



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
10 September 2019

Original: English

Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 87/2015^{*,**,**}

<i>Communication submitted by:</i>	O.M. (represented by counsel, Valentina Mudrik and Mariana Yevsyukova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Ukraine
<i>Date of communication:</i>	1 September 2014
<i>References:</i>	Transmitted to the State party on 5 May 2015 (not issued in document form)
<i>Date of adoption of views:</i>	19 July 2019

* Adopted by the Committee at its seventy-third session (1–19 July 2019).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Rhoda Reddock, Elgun Safarov, Franceline Toé-Bouda and Aicha Vall Verges.

*** Under rule 61 of the rules of procedure of the Committee, Genoveva Tisheva did not take part in the examination of the communication.



Background

1. The author is O.M., a Ukrainian citizen born in 1978. She claims that Ukraine violated her rights under article 2 (a)–(d) and (f), article 5 (a) and (b) and article 16 (c)–(e) and (g) of the Convention, taking into consideration the Committee’s general recommendation No. 19 (1992) on violence against women, general recommendation No. 21 (1994) on equality in marriage and family relations and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention. She is represented by counsel, Valentina Mudrik and Mariana Yevsyukova.

Facts as submitted by the author

2.1 The author met her future husband, Mr. Abdelmajid, a Jordanian national, when they were studying medicine in Ukraine. They married in April 2003 in Ukraine and moved to Jordan in August of that year. In May 2004, Ms. Melnik gave birth to their first daughter. With the permission of the father, the baby was registered as a Ukrainian citizen with the Embassy of Ukraine in Amman. In October of that year, Ms. Melnik and her daughter, with the permission of the father, moved to Ukraine. In March 2005, with the father’s agreement, the author moved to Jordan but left the baby with her parents in Ukraine.

2.2 In January 2006, the author gave birth to a second daughter, who was also registered with the Ukrainian Embassy in Amman, with the father’s permission.

2.3 The author claims that, at the start of her relationship with her husband, their relationship was loving and free from violence. Then, after moving to Jordan, she experienced psychological, physical and financial abuse from her husband. For example, in January 2006, when the author was pregnant with their second child, her husband refused her access to the maternity hospital, claiming that he had a medical degree and was able to handle the delivery of the baby at home, given that medical services in Jordan were very expensive. As the author’s husband was not a gynaecologist, that refusal exposed the author to a potential risk to her life and the life of the baby in the event of complications.

2.4 After the second child was born, the author claims that her husband became violent against her. He locked her and the baby in the basement of the family home, after having confiscated her mobile telephone, and forbade her to contact anyone. He provided her with minimal food and refused her access to medicine or warm clothes for the baby. He screamed at the author and humiliated her on a daily basis, claiming that, as an Orthodox Christian, she was unable to bring up a Jordanian child properly. If she argued with him, he threatened to kill her and take away the baby. When the author spoke to her husband in a manner he disliked, he would beat her, slap her in the face, twist her arms, kick her in the stomach and the head and push her into walls and to the floor. The husband’s family regularly took the baby away from the author, who remained locked in the basement. When the baby cried, the father’s family disregarded the author’s pleas. This continued for several months.

2.5 At the end of February 2006, the author managed to contact the Ukrainian Embassy in Amman by telephone. She explained the situation and asked for assistance that would allow her to leave the country and return to Ukraine with her daughter. The Embassy officials informed her that they were unable to solve such family disputes.

2.6 Also at the end of February 2006, at the request of the author’s parents, the Ukrainian authorities contacted the Ukrainian Embassy in Amman which, as a result, filed a domestic violence complaint with the Jordanian authorities. In March, the case was decided under sharia law by a *muhafed* (regional representative of the Monarchy),

which ruled in favour of a three-month reconciliation period. At the husband's request, the court also determined that the eldest daughter should be returned to Jordan from Ukraine. The author was not provided with a copy of the decision. No Embassy official followed the proceedings, and the author was not given access to a lawyer or an interpreter.¹

2.7 Subsequently, the author's husband refused to travel to Ukraine or to allow the author to travel with her youngest daughter. He insisted that the author's parents should send the eldest daughter to Jordan alone, by aeroplane. As the husband's violence against the author had resumed and intensified, she contacted the Ukrainian Embassy but was advised to leave the country alone, abandoning her youngest daughter in Jordan. The author refused and continued to suffer violence.

2.8 In 2008, after a serious incident of physical abuse, the author contacted the Embassy and was advised to file a report with the theological police and the "Family Reconciliation Centre", a government organization. The author and her daughter were placed in a shelter run by the organization, for one month. Sharia proceedings were held for a second time, again in the absence of a representative from the Embassy, a lawyer or an interpreter. During those proceedings, the husband provided a false medical report that attested that the author had subjected him to violence and had caused him grave injuries. The court determined that both parents were responsible for the situation, and that the husband should take care of the author and their daughter, rent accommodations outside of the family house for them and give permission for the author to obtain a residence and to work in Jordan. The husband never complied with those requirements, and the domestic violence continued.

2.9 From May to July 2009, child custody proceedings were held before a sharia court in Mahis, Jordan, at the husband's request. The author was informed of the proceedings two days before and asked the Ukrainian Embassy for assistance, which it denied. The husband was represented by two lawyers. No Embassy representative was present at the proceedings, during which, with no assistance and no interpreter, the author was unable to defend herself properly. After 30 days, the court delivered its judgment that the younger daughter should be placed in the custody of the mother and the eldest in the custody of the father. However, the author's husband did not give his consent for her to travel to Ukraine with their youngest daughter. The author decided to remain in Jordan with her daughter. The author claims that the court did not suggest any measures to stop the domestic violence she had been subjected to.

2.10 The author claims that the Ukrainian Embassy did not provide her with information about the judicial system in Jordan or about her rights as a Christian under sharia law or her rights as a mother of a Ukrainian child. When she tried to appeal against the sharia court decision, at the recommendation of her Jordanian friends living in Ukraine, she found out that the time frame for doing so had elapsed. The court rejected her appeal and the judgment came into force. The author complained to the court that she and her daughters were Christians and had never voluntarily accepted to be judged under sharia law, but that claim was also rejected.

2.11 One week after the judgment, the author was informed that she had 10 days to travel to Ukraine and return to Jordan with her eldest daughter. During that period, her husband beat her repeatedly. She decided to stay in Jordan, so as not to leave her second daughter alone.

2.12 Once the 10 days had elapsed, the author's husband presented her to law enforcement officials and reported that she had not complied with the judgment. The police placed her in detention, and the author sought the assistance of the Ukrainian

¹ The author explains that the Embassy noted, on this point, that the Embassy staff counted no lawyer.

Embassy. She remained in detention for 24 hours with 15 other women, in “inhumane conditions”.² She was then taken to court, where a representative of the Embassy was present. The author was asked to sign a declaration to the effect that she was legally bound to bring her eldest daughter to Jordan. Her husband, however, did not allow the author to travel but insisted that her parents should send the daughter to Jordan alone, threatening to kill the entire family if they failed to do so.

2.13 When the author returned to the family home, she was beaten by the husband and his relatives in the presence of her daughter. The husband then took the daughter and left the house. The author called the police and asked to be brought to the Family Reconciliation Centre, but the police refused. The author called the Ukrainian Embassy and was told to leave the house and to go to the Family Reconciliation Centre. The author was then provided with an interpreter and a Jordanian lawyer. After a long delay, the author was finally admitted to the shelter. She asked for the Centre’s help to retrieve her youngest daughter, but to no avail. The husband allowed the author to have one telephone conversation with her daughter and he once brought her to the Centre for an hour. During that visit, the daughter cried but the staff of the Centre refused to allow her to stay. After that visit, the author’s husband refused her any contact with her daughter. The Centre asked the husband to pay for the author to travel by aeroplane to Ukraine. On 10 February 2010, under pressure by the Centre and the Ukrainian Embassy, the author flew to Ukraine.

2.14 On 5 December 2010, the author’s criminal domestic violence case against her husband was closed because of her absence from Jordan. The Ukrainian Embassy and Ministry of Foreign Affairs recommended that she not travel to Jordan as she risked being detained there on the grounds that she had not implemented the decision of the sharia court.

2.15 In March and April 2010, the author was admitted to a hospital in Mariupol because of the cerebral injuries she had sustained as a result of the repeated beatings in Jordan. Also in March 2010, she filed a complaint with the Ordzhonikidzevskiy Rayon District Court of Mariupol, in which she requested a divorce from her husband and to be granted sole custody of her daughters. In December 2010, the court ordered the divorce but refused to deprive the children’s father of parental rights. Custody of the eldest daughter was granted to the author and that of the youngest to the father. On appeal, the court of appeal granted full custody of the youngest to the author.

2.16 However, since September 2011, the author has been unable to have the Ukrainian courts’ judgments enforced in Jordan. The author has appealed twice to the Ukrainian Ministry of Justice, but her requests for enforcement have been returned to her with no explanation or guidelines for further action. In November 2011, she wrote to the Ministry of Foreign Affairs to seek information on the enforcement of the judgments, but the Ministry returned her letter on three occasions, asking for clarifications and documentation. The author has had to bear all translation costs.

2.17 From March to November 2011, all of the author’s attempts to contact the Ministry of Foreign Affairs and Ukrainian Embassy in Amman were in vain. In November 2012, she asked the Ministry of Foreign Affairs to prevent her former husband from taking their youngest daughter to the State of Palestine, where he had remarried. However, the Ukrainian Embassy in Jordan failed to make contact with her former husband or to take any steps to prevent him from moving abroad with their youngest daughter. The Ministry of Foreign Affairs of Ukraine simply informed the author that the decisions of the Ukrainian and sharia courts had been sent back by the Ministry of Foreign Affairs of Jordan and the Ukrainian courts’ decisions remained unenforced.

² No further details provided.

2.18 In the meantime, the author opened a complaint to the Ukrainian authorities about domestic violence and the kidnapping by her former husband of her youngest daughter. The case was sent to the Mariupol Department of the Ukrainian Bureau of the International Criminal Police Organization (Interpol) but was rejected, and the author was advised to pursue her efforts using diplomatic channels.

2.19 From May to July 2012, the author petitioned the ombudsman for children and the Queen of Jordan but received no answer.

2.20 In November 2012, the author sought the assistance of the Ministry of Justice to help her retrieve her youngest daughter. The Ministry informed her that there was no international agreement between Ukraine and Jordan on the basis of which the issue of returning a minor child to Ukraine or recognizing or enforcing court decisions could be solved. Notwithstanding, the Ministry of Justice referred the author's claim to the Ministry of Foreign Affairs.

2.21 The author submits that all of the efforts by the Ukrainian authorities relating to the enforcement of the Ukrainian courts' decisions and her protection against domestic violence were ineffective. The author remains in Ukraine with her eldest daughter and cannot travel to Jordan, as she is liable to be apprehended there. Her youngest daughter lives with her father, and she has no contact with her at all. In 2014, her former husband's father allowed her to send warm clothes and gifts to her youngest daughter and informed her that her former husband had threatened that he would never let her talk to her youngest daughter again. Since then, the author has been unable to contact her former husband's father.

2.22 Regarding the international and domestic legal obligations of Ukraine, the author submits that, under the Vienna Convention on Consular Relations, States parties are obliged to protect the interests of their nationals abroad, help and assist their nationals abroad and represent or arrange appropriate representation before tribunals or other authorities for their nationals abroad who are unable to obtain such representation on their own. The author further quotes articles of the International Law Commission and the case law of the International Court of Justice, wherein the definition of diplomatic protection has been defined or developed. Thus, according to the International Court of Justice, owing to the substantive development of international law over recent decades in respect of the rights it accords to individuals, diplomatic protection, originally limited to alleged violations of the minimum standard of treatment of aliens, has subsequently widened to include, *inter alia*, internationally protected human rights. The author notes that, while at present there is no international entitlement to diplomatic protection abroad, the deliberation of its use by the sending State has become mandatory, thereby providing that every request for consular assistance or diplomatic protection be accorded the due deliberation in agreement with due process standards.

2.23 In addition, under article 25 (3) of its Constitution, Ukraine guarantees care and protection to its citizens who are beyond its borders. The Ministry of Foreign Affairs describes the main function of its Department of Consular Affairs as to carry out tasks and related coordination of the Ministry to protect the rights and interests of citizens of Ukraine abroad.

2.24 Thus, according to the author, she would have had the legitimate expectation that consular assistance and diplomatic protection in Jordan would be accorded to her to the maximum ability. This should also be the case where serious human rights violations have occurred, as in the present case, where a woman who is a victim of domestic violence has suffered the abduction of her child. Women who are victims of domestic violence fighting custody abroad are particularly vulnerable to concrete forms of discrimination prohibited by the Convention. If no special consideration is accorded to such women in the provision of consular support and diplomatic

protection, their rights will prove illusory. The type of violations such women face must be understood by consular staff. Those violations include the failure to implement the decisions of local authorities, failure to include all relevant facts in the assessment of custody issues, in particular those facts negatively affecting the women's partner, failure to recognize the woman as a victim of violence, or failure by the local authorities to properly assess fabricated charges. Such factors can block women's right to procedural fairness.

2.25 The author also submits that Ukraine is bound by other obligations, domestic and international. Under articles 55 (2) and 56 of its Constitution, everyone is guaranteed the right to challenge the omissions of bodies of State power, bodies of local self-government, officials and officers for material and moral damages inflicted by unlawful decisions, actions or omissions of those bodies during the exercise of authority. In the 2006 Law on ensuring equal rights and equal opportunities of women and men, Ukraine signalled its commitment to ending discrimination. Ukraine is a party to the core United Nations human rights treaties and the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights) and is a signatory to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and must ensure that the rights enshrined therein are realized.

2.26 The author further lists the attempts she made to exhaust domestic remedies. Her parents complained to the police in Mariupol, which was unable to act as it has no authority in Jordan. Under the Law on ensuring equal rights and opportunities for women and men, the author was entitled to lodge an appeal to the Parliamentary Commissioner for Human Rights on the grounds of discrimination on the basis of sex. In the author's case, however, such a complaint could only have resulted in her recognition as a victim of indirect discrimination in Jordan. An appeal to a court of law was not an option in the present case, according to the author, despite the fact that, under the above-mentioned Law, every citizen has the right to present a complaint against cases of gender-based discrimination. The author submits that, because she is a victim of indirect discrimination, and given that no definition of indirect discrimination on the basis of gender exists in Ukrainian law, a court of law would be unable to establish such discrimination by the Ukrainian Embassy in Jordan. The author further refers to unsuccessful court cases against high-level State officials regarding gender-based discrimination, which she submits demonstrate that there are no effective mechanisms in Ukraine for the protection against gender-based discrimination, both direct and indirect.

Complaint

3.1 The author claims that she is a victim of gender-based discrimination, in violation of article 2 (a), (c)–(d) and (f), article 5 (a) and (b) and article 16 (c)–(d) and (g) of the Convention on the Elimination of All Forms of Discrimination against Women, taking into consideration the Committee's general recommendations No. 19, paragraph 24 (b), (i) and (t) (i) and (iii); No. 21, paragraph 40; and No. 28. Under those provisions, Ukraine must ensure the effective protection of women against any act of discrimination through the practical implementation of legal non-discrimination provisions, the protection of victims' rights in the enforcement of court decisions and the provision of access to competent national tribunals or other institutions. The author submits that Ukraine has failed to comply with those provisions through the non-implementation of court decisions that awarded custody of her daughters to her.

3.2 Under article 16 (1) of the Convention, States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on the basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, in

matters relating to their children; in all cases the interest of the children shall be paramount. In the light of the violence the author suffered, the court of appeal in Ukraine granted full custody over her daughters to the author. Ukraine, however, failed to implement that decision.

3.3 The author claims that she was exposed to an unnecessarily prolonged, unsustainably costly and ineffective process. As a survivor of violence seeking justice and safety for her child, the lack of appropriate remedy or information and the dismissiveness and disregard for her rights only revictimized her. The fact that not a single government agency or representative would provide her with guidance or facilitate her communication with the various agencies and bodies she was dealing with led her to feel helpless in the face of a justice system characterized by inadequacy in dealing with a survivor of violence and in front of a parent who failed to comply with a child custody order. The representatives of the justice system and the Ministry of Foreign Affairs violated her rights by not providing her with conclusive answers to her numerous requests for information and instead trying to discourage her from taking action, through their prolonged lack of replies and their requests that she provide additional information or documentation. The author submits that such a bureaucratic attitude amounts to a violation by Ukraine of its obligations to protect women who are survivors of domestic violence effectively and immediately.

3.4 The author further submits that Ukraine, despite being aware of the discriminatory situation of Christian women who dispute family issues in sharia courts, did not take the steps necessary to build a dialogue with its Jordanian counterparts in the present case and did not sign any agreement with Jordan, such as a memorandum of understanding or bilateral treaty, to promote the protection of victims of domestic violence or facilitate the implementation of court decisions in the two countries.

3.5 The author claims that, under article 2 (d)–(e) and article 5 (a), taking into consideration the Committee’s general recommendations No. 19, paragraph 24 (i), and No. 28, paragraphs 17 and 22, Ukraine is under an obligation to identify domestic violence as a human rights violation and ensure that public authorities refrain from discriminatory acts and take all appropriate measures to eliminate discrimination against women. In the present case, the author sought the protection of the Ukrainian Embassy in Amman against domestic violence, but the response and the actions of the authorities were inappropriate and ineffective. The Embassy staff refused to assist her, claiming that it was a family matter to which the Embassy was not obliged to react. The Embassy provided no information to the author about domestic violence in Jordan, its legal proceedings and their possible outcomes, or about alternative sources of help. The Embassy therefore failed in its obligation to identify domestic violence and to prevent the author and her daughter from experiencing further violence. The Embassy not only did not prevent the author from suffering gender-based violence, but also enacted such discrimination. The Embassy’s initial failure to act is an example of the traditional discriminatory attitude towards domestic violence as a private issue.

3.6 The author further claims that, under article 2 (c)–(d), (e) and (f), and article 5 (a) and (b) of the Convention, taking into consideration the Committee’s general recommendations No. 19, paragraph 24 (r) (iii), No. 21 and No. 28, paragraphs 34 and 36, Ukraine is obliged to establish appropriate policies for the protection of its nationals who are victims of domestic violence, through legal representation, including before foreign authorities. When the author appeared in a sharia court as part of the proceedings brought against her former husband for violence against her and her daughter, no representative of the Embassy in Amman was present. In fact, the Embassy refused to provide her with a legal representative, claiming that there was no lawyer among its staff, and did not provide her with any legal consultation on

her procedural rights nor access to an interpreter. The Embassy also did not provide her with the names of lawyers that she could contact. Thus, her interests as a Ukrainian national and a mother of a Ukrainian child could not be respected. As a result, the sharia court ruled in favour of a three-month reconciliation period, which further jeopardized the author's safety, health and physical integrity.

3.7 Later, after the husband had assumed custody of the author's youngest daughter, despite the fact that the court had only granted him custody of the eldest daughter, the Embassy continued to make minimal and ineffective efforts to reunite the youngest daughter with her mother, as the sharia court had decided. Instead, the Embassy suggested that the author return to Ukraine without her daughter and stated that it would have the daughter taken back to Ukraine at a later time, which it failed to do.

3.8 The author further claims that she is a victim of gender-based discrimination, in violation of articles 1, 2 (a) and 5 (a), taking into consideration the Committee's general recommendations No. 19, paragraphs 6, 7, 23 and 24 (c), (e), (r) (iii) and (t) (ii); No. 21, paragraph 49; and No. 28, paragraphs 17–19, 22, 34 and 36. The author received no information from the Ministry of Foreign Affairs about the possible risks of discrimination before moving to Jordan. According to the author, Ukraine was aware of systematic discriminatory practices and acts of violence against Ukrainian women and children in Jordan, and it should have identified such practices and prevented and protected its nationals from discrimination. Adequate consultation with the author could have prevented the violations of her right to be free from cruel, inhuman and degrading treatment, her right to equal protection under the law and her right to equality in the family. The author notes that the Ministry was aware – as shown on its website – that the majority of Ukrainian nationals in Jordan were women who had married Jordanians. The website even indicated that there were numerous cases in which Ukrainian mothers had had to leave Jordan without their children. The fact that sharia courts based on religious rules are responsible for examining custody cases allows for potential acts of discrimination against Christian women. The Ministry accepts that the risk for Ukrainian women of being discriminated against in Jordan is obvious and should be considered before moving there, yet the author was never consulted on the issue.

3.9 Under the Constitution of Jordan, sharia courts are competent to deal with several family-related disputes, including marriage, divorce, inheritance and child custody. According to the Jordanian Women's Union, women do not appear before sharia courts on an equal basis with men. In marriage disputes, a woman must be represented by her father or legal guardian, whereas a man represents himself. In addition, article 3 of the Nationality Act stipulates that any person whose father holds Jordanian nationality shall be deemed a Jordanian national. Moreover, in Jordan, custody orders and judgments of foreign courts are not enforceable if they potentially contradict or violate local laws and practices. The Committee made reference to the high rate of violence against foreign women in Jordan in its concluding observations on the State party's fifth periodic report ([CEDAW/C/JOR/CO/5](#)).

State party's observations on admissibility

4.1 The State party provided its observations in a note verbale dated 20 July 2015, in which it challenged the admissibility of the communication. It notes that the author has contended that the Ukrainian Embassy in Amman made minimum and ineffective efforts to return her youngest daughter to her, in accordance with the decision of the sharia court decision. The State party notes that, according to the decision in question, the daughter has not been placed in the custody of the mother and there is no such wording in the decision of the court. The daughter was de facto placed in the custody of her father, as her mother was not in Jordan at that time and had not initiated any court proceedings regarding her daughter's custody.

4.2 The author has also claimed that Ukraine has failed to implement the decision of the Ukrainian court that granted the author custody of her two daughters. In the absence of a bilateral agreement, the decisions of Ukrainian courts are not binding in Jordan. According to the Jordanian Law on the enforcement of foreign judgments in Jordan, the custody orders and judgments of foreign courts are not enforceable in Jordan if they potentially contradict or violate local laws or practices. The Jordanian authorities have rejected the Ukrainian decisions in the present case.

4.3 The author further claims that the Ukrainian Embassy failed to take the steps necessary to sign a bilateral agreement with Jordan. The State party explains that its Embassy had on a number of occasions tried to initiate the conclusion of a bilateral agreement on legal assistance in family issues, during consultations with the Ministry of Foreign Affairs of Jordan. However, the Jordanian counterparts did not support the idea, explaining that such an agreement would lead to numerous legal collisions with Jordanian family law, which is based on sharia law and Islamic traditions. Ukraine continues to try to reach such an agreement.

4.4 According to the State party, during the sessions of the sharia court, the author was assisted by a Jordanian lawyer and provided with recommendations from the Embassy about her rights as a Christian in Jordan.

4.5 The State party further notes that the author has not yet initiated a case in the sharia court in Jordan to win custody of her youngest daughter. Given that the author's presence in Jordan could be potentially dangerous for her, owing to the non-implementation of a previous sharia court decision, the author can initiate the case by giving a Jordanian lawyer power of attorney in the matter. The lawyer could also visit the daughter and check on the condition of the environment in which she is living. The Embassy in its letters has repeatedly invited the author to initiate such proceedings, but the author has refused, focusing instead on the implementation of the Ukrainian court judgments through diplomatic channels or wrongly believing that the sharia court decision gave her custody of her youngest daughter and that there was therefore no need to initiate a new case.

4.6 The State party further notes that the author has failed to appeal to the Jordanian family police and the Jordanian Department of Human Rights through a local lawyer. The family police can inspect the environment in which the author's daughter is living. If the family police deems the conditions to be unsatisfactory, the custody of the child can be transferred to the mother.

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

5.1 On 21 January 2016, the author provided comments on the State party's observations. She takes note of the State party's contention that the sharia court's decision did not award custody of her youngest daughter to the father and that she voluntarily did not claim custody of the daughter to the court, but returned to Ukraine. She notes that, *de jure*, the father and mother have equal rights over their children and there was no need to receive a decision of the sharia court with a specific wording stating that the mother had custody over the youngest daughter. The father forcibly took the daughter away from the mother. While staying at the Family Reconciliation Centre, the author appealed to the Embassy and the Centre, asking for legal representation before the sharia court to force her former husband to return their daughter to her and to win custody of her. The Centre's lawyer pleaded before the sharia court in favour of the mother being granted custody, but the case was closed as the author had left Jordan.

5.2 The author notes that the Family Reconciliation Centre is a closed-door institution with limited freedom of movement for its occupants. The author claims that she was forced by the Embassy and the Centre to move back to Ukraine and was

driven to the airport in a police convoy. She therefore disputes the assertion that she did not request custody of her youngest child in court and the claim that her departure was voluntary.

5.3 The author claims that, at that time, the Embassy failed to provide her with adequate advice on Jordanian family law and her rights as a mother, as well as interpretation or legal assistance to protect her as a mother and a woman. Instead, the Embassy insisted that the author return to Ukraine and allow the sharia court's decision to be implemented regarding her eldest daughter, in the knowledge that the sharia court's decision was in violation of the author's rights, owing to her lack of representation and in the absence of access to her youngest daughter. The Embassy therefore violated its duty to act with due diligence and ensure the rights enshrined under article 16 (d) and (f) of the Convention by providing legal consultation and representation before the Jordanian authorities throughout the proceedings.

5.4 In response to the State party's argument to the effect that she failed to initiate a new case before a sharia tribunal regarding the custody of her youngest daughter after her return to Ukraine, the author notes that, in Ukraine, she was informed by a lawyer from the Family Reconciliation Centre that the court had not granted her custody of the daughter, as she had left Jordan. Thus, she had attempted to be granted custody in court, but her request had been rejected.

5.5 With respect to the State party's suggestion that the author hire a lawyer in Jordan to conduct new proceedings, the author notes that the cost of such representation amounts to at least \$1,000. The author submits that she works as a physician in a local hospital in Mariupol and takes care of her eldest daughter on her own, and therefore cannot afford such legal representation. She has repeatedly asked the Ukrainian Embassy in Amman to grant her legal representation and to find out in what conditions her youngest daughter is living. Only recently did she receive any information about her daughter. However, the Embassy only acceded to her requests from mid-2015, subsequent to a rotation of staff.

State party's additional observations

6.1 On 8 August 2017, the State party submitted copies and translations of a number of documents related to the author's case.

6.2 In a note verbale dated 7 November 2017, the State party added that, since 2012, the author had repeatedly appealed to the Ministry of Justice of Ukraine to help her have her youngest daughter brought back to Ukraine and to have the decision of the Ukrainian court recognized in Jordan.

6.3 The State party submits that the Ministry of Justice emphasizes in this connection that there is no bilateral treaty between Jordan and Ukraine that would make it possible to resolve the issue by the competent authorities of the two States or to establish an appropriate legal mechanism. Moreover, Jordan is not a party to the relevant international conventions. Accordingly, the child remains in Jordan and the issue raised by the author can only be resolved according to Jordanian law.

6.4 In the light of the above, and bearing in mind the fact that the father, who has allegedly violated the author's and her daughter's rights, is a Jordanian national, the Ukrainian Ministry of Justice considers that the mechanism stipulated under rule 69 (5) of the Committee's rules of procedure regarding the ability of a State party to request that a communication be declared inadmissible, must be applied.

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

7.1 On 21 November 2017, the author provided additional comments. As to the argument on the inadmissibility of the communication, the author notes that this is

the State party's second objection concerning admissibility, and that she has already provided comments to the first. The State party argues that there is no bilateral treaty between Jordan and Ukraine, that Jordan is not a State party to the relevant international conventions and that the father is a Jordanian citizen. Those arguments, in the author's opinion, do not prevent the State party from fulfilling its international and domestic obligations to provide consular assistance and diplomatic protection to its citizens abroad to the maximum ability, and that its failure to do so was already exposed by the author in her initial communication. Such assistance and protection should apply in particular when serious violations of internationally guaranteed human rights have occurred, as in the present case concerning a female survivor of long-term domestic violence and parent who has suffered the abduction of her child.

7.2 The author recalls that, while living in Jordan, she suffered continuous domestic violence and was discriminated against as a woman. She sought the assistance of the Ukrainian Embassy in Amman and its protection against the domestic violence being perpetrated against her. The response of the Embassy was inappropriate and ineffective: not only did it fail to prevent the author from suffering gender-based discrimination, but it also enacted such discrimination. The State party has failed to ensure that public authorities refrain from discriminatory acts and to apply due diligence to protect the author from discrimination against women both by an individual and the public authorities in Jordan.

7.3 The author considers the State party's objection on admissibility to be unsubstantiated and invites the Committee to take a decision on the merits based on the material on file.

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 72 (4) thereof, it is to do so before considering the merits of the communication.

8.2 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.

8.3 The Committee takes note of the author's claims regarding the alleged failure of Ukraine to have the decisions of the Ukrainian courts enforced in Jordan. The Committee also takes note of the efforts undertaken by the State party to have a legal aid agreement and an agreement regarding child custody concluded with Jordan. It considers that, given that no bilateral agreement on legal aid and child custody matters exists between Jordan and Ukraine, the author's claims on Ukraine's failure to ensure the execution of domestic court orders in Jordan cannot be brought against Ukraine. It also notes that Jordan is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. Accordingly, that part of the author's claim is inadmissible, as unsubstantiated under article 4 (2) of the Optional Protocol.

8.4 The Committee notes that the author has claimed violation of her rights under article 2 (a)–(d) and (f), article 5 (a) and (b) and article 16 (c)–(e) and (g) of the Convention, taking into consideration the Committee's general recommendations No. 19, No. 21 and No. 28. It considers, however, that the facts as submitted raise issues under article 2 (a), (d) and (f), article 3 and article 5 of the Convention, taking into consideration general recommendation No. 19, general recommendation No. 28 and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. It therefore considers that this part of the communication has been sufficiently substantiated for the purposes of admissibility,

albeit under different provisions. Accordingly, it declares that part of the communication admissible and proceeds with its examination of the merits.

Consideration of the merits

9.1 The Committee wishes to stress that it limits its scrutiny to alleged violations by the authorities of the State party, and not by the Jordanian authorities.

9.2 The Committee notes that the State party is responsible for obligations regarding individuals under its jurisdiction and cannot be held responsible for discrimination within the jurisdiction of another country. The Committee recalls its general recommendation No. 28. It notes that, while consular protection per se does not fall under the Convention's framework, the State party, in the framework of its own prerogatives, in particular its constitutional prerogatives regarding its citizens, must exercise due diligence in the protection of its citizens facing violations of their fundamental rights, in particular when the State party is represented abroad. The Committee considers that the absence of bilateral treaties with the country in which its citizen is found does not relieve the State party of this obligation, in particular in cases of violations of international fundamental rights.

9.3 The Committee notes that, in the present case, the author claims that the Ukrainian authorities, in particular the Ukrainian Embassy and its consular service in Amman, have failed to assist her, in a timely and efficient manner, since the start of the proceedings of her child custody dispute governed by sharia law in Jordan between her, a foreign Christian mother, and her Jordanian husband. She claims that, as a victim of domestic violence, she received no meaningful assistance from the Embassy over a long period, in spite of her request for assistance, and in crucial phases of the subsequent proceedings in the sharia court. In that connection, the author has pointed out that, under article 25 (3) of the Constitution of Ukraine, citizens are entitled to adequate consular protection abroad. The State party has claimed that, throughout the sessions of the sharia court, the author was assisted by a Jordanian lawyer and was provided with advice from the Embassy about her rights in Jordan as a Christian. In addition, the State party notes that the author has refused to initiate a case in the sharia court in Jordan to try to win back custody of one of her daughters. The State party further notes that the author has failed to appeal to the Jordanian family police and the Jordanian Department of Human Rights through a local lawyer and that the family police can inspect the environment in which the author's daughter is living. If the family police considers the conditions to be unsatisfactory, the custody of the child can be transferred to the mother.

9.4 The Committee considers that consular protection may be of particular importance in gender-based or domestic violence cases and child custody disputes. In essence, diplomatic or consular protection operates when a State intervenes to defend its nationals who have suffered or are at risk of suffering, while abroad, violations of their rights by another State. In addition, in countries like Ukraine, a personal and subjective right to diplomatic protection is enshrined in national law and the Constitution, as article 25 (3) of the Constitution stipulates that Ukraine guarantees care and protection to its citizens who are beyond its borders. Citizens therefore have the right to be protected effectively by their diplomatic missions abroad, in particular in gender-based or domestic violence cases and child custody disputes.

9.5 The Committee further notes that Ukraine is a State party to the Vienna Convention on Consular Relations, to which it acceded on 27 April 1989. That Convention establishes a number of principles recognized under international law. In particular, in its article 5, the Convention explains the meaning of the term "consular functions", exercised by the relevant consular services abroad.

9.6 The Committee considers that, in the present case, the author did not receive timely and adequate assistance from the Ukrainian Embassy in Amman over a long period, during which she suffered domestic violence and during which the child custody dispute in the sharia court was ongoing. No representative of the Embassy assisted her during the proceedings, and the Embassy offered her no legal assistance, with the explanation that no consular staff was familiar with sharia law. In that connection, the Committee notes that it remains unclear why, in the absence of qualified lawyers in the Embassy, the authorities did not guide the author to a relevant legal counsel in Jordan or did not hire a lawyer to represent her. The author also was not offered the services of an interpreter, despite the fact that the proceedings were conducted in Arabic, a language that she does not speak sufficiently well.

9.7 In the present case, the author, as a foreign woman in a vulnerable situation and a mother of Christian faith in a State governed by sharia law, was left alone to face, without sufficient knowledge of the language or sharia law, both the court and the relatives of her former husband. As a result, she lost custody of one of her daughters and had to leave Jordan, an act that ended the judicial proceedings. The Committee considers that the Ukrainian authorities' omissions in the present case resulted in the breach of the author's right, under articles 3 and 5 of the Convention, to be given protection, assistance and support as a victim of gender-based violence.

10. Acting under article 7 (3) of the Optional Protocol to the Convention, the Committee is of the view that the facts before it reveal a violation of the rights of the author under article 2 (a), (d) and (f), article 3 and article 5 of the Convention, taking into consideration the Committee's general recommendations No. 19, No. 28 and No. 35. Having reached that conclusion, the Committee will not examine the author's remaining claims.

11. In the light of the above conclusions, the Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication: provide reparations, including recognition of the moral damages she suffered as a consequence of the inadequate and untimely assistance received from the Ukrainian Consulate services in Jordan;

(b) General:

(i) Ensure that consular protection, in line with the Convention, and as enshrined in the Constitution of Ukraine, is effectively provided to Ukrainian women in vulnerable situations abroad;

(ii) Provide legal support in gaining access to justice and to all legal guarantees of protection, including against gender-based discrimination and in child custody disputes, to its female nationals abroad who claim to be victims in need of assistance;

(iii) Ensure that consular staff are fully trained on matters pertaining to the conventions it has ratified or acceded to, including the Convention on the Elimination of All Forms of Discrimination against Women;

(iv) Take further measures to reach an agreement with Jordan on legal aid and child custody matters.

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 any information on any action taken in the light of the views and recommendations of the Committee. The State party shall also publish the Committee's views and recommendations and have them widely distributed in order to reach all relevant sectors of society.