all of the legal costs of the defendant. A civil lawsuit therefore does not constitute an effective remedy for the specific violations of the complainant's rights in this case.

State party's observations on the merits

6.1 On 5 September 2019, the State party reiterated that following the administrative complaint¹⁶ of 24 July 2006, the Regional Office in Nitra stated on 17 August 2006 an infringement of article 18a of the Act on Social Assistance, which sets out that "*when providing care in social services facilities to individuals with intellectual and behavioural disorders, it is not possible to use physical and non-physical means of restraint, even in the acute stage of manifestations of their disease.*" Apart from a statement of the violation of

¹¹ ECHR (no. 75450/12), judgment of 19 February 2015.

¹² ECHR (no. 18968/07), judgment of 8 November 2011.

¹³ ECHR (no. 42994/05), decision of 2 December 2008.

¹⁴ ECHR (no. 9210/02), decision of 28 November 2006.

¹⁵ CAT/C/42/D/261/2005, para. 7.1.

¹⁶ Act on Complaints (No. 152/1998 Coll.).

the prohibition of placement in a net bed, the Regional Office in Nitra ordered the Facility to eliminate all such net beds from its premises.

6.2 On 5 September 2016, the complainant filed a criminal complaint, more than 10 years after the incident, claiming that the action taken by the Facility amounted to the crime of torture or other cruel or inhuman treatment under article 420 (1) and (2) (a), (b) and (c), and the crime of abuse of a close or entrusted person under article 208 of the Criminal Code.¹⁷ The District Police Corps Directorate in Nové Zámky (DPCD), however, took prompt action and rejected the complaint on 19 October 2016, since the measures taken by the Facility did not constitute the crime of torture or any other crime. The complainant filed an appeal against the DPCD decision, which was rejected by the District Prosecutor's Office in Nové Zámky on 20 January 2017. A complaint to the Committee was submitted after nearly 12 years, which has complicated the establishment of evidence.

6.3 On 22 March 2017, the complainant submitted a constitutional complaint, asserting the right not to be subjected to torture or other ill-treatment, the right to health, the right to an effective investigation and non-discrimination, and requested nullification of the decisions by the DPCD and the District Prosecutor's Office in Nové Zámky. On 4 April 2017, the Constitutional Court rejected the complainant's claims as unsubstantiated,¹⁸ arguing that, given the circumstances of her case, no crime of torture or other inhuman or cruel treatment as defined in article 420(1) and (2)(a), (b) and (c) of the Criminal Code could have occurred. While a placement of a person into a net bed may generally result in a harm amounting to other cruel or inhuman treatment, the individual circumstances in this case were not considered as constituting elements of the crime of torture. The complainant was in fact placed in a net bed because of the increased level of distress and aggressiveness she exhibited and to protect the health and safety of the complainant and other female patients at the Facility. The Court also held that the right to judicial protection does not entail an obligation by the law enforcement authorities to launch criminal prosecution or investigation of a specific party based on the fact that a criminal complaint is filed, and that the positive obligation of the state to conduct effective investigations only applies to very serious infringements into rights. The Constitutional Court stated that, as the Facility in Maňa is a private law entity, by placing the complainant in a net bed, it was not exercising any public authority or otherwise acting at its instigation or with its consent. It did not act with a required intent to cause pain, to punish, to humiliate or to cause harm either, hence not meeting the conditions set out in article 420(1) of the Criminal Code, and article 1 of the Convention. The Court also stated that if the complainant's rights had been infringed, she had other means of redress available to her, such as a civil action for personal protection¹⁹ under article 11 et seq. of the Civil Code.²⁰

6.4 The complainant failed to exhaust available domestic remedies that would have secured protection of her rights and compensation for the damages due to infringement of her personal rights. The civil law proceedings would be the most effective, compared to administrative or criminal proceedings. The concept of personal rights and their infringement is broader compared to the crime of torture, and the Facility bore objective responsibility for its actions, regardless of culpability or specific factual basis. The concerned acts do not need to rise to a level or intensity resulting in severe pain or physical or mental suffering. It is sufficient to establish that the law defines a specific obligation and the prohibited action occurred. It is highly probable that the complainant would be successful in case of a civil action as she could present available evidence, and would likely receive compensation. The State party holds that the present complaint was not submitted in good faith and in line with the principle of subsidiarity, and that the criminal complaint was submitted more than 10 years after the alleged crime of torture, which is not subject to statute of limitations. The relatively long period from the incident to the filing of criminal complaint has complicated further investigation.

¹⁷ Act No. 300/2005 Coll.

¹⁸ II. ÚS 221/2017-15.

¹⁹ ECHR *Baláž and others v. Slovakia* (no. 9210/02), *Furdík v. Slovakia* (no. 42994/05), *V.C. v. Slovakia* (no. 18968/07), paras. 125-129.

²⁰ Act No. 40/1964 Coll., and article 16 of the Slovak Constitution.

6.5 The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under the State party's Constitution and the Criminal Code, as part of *ius cogens*. Both the Act on Social Assistance, effective until 31 December 2008, and the current Act on Social Services²¹ stipulate the authority of the Ministry of Labour, Social Affairs and Family to exercise control over social services and to ensure compliance with the Act. The violation of its provisions, including the obligations of social service providers (article 10), is considered an administrative offence.

6.6 As regards alleged non-conformity between the Convention and domestic legislation, it refers to article 420(1) of the Criminal Code: "*Anyone who in the exercise of public authority instigates or gives express or tacit consent to terrorize, torture or otherwise subject someone to inhuman or cruel treatment resulting in physical or mental suffering may be punished by imprisonment for two to six years.*" This provision is based on the definition contained in article 1(1) of the Convention. Torture is defined as any action that causes an individual severe pain or physical or mental suffering. Other inhuman or cruel treatment does not reach the intensity of torture, which is in line with the case-law of the European Court of Human Rights.²² While article 1 of the Convention requires a specific motive for the acts to amount to torture, such motive is not required to constitute a crime under article 420(1) of the Criminal Code. A broader set of actions could be considered a crime, without a need to demonstrate subjective elements, including a motive. However, the acts must be linked to the exercise of authority, i.e. making decisions on the rights and obligations, and the provision implies intent for the commission of such acts. Except the expansion of the scope, article 420(1) of the Criminal Code also defines as crime other ill-treatment, with adverse physical or psychological effects on a person. Criminal responsibility is expanded to acts similar to torture, which are of lesser intensity. The commission of proscribed acts against a protected person constitutes aggravating circumstances. As the Committee stated, the domestic definitions may differ in terms of wording, and may be broader and more extensive. The State party's definition meets the minimum standards of the Convention while allowing wider application and increased protection. As required by article 4(1) of the Convention, the acts of torture are considered as deliberate crimes. The periodic reports to the Committee have identified other crimes which proscribe elements of torture when committed in the context of genocide, involuntary disappearance, bodily harm, extortion etc.

6.7 The State party objects that it did not thoroughly differentiate between torture and other ill-treatment, given the distinct levels of culpability and the requirement of intent as an obligatory part of the subjective aspect of the crime. Article 16(1) of the Convention defines other ill-treatment as an action that does not rise to the intensity of torture. In the commentary to the Convention, the distinction between the definitions in article 1(1) and article 16(1) of the Convention is based on the difference in the intensity of the action and the fact that a specific motive is not required for the latter.²³ A specific motive may not be equated to intent. In case of article 1(1) and article 16(1) of the Convention, culpability in the form of intent is required to constitute the factual basis of a crime (*mens rea*). Therefore, article 420(1) of the Criminal Code should be considered as complying with article 16(1) of the Convention. As the Committee expressed, it is almost impossible to make a distinction between obligations to prevent torture and ill-treatment, since the obligations are indivisible, interdependent and interrelated.²⁴ Article 16(1) of the Convention also stipulates other provisions of the Convention, in particular articles 10, 11, 12 and 13, that shall apply to prevent ill-treatment, subject to conditions of article 16(2) of the Convention. Accordingly, the obligations under article 4(1) of the Convention primarily apply to torture under article 1(1) of the Convention, and not to ill-treatment. The State party also claims that the Convention does not require characterising other ill-treatment as a crime.²⁵ If article

²¹ Act No. 448/2008 Coll.

²² ECHR *Güfgen v. Germany* (no. 22978/05); *Cestaro v. Italy* (no. 6884/11); *Aksoy v. Turkey* (no. 21987/93).

²³ Wendland, L., *A Handbook on State Obligations under the UN Convention against Torture*, p. 57 - 58, Geneva, APT, 2002.

²⁴ CAT General Comment No. 2 (CAT/C/GC/2), para. 3.

²⁵ *Ibid.*, paras. 9 - 10.

420(1) of the Criminal Code did not thoroughly differentiate between torture and ill-treatment, the State party could not have infringed its obligations under article 4(1) of the Convention in relation to ill-treatment. Conversely, the inclusion of ill-treatment as a crime under article 420(1) of the Criminal Code expands protection for persons from torture and ill-treatment, as compared to obligations under article 16(1) of the Convention. The national legislation is hence in compliance with the Convention, including its article 1(1).

6.8 Moreover, the complainant was not placed into a net bed to discriminate against her based on her gender and disability. While a reverse burden of proof is applied in the event of suspected discrimination, the complainant is obliged to submit evidence that can be used to determine that such discrimination occurred. Given that the complainant was placed in a social services facility exclusively for women at the given time and no relevant data or details concerning other cases of suspected institutional violence from facilities for men were provided in the complaint, the State party considers such claims as unfounded.

6.9 As regards alleged violations of articles 2(1) and 11 of the Convention, the State party asserts that women with physical or mental disabilities enjoy sufficient protection from all forms of abuse, as the use of violence and restrictions of personal freedom in health care and social services facilities has been prohibited under the Act on Social Services (effective from 1 January 2009).²⁶ The prohibition of the use of any form of violence or restriction of personal freedom, including the prohibition on the use of net beds, was also included in the then-valid version of §18a of Act on Social Assistance (effective from 1 July 1998 to 31 December 2008). The legislation in place protected the complainant from infringement into her personal rights by direct prohibition on the use of net beds as a means of physically restraining an individual. The action by the Facility during the incident represented an infringement of the applicable legislation. However, given the legislation in place at the time of the incident, the State party considers it has adopted legislative measures to prevent torture and ill-treatment, in line with its obligations under article 2(1), in connection with article 16(1) of the Convention.

6.10 The legislation permitted the performance of controls and supervision over social services facilities, in accordance with international obligations, by municipalities, self-governing regions, the Ministry of Labour, Social Affairs and Family, and the Ombudsman. The complainant objected to a violation of her rights through an administrative complaint to the Office of the Nitra Self-Governing Region, which stated that the Facility had violated article 18a of the Law on Social Assistance and ordered the removal of all net beds from the facility. Given the long period of time between the incident and the submission of the present communication, the State party does not have further information available regarding the incident, due to archiving and data protection rules. Likewise, it does not possess any data or statistics on the completed controls and surveillance of social services providers. At present, the complainant receives care at a public social services facility Harlekýn, in Topolčany. The complainant's mother repeatedly submitted complaints concerning the alleged abuse and inhuman treatment of the complainant also at this facility. The Ministry of Labour, Social Affairs and Family, the Nitra Self-Governing Region and law enforcement authorities have exercised controls, in accordance with article 11 of the Convention, but none of them found the allegations to be justified and no infringements of the applicable legislation were identified. The State party reiterates that the complainant did not use available means of redress pursuant to article 11 of the Civil Code, despite the finding of unlawful interference into her rights by restraining her in the net bed, and initiated only criminal proceedings more than 10 years after the incident.

6.11 Regarding the alleged violation of article 12, as the employees of the Facility had not been investigated and held criminally responsible, the State party argues that not every act can be considered as criminal and a third party sentenced accordingly. It elaborates on the guarantees of a prompt and impartial investigation in the Criminal Code and the Laws on the Police Corps and on the Public Prosecutor's Office. Following the criminal complaint of 5 September 2016, the competent police investigator requested that the Nitra Self-Governing Region share the evidence collected when processing the administrative complaint. Following its assessments, including the testimonies from the treating physician,

²⁶ There are no statistics that would support the complainant's claims in this regard.

the then-director and the subsequent director of the Facility, the DPCD rejected the complaint as it fell short of the factual basis of the crime of torture under article 420(1) of the Criminal Code, stating that the action taken by the Facility could not be considered any other crime either. The complainant submitted an appeal against the decision of DPCD, which was rejected by the District Public Prosecutor in Nové Zámky on 27 October 2016, reaffirming the DPCD's decision. Given the facts of the case, the State party holds that an independent, impartial and prompt investigation was instituted, in accordance with the Criminal Code, and as required by article 12 of the Convention.

6.12 As regards article 14, the complainant has argued that she had not been offered compensation for the damage caused to her by the Facility in the context of the administrative, criminal or constitutional complaints. Since the incident did not constitute the crime of torture under the Criminal Code, there is no reason to apply article 14 of the Convention, which the State party could not have violated. Not every action may be classified as torture under article 1 (1) or ill-treatment under article 16 of the Convention. In the case of interference into personal rights, other means of redress than those stipulated in criminal law are available, such as action for personal protection and compensation for damages under the civil law. In *Baláž and others v. Slovakia*²⁷, concerning the alleged mistreatment by the Police, the European Court concluded that the complainants failed to exhaust all available domestic remedies as they could seek protection of their personal rights and to request compensation for non-pecuniary damages under article 11 of the Civil Code. In *V.C. and N.B. v. Slovakia*, the complainants requested compensation for forced sterilization under article 11 of the Civil Code. While the domestic courts considered forced sterilization as unlawful, although not amounting to a crime, the European Court found no violation of the European Convention, having considered that the domestic authorities effectively examined the complainants' claims by the judicial or police organs. When seeking a remedy for a violation of obligations by a public authority, pursuant to Act on Complaints²⁸, the complainant should have started the court proceedings. Given that the Facility violated the prohibition under article 18a of the Act on Social Assistance, as per the decision of the Nitra Self-Governing Region, proceedings at an independent and impartial court under civil law were the most effective and most accessible means of redress available for the damages caused by the action of the Facility. The complainant had means to obtain compensation that were available, accessible and, if used, effective. However, her claim lapsed by failing to initiate the proceedings within the statutory period. As regards general legal framework for compensation of victims of crimes, in accordance with article 14 of the Convention, it is governed by the Act on Crime Victims,²⁹ which guarantees also psychological counselling and legal assistance.

6.13 The State party sums-up that the action taken by the Facility did not constitute the factual basis of the crime of torture under §420(1) of the Criminal Code and there was no infringement of article 1(1) or article 16(1) of the Convention. Given the proper implementation of its obligations under the Convention and the existing mechanisms to prevent torture and ill-treatment, the State party is of the view that it did not violate provisions of articles 1(1), 2(1), 4(1), 11, 12, 14(1) and 16(1) of the Convention.

Complainant's further comments

7.1 On 18 February 2020, the complainant submitted that the State party had not contested the facts of the case, reiterating that the use of the cage-bed was unlawful under the Slovak law at the time of her restraint in the Facility, and that its harmful consequences on persons with disabilities had been recognized by the State party.

7.2 She objects to the argued non-exhaustion of all available domestic remedies as she had not submitted a civil claim for violation of her personal rights not amounting to torture or ill-treatment. The State party has misinterpreted the nature of the violations complained

²⁷ Fn. 20.

²⁸ Act no. 9/2010 Coll.

²⁹ Act no. 274/2017 Coll.

of and the effectiveness of civil proceedings in providing redress for acts of torture or ill-treatment.

7.3 Since the criminal proceedings were the only remedies that were both available and effective, all available domestic remedies have been exhausted. She would have been disadvantaged, due to her vulnerability, had she resorted to civil proceedings, which would have been ineffective in her case as not available in practice. She claims to have lacked funds and opportunity to obtain a specialized attorney; she did not have access to necessary evidence to carry the burden of proof³⁰ or competence to file a court action. If she initiated civil proceedings, the defendant could have only been the Facility as a legal entity. This would lead to the impunity of the perpetrators who violated her human rights.

7.4 According to international human rights law, there is a need to strictly differentiate between unintended consequences of otherwise legitimate or justifiable medical action and wilful acts; in the latter case there is no need to exhaust domestic remedies by action to seek protection of personal rights. In this case, the harm was caused by her placement in a cage-bed wilfully³¹ and unlawfully, without any medical justification.³² The present case is analogous to the use of restraints on persons in detention or subject to treatment in a psychiatric hospital. The concept of an effective remedy requires the State to conduct a thorough and effective investigation. A wilful ill-treatment of persons subject to control of State agents cannot be remedied exclusively through an award of compensation to the victim.³³ The complainant therefore rejects the argument that she did not act in good faith when submitting the complaint to the Committee without seeking redress through a civil law. Considering the wilful and unlawful use of a cage-bed against the complainant as a person with disability, the submissions of a successful complaint with the Nitra Regional Office and of a subsequent criminal complaint were the only available avenues for seeking an adequate remedy capable of leading to the identification and punishment of those responsible, guarantees of non-repetition, and providing the complainant with satisfaction and compensation.

7.5 The complainant reiterates that all four elements of torture, including severe pain or suffering, intent, purpose and State involvement, were present, and that by placing her in a cage bed, she suffered severe emotional distress. Her rights were violated by the fact that domestic criminal law does not incorporate adequate provisions criminalizing torture and other cruel, inhuman or degrading treatment or punishment. Moreover, the national legislation does not ensure effective investigation, prosecution and punishment, where appropriate, of perpetrators of torture and ill-treatment.³⁴ The definition in article 420 of the Criminal Code mixes up torture and ill-treatment, and fails to define elements of torture. In particular, the law does not define specific purposes of inflicting torture, including discrimination. It also fails to distinguish acts of torture from ill-treatment on grounds of *mens rea*. Since an intent is required even for acts of degrading treatment, it limits the applicability of this provision in practice. Although the act committed against the complainant would have been considered torture or other cruel, inhuman or degrading treatment or punishment under international law, it cannot be effectively subsumed under the domestic criminal law. It leads to the practical impossibility to carry out effective criminal investigation and to de facto impunity for acts of torture or ill-treatment of the complainant as a woman with disabilities in institutional setting.

7.6 The complainant also argues that the State party violated the obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture in

³⁰ The complainant would be required to prove: a) illegality, b) harm done and c) causality. While illegality was proven by the fact that the Nitra Regional Office stated the illegality of her placement to a cage-bed, substantiating a harm done to the complainant and the causality thereof would be impossible due to a lack of reasonable and procedural accommodations. The complainant holds that she had a better prospect of success in criminal proceedings, where the burden of proof is shifted.

³¹ This argument was not contested by the Nitra Regional Office as supervisory entity, nor the State party.

³² *Bureš v. the Czech Republic*, fn. 3.

³³ *Krastanov v. Bulgaria* (application no. 50222/99), judgment of 30 September 2004, para. 60; and *Kopylov v. Russia* (application no. 3933/04), judgment of 29 July 2010, para. 130.

³⁴ CAT/C/SVK/CO/3, para. 7.

any territory under its jurisdiction and to establish an effective and independent system of control over complaints and of external inspections³⁵ to protect persons with disabilities in institutional setting from any act of ill-treatment. The use of chemical, physical or mechanical restraints, resulting in violation of the women with disabilities' freedom from torture and other ill-treatment, and interfering with number of their rights³⁶ in health care and social care settings, are motivated by stereotypes about persons with disabilities and wrongfully justified by theories of incapacity and therapeutic necessity.³⁷ The State party has failed to introduce adequate safeguards to protect women with disabilities in social and health care institutions from abuse, arguing that the use of cage-beds is lawful to date in the health care settings.

7.7 The authorities further failed to initiate criminal proceedings after the incident of 9 July 2006, did not bring the perpetrator(s) before a court and did not impose appropriate penal sanctions, as required by article 12 of the Convention. The complainant finally recalls that she has not been offered or provided with any reparation for the harm suffered due to being placed in a cage-bed, and that her efforts to obtain it have been futile. The State party's obligation to provide the complainant with an appropriate remedy under article 14 of the Convention has not been fulfilled.³⁸

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 As regards article 22 (5) (b) of the Convention, the Committee notes the State party's argument that the complainant has not exhausted domestic remedies since she could have submitted a civil claim under article 11 of the Civil Code, through which she would have most likely obtained a remedy for the harm suffered, given the principle of objective responsibility. The State party also claimed that the complainant's criminal complaint was submitted only in 2016 - ten years after the decision on her administrative complaint, and that the present communication was not submitted in good faith. The Committee notes the complainant's argument that the criminal proceedings were the only remedies that were available and effective, given a reversed burden of proof, and that the civil action would not be effective.³⁹ As a woman with disabilities, she held that she could not bear the burden of proof while the evidence was in possession of the Facility, her legal capacity was restricted and the claims were time-barred (paras. 5.5, 6.3-6.4 and 7.3). The complainant further claimed that the civil action could not guarantee an effective investigation of the ill-treatment imposed on her unlawfully and wilfully, that it would not ensure compensation for the harm she had suffered, that the State party violated its obligation to investigate the incident ex officio, and that the perpetrators remained unpunished.⁴⁰ The Committee observes that the Nitra Regional Office stated the violation of the complainant's rights on 17 August 2006; that the complainant's criminal complaint was suspended in 2016 and the appeal against the decision was rejected; and that her constitutional complaint was rejected as unsubstantiated on 4 April 2017. The Committee also observes that the Constitutional Court did not consider the submission of the criminal complaint in 2016 as abuse of submission, and that the present communication was submitted after a year from the exhaustion of the last available remedy in 2018. In the circumstances, the Committee considers that a civil action would not likely bring an effective relief to the complainant, since it was not available to her in practice, in particular due to a lack of reasonable and procedural accommodations to carry the burden of proof, and as it would not lead to

³⁵ A/56/44/, para. 114 (d).

³⁶ Concluding observations of the CRPD Committee on Sweden (CRPD/C/SWE/CO/1), para. 37.

³⁷ Fn. 7.

³⁸ CAT/C/GC/3, para. 5.

³⁹ See e.g. *Dar v. Norway* (CAT/C/38/D/249/2004), para. 6.5.

⁴⁰ *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

establishing accountability of the perpetrators.⁴¹ Accordingly, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the present communication.

8.3 The Committee notes the State party's argument that the communication is also manifestly ill-founded and therefore inadmissible pursuant to article 22 (2) of the Convention, in particular as regards the complainant's claims that her restraint amounted to torture, stereotyped abuse and discrimination, in violation of article 1. The Committee further notes the State party's objection that the constitutive elements of torture, including intent, intensity and purpose of disputed acts, and the quality of the subject, have not been met since the complainant was restrained after she had presented risks to her health, and to other inmates of the Facility. The Committee recalls that the personnel of non-state or even private institutions providing public services are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to prevent torture and ill-treatment.⁴² The Committee observes that the State party's authorities have inadequately assessed the quality of the subject since the Facility in Maña has provided public services on the basis of the Act on Social Assistance, the Facility's role has been supervised on the basis of the Code of Administrative Procedure⁴³, and the Nitra Regional Office – as founder of the Facility, found a violation of the Act in exercising the State party's authority. The Committee also observes that the deliberate intent and discriminatory purpose of the complainant's restraint have not been established for the act to amount to torture, and that no evidence to support the allegations of stereotyped abuse and discrimination has been provided. Since the claims under article 1 of the Convention, including the allegations of abuse and discrimination on grounds of gender and disability, have not been sufficiently substantiated, the Committee considers those claims as manifestly ill-founded and therefore inadmissible pursuant to article 22 (2) of the Convention.

8.4 The absence of constitutive elements of torture does not prevent the Committee from examining if the complainant's restraint did not constitute ill-treatment. The Committee notes the complainant's claims that her restraint pending confinement in the Facility, and the lack of investigation and absence of redress thereof, have amounted to a violation of articles 2(1), 4(1), 11, 12, 14(1) and 16(1) of the Convention. The Committee considers those claims to be adequately substantiated for the purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares the claims under articles 2(1), 4(1), 11, 12, 14(1) and 16(1) of the Convention admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information provided to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 In the present case, the issue before the Committee is whether the complainant's restraint in a cage bed on 9 July 2006 amounted to a form of violence and harm, in breach of her rights under articles 2(1), 4(1), 11, 12, 14(1) and 16(1) of the Convention.

9.3 As regards the claims of a violation of her rights under article 16 (1), the Committee notes the complainant's argument that her restraint in a cage-bed was not justified by medical necessity, and was analogous to impermissible restrictions on persons deprived of liberty. She argued that the restraint was imposed on her intentionally, with the aim of disciplining her, that the staff of the social care Facility acted in their public capacity, and that she was deprived of her liberty by an administrative decision. The Committee also notes the claim that such treatment caused the complainant severe pain and suffering, which amounted to cruel, inhuman or degrading treatment, if not torture, and that similar restraints have been disproportionately imposed upon persons with mental disabilities and also on women. Furthermore, the Committee notes the allegation that the use of cage-beds is still

⁴¹ *Ibid.*

⁴² General comment no. 2 (CAT/C/GC/2), paras. 7, 17 and 18.

⁴³ Act No. 67/1971 Coll.

lawful in the health care settings and no general standards of quality of care have been adopted. The Committee notes the State party's argument that not every action may be classified as ill-treatment under article 16; however, the Constitutional Court admitted that the complainant possibly suffered degrading treatment. In that context, the Committee recalls that it has, in its jurisprudence and in its general comment No. 2 (2008) on the implementation of article 2, addressed the risk of torture and ill-treatment by non-State actors and the failure on the part of a State party to exercise due diligence to intervene and stop the abuses that are impermissible under the Convention, for which it may bear responsibility. It also recalls that ill-treatment can be committed through acts or omissions, not requiring intent as negligence may suffice. On the basis of the information available, the Committee concludes that the complainant's allegations must be taken fully into account; that the restraint was imposed on her by the staff of the Facility acting in their public capacity - on behalf of the State; and that the act in question reached the intensity and harmful consequences amounting to ill-treatment within the meaning of article 16(1) of the Convention.

9.4 As regards article 2 (1), the Committee notes the complainant's claims that the State party has not taken effective measures to prevent acts of torture or ill-treatment, as she was restrained in a cage-bed when deprived of liberty, without adequate protection from abuse and violence. Although the complainant submitted several complaints, the incident has not been effectively investigated. The Committee recalls that the obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture, that the definitional threshold between ill-treatment and torture is often not clear, and that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.⁴⁴ The Committee observes that the use of the cage-bed was unlawful under the Slovak law at the time and that the State party admitted a violation of the Act on Social Assistance in the complainant's case, including the fact that the duration of the complainant's restraint was not recorded in a special register. The Committee considers that stating a violation of the domestic law by the Nitra Regional Office, without remedying harmful consequences for the complainant, is not an effective means of addressing ill-treatment in order to prevent its recurrence. Moreover, no information has been provided on the steps taken to rectify the absence of a record on the duration of the complainant's confinement.⁴⁵ Accordingly, the Committee concludes that there has been a violation of article 2 (1), read in conjunction with article 16(1) of the Convention.

9.5 Concerning the claims under article 4 (1), the Committee notes the State party's argument that article 420 of its Criminal Code offers wider protection since it criminalizes both acts of torture and ill-treatment, while asserting that article 4 of the Convention requires only the criminalization of torture. The Committee, however, notes the complainant's objection that the concerned definition of the crime conflates torture and ill-treatment, as it does not define elements of torture and fails to distinguish acts of torture from ill-treatment on grounds of *mens rea*, as intent is required even for cases of degrading treatment. The complainant argued that this leads to impossibility to carry out effective criminal investigation and de facto impunity for acts of torture or ill-treatment against a woman with disabilities in institutional settings. The Committee recalls that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture or ill-treatment to remain unpunished. It also recalls that elements of intent and purpose, as stipulated in article 1 of the Convention, do not involve a subjective inquiry into the motivations of the perpetrators, but must be objective determinations; that ill-treatment differs from torture in the severity of pain and suffering, without requiring a proof of purpose; and that ill-treatment may be caused by negligence. The Committee observes that while the complainant's restraint has been formally examined by the authorities, her complaint was suspended as formal elements of article 420 of the Criminal Code have not been met, without investigating and punishing the perpetrators of the complainant's ill-

⁴⁴ CAT/C/GC/2, para. 3.

⁴⁵ *Ibid.*, para. 13.

treatment. The Committee concludes that there has been a violation of article 4(1) of the Convention.

9.6 The Committee also notes the complainant's claim of a violation of article 11 of the Convention, since the State party has not met its obligation to establish an effective and independent system of control over complaints of torture or ill-treatment, and external and civil inspections including monitoring and prevention mechanisms, protecting persons with disabilities in institutions against any act of ill-treatment. The complainant has also argued that article 11 was violated because the State party failed to conduct the necessary oversight of her restraint, duration of which was not recorded. The Committee recalls that the obligation of monitoring in order to prevent torture and ill-treatment extends to situations where violence is inflicted both officially and privately.⁴⁶ In the absence of compelling evidence from the State party that oversight of the conditions of the complainant's restraint was ensured, the Committee concludes that there has been a violation of article 11 of the Convention by the State party.⁴⁷

9.7 Regarding the claims of a violation of article 12, the Committee notes the complainant's argument that the authorities failed to investigate the incident of 9 July 2006, did not bring the perpetrators to trial and did not impose appropriate penal sanctions. The Committee also notes the State party's objection that the complainant's criminal complaint was examined, but was suspended. While an investigation was opened, the State party has not prosecuted the alleged perpetrators of ill-treatment, arguing that the material elements of a crime had not been established. The Committee further notes that the State party also objected that the complainant had not sought compensation for immaterial harm. The Committee recalls the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed to a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed.⁴⁸ Such an investigation should be prompt, impartial and effective.⁴⁹ A criminal investigation must seek to determine the nature and circumstances of the alleged acts, to establish the identity of the persons who may have been involved⁵⁰, to provide the victim with adequate reparation and to combat impunity for the violations of the Convention.⁵¹ The Committee further recalls that article 12 applies equally to allegations of cruel, inhuman or degrading treatment or punishment. Accordingly, the Committee considers that a wilful ill-treatment of a person who is within the control of agents of the State or non-State actors acting in public capacity cannot be remedied exclusively through an award of compensation to the victim. In the circumstances of the present case, the Committee concludes that the State party failed to meet its obligations under article 12 of the Convention.

9.8 As regards the alleged violation of article 14(1), the Committee notes the State party's argument that an effective remedy has been ensured through the administrative and criminal investigations, while redress could not be provided as torture was not established. The Committee observes that the criminal investigation was suspended without identification of the perpetrators; that the complainant has not received any compensation, rehabilitation or satisfaction for physical and moral harm suffered; and that no steps have been taken to prevent the use of cage-beds in the future against her, and women with mental disabilities in general. As the Committee affirmed in paragraph 17 of its general comment No. 3, a State party can violate article 14 of the Convention, which requires States parties to ensure that victims of torture or ill-treatment obtain redress, through a failure to effectively investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture or ill-treatment. When acts of torture or ill treatment are being committed by non-State officials or private actors, the State bears responsibility for failure to exercise due diligence to prevent, investigate, prosecute and punish such non-State

⁴⁶ CAT/C/GC/2, para. 25.

⁴⁷ See *Gahunju v. Burundi* (CAT/C/55/D/522/2012), para. 7.7.

⁴⁸ See *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.4, and *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.7.

⁴⁹ See *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 13.2.

⁵⁰ See *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.7, and *Djemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000), para. 9.4.

⁵¹ CAT/C/GC/3, para. 18.

officials or private actors in accordance with the Convention,⁵² and for providing redress for the victims.⁵³ The Committee further recalls that the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14,⁵⁴ that the right to redress requires initiating or concluding legal investigations into complaints of torture or ill-treatment without undue delays,⁵⁵ and that both civil and criminal remedies which are effective should be available to victims.⁵⁶ In light of the above, the Committee considers that the complainant has been denied her right to effective redress and reparation under article 14(1) of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, considers that the facts before it constitute violations of article 2(1), in conjunction with article 16(1), and articles 4(1), 11, 12, 14(1) and 16(1) of the Convention.

11. The Committee urges the State party: (a) to complete the investigation into the act in question with a view to sanctioning all persons who may have been responsible for the complainant's ill-treatment; (b) to provide the complainant with appropriate redress, including compensation for material and non-material damages, rehabilitation, satisfaction and guarantees of non-repetition; (c) to take measures to prevent repetition of similar acts in the future, including by strictly regulating, in the context of the Convention, the use of physical restraints in psychiatric and related institutions, by restricting the use of physical restraints in all establishments, and by preventing the use of unlawful or prohibited forms of restraints;⁵⁷ and d) to provide relevant training to the staff of social and psychiatric institutions. In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of transmission of this decision, of the steps it has taken in response to the above findings.

⁵² CAT/C/GC/2, para. 18.

⁵³ CAT/C/GC/3, para. 7.

⁵⁴ CAT/C/GC/3, para. 9.

⁵⁵ *Ibid.*, para. 25. See also *Zentveld v. New Zealand* (CAT/C/68/D/852/2017), para. 9.9.

⁵⁶ CAT/C/GC/3, para. 26.

⁵⁷ Committee against Torture, Concluding observations on the fifth periodic report of Germany (CAT/C/DEU/CO/5), paras. 16 and 39, and Concluding observations on the sixth periodic report of Germany (CAT/C/DEU/CO/6), paras. 34-36. See also Human Rights Committee, Concluding observations on the fourth periodic report of Slovakia (CCPR/C/SVK/CO/4), para. 21.