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# Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination against Women**

## Communication No. 50/2013

### Decision adopted by the Committee at its sixty-first session (6-24 July 2015)

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|---|---|
| *Submitted by*: | O. V. J. (not represented by counsel) |
| *Alleged victims*: | The author and her daughter |
| *State party*: | Denmark |
| *Date of communication*: | 24 December 2012 (initial submission) |
| *References*: | Transmitted to the State party on 12 March 2013 (not issued in document form) |
| *Date of adoption of decision*: | 23 July 2015 |

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# Annex

## Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-first session)

concerning

## Communication No. 50/2013*

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| *Submitted by*: | O. V. J. (not represented by counsel) |
| *Alleged victims*: | The author and her daughter |
| *State party*: | Denmark |
| *Date of communication*: | 24 December 2012 (initial submission) |

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting* on 23 July 2015,

*Adopts* the following:

### Decision on admissibility

1. The author of the communication is O. V. J., a Russian national, who submits the communication on her own behalf and on that of her daughter, V. D. J.[1] She claims that she and her daughter are victims of a violation by Denmark of their rights under articles 1, 2 (d), 5 and 16 (1) (d) of the Convention on the Elimination of All Forms of Discrimination against Women. She is not represented by counsel. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 31 August 2000, respectively.

#### Facts as presented by the author

2.1 The author married a Danish national on 31 December 2005. She contends that, shortly after their daughter was born, he changed his attitude towards her and became abusive towards her and their daughter. He allegedly isolated the author and forbade her from visiting her family and friends. He also reportedly demonstrated

* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Biancamaria Pomeranz, Patricia Schulz and Xiaoqiao Zou.

[1] While her daughter's date of birth has not been provided, the author states that her daughter was 4 years old when she submitted the communication to the Committee.

violent behaviour towards their daughter, turning her upside down and shaking her to make the author afraid.

2.2 Pending a decision on the spouses' divorce, a temporary agreement was reached by the author and her husband, pursuant to which both parents cared for the child on a weekly (seven-day) basis. By a decision of 22 June 2010 of the District Court of Aalborg, the author was granted a divorce from her husband. The Court also assigned sole custody of the daughter to the father. The decision was based on a child welfare report, drafted by a welfare consultant after conducting a psychological assessment of the child and her parents. According to the report, the temporary access scheme of shared parental authority put in place by the Court until the case had been determined had worked in substance and the parties had been able to cooperate on practicalities. Nevertheless, after considering the parties' statements during the proceedings, the Court had "found it highly dubious that the parties would be able to handle their disagreements about their daughter's affairs in general in a harmless manner". The Court also considered that, according to the report, both parties were suited to handle custody, but it was recommended that custody should be awarded to the father because the child appeared emotionally more attached to him. The Court therefore concluded that it was in the child's best interest to award sole custody to the father. The Court determined that the author's daughter should spend 5 of every 14 days with her. The Court also established that, given that "the author had not had the opportunity to develop strong ties with the Danish labour market", her husband should pay her maintenance for two years, as from 15 November 2009.

2.3 By a decision of 8 December 2010, the High Court of Western Denmark upheld the District Court's decision, considering, on the basis of the child welfare report and the parties' statements, that it was in the child's best interest to assign sole custody to the father.

2.4 On 28 June 2012, the author claimed joint custody of her daughter before the District Court of Aalborg. On 20 December, the Court again concluded that it was in the child's best interest to maintain the current arrangements, with the father having sole custody and the mother spending only 5 of every 14 days with her daughter. The Court based its decision on the child's current situation and on the fact that the cooperation between the parents was not good and that the period corresponding to the previous proceedings had been marked by "difficulties of cooperation and a high conflict level".

2.5 On 10 January 2013, the author appealed against that decision. By a decision of 3 June, the High Court of Western Denmark upheld the decision, based on the same reasoning and considering that no new facts had been presented.

**Complaint**

3.1 The author claims a violation of articles 1, 2 (d), 5 and 16 (1) (d) of the Convention. She contends that the State party has failed to provide effective measures of protection for her and her daughter against her ex-husband. She suggests that the Danish courts took into consideration only her husband's allegedly false statements and considered none of the evidence that she provided, assigning custody to him on the basis of his nationality alone. She adds that domestic remedies are unnecessarily prolonged and unlikely to bring relief.

3.2 The author requests the Committee, among other things, to secure the reinstatement to foreign mothers of their rights to family life and custody of their children; train the Danish authorities regarding domestic abuse; pass legislation that effectively protects foreign women and their children from abuse by Danish men and the application thereof; grant permanent residency and legal social protection and benefits to foreign mothers; immediately pass legislation and adopt other measures to ensure the prevention of and effective response to domestic abuse; and adopt urgent measures to protect foreign women who are victims of domestic violence from irreparable harm.

**State party's observations on admissibility**

4.1 On 13 May 2013, the State party argued that the communication was inadmissible under article 4 (1) of the Optional Protocol because the author had failed to exhaust domestic remedies. It noted that the author's claims had not been raised before the Danish courts, invoking the Committee's jurisprudence in the sense that the author should have raised the substance of the claim before the Committee at the national level.[2] The State party observed that the author had made no allegations concerning gender-based discrimination by her ex-husband against her or her daughter before the Danish authorities, meaning that the national courts had had no opportunity to assess such allegations.

4.2 The State party added that the author had submitted her complaint to the Committee while national-level custody proceedings (the author's appeal to the High Court of Western Denmark on 10 January 2013 against the decision rendered by the District Court of Aalborg) were under way, with a hearing before the High Court scheduled for 27 May.

4.3 The State party also argued that the communication was inadmissible under article 4 (2) (c) of the Optional Protocol because it was manifestly ill-founded. The State party suggested that the author had completely failed to substantiate why or how her daughter's and her own rights under the articles invoked had been violated and to indicate in what manner specific decisions, acts or omissions by the Danish authorities had allegedly entailed a violation of those rights. Furthermore, no specific information on factual issues, including dates or court decisions, had been provided.

4.4 Lastly, the State party argued that the communication was inadmissible under article 4 (2) (d) of the Optional Protocol because it constituted an abuse of the right to submit a communication. The State party noted that the author was solely seeking to obtain an additional review of the question of custody and to use the Committee as an additional forum for appeal, or "fourth instance".

**Author's comments on the State party's observations**

5.1 On 8 July 2013, the author challenged the State party's observations. She noted that she had previously sought to exhaust domestic remedies by filing an appeal with the High Court of Western Denmark, but that such remedies were

[2] The State party cites the Committee's decisions in communication No. 8/2005, *Kayhan v. Turkey*, decision of inadmissibility adopted on 27 January 2006, para. 7.7, and communication No. 10/2005, *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, decision of inadmissibility adopted on 30 May 2007, para. 7.3.

ineffective because of the judicial bias in favour of Danish men. She noted that the Committee had found that domestic remedies did not have to be exhausted where they were unreasonably prolonged or unlikely to bring effective relief. She added that, in cases of domestic violence, the Committee had evaluated the requirement of exhaustion of domestic remedies in the light of the failure by the police to properly and thoroughly investigate and protect the applicants.[3] She noted that, in her case, the relevant authorities had not exercised due diligence with regard to their obligation to effectively protect her and her daughter. She claimed that both she and her daughter had been subjected to threats, harassment and abuse by her ex-husband since 2009 and that she had been baselessly denied custody of her daughter. She also claimed that, as a foreign mother in Denmark, she was not allowed to participate in children's events at her daughter's kindergarten and that the holidays spent with her daughter had been reduced by the Danish authorities.

5.2 The author argued that she had provided the Committee with conclusive evidence of gender-based violence and the "removal of their rights to family life", a form of gender-based discrimination. She recalled the Committee's jurisprudence that State parties had a responsibility to act with due diligence to prevent violations of rights by individuals or to investigate and punish acts of violence, and to provide compensation.

5.3 The author questioned the assertion that the adoption of the national-level decisions had taken into account the best interest of the child. She argued that her ex-husband had been granted custody simply because he was ethnically Danish, adding that it was inhumane that her daughter was not allowed to live with her.

**Issues and proceedings before the Committee concerning admissibility**

6.1 At the State party's request, the Working Group on Communications under the Optional Protocol, acting on behalf of the Committee, decided, pursuant to rule 66 of the Committee's rules of procedure, to examine the admissibility of the communication separately from the merits.

6.2 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

6.3 The Committee notes that the author has not submitted sufficient and relevant documentation and information in support of her communication, such as the child welfare report and, in particular, the court proceedings and the court judgements, the several reminders sent to her to that effect notwithstanding. In that regard, the Committee notes that, at its request, the State party submitted, on 29 June 2015, some translations of court judgements and trial transcripts.

6.4 The Committee has taken note of the author's claims under articles 2 (d), 5 and 16 (1) (d) of the Convention. It notes that the author has provided no information and explanations in support of her claims. In addition, the Committee notes that it does not examine allegations or claims of a general nature such as those expressed in paragraph 3.2. In the absence of any other pertinent information on

[3] The author invokes the Committee's decision in communication No. 2/2003, *A.T. v. Hungary*, views adopted on 26 January 2005, and communication No. 20/2008, *V.K. v. Bulgaria*, views adopted on 25 July 2011.

file, the Committee considers that the communication is inadmissible under article 4 (2) (c) of the Optional Protocol as insufficiently substantiated.

6.5 In the light of that conclusion, the Committee decides not to examine any other inadmissibility ground.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.