



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13 to 31 October 2008

DECISION

Communication No. 1584/2007

<u>Submitted by:</u>	Ms. Meng Qin Chen (represented by counsel, Mr. Michel A. Collet)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Netherlands
<u>Date of communication:</u>	4 April 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 August 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	30 October 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Deportation of the author and her daughter (born in the Netherlands) back to the Peoples' Republic of China.

Procedural issue: Admissibility

Substantive issue: Not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence

Article of the Covenant: 17

Articles of the Optional Protocol: 5, paragraph 2 (b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS

Ninety-fourth session

concerning

Communication No. 1584/2007*

Submitted by: Ms. Meng Qin Chen (represented by counsel,
Mr. Michel A. Collet)

Alleged victim: The author

State party: Netherlands

Date of communication: 4 April 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant
on Civil and Political Rights,

Meeting on 30 October 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Ms. Meng Qin Chen, a Chinese national, born on 14 December 1987, also writing on behalf of her daughter, Wenni, who was born in the Netherlands on 18 May 2004, both of whom are currently awaiting deportation from the Netherlands to the Peoples' Republic of China. The author claims to be a victim of violations by the Netherlands of article 17, of the International Covenant on Civil and Political Rights. She is represented by counsel; Mr Michel Collet.

1.2 On 28 November 2007, on behalf of the Committee, the Special Rapporteur for New Communications and Interim Measures decided to examine first the admissibility of the communication.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

The facts as presented by the author

2.1 On 14 July 2003, the author arrived in the Netherlands, and was placed under supervision in the “Aanmeldcentrum” under article 6 of the Dutch Alien Act 2000. On 16 July 2003, the Dutch immigration service (IND) notified the Court of Amsterdam of this procedure. On 24 July 2003, the Court of Amsterdam ruled that the author should be placed in a facility suitable for minors. The IND appealed against this decision before the Council of State. On 20 November 2003, the Council of State confirmed the ruling of the Court of Amsterdam.

2.2 Upon her arrival in the Netherlands, on 14 July 2003, the author applied for asylum. Her application was rejected by the IND on 18 July 2003. The IND also refused to give the author a permit as a single minor. The decision was appealed, but rejected by the Court of Haarlem on 7 October 2003 as inadmissible. The author filed a complaint with the IND against the decision of not granting her a permit as a single minor. The IND did not believe that the author was in fact a minor and had her collarbone X-rayed. The author gave birth to a daughter on 18 May 2004. On the basis of the results of the x-ray, the IND rejected the appeal on 17 June 2005. The author appealed this decision before the Court of Breda, which rejected the appeal on 10 July 2006. The author then appealed to the Council of State which rejected the appeal on 10 October 2006.

The complaint

3. The author alleges a violation of article 17, as the State party’s authorities denied her a permit to stay in the Netherlands, thus constituting interference in the private life she has built up in the State party. She asserts that, by not expelling her immediately, the State party consented to her building a new life in the Netherlands. As she came to the State party as a minor, sixteen years old, she claims that she should have been granted a permit to stay. However, due to the IND’s reliance on a “faulty method” to determine her age, i.e. an x-ray of her collarbone, the State party failed to recognise that she was a minor. According to the author, the State party’s authorities did not attach sufficient weight to: her age; to the fact that she has no family or relatives left in the Peoples’ Republic of China; also to the fact that she has a daughter who was born in the State party and who has never been to the Peoples’ Republic of China; and that there are marked cultural differences between the Netherlands and the author’s country of origin. In any event, she claims that she cannot return to the Peoples’ Republic of China as she has no identity documents and the Chinese authorities would not recognise her as a Chinese citizen.

State party’s submission on admissibility and the author’s comments thereon

4. On 15 October 2007, the State party contested the admissibility of the communication on grounds of non-exhaustion of domestic remedies. It submits that the author has not invoked the matters raised under article 17 of the Covenant before the domestic courts, and has thus denied the State Party the opportunity to respond to this claim raised by the author. Moreover, the author has not substantiated her argument that she cannot return to the Peoples’ Republic of China because she does not have the necessary documents. She has not provided any evidence of any efforts on her part to obtain such documents. Furthermore, there is no factual basis for her argument that the Dutch authorities consented to her building a new life in the State party. As early as 18th July 2003 by a decision of that date the author was informed that she was required to leave the State party without delay. Although the author was not immediately expelled and

remained in the Netherlands for the duration of the procedures relating to her application, she was never given assurances that she would be granted a residence permit.

5. On 23 November 2007, the author commented on the State party's submission, arguing that the right to a private life is "an absolute right" and that consequently the fact that it was not invoked before the domestic authorities is irrelevant. She states that it is generally known in the State party that the Chinese Embassy is not willing to provide the necessary documents if an individual cannot prove that he or she is originally from the Peoples' Republic of China, and without any documents in her possession it is difficult to prove her origins. In addition, as her child was born in the State party, the birth of the child is not registered in the Peoples' Republic of China, and therefore it will not be possible to obtain any documents on her daughter's behalf.

Issues and proceedings before the Committee

Consideration of Admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol.

6.2 The Committee notes that the State party contests the admissibility of the communication on grounds of non-exhaustion of domestic remedies. It observes that the only article of the Covenant relied upon by the authors relating to the facts of this case is article 17. It also observes that the author admits not having raised the issues under this provision before the State party's authorities and does not contest that such issues could have been raised before the State party's courts. The only argument put forward by the author for not having done so is that, in her view, the right to privacy is an "absolute right" and her failure to invoke this right in the domestic court is thus "irrelevant". The Committee recalls its jurisprudence that mere doubts about the effectiveness of the remedies, or in this case about the relevance of such remedies, do not absolve an individual from exhausting available domestic remedies. For this reason, the Committee considers that the communication is inadmissible for non-exhaustion of domestic remedies, under article 2, and article 5, paragraph 2(b), of the Optional Protocol.

7. The Committee therefore decides:

- (a) that the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;
- (b) that this decision shall be communicated to the author's counsel and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
