



**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. 59/2013

**Decision adopted by the Committee at its fifty-ninth session
(20 October-7 November 2014)**

Submitted by: Y. C. (represented by counsel, CityAdvokaterne)
Alleged victim: The author
State party: Denmark
Date of communication: 16 January 2013 (initial submission)
References: Transmitted to the State party on 14 August 2013
(not issued in document form)
Date of adoption of decision: 24 October 2014



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 (fifty-ninth session)

concerning

Communication No. 59/2013*

Submitted by: Y. C. (represented by counsel, CityAdvokaterne)
Alleged victim: The author
State party: Denmark
Date of communication: 16 January 2013 (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 24 October 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Y.C., a Chinese national born in 1974. She sought asylum in Denmark; her application was rejected and, at the time of submission of the communication, she was awaiting deportation to China. She claims that such deportation would constitute a violation by Denmark of her rights under articles 1 to 3 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women and the Committee's general recommendation No. 19. The author is represented by counsel, CityAdvokaterne. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the case, the Committee, acting through the Working Group on Communications under the Optional Protocol, decided not to accede to the author's request for interim measures of protection in accordance with article 5 (1) of the Optional Protocol (i.e. to stay her deportation pending consideration of her communication by the Committee).

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Nicole Ameline, Olinda Bareiro-Bobadilla, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Violeta Neubauer, Theodora Oby Nwankwo, Maria Helena Lopes de Jesus Pires, Biancamaria Pomeranzi, Patricia Schulz, Dubravka Šimonovič and Xiaoqiao Zou.

1.3 On 20 June 2014, the Committee, acting through the Working Group, decided, pursuant to rule 66 of its rules of procedure, to examine the admissibility of the communication separately from its merits.

Facts as submitted by the author

2.1 The author arrived in Denmark early in 2011 and sought asylum when she was arrested there on 17 June 2011. Her application was rejected by the Danish Immigration Service on 23 August 2011. That decision was upheld by the Refugee Appeals Board on 7 November 2011.

2.2 The author further contends that she is a Chinese Catholic. She participated in a church service in the city of Xinxiang and assisted a priest on a daily basis. At some point, her employer forbade her to display religious items (icons and pictures) at her workplace and also checked the place where she slept, which was on the premises of her employer. The author explains that she had no problems with the authorities, but the priest whom she was assisting had been threatened by them, specifically that the church would be demolished.

2.3 Lastly, the author claims that she lived with a man and had a child with him; the child was about 13 years of age when the communication was submitted. Shortly after their son was born, the father took him away. He beat the author on six occasions when she sought to see the child and threatened to beat her again when she saw him for the last time, some two to three years before her departure from China. Subsequently, he married another woman.

Complaint

3.1 The author claims that the Refugee Appeals Board did not challenge her assertion that she participated in a daily church service in her city and assisted the priest, nor that she had had problems with the father of her child and suffered violence at his hands. It noted that the author, even if she had had to exercise her religion discreetly, could not be regarded as concretely and individually persecuted by the authorities on religious grounds. It also found that the background information describing the general conditions of Catholics in Fujian Province could not lead to the author being considered at risk of persecution for the purposes of section 7 (1) of the Aliens Act.

3.2 Concerning the conflict with the father of her child, the author maintains that the Board decided that her relationship was a private relationship and did not believe that the conflict would mean that the author, upon her return, would risk persecution or abuse of a nature referred to in the Aliens Act (sect. 7 (2)) against which she would not be able to seek the protection of the Chinese authorities. The Board also noted the author's statement that the father of her child had not sought her out.

3.3 The author claims that the State party would, by deporting her, breach her right to freedom of religion and that, having previously been beaten by her former partner when she sought to see her child, the lack of action on the part of the Chinese authorities has prevented her from making another attempt to do so. She suggests that any further attempt to see her son will result in fresh violence being inflicted on her by her former partner. With reference to paragraph 6 of the Committee's general recommendation No. 19, the author notes that the notion of discrimination against

women includes gender-based violence, including acts that inflict physical, mental or sexual harm or suffering. Accordingly, her deportation to China would amount to a breach by Denmark of the Convention and the general recommendation. She explains that she would not receive protection from the Chinese authorities because she was not married to the child's father and because she comes from a society in which it is considered normal for men to beat women. She adds that she is afraid that her religion would place her in an even weaker situation if she were to seek help or protection from the authorities in relation to her child.

3.4 The author claims that the foregoing demonstrates that she would be a victim of a violation of articles 1 to 3 and 5 of the Convention and of the Committee's general recommendation No. 19. She claims that, by deporting her to China, Denmark would be in breach of the Convention because the Chinese authorities would be unable to protect her.

State party's observations on admissibility

4.1 By a note verbale of 14 October 2013, the State party challenged the admissibility of the communication. It recalls the facts of the case, noting that the author is a Chinese national born in 1974 who entered Denmark without valid travel documents early in 2011. On 16 June 2011, the police encountered her in a Chinese restaurant and arrested her for being in the country illegally. At the statutory court hearing on 18 June 2011, the author applied for asylum, claiming that she had nowhere to live in China and that she would face violence at the hands of her former partner, with whom she had a son, if they met again. She stated that she had given birth at 25 years of age, in or around 1999. Shortly after, the father had left with the child; he had hit her six times on that occasion. The child had lived with his father since then and the author had not seen him since 1998. After their break-up, the author had telephoned her former partner once because she wanted custody of their child; he had visited her and they had fought. She had met him again two or three years before her departure and he had threatened to hit her if she continued to harass him. The author had not since sought to contact him and he had not looked for her. The author also referred to her lack of freedom of religion in China.

4.2 On 23 August 2011, the Danish Immigration Service refused to grant her asylum. On 7 November 2011, the Refugee Appeals Board upheld that decision, finding that the author did not meet the conditions for residence under section 7 of the Aliens Act. The Board considered it a fact that the author had had conflict with the child's father, who had hit her, but noted that she had not contacted the authorities about that violence or about her former partner taking the child away. It observed that the author's relationship with her former partner was a matter of private law and that that conflict did not imply that, if returned to China, the author would necessarily risk persecution or outrages of a nature set out in section 7 (2) of the Aliens Act against which she would be unable to seek the protection of the Chinese authorities. The Board also observed that the author's former partner had not himself sought her out.

4.3 Concerning the exercise of her religion, the Board gave credence to the author's statement that she had taken part and assisted a priest in Catholic services every day in the city in which she worked. The priest had told her to be careful with the authorities; the author had had no conflict or dealings with the authorities

regarding her religion. The author's employer had forbidden her to have religious pictures and objects on view at her workplace, where the author also lived.

4.4 The Board found that, although the author had had to exercise her religion discreetly, she could not be considered to be specifically and individually persecuted by the Chinese authorities on religious grounds. It also found that the background information describing the conditions for Catholics in Fujian Province in general terms could not give rise to the conclusion that the author must be considered to be at risk of being subjected to persecution justifying asylum for the purposes of section 7 (1) of the Aliens Act if returned to China.

4.5 In its overall assessment, the Board took into consideration the fact that the author's departure had not been caused by a specific situation, but that, according to her, she had felt under pressure from her former partner and the lack of contact with her own family, as well as from her situation in terms of work, home and religion. The Board also took into consideration the fact that the author had spent four or five months in Denmark before applying for asylum and did so only when the police found her.

4.6 The State party further provides a comprehensive description of the organization, composition, duties, prerogatives and jurisdiction of the Board and the guarantees for asylum seekers, including legal representation, the presence of an interpreter and the possibility for an asylum seeker to make a statement on appeal. It also notes that the Board has a comprehensive collection of general background material on the situation in the countries from which Denmark receives asylum seekers, updated and supplemented on a continuous basis from various recognized sources, and it takes it into consideration when assessing cases.

4.7 Regarding the admissibility of the communication, the State party observes that the author submitted that, if returned to China, she would be subjected to gender-based violence because her former partner had hit her when she had sought to see their child, had refused to allow her even to see the child and had threatened to hit her if they met again. The author admits not having sought protection from the authorities because, in her place of origin, it was normal for men to hit women. Furthermore, she submitted that having to exercise her religion discreetly was a breach of article 18 of the International Covenant on Civil and Political Rights.

4.8 The State party considers, first, that the communication is inadmissible as manifestly ill-founded and insufficiently substantiated under article 4 (2)(c) of the Optional Protocol. It notes that the author seeks to apply the obligations under the Convention in an extraterritorial manner. With reference to the Committee's decision in communication No. 33/2011, *M.N.N. v. Denmark*, the State party notes that from the Committee's reasoning it appears that the Convention has extraterritorial effect only when the woman being returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence. It is, moreover, a requirement that the necessary and foreseeable consequence is that the woman's rights under the Convention will be violated in another jurisdiction.

4.9 In the State party's view, this means that acts of States parties that may have an indirect effect on a person's rights under the Convention in other States can entail responsibility for the acting State party (extraterritorial effect) only under exceptional circumstances in which the person to be returned is at risk of being deprived of the right to life or of being exposed to torture or other inhuman or

degrading treatment. Such rights are protected under the Convention against Torture, articles 6 and 7 of the International Covenant on Civil and Political Rights and articles 2 and 3 of the European Convention on Human Rights.

4.10 The State party notes that the author indicates that the basis of her fear of returning to China is that the father of her child hit her six times in connection with her wish to have custody of the child, that he married another woman and refused to allow the author even to see the child and that he threatened to hit her if they met again.

4.11 The State party observes that the child's father has at no time sought out the author since taking the child. According to the author's statement, it was she who had contacted the child's father because she wanted custody of the child. Upon his visit, they had fought. Subsequently, the child's father had changed his telephone number and the author had since had no contact with him, apart from once, two or three years before her departure, when they had met and he had threatened to hit her if she harassed him again. Therefore, according to the author's own statement, there is no question of any risk that the author will be sought out and assaulted by the child's father; the author has stated that, if returned, she fears meeting him because he would probably hit her.

4.12 As to the author's fear of meeting her child's father, the State party observes that the author has met him only once without prior agreement, two or three years before her departure. She has also stated that he lives in another village and that the city in which both worked is large. Her assumption that he will hit her should they meet is based solely on supposition. When they met two or three years before her departure, he did not hit her. The State party thus finds no basis for considering it foreseeable that serious gender-based violence would occur were the author returned to China.

4.13 Regarding the author's fear of returning to China because she has been forbidden to display religious icons and pictures at her workplace and her fear that her religion would place her in an even weaker situation if she were to seek help or protection from the authorities in relation to her child, the State party first points out that the author herself has requested that her complaint be considered under the Convention on the Elimination of All Forms of Discrimination against Women, not the International Covenant on Civil and Political Rights.

4.14 The State party adds that the author has failed to substantiate how her religion would place her in a weaker situation if she were to seek help or protection from the authorities in relation to her child, or how it might otherwise be of significance to the Committee's assessment as to whether she would be at risk of gender-related violence or discrimination should she be returned to her country of origin. On the contrary, the author has constantly maintained that she has had no problems with the Chinese authorities; she contended that the authorities had had conversations with the priest or priests of the church without any further action. The author has also stated throughout the proceedings that it was her employer who had forbidden her to have religious pictures and objects on view at her workplace, where she also lived.

4.15 Concerning access to her son, the author has failed to provide any information suggesting that her situation would be different if she were issued with a Danish residence permit as opposed to being returned to China.

4.16 In addition, the author's departure was not caused by a specific situation. During her interview with the Danish Immigration Service on 26 July 2013, she referred to the difficult social conditions in China as a reason for her asylum application.

4.17 In the light of the foregoing, the State party considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, her claim that her removal to China would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence. Furthermore, it remains unclear and insufficiently substantiated what violations of the Convention the author would suffer if she were returned to China. The author refers to several provisions of the Convention, without describing in detail how they may be considered relevant. The communication should therefore be declared inadmissible under article 4 (2)(c) of the Optional Protocol as manifestly ill-founded and unsubstantiated.

4.18 As regards the part of the author's claims regarding her fear of persecution by the father of her child, the State party submits that that part of the communication is inadmissible under article 4 (2)(b) as incompatible with the provisions of the Convention.

4.19 With reference to the jurisprudence of the Committee against Torture, the State party notes that positive duties under article 2 (d) do not encompass an obligation for States parties to refrain from expelling a person who might risk pain or suffering inflicted by a private person, without the consent or acquiescence of the State authorities. The case law of the European Court of Human Rights on article 3 of the European Convention on Human Rights shows also that, when returning an alien, a State party can become responsible for acts committed against the alien in his or her country of origin only if the alien is able to show that the authorities of the receiving State are unable to obviate the risk by providing appropriate protection.¹

4.20 In the State party's view, the author has failed to sufficiently substantiate her contention that the Chinese authorities would be unable to obviate the alleged risk through appropriate protection, meaning that this part of the communication should be declared incompatible under article 4 (2)(b) of the Optional Protocol.

4.21 In this respect, the State party emphasizes that, according to her own statements to the Danish authorities, the author at no time contacted the Chinese authorities concerning the violence to which she was subjected by her child's father or the child's sustained stay with his father. The author's claims in the communication to the effect that she could not receive help from the authorities because she was not married to the child's father or that the situation of neglect on the part of the authorities prevented her from making another attempt to see her child are not supported by the author's own statements during the proceedings.

4.22 The State party adds that the author's own statements during the proceedings also do not support the allegation made in the communication to the effect that she did not contact the authorities because she did not dare to seek protection from them. Before the Danish Immigration Service, she had stated that she did not seek the protection of the authorities because in China nobody wanted to be involved in private matters, that it would be a waste of time and that the authorities

¹ See, for example, *H.L.R. v. France*, application No. 24573/94, para. 40, *Salah Sheekh v. the Netherlands*, application No. 1948/04, para. 137, and *NA v. the United Kingdom*, application No. 25904/07, para. 110.

would “take care of the problems presented by the rich people”. Before the Refugee Appeals Board, she had stated that she had not contacted the authorities regarding the custody of the child because, in her view, they would not consider the case because she was not married to her child’s father. She had also stated that she thought that neither the police nor any other authorities would consider her case because it was a family matter. In that light, the State party is of the view that the author has failed to seek assistance from the Chinese authorities based on her own assumption that they would ignore her case.

4.23 On those grounds, the State party submits that the communication should be rejected by the Committee as inadmissible. Referring to rule 66 of the Committee’s rules of procedure, the State party requests the Committee to examine the admissibility of the communication separately from its merits. It also reserves its right to submit observations on the merits.

Author’s comments on State party’s observations on admissibility

5.1 On 6 March 2014, the author’s counsel expressed the view that the communication was admissible and substantiated, stating that Y.C. did not seek police assistance in China because she was not married to the father of her child and because the police force does not care about domestic issues. As a Christian, she believed that she would receive even less attention and feared harassment by the police.

5.2 The author’s counsel points out that, because Y.C. has been beaten six times by her child’s father and because he has threatened to beat her if they meet again, she faces a real, personal and foreseeable risk of serious forms of gender-based violence if she approaches him again. As a principle of human rights, a person must be able to see his or her own child; out of fear, the author was unable to exercise that right for many years.

5.3 According to the author’s counsel, if the author were to be granted asylum in Denmark and eventually become a Danish citizen, she would have a better chance of success and protection if she approached the Chinese authorities to see her son.

5.4 With reference to a report by a non-governmental organization, the author’s counsel notes that domestic violence is traditionally considered to constitute a private issue in China.

5.5 The author’s counsel concludes that the communication should be declared admissible in order to secure the human rights of the author and enable her eventually to see her child and to exercise her religion as freely as she has been able to do in Denmark.

Issues and proceedings before the Committee concerning admissibility

6.1 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 66, the Committee may decide to consider the admissibility of the communication separately from its merits.

6.2 In accordance with article 4 (2)(a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's allegation that her deportation to China would constitute a violation by Denmark of her rights under articles 1 to 3 and 5 of the Convention and general recommendation No. 19, given that States are under an obligation to refrain from deporting persons who risk gender-based violence. In substantiation, she explains that the father of her child left with their son and that she was hit on six occasions during an argument with him when seeking to see the child. The father refused to allow her see the child and threatened to beat her if they met again. The author also claims that she is a Christian and that her former employer forbade her to display religious items at her workplace, where she also lived. The Committee also takes note of the State party's argument that the communication should be declared inadmissible as incompatible with the provisions of the Convention and manifestly ill-founded and unsubstantiated under article 4 (2)(b) and (c) of the Optional Protocol.

6.4 In the present case, regarding the author's claims that she suffered violence at the hands of the father of their child, that it was impossible for her to see the child, having been prevented from doing so by the father, and that she was threatened with beatings if they met again, the Committee notes that, in fact, the author has made no attempt whatsoever to bring her problems to the attention of the Chinese authorities. Even taking into account the author's claims about the persistent stereotypes in China, that police officers perceive domestic violence issues to constitute a private matter and that she was not married to the father of her child and is a Christian, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, her claim that she would not have received adequate protection in China had she contacted the competent authorities there and would not have been granted access to or custody of her child. The Committee considers that the alleged violence inflicted by the author's former partner in 1998 was sporadic. It also notes that the author indicates that she last sought to see her child some two to three years before her departure from China, without providing sufficient explanation about her failure to seek to see her child or obtain custody of him for such a significant period. In the circumstances, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility and is therefore inadmissible under article 4 (2)(c) of the Optional Protocol.

6.5 As to the author's claim that it would be impossible for her to exercise her religious beliefs freely and that she would be unable to display religious items at her workplace, where she also lived, the Committee notes that, in this context, the author has failed to substantiate any aspect of gender-based discrimination in her allegations. The Committee notes the State party's argument that, in this regard, the author has invoked a breach of her rights under article 18 of the International Covenant on Civil and Political Rights, not a breach of her rights under the Convention. In addition, the Committee considers that the author has not provided sufficient information in support of her contention regarding the alleged religious-based persecution. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that this part of the communication is inadmissible as manifestly ill-founded under article 4 (2)(c) of the Optional Protocol.

6.6 In that context, the Committee expresses its concern about the lack of substantiation in the arguments presented by the counsel for the author. In the circumstances, the Committee cannot but conclude that the author's claim that her removal to China would expose her to a real, personal and foreseeable risk of

serious forms of gender-based violence is insufficiently substantiated for the purposes of admissibility. Accordingly, the communication is inadmissible under article 4 (2)(c) of the Optional Protocol as both manifestly ill-founded and not sufficiently substantiated.

6.7 In the light of that conclusion, the Committee decides not to examine the remaining inadmissibility grounds invoked by the State party, namely incompatibility with the provisions of the Convention.

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.
