



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

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## Committee on the Elimination of Discrimination against Women

### Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 106/2016\*.\*\*

<i>Communication submitted by:</i>	K.B. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	United Kingdom of Great Britain and Northern Ireland
<i>Date of communication:</i>	17 October 2016 (initial submission)
<i>References:</i>	Transmitted to the State party on 4 November 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	4 November 2019

\* Adopted by the Committee at its seventy-fourth session (21 October–8 November 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, Esther Eghobamien-Mshelia, Naéla Gabr, Hilary Gbedemah, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



**Background**

1. The author is Ms. K.B., a German national born in 1960. She claims to be a victim of a violation by the United Kingdom of Great Britain and Northern Ireland of her rights under articles 1, 2, 5, 9, 11, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The Optional Protocol entered into force for the United Kingdom on 17 December 2004.

**Facts as submitted by the author**

2.1 The author arrived in the United Kingdom in 1997 and met her future husband, a British national, there in 1999. They were married in October 2002 and she gave birth to their first child. In 2005, she gave birth to their second child. Complications arose due to the birth, for which she received treatment in Germany; however, she did not heal properly. In 2008, the author decided to attempt more treatment in Germany, and took both children to Germany on that occasion. The husband travelled to Germany and took the children back with him to the United Kingdom during the author's hospitalization. The husband was supposed to bring the children back to Germany after the author's discharge from hospital. However, the husband informed the author that he did not intend to bring the children back. He also advised the author not to return to the United Kingdom and informed her that he had applied for divorce.

2.2 Shortly after, the author travelled to the United Kingdom. She discovered that, in the meantime, her former husband's mother and the mother's new husband had moved into the author's family house and were now living with the author's former husband.<sup>1</sup> The former husband refused to allow the author into the house. An acquaintance present at the scene called the police but was advised that the author had to solve "this family matter" with the help of a solicitor.

2.3 The author applied to Chester County Court for permission to travel to Germany with her children. The first hearing took place two weeks later. The author's husband made an application for an occupation order (i.e., to deprive the author of her right to occupy the family home). The court rejected the request and allowed the author to return to the family home. The author stayed in the house, with her belongings in trash bags, for almost a year. The husband made her life difficult in the meantime. He tried to push her down the stairs, threw items at her, trapped her arm in the door and frequently locked her out of the house. The birth certificates of the children and personal documents of the author disappeared. The author was prevented from using her computer and her car.

2.4 The German Embassy in London provided the author with some financial support but did not cover legal costs. The author received some legal aid, but funding for the legal aid scheme of the United Kingdom was drastically reduced in the meantime and she could not afford a lawyer.

2.5 In June 2009, there was a hearing regarding the author's application to move to Germany with the children. The judge, according to the author, was biased, as he was a good friend of the author's former husband. As a result, the judge disregarded the author's claims against the husband. Instead, the judge accused her of not being cooperative. The author had to move out of the family home every second week.<sup>2</sup>

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<sup>1</sup> The author explains that she owned half of the family house.

<sup>2</sup> The author claims that the judge ordered a "bird-nesting arrangement", in which the children stayed in the family home and the parents alternated living with them. As a result, she had to ask the homeless services of the town of Chester for support. The author claims that she was unable to appeal against the judge's decision as it was confidential and not final.

2.6 In June 2009, the author was allowed to travel with her children to Germany. Her younger son experienced severe abdominal pain, and the author informed her husband and his lawyers. The author claims that the judge held a hearing on the matter without informing her or her lawyers, and the International Child Abduction and Contact Unit was contacted. The judge ordered the immediate return of the children but later revoked his order when he was notified that the author had in fact contacted her former husband and his lawyers on the matter. Her former husband complained to her employer and as a result she lost her job.

2.7 In June 2010, the judge made a decision on the author's 2008 application to move with the children to Germany. The judge rejected the application, stating that it was crucial for the children to have contact with their father and that it was important that they maintain their English language skills. The judge based his decision, in the author's opinion, on a very controversial report of a social worker from the Children and Family Court Advisory and Support Service (CAFCASS). At the same time, contact between the children and their mother was regarded as not important and maintaining their German was never acknowledged.

2.8 The author claims that in 2010, the judge also ruled that the family home had to be sold so that the husband could pay his lawyers. The author's divorce was finalized in 2010. The judge ordered a custody arrangement that required the children to spend one week with their mother and the next week with their father. The judge warned the author that if she disagreed with the arrangement, he would grant full custody to the father. The author points to difficulties in the arrangement, such as the father's refusal to follow medical instructions from doctors regarding the children's treatment and his refusal to bring them to medical visits. A report from CAFCASS in October 2010 indicated that the children disagreed with the arrangement.

2.9 However, that report was ignored at the hearing of the author's request to the court in 2011 to modify the arrangement so as to let the children live in the main home with her and give the father visitation rights. The hearing was initially scheduled in front of the same judge, in April 2011. The author's lawyer asked the judge to recuse himself, given his remarks about the case and the fact that it was obvious that he had not read the application. As a result, the judge transferred the case to a judge in Liverpool.

2.10 The new judge reviewed all of the author's claims of abuse by the husband against her and the children. He informed the author that an assessment of the facts could take up to two years. In the meantime, CAFCASS decided that the children should stay with social services. The author decided to withdraw her case for abuse in order to protect the children. The author's application to review the terms of the arrangement was rejected and the author was barred from making any further application to English courts. She tried to appeal against that decision, with no success.

2.11 In 2011, the author's former husband continued to threaten and abuse her on every occasion. In addition, in June 2012, when her younger child had difficulties in going to the toilet, he informed her that his father always put his finger in his bottom when he used the bathroom and that this was painful. In July 2012, the author brought her children to Germany. She started working in a private school in Frankfurt and her children were enrolled there and were very happy, according to reports from their teachers.

2.12 In March 2013, a German court ordered the children's return to the United Kingdom without giving the children the opportunity to speak to a judge, although child protection services in Germany had spoken to the children and recorded their wish to remain in Germany and their statements on the abuse they had suffered. The forced return of the children caused them additional trauma. The abuse claims of the

children were not investigated in Germany, as the authorities concluded that they needed to be investigated by authorities in the United Kingdom. The author received a report from the Chester children's services office to the effect that it would not be carrying out an investigation, as the German authorities had probably already investigated the matter and found the allegations groundless, otherwise the children would not have been sent back to the United Kingdom.

2.13 In the meantime, the author was prevented from seeing her children by a decision of a judge. The judge also ordered that she undergo a psychological assessment to determine whether she should be given access to the children.

2.14 The author explains that upon her return to England, she applied to the court for her children to be returned to her, but the judge did not try to ascertain the children's wishes, nor did he present to them the option of living in Germany with their mother. The court instead came to the conclusion that "the children belonged [in] the north-west of England".

2.15 The author explains that the children now live in England and have a number of issues regarding their welfare. In June 2014, the judge held the final hearing on her application for the children to live in Germany. The judge excluded the author from participating in the hearing. The author's application was rejected, she was ordered to pay court costs and she was barred from submitting further complaints. She tried to appeal the refusal, but the appeal was rejected.

2.16 In June 2014, the children's doctor (a general practitioner) refused to update the author on the children's situation, as the father had told the doctor that the author no longer had parental rights. In June 2015, a judge ruled against allowing the author access to copies of the children's school reports. There was no hearing and the author was not allowed to express her wishes in front of the judge, even though the issue was important.

2.17 The author explains that she experienced considerable racism in England, not only from her former family, but also in her daily life, as neighbours had explained to her in front of the children that her problem was that she was German and they did not like Germans there.

2.18 The author claims that she was continuously threatened as if she had no rights in the United Kingdom, while her husband's abuse against her and the children was ignored. Her three applications from 2008 to 2013 were rejected, even though they were in the best interest of the children. The judge was "obviously racist and prejudiced", and made untrue statements against the author, interfered with her parental rights, actively supported her former husband and tried to alienate the children from her. Daily contact with and maintenance of the English language was of utmost importance in 2008, but contact with the mother was assessed by the judge as unnecessary, as was the need to maintain their German.

2.19 The author claims that all applications made on behalf of her former husband were successful, even when they were not in the interest of the children. On the other hand, the author was excluded from hearings, hearings took place without her knowledge, she was not provided with a copy of the other side's application and she was provided with the argumentation only at the beginning of the hearings. The judge systematically ordered costs against her. The author could not afford a lawyer and lost her house, as her former husband used the money he received from selling their house to pay his lawyers. Her parental rights were restricted for no reason and she was not provided an opportunity to defend herself. The judges helped her former husband, for no reason other than racism and prejudice, to destroy her life and make her children's lives miserable, to separate them and to encourage her former husband's abusive behaviour.

2.20 The author adds that her children were never given the opportunity to be heard and their well-being was not considered by the judge. The children had been traumatized and had to stay in England in a situation which was not in their best interest.

2.21 The author states that she had applied to the European Court of Human Rights, but her application was rejected as inadmissible without justification.

### **Complaint**

3. The author claims in general terms that the facts as submitted amount to a violation of her rights under articles 1, 2, 5, 9, 11, 15 and 16 of the Convention.

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

4.1 In a note verbale dated 16 January 2017, the State party challenged the communication, arguing that it should be held inadmissible for being ill-founded and for non-exhaustion of domestic remedies.

4.2 The State party recalls the facts of the case, but disputes the version of the author.

4.3 The State party adds that the author returned to the United Kingdom after her surgery against medical advice and was not allowed to enter the family home, which she co-owned with her husband.

4.4 She filed a petition for divorce in July 2008. The court asked both parents to inform it about their arrangements for the children. A decree nisi – an interim divorce order – was granted in 2009 and the divorce became final in 2010.

4.5 In the meantime, in 2008, the author applied to the Chester County Court for a residence order and permission to take the children to Germany, claiming domestic abuse.

4.6 In 2009, the judge made the following statement:

On a practical level, it is vital to these children that the level of animosity is reduced immediately; this requires two steps to be taken. First, both parties must be made to realize that the pursuit of their grievances must be stopped otherwise severe damage will be done to their children. Second, the situation of both living under the same roof must be brought to an end. If possible, given the isolation, the mother will be subjected to this order. This should be achieved without her losing her home as well.

4.7 As a result, the author and her former husband vacated the home for alternate weeks in order to share the property and to care for the children.

4.8 In June 2009, the author travelled with the children to Germany, but the younger boy fell ill.

4.9 According to the author, her former husband had alerted the International Child Abduction and Contact Unit following a judge's order for the immediate return of the children to the United Kingdom. The judge revoked the order when it was explained to him that the reason the children were not brought home on time was owing to the child's illness.

4.10 In 2010, the author's application to move to Germany with the children was rejected. A 50/50 residence arrangement for the children, in which the children would stay with the mother for a period of time and then with the father for an equal period of time, was ordered by the judge, which according to the author had a negative impact on the children.

4.11 In 2011, the author filed a second application to the Chester County Court to review the residence arrangements for the children. In April 2011, that application was transferred to a judge in Liverpool, who initiated a fact-finding process regarding the claims of domestic violence and its impact on the children. The author claims that she had been advised that the process would last more than two years, and she withdrew the claims as a result.

4.12 An order was issued in December 2011 maintaining the living arrangements and noting that the author could apply to the court only with the court's permission. An appeal regarding that order was rejected by a judge in April 2012.

4.13 In July 2012, the author travelled to Germany with the children, with the court's permission. She claims that, as she was not allowed to appeal to the court, she could not obtain permission for the children to remain in Germany. The State party notes in that regard that the author needed the prior permission of the court to appeal, but that she was not barred from appealing.

4.14 The author started to work in Frankfurt in the school where the children were enrolled, until a German court ordered the children's return to the United Kingdom in March 2013. The children returned to the United Kingdom while the author remained in Germany.

4.15 In June 2014, the judge held the final hearing regarding the author's second application to leave for Germany with the children. The application was rejected. The author applied for permission to appeal that decision, but her application was rejected.

4.16 The author appealed to the European Court of Human Rights in February 2016. Her application was declared inadmissible in June 2016.

4.17 The State party believes, first, that the author's communication should be declared inadmissible as manifestly ill-founded and insufficiently substantiated. The author has failed to explain why and how she considers that her rights under the Convention have been violated.<sup>3</sup> The author in the present communication fails the test articulated in *Mukhina v. Italy* because she fails to identify the discrimination she is alleged to have suffered as a result of the acts of the United Kingdom and fails to explain why and how she considers that her rights under the Convention have been violated.

4.18 The State party notes that there is no reference to any distinction, exclusion or restriction which has been made on the basis of the author's sex in terms of her ability to exercise her rights and fundamental freedoms. She expressed dissatisfaction with the court process for which she could have sought redress through the domestic procedures in place. There is no reference to either direct or indirect discrimination on the basis of sex or any indication as to how the State party has breached article 1 of the Convention.

4.19 Regarding article 2, the State party notes that it has enacted the Equality Act 2010 as the primary legislation making it unlawful to discriminate against certain protected characteristics, including on the basis of sex. Unlawful discrimination is prohibited in various circumstances, including with regard to the provision of services or in the context of employment. A claimant can complain to the employment tribunal

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<sup>3</sup> The State party notes that in *Mukhina v. Italy* (CEDAW/C/50/D/27/2010), the Committee noted the author's claim that her rights under art. 16 had been violated. The Committee took note of all materials submitted by the author in support of her claim. The Committee noted, however, that the author had not provided any specific explanation as to why and how she considered that her rights under the Convention had been violated. In the absence of any other pertinent information, the Committee considered that the author had failed to sufficiently substantiate her claims for the purposes of admissibility.

or to the Equality and Human Rights Commission, which has wide powers under the Equality Act 2006 to ensure compliance with duties under the Equality Act 2010. There is no evidence that the author made an application to the Equality and Human Rights Commission. In addition, no violation of article 2 of the Convention was revealed.

4.20 Regarding the author's claim under article 5, the State party notes that the communication contains no indication of any prejudice suffered by the author as a result of any State action or inaction under the Convention's provision. Under the Children Act 1989, the welfare of the child is the court's paramount consideration when making any decision about the upbringing of a child. That part of the communication also appears to be manifestly ill-founded.

4.21 Regarding the author's claim under article 9, the State party observes that there is no reference to a breach of the Convention with regard to granting men and women equal rights in terms of their nationality. There is no evidence that the author has been treated unfairly because of her nationality. In addition, she has not indicated how she was treated any differently as a result of her sex.

4.22 As to the author's claim under article 11, the State party notes that the author has not explained how she has been treated unlawfully on the basis of sex in the field of employment. The author was able to find work. If there had been any discrimination, she would have been able to file a complaint against her employer. The State party has extensive legislation dealing with employment rights, social security and health and safety rights. Accordingly, that part of the communication is manifestly ill-founded.

4.23 Regarding the author's claims under articles 15 and 16 of the Convention, the State party notes that there is no indication as to how those provisions were breached in the author's case. The author has not indicated how any treatment throughout the court proceedings has been due to her sex, nor has she identified any treatment indicating that she has been discriminated against because of her sex in relation to her marriage or its dissolution. In addition, English law on marriage is gender-neutral. Accordingly, that part of the communication is manifestly ill-founded.

4.24 On exhaustion of domestic remedies, the State party notes that the author has failed to articulate any alleged discrimination under the articles of the Convention or how the State party has breached those provisions. She has failed to raise those allegations throughout the lengthy proceedings in England and Wales, and it was plain that she could have done so, including by pursuing judicial review proceedings. A claim was available to her under the Human Rights Act 1998, section 6 (1): "It is unlawful for a public authority to act in a way which is incompatible with a Convention right." "Public authority" includes a court or tribunal (section 6 (3)), and "a Convention right" includes article 14 of the European Convention on Human Rights (prohibition of discrimination).

4.25 If the author was of the opinion that she was a victim of discrimination, she should have argued that any treatment of her or towards her was contrary to articles 2, 3 and 8, read in conjunction with article 14, of the European Convention on Human Rights, as there was a real risk that her rights under that Convention would be violated in respect of the family court proceedings concerning her sons. However, there is no indication that she made reference to article 14 of the European Convention on Human Rights during the domestic court proceedings and she did not pursue a judicial review claim.

4.26 Therefore, the author has failed to exhaust the available domestic remedies, contrary to article 4 (1) of the Optional Protocol.

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

5.1 The author presented her comments on 17 February 2017. On the need to indicate which articles had been breached in her case, she notes that as a woman, she had to deal with the English legal system and with a judge who always interpreted the law in ways that went against her. In May 2009, the judge decided that the father was the most important. The judge ignored the importance of the author as a mother and caretaker and discriminated against her as a foreign national. The judge also failed to sanction the "obvious and documented" domestic abuse. He had evidence that included witness statements, documents and photographs, but ignored the fact that the author was unlawfully forced out of her home and was not allowed to see her children or to fulfil her duties as a mother.

5.2 The author claims that she was denied the right to have a fact-finding inquiry concerning the domestic abuse by her former husband, as she was threatened that the children would be put into public care.

5.3 The author contends that the judge also made it clear that he did not consider the author's maternal functions important and violated them by stating that the abusive father was of the utmost importance. She claims that the judge refused any evidence of domestic abuse and ignored any document indicating the wishes of the children. The judge refused to speak to the children to establish their wishes. The judge never considered the author's difficult circumstances as a foreign mother and a woman, a full-time mother and a primary carer.

5.4 The author claims that the State party failed to protect her function as a mother with regard to the upbringing of her children, and failed to investigate the welfare issues of the children and to ensure that the best interest of the child was given primordial consideration.

5.5 The author further claims that the judge decided on the 50/50 residence order regarding the children, which caused stress to both the author and the children, as it permitted her ex-husband to continue the abuse.

5.6 The Liverpool tribunal, according to the author, discriminated against her as a foreign mother because it refused her financial support and confirmed that she had no right to reside in the United Kingdom.

5.7 The author claims that the State party failed to protect her employment rights by allowing the 50/50 residence order.

5.8 The author explains that when her marriage broke down, the judge did not give her the same rights as her former husband, and she reiterates that she lost her home so that her former husband could pay his lawyers.

**Additional observations of the State party on admissibility and the merits**

6.1 The State party presented its additional observations on admissibility and the merits on 6 October 2017. The State party refers to the application of the author of 10 July 2008 to Chester County Court for a residence order and for permission to live with the children in Germany, citing allegations of domestic abuse (the first application). Subsequently, she applied several times to the court regarding her children.

6.2 In preparation for the hearing, district Judge H. ordered the preparation of a report from CAFCASS at a preliminary hearing on 29 July 2008. The report, dated 10 December 2008, noted that "based on the information" on file, it transpired "that both parents have played a significant role in their children's lives". If the court did not grant the author "leave to remove the children from the jurisdiction", the author



would remain in England. Therefore, “the children’s best interest will be met if they remain in England because it will enable them to have both parents in close proximity and thus maintain their significant attachments to each of them”. As a result, CAF/CASS recommended that the court reject the author’s application to remove the children and to instead issue a joint residence order to both parents.

6.3 The author’s first application was heard on 21 and 22 May 2009. In a judgment on 22 May, Judge H. dismissed her application. The judge noted that the author was

the primary carer for the children. She therefore makes the assumption that she is the natural parent to have residence of the two boys ... It is clear that the application is genuinely motivated, well thought out and based on a thorough knowledge and understanding of the facilities available for herself and the children. She goes on to say that if she is not allowed to take the children with her she will not go. She will remain living in the United Kingdom where she has a job on a part-time temporary contract with the County Council ... Mr. B’s case is that there is no established resident parent in this case and that he is as capable [as the author] of being the resident parent. They have both shared the care of the children up to now.

6.4 The State party notes further that the judge observed that

a specific feature of great importance in the case is that the parties are very antagonistic towards each other. Both parties are at fault, some of the actions of Mr. B in the throes of the breakdown of the relationship were insensitive and thoughtless to the point of rank stupidity. Some [of the author’s] failures to cooperate with those who might have helped ease the situation show some level of inability to discriminate between her own feelings and the welfare of the children.

The judge also noted that the CAF/CASS report was of critical importance to the case. CAF/CASS noted that separating the children from the father would result in significant emotional damage.

6.5 The judge noted that the refusal to allow the author to take her children to Germany would be detrimental to the children, but there was no established “resident parent” in the case and the emotional damage that separation from their father would bring was considered to be the main element in the case. Accordingly, the judge accepted the CAF/CASS recommendations. The judge further noted that it was vital to the children that the level of animosity be reduced immediately. To that end, two steps had to be taken: both parties had to realize that the pursuit of their grievance had to stop to avoid severe damage to their children; and the situation of those living under the same roof had to be brought to an end, but be achieved without the mother losing her home as well. The judge therefore issued a joint residence order. The rationale of the order was that in the short term, the parties would take turns residing at the matrimonial home and caring for the children. The judge was of the opinion that in the long term, the father would be able to find alternate accommodation, the mother would retain the home, and the children would alternate between them.

6.6 The State party reiterates its position that the communication is inadmissible for reasons of failure to exhaust domestic remedies and as manifestly ill-founded and insufficiently substantiated. The author had to make use of all judicial avenues of complaint. She should have raised, before the domestic authorities, the substance of the complaint that she raises before the Committee. In that regard, the State party notes that a significant part of the author’s case relates to the court decision of May 2009 and its consequences. She could have appealed against it, but chose not to do so. Therefore, she failed to exhaust domestic remedies in that regard. Another

significant part of the communication relates to the alleged bias of Judge H. Again, the author failed to apply for the judge to recuse himself.

6.7 The State party notes that in her submission regarding admissibility, the author claimed that she had suffered discrimination on the grounds of sex. She could have raised those allegations in the domestic proceedings in a number of ways, including by relying on the Human Rights Act 1998: she could have argued that any treatment of her or towards her was contrary to article 8, in conjunction with article 14, of the European Convention on Human Rights. There is no evidence that she made any reference to article 14, or to sex discrimination, throughout her cases in the family court. Nor did she pursue a judicial review claim. Accordingly, she failed to exhaust domestic remedies in relation to all sex discrimination allegations submitted to the Committee.

6.8 The State party further observes that the communication should be declared inadmissible as manifestly ill-founded. The author has failed to explain why and how she considers that her rights under the Convention on the Elimination of All Forms of Discrimination against Women have been violated.

6.9 The author fails to identify the sex discrimination she alleges to have suffered as a result of the State party's acts. In addition, there is no proper explanation of what "distinction, exclusion or restriction" has been made on the basis of sex in terms of the author being able to exercise her rights and fundamental freedoms. She has expressed dissatisfaction with the court process but there is no reference to either direct or indirect discrimination on the basis of sex or any indication as to how the United Kingdom has breached article 1 of the Convention.

6.10 The State party reiterates its contentions (set out in paras. 4.19, 4.20 and 4.22 above) with regard to the author's claim under articles 2 and 5 of the Convention being inadmissible and her claim under article 11 being manifestly ill-founded.

6.11 Regarding article 15 of the Convention, the State party notes that the communication does not allege sex discrimination concerning legal capacity or freedom of movement. Accordingly, it considers that part of the communication to be manifestly ill-founded.

6.12 Regarding article 16 of the Convention, the State party notes that the author has not identified any treatment as to how she has been discriminated against because of her sex in relation to her rights as a parent. Therefore, that part of the communication is manifestly ill-founded.

6.13 The State party further observes that the author has failed to adduce sufficient elements in support of her claims of a violation of rights under the Convention.

6.14 With regard to the merits, the State party notes that the author describes a series of events from 1997 to 2015. She claims, for example, to have experienced racism in England and that as a German, the judge was biased against her. The State party notes that the author claims racism, but she does not mention alleged discrimination based on sex. She simply lists articles 1, 2, 5, 9, 11, 15 and 16 of the Convention and claims that they have been violated in her case.

6.15 It was only after the submission of the State party's observations on admissibility that the author provided comments on admissibility. She claimed that when she made her first application, the judge ignored her detailed statement. The State party has no evidence of that assertion, but the judge examined her application in May 2009. In relation to the judgment of May 2009, the author claims that her status as a mother did not matter to the judge and he gave no regard to the fact that she was the main carer for the children. The State party believes that is incorrect. The judge considered the author's position, but did not accept that she was the "main

carer". If the author believed that the judge's factual findings were improper or not open to relevant related evidence submitted in that regard, then she could have appealed against the May 2009 judgment to the Court of Appeal. However, she did not do so.

6.16 According to the author, the judgment of May 2009 discriminated against her, as she considers that the English are prejudiced against Germans. There is no allegation that the judge discriminated against her based on sex. The State party notes that if the author were concerned about the judge's impartiality and independence, she could have applied for him to recuse himself and she could have appealed against the judgment on the basis of bias. However, she failed to do so.<sup>4</sup>

6.17 As to the author's assertion that she had to pay for the defence of her former husband for no reason, the State party notes that this is incorrect. In the United Kingdom, usually the losing party is asked to pay the legal costs of the winning party. As the author did not succeed in her three principal applications, some costs orders were made against her.

6.18 The State party also draws the Committee's attention to the fact that the author had consented to the April 2010 consent order and there is no evidence whatsoever to indicate that her consent was obtained under duress by her solicitor. The author should not be permitted to make any allegations about domestic abuse not being properly considered by the United Kingdom authorities and courts after her unreserved retraction of all such allegations in 2011.

6.19 As to the author's claims under article 1 of the Convention, the State party notes that the provision does not confer substantive protection and that the author's claim has no merit. The author claimed that, in May 2009, the judge discriminated against her as a German and a mother, and that he ordered the sale of the family home knowing that she would become homeless.

6.20 In that connection, the State party observes that the judge took his decision based on the consideration of the evidence before him. There is no basis to conclude that he discriminated against the author. Again, the author could have appealed or made an application for the judge's recusal, but chose not to.

6.21 The State party contends that the author's claim regarding article 2 of the Convention are without merit and that, even if the author's allegations were to be accepted under that provision, they are unmeritorious. The State party provides a number of clarifications regarding the author's specific claims. As to the allegation that the judge failed to sanction the domestic abuse and refused to order a fact-finding hearing, the State party clarifies that the author's assertion is misleading given that the author retracted her claim. She claimed not to have been eligible for income support as she did not reside in the United Kingdom, but did not, however, explain how that constituted discrimination based on sex. She also incorrectly stated that the judge had prevented her from obtaining the children's school reports. Her claim that the judge ordered a psychological report for her but not for her former husband is also misleading: the judge's report relates to previous evidence given by the psychologists in relation to both parents, and it noted only that, if the author wished, she could produce an addendum to the report, otherwise the court would base its decision on the content of the existing report. Finally, the author's presence at the final hearing when the judge made public his decision was not necessary.

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<sup>4</sup> The State party refers to an email from the author's attorney dated April 2011 in which the lawyer notes that there was no need to write to the judge and ask him to recuse himself, as the judge had decided to recuse himself. However, according to the State party, the judge never recused himself.

6.22 The State party further contends that the author's claims under article 5 of the Convention are without merit. The majority of the author's claims relate to the conclusions of Judge H. in May 2009 and June 2014 not to allow the children to reside in Germany. The State party notes that the judge's conclusions were based on evidence and were duly reasoned, and were not discriminatory. The author has not appealed the May 2009 order. She appealed the 2014 order and each of her grounds for appeal was fully and properly addressed by the judge (on abuse, on bias, etc.). The State party concludes that the author's allegations have no merit and that none of the allegations show that she suffered discrimination on the grounds of sex.

6.23 The State party further submits that the author's claims under article 11 of the Convention are without merit. In that connection, the State party considers that the author's claim that the judge failed to consider that she would find it difficult to find new employment, and that she was forced to stay in Chester owing to his order that she share custody with the father on a 50/50 basis, is without merit. The State party notes that when the judge heard the case in May 2009, it was the author's express position that she would remain in the United Kingdom if she were not permitted to move with the children to Germany. The judge imposed no geographical constraints on the author in the May 2009 or the June 2014 judgments. The author did not appeal against the 2009 judgment, and she did not refer to any employment-related detriment in her appeal against the June 2014 judgment.

6.24 Similarly, the State party considers the author's claims under article 15 to be without merit. The author referred to her difficult circumstances as a foreign mother and woman, a full-time mother and primary carer. The State party notes that none of her points relate to any alleged inequality regarding legal capacity.

6.25 The State party further considers that the author's allegations under article 16 of the Convention are without merit: the courts and institutions have been extremely careful to ensure that the interest of the children was paramount. In addition, the author has been given the same rights and responsibilities as a parent as her former husband, without any discrimination.

6.26 In the light of the above considerations, the State party considers that the communication is inadmissible under article 4 (1) or 4 (2) (c) of the Optional Protocol, or is to be rejected on the merits, as the State party has not violated the author's rights under the Convention.

#### **Author's comments on the additional observations of the State party**

7.1 On 18 January 2018, the author submitted her comments on the State party's additional observations on admissibility and the merits. She considers having substantiated her claims and having exhausted the available domestic remedies to be "confirmed by the Court of Appeals on 20 November 2014". The author extensively reiterates her claims about the wrongdoing of Judge H. when dealing with the case.

7.2 She asserts that she had repeatedly claimed in her appeal applications and in her complaints to the Judicial Conduct Investigations Office about the discrimination against her as mother – and therefore as a woman. As to the State party's contention that she did not apply for the judge's recusal, the author notes that her lawyer applied, orally, on 24 March 2011, for the judge's recusal, and the judge angrily stated that he would transfer the case to a judge in Liverpool, who would be "worse" than he was.

7.3 The author also makes detailed points about several elements of the State party's submission, which according to her are incorrect and present the facts inaccurately.

7.4 She claims that, as the best interest of the children was never considered, the result was that her children remained unhappily in England.

7.5 As to her claims under article 2 of the Convention, she notes the State party's contention that she could have appealed to the Equality and Human Rights Commission. The author indicates that this was never explained to her.

7.6 Regarding article 5 of the Convention, the author questions why the judge in her case did not recognize her as a full-time mother and primary carer, ignored domestic abuse by and the criminal behaviour of the father, rendered her and the children homeless, did not ensure that the children were heard and did not take into consideration the living conditions of the children, their emotional stability, health-care needs, education and language, and their own wishes.

7.7 Regarding her claim under article 11, the author claims that the State party did not understand her claim about how that provision was violated. She was restricted by prohibition orders to finding employment within an area of 3 miles around the small town of Chester in order to be with her children. Her former husband could therefore continue to abuse her, through simple chicanery, threats and manipulations behind her back, and she lost her job as a result.

7.8 Since she had referred to herself as the mother of the children in every complaint, the author considers that any discrimination against her was gender-based.

7.9 As a person fighting for her children, she could not attack the judge sitting on her case because he had all the power. She had to be very careful. According to the author, the biased judge was only looking for reasons he could rule against her. She was on her own, a foreign mother in a foreign country, using a foreign language.

7.10 The fact that the judge did not accept that she was a full-time mother and primary carer showed that he was not interested in the facts of the case and in her situation. The order of 2009 was confidential and could not be appealed. In addition, she could not attack the judge as she risked losing everything. Her statements did not matter to the judge, who only considered the position of her former husband.

7.11 According to the author, if a person asks a judge to recuse himself and he fails to do so, and if that person appeals to the Court of Appeal, the case is sent back to the judge in question. When the author's lawyer asked the judge to recuse himself in 2011, the case was transferred to a judge in Liverpool.

7.12 The author adds that there was no evidence that the order imposed barring the children from travelling to Germany was in the best interest of her children. According to the author, there was no evidence that remaining in the United Kingdom was in the best interest of her children.

7.13 According to the author, no costs should have been awarded against her. Instead, she lost her home so that the lawyers for her former husband could be paid.

7.14 The author claims that she has exhausted domestic remedies, as "certified by the Court of Appeal". She claims that there was nothing more she could do to obtain effective relief against the discrimination she suffered.

7.15 The author claims that she wanted to appeal against one of the judge's orders but she was advised not to do so by her lawyers. Later on, the Legal Ombudsman confirmed the "poor service" of the solicitor. As a result, the author received compensation in the amount of £75 from the law firm, and the firm paid £400 to the Legal Ombudsman in case fees.

7.16 The author claims that she was unable to find a solicitor to file an appeal in her case.

7.17 The author further notes that the judge clearly ordered a psychological examination for her, but not for her former husband. The psychologist chosen was close to CAFCASS. The report was ordered only because the judge intended to use it.

7.18 As to the refusal of the judge to allow her presence at the final hearing, the author notes that the refusal made it much easier for the judge to award extortionate costs against her. The fact that the judge arranged for her not to be present at the last hearing demonstrates that she was a victim of discrimination.

7.19 There was no evidence to suggest that it was in the best interest of the children to remain with their father in the United Kingdom. The fact that the living situation in Germany would have been better for the children, who would have a room of their own and better private health insurance and education conditions, shows that the best interest of the children would have been to live in Germany. That the judge disregarded that shows that the author was a victim of discrimination.

7.20 Given that the judge ignored the author's role as the primary carer and a full-time mother, ordered that she and the father take turns residing at the matrimonial home and caring for the children and eventually issued a 50/50 residence order in April 2010, which included a "prohibited steps order", had the author found a job elsewhere in England and lived there with the children, she would have risked prison. She considers that the restriction to Chester was due to the fact that the father lives and operates his business there, which constitutes discrimination contrary to article 11 of the Convention.

7.21 The author notes that a full-time mother is in a much more delicate situation than a working father, who can afford better lawyers, especially in the absence of a legal aid scheme. In addition, the judge threatened to give custody to the father if she continued to ask to move with her children to Germany. Those facts reveal a violation of article 15 of the Convention.

7.22 According to the author, article 16 was violated as, in reply to her claims, she was informed that judges were immune and free to do whatever they decided. Therefore, the State party had not even attempted to remedy the discrimination against her as a foreign mother and assure the best interest of her children. According to the author, the English institutions are helpless, underfunded and would not intervene in the "corrupt court system, in which an undemocratically selected person, sitting as a judge, will invent a case law and will never face any consequences even if he disregards the law, including the Human Rights Act, the Children's Act or the Human Rights Convention".

7.23 On 12 March 2018, the author provided additional information, in particular on the difficulties she faced in seeing her children in the United Kingdom. She notes that in October 2013, her former husband refused to allow her contact with the children for no reason. Later that year, he refused to allow her contact with the children during Christmas, claiming that they already had other plans. In 2014, the former husband threatened the friend she was staying with in England. In April 2014, at Easter, she was prevented from driving the children in her car.

7.24 In 2015, the former husband booked their holidays for August, even though the author had told him that August was the only period during which she would be able to spend time with the children.

7.25 The author also explains that she had difficulties organizing a trip for her children in Germany in 2016. During the trip, the father sent emails to the children every day, which put a lot of pressure on them.

7.26 In 2017, the author asked for permission from a judge for her children to spend time with her in October and at Christmas, but was refused.

7.27 In 2018, when the younger child was expelled from school, the author wanted to travel to England and see him, but the father refused.

**Issues and proceedings before the Committee concerning 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 to the Convention. Pursuant to rule 66, the Committee may examine the admissibility of the communication separately from the merits.

8.2 In accordance with article 4 (2) 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 State party's observation that the author failed to raise any allegation of gender-based discrimination before the national authorities and courts prior to submitting a complaint to the Committee, failed to appeal against the court decision of 2009 and also failed to submit a claim to the Equality and Human Rights Commission under the Human Rights Act 1998. In reply, the author noted that throughout the judicial proceedings she had referred to herself as being the mother of her children, and that her gender-based claims were therefore present in all her claims.

8.4 The Committee recalls that, under article 4 (1) of the Optional Protocol, authors must use all remedies in the domestic legal system that are available to them. It also recalls its jurisprudence, according to which the author must have raised, in substance, at the domestic level, the claim that he or she wishes to bring before the Committee<sup>5</sup> so as to enable domestic authorities and/or the courts to have an opportunity to address such a claim.<sup>6</sup>

8.5 In the present case, the author has not appealed against the court decision of 2009, even though several of her allegations in the present case relate to the behaviour and the decisions of the judge in that very trial. In addition, the author has not appealed to the Equality and Human Rights Commission, which has extensive resources to address complaints of human rights and discrimination.

8.6 In the present circumstances, the Committee considers that the State party's authorities have clearly not been given an opportunity to consider the author's gender-based allegations, which are at the heart of her communication before the Committee, and were therefore deprived of the opportunity to assess those claims. Accordingly, the Committee finds the present communication inadmissible under article 4 (1) of the Optional Protocol.

8.7 Having found the communication inadmissible under article 4 (1) of the Optional Protocol, the Committee decides not to examine any other grounds for inadmissibility.

9. The Committee therefore decides that:

- (a) The communication is inadmissible under article 4 (1) of the Optional Protocol;
- (b) This decision shall be communicated to the State party and to the author.

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<sup>5</sup> See *Kayhan v. Turkey* (A/61/38, part one, annex I).

<sup>6</sup> *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005).