

You are a legal assistant to one of the judges of the African Court on Human and People's Rights. A high-ranking citizen of the Republic of North Korea (Ms NN) is currently staying at an undisclosed location in Spain. She has filed an application before the Court against the Republic of Zendia. NN alleges that Zendia has violated her right to be protected against torture, which is guaranteed by Article 5 of the [Charter of African Human and People's Rights](#). Zendia is a party to the Charter.

The basis for NN's claim is that Zendia's embassy in Spain refused to issue a tourist visa for her to being able to visit Zendia. At the embassy, where NN ultimately stayed for three hours before she left, she insisted that the purpose of her visa application was to pay a social visit to her uncle, who had been granted asylum by Zendian authorities a decade earlier. The embassy – fearing that she would blow the cover of her uncle – advised her to seek asylum as a political refugee, but NN dismissed this as she feared the repercussions for her family in North Korea. This she also told the Embassy staff, who advised her to leave. It is uncontested that NN, where she to return to North Korea, would be subjected to treatment by North Korean officials that would amount to 'torture' within the meaning of Article 5 of the Charter.

NN's counsel has submitted that Zendia must be held responsible for a breach of Article 5 of the Charter. They refer to the fact that Zendia has accepted the competence of the Court to consider individual complaints, and they refer, in particular, to Article 3 of the [Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights](#):

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

NN's counsel also submits that no provision of the African Charter itself, including Article 5, contains a clause restricting the responsibility of Zendia to be held accountable for placing her in a situation in which she risked, if denied a visa, would be tortured upon returning to Pyongyang. The Government of Zendia responds that the applicant never has been under the jurisdiction of the Republic of Zendia and for that reason alone, the application must be rejected as inadmissible before the Court. It does not matter whether the African Charter regulates the question of States' jurisdiction.

Article 3 § 2 of the Protocol to the Charter states that the Court must decide whether it is competent to consider the claim. This depends on whether what occurred at the embassy was within Zendia's jurisdiction for the purpose of the African Charter. The judge has asked you to give him "a brief consisting to *two different parts*, one which sets out the main legal arguments *in favour* of rejecting the applicant's complaint and one which identifies legally convincing reasons why I should *support* that the Court considers the merits of this poor woman's complaint". The judge asks you to find arguments in legal material in "the practice of a variety of international courts and tribunals". He throws de Schutter's textbook to you as a "useful source of reference" and mentions in passing that "there may be some information to be gathered from the European Court of Human Rights' recent Grand Chamber decision in [M.N. and Others v. Belgium paras. 96-126](#)", delivered on 5 March 2020.



Postal address:
Postbox 6706
St. Olavs plass 5
0130 OSLO Norway

Visiting address:
Cort Adelers gate 30
0254 OSLO Norway

Phone: +47 228 42001
Fax: +47 228 42002
E-mail: info@nchr.uio.no
<http://www.jus.uio.no/smr/english/>

You are to write a paper of no more than 2 500 words and submit it to the judge – via the University of Oslo – by 25 November 2020 at 9:00 AM (local Oslo time). You are only asked to assess whether the Court can consider the case and not whether NN’s claim that Article 5 of the Charter will ultimately succeed.