



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

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 65/2014<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	S.T. (represented by counsel, Alekssei Ponomarev and Vanessa Kogan)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	8 November 2013 (initial submission)
<i>References:</i>	Transmitted to the State party initially on 20 January 2014 (not issued in document form)
<i>Date of adoption of views:</i>	25 February 2019

\* Adopted by the Committee at its seventy-second session (18 February–8 March 2019).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Naéla Mohamed Gabr, Nahla Haidar, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Nerváez, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



**Background**

1. The author of the communication is S.T., a national of the Russian Federation born in 1959. She claims that the Russian Federation has violated her rights guaranteed under article 2 (c) and (d), read in conjunction with article 1, and article 5 (a) of the Convention, given the failure of the authorities to prevent and to effectively investigate the severe physical and psychological violence committed against her by her former husband. The Convention entered into force for the State party on 3 September 1981 and the Optional Protocol on 28 October 2004. The author is represented by counsel, Vanessa Kogan and Aleksei Ponomarev.

**Facts as submitted by the author**

2.1 The author entered into a religious marriage to Mr. Timagov on 20 August 1980, which they officially registered in December 1982. They have three children, Islam, Martan and Zalina. In 1984, they built a family house. By 2010, the entire extended family, including their sons, and their wives and children, and their daughter and her child, lived together in the family house. Through the years, Mr. Timagov repeatedly physically and emotionally mistreated his children and the author, with the author suffering most of the abuse.

2.2 On 12 December 2009, the author reported to the police that Mr. Timagov had beaten her with a shovel until she lost consciousness. Upon his return to the house, the author's son Islam found her unconscious and called an ambulance. She was diagnosed with a closed cranio-cerebral injury and had sustained bruises in the areas of her elbow joint and left knee joint. She refused hospitalization, however, in order to avoid making her beating public knowledge and to avoid a confrontation between her relatives and her husband's relatives.

2.3 The author's husband and his relatives repeatedly threatened her during the court proceedings. On 23 February 2010, a relative of her husband, following a series of insults and threats, struck the author with his fist on her right forearm.

2.4 On 26 April 2010, the Achkhoy-Martan Magistrates' Court convicted the author's husband of intentional infliction of bodily harm under article 115 (1) of the Criminal Code of the Russian Federation. The magistrates' court took into account the information provided by the police regarding the systematic abuse and mistreatment of the author by her husband. Mr. Timagov was ordered only to pay a fine of 15,000 Rub,<sup>1</sup> however, with no further sanctions applied. The author continued living in the same house with her abuser, because she had nowhere else to go, owing to her lack of economic independence.

2.5 Subsequent to the violent attack of 12 December 2009, the author filed a divorce application. Her husband was categorically opposed to the author applying to the court instead of resorting to sharia law. He continually harassed her, and his relatives repeatedly sent religious representatives, including a *qadi* (Islamic judge), an imam and the head of a mosque council, to speak with the author's father in attempts to resolve the issue in accordance with Islamic law. The author and her father nevertheless insisted on abiding by the civil law of the Russian Federation.

2.6 After the filing of the divorce application, Mr. Timagov evicted the author and their three children and their families from the family house. He threatened them physically and did not let them take any personal belongings. He justified his actions by citing sharia law, according to which, if a man divorces his wife, she must return to her parents' house.

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<sup>1</sup> Equivalent to US\$ 225.

2.7 On 6 February 2010, while still legally married to the author, Mr. Timagov entered into a religious marriage, in accordance with sharia law, to R, whom he had met one month prior to the wedding. On 6 April 2010, the Achkhoy-Martan District Court issued a divorce ruling, indicating that the author and her two sons were entitled to a one-half share of the house, namely, a bedroom and a hallway, in addition to a one-half share of three vehicles, a car, a truck and a tractor. On 25 May 2010, the Supreme Court of Chechnya, Russian Federation, partially quashed the lower court decision. On 22 July 2010, the Achkhoy-Martan District Court rendered an amended decision on the family arrangements, confirming the author's entitlement to a one-half share of the house. Subsequently, the author was able to move back into the house, where Mr. Timagov had been living with his new wife. In the intervening period, for eight months, the author was obliged to live with her parents.

2.8 In early November 2010, Mr. Timagov turned off the heating in the rooms occupied by the author and her sons. The author complained to court bailiffs. On 15 November 2010, a court bailiff requested that Mr. Timagov turn on the heating and move to the part of the house assigned to him by the court. On 27 December 2010, the bailiff again requested that he implement the earlier instruction.

2.9 On the same day, at around 4.30 p.m., while the author was in the toilet in the backyard, her former husband abruptly opened the door of the toilet and swung at her with an axe, saying "I will kill you". She barely managed to cover her head with her left arm, and the axe blade nevertheless struck her directly in the head, and she fainted. The author indicates that this event was not triggered by any immediate conflict. Mr. Timagov did not provide any emergency assistance to the author and left her lying unconscious and bleeding next to the toilet. He did not allow his son's pregnant wife into the backyard either, later providing the justification that he feared that seeing the author in such a state and bleeding could have caused complications with the pregnancy. Subsequently, he drove away in his car. The author's sons were then able to provide first aid to their mother.

2.10 On 6 January 2011, 10 days after the attempted murder, Mr. Timagov was arrested. On 21 January 2011, his relatives declared that they abandoned their family ties with the author's children, given that they had taken their mother's side against their father. This custom is known as "*dollar dovla*".

2.11 The forensic medical examination report of 29 March 2011 concluded that "the presence of two wounds, one in the right parietal and one in the occipital regions, indicates that at least two strikes were directed at the head." Mr. Timagov's psychiatric examination, conducted on 11 February 2011 in the course of the preliminary investigation, concluded that the author's former husband was not suffering any mental disorder at the time of the commission of the crime or at the time of the examination, nor had he suffered from temporary insanity. He was determined to be aware of the nature and social danger of his actions and in control of his actions, both at the time of the commission of the crime and at the time of the examination.

2.12 The investigation concluded on 31 March 2011. On 11 April 2011, the Office of the Achkhoy-Martan Interdistrict Prosecutor approved the indictment, and the case was transmitted to the Achkhoy-Martan District Court. In the indictment, the author's former husband's actions were classified as attempted murder, under article 30 (3), and murder, under article 105 (1), of the Criminal Code.

2.13 On 6 June 2011, the court dismissed the author's claim to seize her former husband's car, deciding that it represented an item of evidence and transferring it into the custody of Mr. Timagov's brother. For all practical purposes, this meant that the car was left in Mr. Timagov's possession.

2.14 On 11 July 2011, the author's counsel presented a medical certificate and requested the court to adjourn the hearing due to the author's ill health. The court dismissed the request and held a hearing on 12 July 2011, in the absence of the author and her representative. In the course of that hearing, the court "sided with the defence" and ordered an additional outpatient psychiatric examination of the accused. At that stage of the proceedings, defence counsel radically changed its strategy, bringing new witnesses who alleged that the author had systematically insulted her former husband. The defence then argued that the author was the real culprit, not Mr. Timagov, and the prosecution did not object.

2.15 On 15 July 2011, the additional psychiatric examination of the accused was conducted, in the absence of the author and her representative. The examination report recognized that the author's ex-husband had been temporarily insane while committing the crime.<sup>2</sup> As a consequence thereof, the public prosecutor requested that the court mitigate the classification of the crime from attempted murder to inflicting serious bodily harm in the state of temporary insanity, under article 113 of the Criminal Code.

2.16 The author's counsel requested the court to conduct an additional psychiatric examination of the accused, pointing out contradictions between the first two. On 6 September 2011, the Achkhoy-Martan District Court ordered the Krasnodar Forensic Laboratory of the Russian Federal Centre of Forensic Science of the Ministry of Justice to conduct an additional combined psychological and psychiatric examination. On 28 September 2011, the Supreme Court of Chechnya quashed that decision, indicating that the lower court had not provided its reasoning as to why the two available psychiatric examinations differed and had not attempted to question medical experts.

2.17 Furthermore, the public prosecutor and defence counsel sided together, arguing against the court ordering any compensation for the material and moral damages sustained by the author. The court dismissed all of the author's claims for compensation. The court concluded that "through litigation (the divorce and family arrangement proceedings) the victim [the author] continued to humiliate and address excruciating insults to the accused and his second wife, resulting in conflict aggravation. The given circumstances make the court conclude that the accused was in a prolonged psychotraumatic situation that had arisen in connection with the systemic insults by the victim, which culminated in the nervous breakdown of Mr. Timagov on 27 December 2010." The court established that "the accused inflicted serious bodily harm in a state of sudden emotional tumult (temporary insanity) caused by a prolonged psychotraumatic situation, arisen in connection with the systematic amoral behaviour of the victim".

2.18 On 14 October 2011, the author's ex-husband was found guilty under article 113 of the Criminal Code and was sentenced to 9 months and 8 days' imprisonment. Taking into account the time he had spent under arrest since his detention, he was immediately released in the courthouse. In the sentence rendered, the court indicated that it was "guided by the principle of justice, takes into account the nature and the degree of social danger resulting in the minor offence [referring to striking the author with an axe], the positive characteristics of the accused, mitigating and aggravating

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<sup>2</sup> The report, which is annexed to the submission, indicated that: "Timagov was constantly in a state of internal conflict, on one side his injured vanity due to the non-recognition as an authority and head of the family, on the other side the necessity to suppress his negative emotions and to build tolerant relationships with family members in order to avoid conflicts and ensure the safety of his new family. The dramatic event occurred in this context. Listening to the insults addressed to him and his new wife, he tried to maintain self-control and be in charge of his emotions. At some point, nevertheless, happened an 'explosion of affect' that ended in brutal axe blows directed at the victim's head."

circumstances, the impact of punishment on the correction of the accused and the prevention of new crimes”.

2.19 On 12 October 2011, the author’s counsel filed an application for cassation challenging the Achkhoy-Martan District Court decisions rejecting a number of motions, notably, the motion to postpone a hearing, the motion for a second representative to have sufficient time to read the case materials, the motion to interview medical forensic experts, the motion to exclude testimony of a witness and the interrogation protocol of the accused and the motion to challenge the judge and the public prosecutor.

2.20 On 14 November 2011 and 10 January 2012, the author’s representatives claimed, in additional applications for cassation, that the Achkhoy-Martan District Court had acted in breach of criminal procedure law and violated the principles of impartiality and independence by siding with the defence and dismissing without sufficient grounds all of the author’s motions.

2.21 On 28 March 2012, the Supreme Court of Chechnya upheld the Achkhoy-Martan District Court verdict, with one amendment deleting the mention of Mr. Timagov’s previous conviction by the Achkhoy-Martan Magistrates’ Court. The author’s subsequent applications for supervisory review were dismissed by the Supreme Court of Chechnya, on 8 August 2012 and 19 February 2013, respectively.

2.22 The author lived at her parents’ home in Achkhoy-Martan for a brief period, then rented an apartment in Grozny together with her children and their families. She had no other choice but to rent accommodations, given that she could not live under the same roof as her abuser. Moreover, after Mr. Timagov was practically acquitted by the court, the author was considered by religious villagers to be guilty of improper conduct for a Chechen women, given that she had “provoked” her husband, according to the verdict issued. It thus became unbearable for the author to live in her village.

2.23 After the various surgeries required to treat the injuries the author had sustained, her status was classified as disability category II. She suffers from severe headaches. Her state of health requires regular medical examinations, yet she cannot afford the necessary treatment.

## **Complaint**

3.1 The author claims a violation of article 2 (c) and (d), read in conjunction with article 1, and article 5 (a) of the Convention, given the failure of the State party to effectively respond to the gender-based violence committed against her by her former husband.

3.2 The author submits that the definition of discrimination against women in article 1 of the Convention includes gender-based violence, notably, acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.<sup>3</sup> She claims that States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence. She claims that she was subjected to gender-based violence perpetrated by her former husband and that the authorities’ response to the violence was manifestly inadequate and disproportionate to the gravity of the offence. She claims that the overall violence to which she was subjected over a long period of time cannot be considered as separate, isolated episodes but as a chain of connected events in which the level of violence continually escalated over time. She claims that

<sup>3</sup> The author refers to the Committee’s general recommendation No. 19 (1992) on violence against women, para. 6; and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention; as well as to jurisprudence of the European Court of Human Rights, namely, *Opuz v. Turkey* (application No. 33401/02), judgment of 9 June 2009.

the violence was not limited to the physical injuries but also included psychological pressure and a corresponding feeling of helplessness and despair.

3.3 The author alleges that she suffered revictimization<sup>4</sup> by the State party, given that the disproportionately lenient sentence imposed on her former husband violated her right to non-discrimination and the State party failed in its legal obligation to respect, protect and fulfil that right. She claims that she was deprived of effective legal protection, in violation of article 2 (c) of the Convention. She also claims that a judgment grounded in gender-based misconceptions and myths can hardly be considered as one rendered by a fair, impartial and competent tribunal.

3.4 The author maintains that, in domestic violence cases, in which victims are particularly vulnerable due to the nature of the crime and the proximity of ties with the perpetrator, perpetrators' rights cannot supersede victims' rights to life and to physical and mental integrity.<sup>5</sup> The author submits that, although the national statistical institution of the State party does not maintain centralized statistics, disaggregated by gender, on domestic violence, it is considered to be of general knowledge that around 14,000 women are killed by their husbands or other relatives every year.<sup>6</sup>

3.5 The author claims that she could not have asked for a restraining or protection order, because neither is available under the law of the State party. Nor could she flee to a shelter or seek assistance at a crisis centre, because none are available in Achkhoy-Martan. She submits that article 2 of the Convention is not limited to the prohibition of discrimination against women caused directly or indirectly by public authorities, but also imposes a positive obligation of due diligence on States parties.<sup>7</sup>

3.6 The author further submits that there are no special provisions or procedures in civil or family law for cases of violence against women, such as remedies or compensation for pecuniary and non-pecuniary damage. She invoked a general provision on compensation, to no avail. She claims that the cost of her two surgeries in Grozny and Saint Petersburg and the prolonged treatment sessions that were required following the assault of 27 December 2010 amounted to around 200,000 Rub.<sup>8</sup> Furthermore, there is no free legal aid for victims of domestic violence; only the accused has the right to obtain free legal advice and legal representation in court. During the trial, the prosecutor and defence counsel argued against the court ordering any compensation for the material and moral losses that the author had sustained, and the court dismissed all claims for compensation.

<sup>4</sup> In this regard, the author refers to *Vertido v. Philippines* (CEDAW/C/46/D/18/2008).

<sup>5</sup> The author refers to *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Akbak et al v. Austria* (CEDAW/C/39/D/6/2005) and *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Goekce et al v. Austria* (CEDAW/C/39/D/5/2005) and to the Committee's concluding observations on the combined sixth and seventh periodic reports of the Russian Federation (CEDAW/C/USR/CO/7, para. 24, regarding the Committee's concerns about the increasing rate of violence against women and the killings of women in Chechnya).

<sup>6</sup> American Bar Association Rule of Law Initiative-Central European and Eurasian Law Initiative, "CEDAW assessment tool report for the Russian Federation", February 2006, p. 97. Available from [www.americanbar.org/content/dam/aba/directories/roli/russia/russia-cedaw-eng.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/russia/russia-cedaw-eng.pdf).

<sup>7</sup> The author also refers to the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 9; and European Court of Human Rights, *Wilson v. United Kingdom* (application No. 10601/09), decision of inadmissibility of 2 February 2009, para. 37.

<sup>8</sup> Equivalent to US\$ 3,002.

3.7 The author claims that there is no effective support for victims of domestic violence, namely, appropriate protective and support services such as shelters, specially trained health-care workers, rehabilitation or counselling.<sup>9</sup>

3.8 The author explains that she could not claim any protection while she was still living in the same house as Mr. Timagov, because the law of the State party does not provide for protection or restraining orders. Moreover, all protection measures ceased upon his immediate release. She claims that her physical integrity, physical and mental health, and life were at serious risk and that she was living in a state of constant fear, culminating in the assault of 27 December 2010, when she was nearly killed by her ex-husband.

3.9 Under article 5 of the Convention, the author submits that the lenient sentence granted to her ex-husband was the result of the domestic courts having based their decisions on gender-related myths and misconceptions of how Chechen women must behave towards their husbands. The authorities' response to the conduct of her former husband was manifestly inadequate and disproportionate to the gravity of the offence in question. The author submits that, had the court not been influenced by gender-based myths and stereotypes, her ex-husband would not have been granted impunity for the committed crime. She claims that the court took into account only the testimonies of the defence witnesses and, on that sole basis, attributed to the author "systemic amoral behaviour", i.e., not in line with the behaviour associated with a stereotypical proper Chechen woman. The court disregarded the numerous witnesses supporting the author's version of events, who were moreover direct witnesses, who could have testified to the author's behaviour, given that they lived side by side in the same house.<sup>10</sup>

3.10 Furthermore, the court ruled that the defendant, not the victim (the author), was "in a prolonged psychotraumatic situation, arisen in connection with the systematic insults by the victim". The defendant had shown no remorse, and he did not plead guilty, instead denying any wrongdoing. The author claims that traditional attitudes played a decisive role in the court's reasoning. In line with the authorities' widely held views on and general approach to domestic violence, the court disregarded the author's vulnerable position, Mr. Timagov's previous record of domestic violence and his previous conviction for inflicting bodily injury to the author and instead took into account the positive description of his character provided for the defence by witnesses from the local mosque administration.

3.11 The author claims that the traditional attitudes by which women are regarded as subordinate to men contribute to violence against women, and judgments such as the one rendered in her case strengthen these stereotypical beliefs. The court gave precedence to the version of events put forth by the defence, that she had repeatedly insulted her ex-husband, while not giving equal consideration to the fact that her ex husband had continually assaulted her physically and mentally, which was supported by witnesses and evidenced by her injuries. In addition, the prosecution *proprio motu* petitioned the court for mitigation, reducing the classification of the crime with which the defendant was charged from attempted murder to inflicting serious bodily harm in a state of temporary insanity. The Supreme Court of Chechnya held to remove the mention in its judgment of Mr. Timagov's previous conviction by

<sup>9</sup> The author refers the Committee's general recommendation No. 19, para 24 (o). She explains that 21 crisis centres and 5 shelters are available to cover a country of 143 million people, of whom 76 million are women.

<sup>10</sup> The court's selective preference of defence witnesses over those of the prosecution is explicitly referenced in the text of the verdict, which states that "the Court critically [критически, could also be translated as "negatively"] evaluates the victim's testimony as it contradicts [that of] witnesses".

the Achkhoy-Martan Magistrates' Court. According to the author, the judicial decisions reveal a certain degree of tolerance of, with no preventive or deterrent effect on, the conduct of potential perpetrators. They lack effectiveness, because they suggest that domestic violence is tolerated by the authorities.<sup>11</sup> The discriminatory judgment revictimized the author and de facto justified her ex-husband's aggression.

3.12 The author claims that she and her family suffered immeasurably from the public exposure of the case and the minimal sentence imposed by the court, which portrayed her ex-husband as the victim. The author was ostracized and stigmatized in a community in which family ties play an extremely important role. All of those factors aggravated the post-traumatic stress disorder from which she had been suffering since her assault. Her physical and mental integrity was affected, preventing her from rebuilding her life. Her injuries have resulted in a permanent disability, preventing her from working and earning a living. She is unable to live in the half of the house that legally belongs to her, and neither the State nor her ex husband contributes financially towards her treatment. As a result, she is not undergoing any medical treatment, because she cannot afford it.

3.13 The author states that, in accordance with article 4 (1) of the Optional Protocol, only available and effective remedies must be exhausted. The imposition of a sentence on her ex-husband puts an end to the process available to her, and she has therefore exhausted all domestic remedies available to her within her means. The author submitted a complaint to the European Court of Human Rights, but it was rejected, because it did not meet the admissibility criteria. Given that the case was not examined on its merits, the complaint meets the requirements of article 4 (2) (a) of the Optional Protocol.

3.14 The author requests that the Committee find that she has been a victim of discrimination and that the State party failed to fulfil its obligations under articles 2 and 5 of the Convention. She also requests that the Committee recommend to the State Party to grant her financial compensation proportionate to the serious violation of her rights and the physical, mental and social harm caused to her, in order to enable her to continue her therapy and other treatment.

#### **State party's observations on admissibility**

4.1 On 17 March 2014 and on 22 April 2014, the State party submitted its observations on the admissibility of the communication. The State party submits that the communication should be declared inadmissible under article 4 (2) (b) of the Convention, because in 2012 the author lodged an application with the European Court of Human Rights, which was declared inadmissible.

4.2 On 22 April 2014, the State party submitted additional information. It notes that the author has not submitted a supervisory review application to the Supreme Court of the Russian Federation in relation to the court decisions of 26 April 2010 and 14 October 2011 finding her husband guilty of inflicting her bodily injury, despite her claims that the sentence was light and influenced by gender-based stereotypes. The communication should, therefore, be declared inadmissible under article 4 (1) of the Convention.

4.3 On 12 March 2015, the State party again submitted the same argument of non exhaustion of all available domestic remedies by the author.

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<sup>11</sup> At the same time, the author claims that no violence by women is tolerated, either by their husbands or by the State. She refers to a verdict of the Lenin district court of Grozny of 21 February 2013, in which, for inflicting a grave injury under article 111 (1) of the Criminal Code, a woman was sentenced to 3 years of imprisonment.

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

5.1 On 3 and 11 June 2014, the author submitted comments to the State party's observations on admissibility. The author challenges the State party's argument that the communication is inadmissible under article 4 (2) (a) of the Optional Protocol. In particular, she contends that the subject matter of the complaint before the European Court of Human Rights is distinguishable from the subject matter of her complaint before the Committee. That Court focused on the disproportionately lenient sentence and the violation of the author's procedural rights, rather than on the issue of discrimination on the basis of gender. Under the Court's case law, the complaints of discrimination cannot be examined unless they fall within the ambit of another right protected under the European Convention on Human Rights. The author's complaint before the Committee focuses on the discrimination she suffered, namely, regular incidents of gender-based violence, followed by a deadly assault that she survived. In her complaint, she also submits that the State party has violated its positive obligations under the Convention on the Elimination of All Forms of Discrimination against Women, such as the absence of the possibility of obtaining a restraining or protection order issued under the domestic legislation, the absence of sufficient support services for victims, such as shelters or crisis centres, and the dismissal of her compensation claims. Furthermore, she submits her complaint to the Committee not only to claim a violation of her rights but also to shed light on the prevalence of domestic violence in the northern Caucasus, especially gender-based stereotyping and prejudice that perpetuate violence against women as being acceptable, as well as on the ostracism from the community faced by women who report domestic violence.

5.2 The author also contends that the European Court of Human Rights has not examined her application on the merits and has not provided detailed reasons why it was declared inadmissible. According to the Court inadmissibility letter of 6 December 2012,<sup>12</sup> her application did not correspond to the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights. The letter was issued two months after the Court received her application. The application was therefore rejected at a very initial screening stage, which does not comprise any consideration of the merits. In addition, the author refers to *N.S.F. v. United Kingdom* (CEDAW/C/38/D/10/2005), in which the Committee found that a declaration of inadmissibility by the Court did not preclude the Committee from examining the case.

5.3 Furthermore, the author challenges the State party's argument that the communication is inadmissible under article 4 (1) of the Optional Protocol. She submits that she has exhausted all available domestic remedies that would have been likely to bring sufficient relief and the application of which would not have been unreasonably prolonged. She has challenged the verdict in cassation and supervisory review proceedings. The State party has conceded that she raised the same arguments at the cassation level as in her communication to the Committee and that her claims were considered unsubstantiated by the national courts. It has also conceded that her applications for supervisory review were twice dismissed by the Supreme Court of Chechnya, on 8 August 2012 and 19 February 2013.

5.4 The author claims, with reference to the Committee's views in *Vertido v. Philippines*, that a verdict of acquittal based on gender-based myths and stereotypes is not a relevant and sufficient remedy within the meaning of article 4 (1) of the Optional Protocol. Supervisory review proceedings are unlikely to bring effective relief, as they are aimed at providing an extraordinary remedy dependant on the discretion of the authorized officials, and such a remedy would not provide adequate relief in domestic violence cases. The supervisory review procedure has already been

<sup>12</sup> On file with the secretariat of the Committee.

shown to be ineffective in her case. The State party has failed to substantiate its assertion as to the effectiveness of the supervisory review procedure or to provide the Committee with extensive domestic case law that would demonstrate its effectiveness.

5.5 The author further emphasises that, despite the gravity of the offence, the State party places the burden of proof on the author, who has been a victim of domestic violence, and she must find the financial resources and psychological strength to persist in seeking justice. She has already sought justice at every instance, including under the cassation and supervisory review procedures, to no avail.

5.6 The author submits that supervisory review proceedings would only be relevant to punishing the perpetrator, inasmuch as the Supreme Court would overrule the verdict and remit the case for a new examination to courts that had already found in his favour. However, in line with the Committee's practice, effective domestic remedies in domestic violence cases were those related to the obligation of the State party concerned to exercise due diligence to protect, investigate the crime, punish the perpetrator and provide compensation as set out in general recommendation No. 19 of the Committee.<sup>13</sup>

5.7 The author claims that women in the State party generally lack protection. The prolonged litigation in her case indicates that serious shortcomings exist in the State party's legislation and judiciary in relation to domestic violence cases.

5.8 In addition, on 15 June 2015, in response to the State party's submission of 12 March 2015, the author rebutted the State party's assertion that she had not exhausted all domestic remedies, reasserting that supervisory review proceedings are an extraordinary remedy, that such proceedings would not grant adequate relief and that applying to the Supreme Court of the Russian Federation would be unreasonably prolonged and unlikely to bring effective relief.

5.9 The author underlines that the compensation claims were brought in the course of the criminal proceedings and are closely linked to the classification of the perpetrator's status. Because the court accepted that he was temporarily insane at the moment of almost hacking the author to death, her compensation claims were rejected. Thus the author was caught in a vicious circle. The general legal principle is that damages should be compensated for in full by the individual who has inflicted them.<sup>14</sup> However, it is at the court's discretion to award compensation, when perpetrators are not aware of their actions, such as in cases of temporary insanity. Therefore, by recognizing Mr. Timagov to have been temporarily insane, the district court also ruled out the author's compensation claims. The Supreme Court of Chechnya, by upholding the lower court's position as to the mental state of the perpetrator at the time of the commission of the crime, automatically confirmed that the author was not entitled to compensation.

5.10 The author submits that there are no special provisions or procedures in civil or family law concerning gender-based violence cases, such as remedies or compensation for pecuniary and non-pecuniary damage. She invoked a general provision on compensation, to no avail. Her efforts to obtain redress to the harm and irreparable injury (disability category II) that she suffered were futile. Launching a separate compensation claim in a civil lawsuit outside of the criminal proceedings would have worsened her situation of isolation and ostracism, given that it would

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<sup>13</sup> Reference is made to *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Akbak et al v. Austria*, para. 7.3; and *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Goekce et al v. Austria*, para. 7.3.

<sup>14</sup> Liability for damage, article 1064 (1) of the Civil Code of the Russian Federation.

have been interpreted as acting in the interest of self-enrichment. She concludes that the refusal of the courts to grant any compensation or support encourages both criminal and financial impunity in domestic violence cases.

5.11 In addition, the author submits that there is no free legal aid for women who are victims of violence, neither before nor during the procedures required by law. Only the accused has the right to obtain free legal advice and representation in court.

5.12 The author asserts that the State party authorities were aware of the systematic patterns of violence against women in Chechnya and of the situation with regard to domestic violence and were specifically aware of her situation, given the mistreatment reported on 12 December 2009, the threats reported on 23 February 2010, the magistrates' court ruling in that regard, the bailiff intervening regarding the hearing in the winter months and Mr. Timagov's attempted murder of the author with an axe.

5.13 The author claims that, given the lack of a normative and structural framework protecting women from domestic violence, the State party failed to discharge its obligations under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. She was obliged to stay with her abusive husband, because there were no shelters available to her and, moreover, she could not have applied for a restraining or protection order, given that neither option exists in the State party.

#### **State party's observations on the merits**

6.1 On 6 May 2016, the State party submitted its observations on the merits. It affirms that, according to article 19 of the Criminal Code, only a sane natural person who has reached the statutory age envisaged by the Code shall be subject to criminal liability. Furthermore, pursuant to article 22 (1) of the Code, a person who, at the time of the commission of a socially dangerous act, was insane, that is, was unable to understand the actual character or social danger of his actions (inaction) or to govern them as a result of a chronic or temporary mental derangement, mental deficiency or any other mental condition, shall not be subject to criminal liability. In accordance with article 113 of the Code, intentional infliction of a grave injury or injury of average gravity to health in a state of sudden strong mental agitation (temporary insanity), caused by violence, mockery or grave insult on the part of the victim or by other unlawful or amoral actions (inaction) of the victim, or by a mentally traumatizing situation that arose in connection with the systematic unlawful or immoral behaviour of the victim, shall be punishable by corrective labour for a term of up to two years, or by restraint of liberty for a term of up to two years, or by compulsory labour for a term of up to two years, or by deprivation of liberty for the same term. The criminal liability is lower than in cases under articles 111 (intentional infliction of a grave injury) and 112 (intentional infliction of injury to health of average gravity) of the Code.

6.2 The State party also submits that, under article 42 of the Code of Criminal Procedure of the Russian Federation, a victim is a natural person, upon whom physical, property or moral damages are inflicted by the crime, as well as a legal entity, if his property and business reputation were damaged by the crime. Pursuant to article 131 of the Code: The procedural outlays are spending connected with the proceedings on the criminal case, which shall be compensated from the funds of the federal budget or from the means of the participants in the criminal court proceedings. To the victim shall be guaranteed the compensation for the property damage inflicted by the crime, as well as for the outlays he has had to make in connection with his participation in the process of the preliminary investigation and of the trial, including the outlays on the representative, in conformity with article 131 of the Code. The rules governing compensation for moral and material (property) damages are established

in the Civil Code.<sup>15</sup> Nevertheless, if damages are inflicted on the life or health of the victim, the court has discretionary power to order perpetrators to pay full or partial compensation for the damages, regardless of their mental state at the moment of commission of the crime.

6.3 On 14 October 2011, the Achkhoy-Martan District Court found the author's ex-husband guilty of inflicting serious bodily harm in the state of temporary insanity under article 113 of the Criminal Code and sentenced him to 9 months and 8 days' imprisonment, a punishment which is in compliance with the sanctions established thereunder. However, the court rejected the author's claim for compensation of moral damages, because, according to Supreme Court Decree No 4409-VIII of 26 June 1973 on the compensation of expenses for medical treatment of citizens-victims of crime, individuals who commit a crime in a "state of affect", are not required to compensate victims for the cost of medical treatment.

6.4 The State party further submits that, according to article 1078 (1) of the Civil Code, individuals who have inflicted damages in a state in which they were not able to understand the meaning of their acts or to control those acts are not responsible for the damages caused. The State party adds that, while challenging the verdict of 14 October 2011 before the Supreme Court of Chechnya in cassation and supervisory review proceedings, the author and her representative did not express disagreement as to the part of the decision concerning the civil claim, nor have they claimed compensation for moral or material damages in civil proceedings.

#### **Additional submission by the author**

7.1 On 6 September 2016, the author provided additional comments and an update on her situation. She continues to reside with her sons and their families in a rented two-room apartment in the town of Grozny. She has not received any compensation or support, either from her former husband or from the State party. A victim of domestic violence, she now has a disability for the rest of her life. Her state of health is deteriorating, due to the impossibility of obtaining the necessary medical care. The State social services do not provide any assistance.

7.2 The author underlines that the blame is entirely placed on the victim and that the State party is emphasizing only the mental condition of the perpetrator of violence to thereby obscure that this case is one of domestic violence. The State party arguments focus on their assertion that the author provoked her ex-husband, which recalls the parallel argument made by rape apologists that rapists are provoked to commit rape by victims' wearing revealing clothing. The perpetrator hides behind the defence of temporary insanity. As a result, the victim is denied any compensation and assistance. However, the State party affirms that the court has discretionary power to award damages, regardless of the mental state of the perpetrator at the moment of commission of the crime. It follows that neither the judicial authorities nor the State party consider domestic violence and its consequences on the victim to be worthy of awarding any damages. Despite the fact that a local court granted her a property settlement, she is not able to claim it, because it is half of the same house in which her abuser resides.

7.3 The author contends that, throughout the consideration of her case, the stereotype that a husband can continually commit violence against his wife with impunity has been reinforced by the State officials through use of the guise of temporary insanity.

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<sup>15</sup> The State party refers to articles 1064, 1078 and 1101 of the Civil Code and ruling No. 10 of the Supreme Court plenary.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 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 of its rules of procedure, the Committee may decide to examine the admissibility of the communication together with its merits. Pursuant to rule 72 (4) thereof, it is to do so before considering the merits of the communication.

8.2 In accordance with article 4 (2) of the Optional Protocol, the Committee must first ascertain whether the matter has already been or is being examined under another procedure of international investigation or settlement. In that connection, the Committee notes the State party's argument that the communication should be declared inadmissible under that provision, because the author lodged an application with the European Court of Human Rights. The Committee also notes the author's contention that the State party made no reservations at the moment of ratification of the Convention or the Optional Protocol, that her application has not been examined by the Court on the merits and that her application to the Court and her communication to the Committee deal with different legal issues.

8.3 The Committee observes that the author submitted an application to the European Court of Human Rights in 2012. The Committee therefore proceeds to examine whether her application was examined by the Court in the sense of article 4 (2) of the Optional Protocol. In the present case, the Committee observes that the Court declared the author's application inadmissible, given that it considered that "it is not in compliance with the requirements set forth in articles 34 and 35 of the [European Convention on Human Rights]". In such circumstances, the Committee considers that the decision of the Court was based on procedural issues, and not on reasons that indicate a sufficient consideration of the merits of the case. Accordingly, the Committee concludes that it is not precluded by article 4 (2) of the Optional Protocol from examining the communication.

8.4 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.<sup>16</sup> In that connection, the Committee notes the State party's argument that the communication should be declared inadmissible under that provision, because the author failed to lodge a supervisory review application to the Supreme Court of the Russian Federation in relation to the court decisions of 26 April 2010 and 14 October 2011. Nevertheless, the Committee notes the author's submission that she has exhausted all available domestic remedies that would have been likely to bring sufficient relief and the application of which would not have been unreasonably prolonged. She has challenged the verdict in cassation and supervisory review proceedings. Both of her applications for supervisory review were dismissed by the Supreme Court of Chechnya, on 8 August 2012 and 19 February 2013. The Committee notes the author's assertion that the supervisory review proceedings, given that they are aimed at providing an extraordinary remedy dependant on the discretion of the authorized officials, are unlikely to provide adequate effective relief in domestic violence cases and that applying to the Supreme Court of the Russian Federation would be an unreasonably prolonged remedy.

8.5 The Committee notes that the State party provides no explanation or data as to how supervisory review proceedings would have been effective in securing the rights

<sup>16</sup> *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

of the author. The Committee therefore concludes that, in the present case, the domestic remedies referred to by the State party would be unlikely to bring effective relief to the author. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication as raising issues under articles 2 and 5 of the Convention.

*Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The Committee notes the argument of the State party that, the author's ex-husband's punishment was proportionate to the gravity of the crime he committed, notably, that the Achkhoy-Martan District Court found him guilty of inflicting serious bodily harm in the state of temporary insanity and therefore sentenced him to 9 months and 8 days' imprisonment, which is in accordance with the sanctions established by article 113 of the Criminal Code. It also notes the State party's argument that the court rejected the author's claims for compensation of moral and material damages, in compliance with national legislation.

9.3 The Committee recalls that, in accordance with paragraph 6 of its general recommendation No. 19, discrimination within the meaning of article 1 of the Convention encompasses gender-based violence against women. Such discrimination is not restricted to action by or on behalf of States parties. Rather, under article 2 (e), States parties may also be responsible for private acts, if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

9.4 With regard to the submission of the author that the decisions of the authorities were based on gender stereotypes, in violation of article 5 of the Convention, the Committee reaffirms that the Convention places obligations on all State organs and that States parties can be responsible for judicial decisions that violate provisions of the Convention.<sup>17</sup> The Committee also emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women.<sup>18</sup> Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors.<sup>19</sup>

9.5 The Committee recalls that, under article 2 (a) and (c)–(e) and article 5 (a) of the Convention, the State party has a duty to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In that regard, the Committee stresses that stereotyping affects women's right to a fair trial and that the judiciary must be careful not to create inflexible standards on the basis of preconceived notions of what constitutes domestic or gender-based violence, as noted in its general recommendation No. 33 (2015) on women's access to justice.<sup>20</sup>

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<sup>17</sup> *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), para. 9.11; and *L.R. v. Republic of Moldova*, para. 13.6.

<sup>18</sup> *Belousova v. Kazakhstan* (CEDAW/C/61/D/45/2012), para. 10.10.

<sup>19</sup> *R.K.B. v. Turkey* (CEDAW/C/51/D/28/2010), para. 8.8.

<sup>20</sup> *L.R. v. Republic of Moldova*, para. 13.6.

9.6 In the present case, the compliance of the State party with its obligations under article 2 (c) and (d) and article 5 (a) of the Convention, to ensure effective legal protection of women against any act of discrimination and to eliminate gender prejudices and stereotypes, needs to be assessed in the light of the level of gender sensitivity applied in the judicial handling of the author's case. In that regard, the Committee notes that the prosecution *proprio motu* petitioned the court for mitigation, reducing the classification of the crime with which the defendant was charged from attempted murder to inflicting serious bodily harm in a state of temporary insanity and that the district court gave precedence to the version of events put forth by the defence, that the author had repeatedly insulted her ex-husband, while not giving equal consideration to Mr. Timagov's previous record of domestic violence, which was supported by witnesses and evidenced by the author's injuries. The court disregarded the author's vulnerable position and Mr. Timagov's previous conviction for inflicting bodily injury to the author.

9.7 The Committee further notes that the court gave considerable weight to defence witnesses' statements alleging that the author behaved provocatively, insulting her ex-husband, and took into account only the positive description of his character provided by the local mosque administration. At the same time, it did not give equal weight to the testimonies of witnesses supporting the author's version of events, witnesses who were living under the same roof with the perpetrator and the victim.

9.8 The Committee notes that the Supreme Court of Chechnya upheld the entire substance of the district court decision, with only one amendment, namely, deletion of mention of Mr. Timagov's previous conviction by the magistrate court for domestic violence. Furthermore, the Committee also notes that the courts did not award any of the author's compensation claims, despite having the discretionary power to do so. The Committee further notes that at no time did the author have access to shelters or free legal advice and representation, nor was she able to apply for a restraining or protection order as the law does not provide for such options.

9.9 The Committee notes that none of those facts have been disputed by the State party and that, read as a whole, they indicate that, by failing to provide effective legal protection to the author and by failing to address her case in a gender-sensitive manner, the national authorities allowed their reasoning to be influenced by stereotypes. The Committee therefore concludes that the State party's authorities failed to act in an adequate manner in order to protect the author from domestic violence and to punish adequately the perpetrator, in violation of its obligations under the Convention.

9.10 The Committee also notes the author's submission that the legislation in the State party does not provide effective legal protection against domestic violence. In that regard, the Committee recalls that, under article 3 of the Convention, States parties are obligated to take, in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. The Committee recalls its concluding observations on the State party's eighth periodic report (CEDAW/C/RUS/CO/8), in which it recommended that the State party urgently adopt comprehensive legislation to prevent and address violence against women, including domestic violence, introduce ex officio prosecution of domestic and sexual violence, ensure that women and girls who are victims of violence have access to immediate means of redress and protection, and that perpetrators are prosecuted and adequately punished. The Committee regrets recent amendments to national legislation that, instead of strengthening the law against domestic violence, decriminalize assault, under which many domestic violence cases are prosecuted, owing to the absence of a definition of

“domestic violence” in Russian law.<sup>21</sup> Under such circumstances, the Committee cannot subscribe to the State party’s observations that its legislation is fully compatible with the standards and norms set out in the Convention.

9.11 The Committee considers that the failure by the State party to amend its legislation relating to domestic violence directly affected the rights of the author to claim justice and to have access to effective remedies and protection. It also considers that the case displays a failure by the State party in its duty to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or superiority of either of the sexes, or on stereotypical roles for men and women.

9.12 In the light of the foregoing, the Committee considers that the manner in which the author’s case was addressed by the State party’s authorities constitutes a violation of her rights under article 2 (c) and (d), read in conjunction with article 1, and article 5 (a) of the Convention, taking into consideration general recommendation No. 19 and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. Specifically, the Committee recognizes that the author has suffered moral damages and prejudice. She was subjected to severe physical and psychological gender-based violence when she was left without adequate State protection, while she was continually ill-treated by her then husband (now ex-husband) and was exposed to renewed trauma when the State authorities that should have been her protector, in particular the police and the court, instead failed to prevent the violence and in the aftermath failed to adequately punish the perpetrator or to provide compensation to the victim.

10. Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author’s rights under article 2 (c) and (d), read in conjunction with article 1, and article 5 (a) of the Convention, and taking into consideration general recommendations No. 19 and No. 35.

11. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication: provide adequate financial compensation to the author commensurate with the gravity of the violations of her rights;

(b) General:

(i) Fulfil its obligations to respect, protect, promote and fulfil the human rights of women, including the right to be free from all forms of gender-based violence, including domestic violence, intimidation and threats of violence within its territory;

(ii) Promptly revise its legislation to bring it into full compliance with the Convention and international standards, ensuring, in particular, that all acts of gender-based violence, including those in the family sphere, are criminalized and made punishable by appropriate penalties and that legal instruments such as restraining orders and orders of protection are legally available to victims;

(iii) Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;

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<sup>21</sup> As at 7 February 2017, an assault without causing bodily harm was categorized as an administrative offence, rather than a criminal offence.

- (iv) Provide victims of violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to available, effective and sufficient remedies and rehabilitation in line with the guidance provided in the Committee's general recommendation No. 33, and ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;
- (v) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods;
- (vi) Sign and ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;
- (vii) Provide mandatory training for judges, lawyers and law enforcement personnel, including prosecutors, on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 19, No. 28 and No. 35;
- (viii) Develop and implement effective measures, with the active participation of all relevant stakeholders, such as women's organizations and religious leaders, to address the stereotypes, prejudices, customs and practices that condone or tolerate domestic violence;
- (ix) Implement expeditiously and without delay the Committee's concluding observations on the eighth periodic report of the Russian Federation in respect of violence against women and girls.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated, in order to reach all sectors of society.

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