



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 119/2017^{*,**}

<i>Communication submitted by:</i>	O.N. and D.P. (represented by counsel, Svetlana Gromova)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Russian Federation
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<i>References:</i>	Transmitted to the State party on 11 July 2017 (not issued in document form)
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** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Gunnar Bergby, Marion Bethel, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.



Background

1. The authors of the communication are O.N. and D.P.,¹ Russian citizens born in 1987 and 1991, respectively. They claim that the Russian Federation has violated their rights under articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party on 3 September 1981 and 28 October 2004, respectively. The authors are represented by counsel, Svetlana Gromova.

Facts as submitted by the authors

2.1 The authors are a lesbian couple, who have maintained a stable relationship for several years.

2.2 On the night of 19 to 20 October 2014, the authors were going home in Saint Petersburg when, at about 12.47 a.m., at a subway station, they noticed two unknown men following them. They continued on their way, followed by the men to the exit from the station, then along the street towards their flat. On their way, the authors openly demonstrated their relationship, hugging, kissing and holding hands. At one point, one of the men attacked the first author from behind, hitting her. He then hit both authors on the head, face and body, shouting homophobic insults and threatening to kill them if he met them again. Meanwhile, the second man filmed the attack with his mobile telephone. Shortly afterwards, the men left.

2.3 Immediately after the incident, the authors refrained from going to the police as they feared for their lives. On the following day, 21 October, they reported it, asking for the matter to be investigated. In their initial submission to the police, they provided an account of the events. On the same day, the first author was examined by a medical doctor. According to the medical report, she had a concussion and a haematoma on her left hip. The second author decided to abstain from a medical examination, as her injuries were not visible on 21 October. The next day, 22 October, bruises appeared on her chin and left hip, but remained undocumented. On 30 October, the authors followed up on their complaint to the police, providing a detailed account of the incident and asking for a criminal case to be opened into the physical violence and death threats to which they had been subjected. They stressed, in particular, in their separate applications that the offences had been motivated by hatred in relation to their sexual orientation. The first author supplemented her complaint with a detailed map of the crime scene, containing information about the closed-circuit television cameras installed along the route from the subway station, where they had first encountered the assailants, to the place of the assault.

2.4 On 30 October, an investigator from Moskovsky District police station No. 29 in Saint Petersburg refused to open a criminal case under article 116 (1) of the Criminal Code of the Russian Federation.² In his decision, he stated that the impossibility of establishing witnesses and the perpetrators of the alleged crime was grounds for the refusal. On 30 October, the decision was overruled by the deputy prosecutor of the Office of the Prosecutor of Moskovsky District, in his capacity as supervising prosecutor, who ordered a further inquiry into the incident and instructed the investigator to establish the gravity of the injuries sustained by the authors, collect closed-circuit television recordings taken from the entrance to the subway station and conduct other inquiry measures necessary in the circumstances relating to the case.

¹ The authors have requested anonymity.

² Under article 116 (1) of the Criminal Code, battery is penalized. Under article 116 (2), aggravated battery, motivated, if relevant, by hatred in relation to a social group, is proscribed.

2.5 On 26 November, a medical examination of the first author was conducted. In the report issued on the same date, it was concluded that she had had a haematoma on her left hip. The injury was classified as not having caused any harm to her health. With regard to the previously diagnosed concussion, the expert concluded that the injury could not be confirmed because the materials submitted for examination were insufficient.

2.6 On an unspecified date in 2014, the investigator requested that the closed-circuit television recording be collected from the subway administration. On 7 December, the administration replied, informing the investigator that the recording had been destroyed following the expiration of the seven-day storage period.

2.7 On 9 December, upon completion of the additional inquiries, the investigator again refused to open a criminal case, referring to the absence of a criminal act. On 19 December, that decision was overruled by the supervising prosecutor as unlawful and unfounded. In his decision, the supervising prosecutor indicated that there were grounds for opening a criminal case under article 116 (1) of the Criminal Code. Consequently, the matter was remitted to the investigator. On 14 February 2015, the investigator once again refused to open a criminal case, referring to the absence of a criminal act. The authors state that they were not informed about these decisions.

2.8 On 3 March, the authors challenged the investigator's failure to act³ before the Moskovsky District Court under article 125 of the Criminal Procedure Code, contending, with reference to articles 1–3 and 5 (a) of the Convention, that no effective investigation into the incident had been carried out and that the inquiry measures had been insufficient and did not correspond to the specific nature of the crime committed against them, namely violence motivated by their non-traditional sexual orientation. The authors also stated that they had not been informed about the procedural steps taken in their case. On 2 April, they reiterated their arguments, adding that no measures whatsoever had been taken to establish either eyewitnesses or the perpetrators of the crime, that no expert forensic medical examination of the injuries sustained by the first author had been carried out, that the request for the closed-circuit television recording from the entrance to the subway station had not been sent promptly, resulting in irreparable loss of evidence, and that no measures had been taken to obtain video recordings from other security cameras installed along the route from the subway station to the place of the incident.

2.9 On 13 March, the supervising prosecutor overruled the refusal of 14 February to open a criminal case and remitted the matter to the investigator. In his decision, the supervising prosecutor reiterated that there were sufficient grounds to institute criminal proceedings for battery under article 116 (1) of the Criminal Code.

2.10 On 14 April, the court accepted the authors' complaint in part, having found that the investigator did not inspect the scene of the incident and thereby failed to comply with the instructions of the supervising prosecutor. The remainder of the authors' complaint was rejected. On 23 April, the authors appealed that decision before the Saint Petersburg City Court, submitting that no effective investigation into the incident had been carried out, in breach of international obligations under the Convention. They further contended that the court had failed to address all the

³ On the basis of article 125 of the Criminal Procedure Code on the court procedure for considering complaints, in which it is stated that the decisions of the inquirer, investigator or head of an investigatory agency regarding refusal to open a criminal case or to terminate a criminal case, as well as other decisions and actions (including omission to act) of an inquirer, investigator, head of an investigatory agency or prosecutor that could inflict damage upon the constitutional rights and freedoms of the participants in criminal court proceedings or interfere with citizens' access to the administration of justice, may be appealed before the district court at the place at which the preliminary investigation was conducted.

arguments put forward in their complaint and that the legal qualification of the crime against them as simple battery under article 116 (1) of the Criminal Code disregarded the homophobic motive of the perpetrators. On 7 July, the Saint Petersburg City Court endorsed the court decision of 14 April and rejected the authors' complaint, without providing any specific argumentation on the matter.

2.11 On 2 May, the investigator opened a criminal case under article 116 (1) of the Criminal Code. On an unspecified date in May and on 3 May, respectively, the first and second authors were granted victim status in the case and interviewed. On 21 July, the proceedings were suspended owing to the failure to identify the perpetrators. According to the authors, they were not informed about that decision.

2.12 On 18 June, the authors' counsel requested the reclassification of the crime, contending that the correct classification should have included the homophobic motive of the act and that it therefore should have fallen under article 116 (2) of the Criminal Code. She argued that the wording of that article contained a broad reference to battery motivated by hatred and hostility in relation to a social group and that, in the authors' situation, taking into account their self-identification as lesbian women belonging to the lesbian, bisexual and transgender community as a social group, that provision was therefore applicable to their case. On 20 June, the investigator refused the request, stating that, in the absence of the possibility of identifying the perpetrators and in view of the subjective nature of the motive as an element of the crime, it was impossible to confirm the alleged homophobic motive for the time being. On 6 August, the first author appealed the refusal before the court. In her appeal, she stated that not only had the investigator disregarded the homophobic motive of the crime in the legal qualification given to the offence, but he had also failed to include the death threat as a component of the qualification. On 16 October, the court rejected the complaint, having endorsed the reasoning put forward by the investigator in his decision. The author's argument relating to the death threat was not addressed. On 22 October, the authors' counsel appealed the decision before the Saint Petersburg City Court, relying on the same arguments as those advanced by the first author in her own complaint. On 2 December, the Saint Petersburg City Court rejected the complaint and upheld the court's findings.

2.13 On 29 February 2016, the authors' counsel challenged before the court the investigator's failure to act and the decision of 21 July 2015 to suspend the proceedings in the criminal case. In the complaint, she contested the legal qualification of the crime under article 116 (1) of the Criminal Code and the failure by the investigator to take the necessary investigative measures, stating, in particular, that not all theories of the crime had been verified, no closed-circuit television recordings of the crime scene had been examined, no eyewitnesses had been established and no persons identified by the authors as possible witnesses had been summoned or interviewed. The counsel further stated that the authors had not been notified of procedural decisions taken in their case.

2.14 On an unspecified date, the criminal proceedings were resumed. On 19 February 2016, they were suspended owing to the failure to identify the perpetrators. On 13 April, the decision to suspend the investigation was reversed by the supervising prosecutor, and the case was remitted for further investigation.

2.15 On 18 April, the court terminated the proceedings on the complaint submitted by the authors' counsel on 29 February, in view of her request to that effect following the decision by the supervising prosecutor of 13 April to resume the investigation.

2.16 On 10 May, the authors' counsel requested the investigator to reclassify the crime, taking into account the homophobic motive of the attack. The request was rejected. The counsel was informed about this decision on 20 May.

2.17 According to the authors, on 31 May, they were notified of the results of the expert forensic medical examination of 16 June 2015, ordered by the investigator on 23 May 2015, of which they had not previously been informed. In September 2016, they requested the authorities to inform them about the status of the investigation into their case. No reply was received.

2.18 The authors contend that the available domestic remedy, namely the procedure under article 125 of the Criminal Procedure Code, does not amount to an effective remedy. They refer to the jurisprudence of the European Court of Human Rights, in particular the case of *Dobriyeva and others v. Russian Federation*, according to which “such appeals do not appear able to redress the defects in the investigation”,⁴ and in the authors’ case, the content of the complaints also contained references to the defects in the investigation, the investigators’ negligence and the reclassification of the crime. Moreover, the national courts reaffirmed their position that the investigators had the procedural freedom to conduct investigations and classify crimes independently.⁵ Thus, the authors state that the available domestic remedies are not effective.

Complaint

3.1 The authors claim a violation of articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention on account of the State party’s failure to effectively investigate a violent offence committed by private individuals against them owing to their non-traditional sexual orientation.

3.2 Under articles 1, 2 (b), (c), (e) and (f) of the Convention, the authors submit that the criminal legislative framework and administrative practice in the State party do not correspond to its obligation to effectively protect women against discrimination based on their sexual orientation. In particular, contrary to the Committee’s general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and its concluding observations on the combined sixth and seventh periodic reports of the Russian Federation ([CEDAW/C/USR/CO/7](#)), violence against lesbian, bisexual and transgender women based on hatred and bias in relation to their sexual orientation is not directly penalized in the country’s Criminal Code. Although it can be said that certain provisions of the Code, in particular articles 63 (1) and 116 (2), indirectly criminalize homophobic offences, proscribing criminal acts motivated by “hatred and hostility in relation to a social group” and qualifying such acts as aggravated in nature, the national authorities refrain in practice from investigating the homophobic undertones of specific crimes and treat them as ordinary criminal acts.

3.3. Under articles 2 (b)–(f) and 5 (a) and recalling article 3 of the Convention, the authors submit that, in their particular situation, the national authorities failed to conduct an effective, prompt and independent investigation and take all necessary measures corresponding to the specific nature of the crime against them as lesbian women. Not only did the investigators in the criminal case fail to act promptly to collect and secure evidence, such as closed-circuit television recordings from the night of the event, but they also did not take measures to identify possible eyewitnesses of the offence or keep the authors informed about the course of the criminal proceedings. For a long time, the investigator repeatedly refused to open a criminal case. It was only on 2 May 2015 that the case was opened and the incident was qualified under article 116 (1) of the Criminal Code, with complete disregard for

⁴ See European Court of Human Rights, *Dobriyeva and others v. Russian Federation* (application No. 18407/10), judgment of 19 December 2013, paras. 78–79.

⁵ The Supreme Court upheld the same position. See resolution No. 1 of the plenum of the Supreme Court of 10 February 2009, paras. 1 and 3 (1).

the homophobic context of the criminal act. None of the subsequent attempts to have the legal classification changed yielded positive results.

3.4 Finally, under articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention, the authors claim a violation, by the State party, of its obligations to promote and fulfil women's rights, on account of the stereotypical attitude that has been widely adopted by the national authorities towards violence against lesbian, bisexual and transgender women based on their sexual orientation. According to the authors, their case is demonstrative of the deeply rooted attitude that this form of violence is an ordinary crime that does not require specific action.

3.5 The authors ask the Committee to establish that there has been a violation of articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention⁶ and to recommend the State party to provide them with appropriate remedies, including monetary compensation and psychological rehabilitation. They also ask the Committee to recommend the State party to: conduct an effective and timely ex officio investigation into each offence, where there are grounds to believe that it was motivated by hatred towards lesbian, bisexual and transgender women, taking fully into account the specific context of the offence; provide relevant professional training for public officials in order that crimes with homophobic undertones committed against lesbian, bisexual and transgender women are understood to be hate crimes requiring active State intervention; and provide lesbian, bisexual and transgender women who have been victims of hate crimes with adequate psychological, legal and other assistance.

State party's observations on admissibility and the merits

4.1 On 26 April 2018, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party submits that the right to appeal a court decision is established in article 389 (1) of the Criminal Procedure Code of the Russian Federation. However, the authors and their representative did not appeal the decision of the Moskovsky District Court of 18 April 2016.

4.3 The State party also submits that the authors and their representative did not file cassation complaints regarding the decision of the Moskovsky District Court of 16 October 2015, the decision of the Saint Petersburg City Court of 2 December 2015 or the decision of the Moskovsky District Court of 18 April 2016, in accordance with articles 401 (1) (2) and 401 (2) (2).⁷

4.4 In 2016, the chamber for criminal cases of the Supreme Court of the Russian Federation observed that a total of 599 cases were examined regarding decisions that had obtained the force of res judicata. Of those reviewed cases, the court accepted 207 criminal cases for consideration under cassation review, of which it found in favour of the appellant in 200 cases, involving 217 persons. In addition, 13 guilty verdicts were annulled. In 9 of the 13 cases, the case was sent to the lower court for reconsideration. In cases that affected three persons, the crimes charged were reclassified in a lower category. A total of 87 guilty verdicts were changed, and in cases that affected 13 persons the crimes charged were reclassified. In cases that affected 74 persons, the verdicts were left intact, but the courts reduced the sentences.

⁶ Article 3 of the Convention was not indicated in the relevant section of the communication.

⁷ The State party claims that, in accordance with article 401 (2) (1) of the Criminal Procedure Code, the author has a right to bring a cassation appeal before cassation appeal courts of the Russian Federation on sentences that have entered into force. Such complaints can be brought forward by convicted or acquitted persons, by way of private prosecution, by representatives of such persons and by other persons whose rights and interests are affected in the relevant court decision.

The chamber for criminal cases of the Supreme Court considered cassation appeals regarding the decisions of the courts on the level of the subjects of the Russian Federation involving 11 persons, in which the cases were sent for reconsideration under appeal reviews; the decision for 1 person was reversed. In cases that affected 35 persons, the cassation decisions were changed or annulled without reversing the sentence or appeal decision.

4.5 The State party refutes the authors' claim that the procedure under article 125 of the Criminal Procedure Code does not amount to an effective remedy. It provides the following statistics in support of its position. In 2016, the courts of the Russian Federation considered 127,086 complaints under article 125 of the Criminal Procedure Code, of which the courts found in favour of the appellant in 6,369 cases and dismissed a further 29,917 cases. During the first six months of 2017, the courts considered 127,086 complaints, of which 2,822 were satisfied, 11,736 were dismissed, 41,979 were discontinued and 146 special court rulings were rendered, including 92 rulings against preliminary investigation bodies.

4.6 The State party reiterates the facts of the authors' case and submits that they filed a complaint concerning the inaction of the investigator from Moskovsky District police station No. 29 before the Moskovsky District Court on 12 March 2015. Their complaint was partly upheld. The decision was appealed before the Saint Petersburg City Court and was dismissed on 7 July.

4.7 On 19 August, the authors filed a complaint under article 125 of the Criminal Procedure Code before the Moskovsky District Court against the refusal to reclassify the crime. The complaint was dismissed on 16 October. On 21 July, the investigation had been suspended because no person had been identified to be charged. The appeal complaint to the Saint Petersburg City Court was dismissed on 2 December.

4.8 On 17 March 2016, the authors' representative filed a complaint against the inaction of the investigator from Moskovsky District police station No. 29 and the suspension of the criminal case before the Moskovsky District Court. On 18 April, the proceedings were discontinued as the decision of the investigator had been revoked by the deputy prosecutor of the Moskovsky District on 13 April. That court decision was not appealed.

4.9 The State party submits that the Office of the General Prosecutor, upon considering the complaint of the authors, did not find any evidence that the authors had been subjected to inhuman or degrading treatment or discrimination based on their sexual orientation. The investigation into their case is still in progress.

4.10 The State party underlines that the authors' claims concern the consideration or assessment of the circumstances of the criminal case and the application of national law. The refusal to reclassify the crime was legitimate since the motive for an act can be established only when the perpetrator has been identified, and the perpetrators in the present case had not been found. The State party states that the authors' access to justice has not been impeded since they could file the same request when the perpetrators have been identified.

4.11 The State party states that the authors' argument that a group of people with a particular sexual orientation is considered by the Constitutional Court and in national jurisprudence to be a social group in relation to which hate crimes can be committed does not alter the conclusion of the competent authorities of the State party, since there are not enough data to establish a motive of hatred towards a particular social group in the actions of an unknown person.

4.12 Lastly, the State party considers that there were no violations of the authors' rights under the Convention.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 30 July 2018, the authors contested the State party's arguments on both the admissibility and the merits of their case.

5.2 The authors informed the Committee that the criminal investigation had been resumed after the submission of their complaint to the Committee. On 8 September 2017, the authors were interviewed by the investigator from Moskovsky District police station No. 29. They were informed that the investigation had been resumed in accordance with the decision of the Office of the Prosecutor of Moskovsky District. The authors were refused permission to obtain copies of new documents relating to their criminal case.

5.3 On 21 September, the authors were invited to take part in the examination of the crime scene for the first time since the attack. The examination of the crime scene was conducted three years after the event took place and was thus ineffective.

5.4 On 17 November, the authors' representative was informed that the investigation into their case had been resumed.

5.5 Having become aware of the decision of the Office of the Prosecutor to cancel the decision to suspend the investigation into the criminal case, the authors' representative discovered that psycholinguistic expertise had been requested in order to decide whether the representatives of the lesbian, bisexual and transgender community could be considered a social group. On 1 December, the experts concluded that the authors' sexual orientation was the cause of the physical violence and verbal aggression to which they had been subjected and that the attackers had demonstrated a hostile personal attitude towards lesbians. However, they did not find any signs of incitement to hatred against the lesbian, bisexual and transgender community as the attackers had not sought to promote negative attitudes towards lesbians among other people through their remarks.

5.6 Since December 2017, the authors have not been informed about further developments in the investigation into the crime committed against them.

5.7 On an unspecified date, the authors filed a complaint under article 125 of the Criminal Procedure Code against the inaction of the investigator, since they had not been informed about the decision to conduct a psycholinguistic examination and could not apply to amend the questions put before the experts. On 13 March 2018, the Moskovsky District Court rejected the complaint since the action of the investigator could not be appealed under article 125 of the Criminal Procedure Code. The authors appealed that decision without success.⁸

5.8 In relation to the exhaustion of domestic remedies, the authors submit that the Human Rights Committee has found that cassation appeals under chapter 47.1 of the Criminal Procedure Code did not constitute an effective remedy in cases in which the investigation into a hate crime against a lesbian, bisexual or transgender person was not effective. The Human Rights Committee believed that such a cassation review contained elements of an extraordinary remedy and considered that the State party must therefore show that there was a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case. The authors claim that their case is similar to the above-mentioned case and that the State party's statistics

⁸ Decision of the Saint Petersburg City Court of 22 May 2018.

are very general and do not reflect the number of cases brought under article 125 of the Criminal Procedure Code.⁹

5.9 In relation to the lack of a cassation appeal against the decision of the Moskovskiy District Court of 18 April 2016, the authors submit that, since the decision to suspend the investigation had already been revoked by the prosecutor, there was no need to appeal it. The authors reiterate their position that a complaint under article 125 of the Criminal Procedure Code does not constitute an effective remedy because it cannot remedy the lack of an effective investigation into a hate crime.

5.10 The authors also submit that, in the Russian Federation, the courts systematically refuse to review matters relating to the legal classification of the facts and the procedural violations of the investigative authorities. The European Court of Human Rights declared that “such appeals do not appear able to redress the defects in the investigation”. Therefore, the authors had no legal avenue to compel the investigator to take into account the discriminatory motive of the crime and take particular investigative actions.¹⁰

5.11 The authors underline that, under the Convention, gender-based violence constitutes a form of discrimination against women, and some groups of women, such as lesbians, are more vulnerable to discrimination. State parties should provide such groups with proper protection against physical or psychological violence and discrimination. In the present case, the State party ignored its duty, which resulted in violations of the authors’ rights.

5.12 The authors state that the State party failed to ensure that the investigation into their criminal case was effective and timely. They also submit that the statute of limitations for the crime under article 116 of the Criminal Code is two years after the crime is committed, and in their case the term has already passed.¹¹ Thus, the negligence of the investigative authorities may result in impunity for the attackers and the absence of a remedy for the authors.

5.13 The authors state that, by its refusal to classify the events in their case as a hate crime, the State party showed tolerance towards violence on discriminatory grounds in relation to lesbian, gay, bisexual and transgender persons, in particular lesbian women. The large number of cases of violence against lesbian, gay, bisexual and transgender persons in the Russian Federation has been disclosed in numerous reports and was also reflected in the Committee’s concluding observations on the combined sixth and seventh periodic reports and on the eighth periodic report of the Russian Federation ([CEDAW/C/USR/CO/7](#) and [CEDAW/C/RUS/CO/8](#)).

5.14 The authors ask the Committee to establish that articles 1, 2 and 5 of the Convention were violated and to recommend the State party to adopt comprehensive anti-discrimination legislation that will oblige it to take into account a homophobic motive as an aggravating circumstance, to collect statistics in relation to sexual violence, domestic violence and homophobic crimes and to nullify the law on “homosexual propaganda”.

⁹ The authors also referred to the decision of the European Court of Human Rights in the case of *Kashlan v. Russian Federation* (application No. 60189/15) of 19 April 2016, in which the Court stated that the cassation appeal procedure under the Criminal Procedure Code did not constitute an effective remedy.

¹⁰ In accordance with resolution No. 1 of the plenum of the Supreme Court of the Russian Federation of 10 February 2009, considering the complaints under article 125 of the Criminal Procedure Code, the courts cannot make any conclusions regarding the factual circumstances of a case, the assessment of evidence and the legal classification of facts.

¹¹ The statute of limitations for the events in question therefore expired on 20 October 2016.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66 of its rules of procedure, the Committee may decide to consider the admissibility of the communication together with its merits.

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

6.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.¹² In that regard, the Committee notes the State party's argument that the communication should be declared inadmissible under that provision because the authors failed to lodge an appeal against the decision of the lower court of 18 April 2016 and failed to lodge a cassation appeal before the presidium of the Saint Petersburg City Court or before the chamber for criminal cases of the Supreme Court against the decision of the lower court of 16 October 2015, the decision of the appellate court of 2 December 2015 or the decision of the lower court of 18 April 2016. The Committee also notes the authors' argument that they did not appeal the court decision of 18 April 2016, since the decision to suspend the investigation into their criminal case had already been revoked by the prosecutor and there was therefore no need to appeal that decision. The Committee further notes the authors' argument that additional appeals would have been ineffective and unlikely to bring any relief. In that regard, the Committee notes that the cassation review procedure¹³ under article 401 (2) (1) of the Criminal Procedure Code was available to the authors at the time of submission of the communication to the Committee. The Committee has thus to decide whether such a procedure could have been effective.

6.4 The Committee notes that the cassation review procedure set out under article 401 (2) (1) of the Criminal Procedure Code concerns the revision, on points of law only, of court decisions that have entered into force. The decision on whether to refer a case for hearing by the cassation court is discretionary in nature, is not subject to a time limit and is made by a single judge. These characteristics lead the Committee to believe that such a cassation review procedure contains elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case.¹⁴ In the present case, the State party submits that, in 2016, the chamber for criminal cases of the Supreme Court of the Russian Federation examined 599 criminal cases, 207 of which were reviewed under the cassation appeal procedure. The court found in favour of the appellant in 200 of those cases (see para. 4.4). The State party failed, however, to provide information on or to show that there was a chance of success in cases in which the investigative authorities had failed to conduct an effective and timely inquiry and in which the motion for prosecution of a violent crime was not granted. In the absence of any clarification by the State party on the effectiveness of the cassation review procedure in cases similar to the present

¹² See *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

¹³ The cassation review procedure entered into force on 1 January 2013.

¹⁴ See *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011).

case, the Committee finds that it is not precluded, under article 4 (1) of the Optional Protocol, from examining the present communication.

6.5 The Committee also notes the State party's argument that the authors' communication concerned how the national investigative authorities considered the facts of the case and applied national legislation and that, in the present case, it cannot be concluded that the actions of the authorities in charge of the criminal proceedings were unlawful or arbitrary or that they limited access to justice.

6.6 The Committee further notes the authors' submission that the investigative authorities did not initiate a criminal case until seven months after the attack against them, that the criminal case was closed, suspended and reopened several times and that the punishment for the crime under article 116 of the Criminal Code has a two-year statute of limitations from the date on which it was committed. The statute of limitations for the events in question therefore expired on 20 October 2016, and any attempt to bring the perpetrators to justice beyond that date is therefore time-barred.

6.7 In the light of the above factual background, the Committee is of the view that the authors' claims cannot be regarded as manifestly ill-founded, but that the issues of the admissibility of their claims under the Optional Protocol and the level of substantiation of the claims in the communication are so closely linked to the merits of the case that it would be more appropriate to determine them during the consideration of the merits stage of the proceedings. The Committee considers, therefore, that the authors' claims under articles 1, 2 (b)–(f) and 5 (a) of the Convention are sufficiently substantiated for purposes of admissibility, and thus declares the communication admissible.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and the State party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 With regard to the authors' submission that the action and inaction of the investigative authorities was based on stereotypes with regard to gender and sexual orientation, in violation of article 5 of the Convention, the Committee reaffirms that the Convention places obligations on all State organs and that States parties can be held responsible for law enforcement decisions that violate provisions of the Convention. The Committee also emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women.¹⁵ Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of Government and by private actors.¹⁶

7.3 The Committee recalls that discrimination within the meaning of article 1 of the Convention encompasses gender-based violence against women. Such discrimination is not restricted to action by or on behalf of States parties. Rather, under article 2 (e) of the Convention, States parties may also be responsible for private acts, if they fail

¹⁵ See *Belousova v. Kazakhstan* (CEDAW/C/61/D/45/2012), para. 10.10.

¹⁶ See *R.K.B. v. Turkey* (CEDAW/C/51/D/28/2010), para. 8.8.

to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.¹⁷

7.4 The Committee recalls that discrimination against women is inextricably linked to other factors that affect their lives, including being lesbian women.¹⁸ Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect women to different degrees or in different ways, meaning that appropriate legal and policy responses are needed.¹⁹

7.5 The Committee has documented many examples of the negative impact of intersecting forms of discrimination on access to justice, including ineffective remedies, for specific groups of women. The Committee has also noted that, when women from such groups lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.²⁰

7.6 The Committee also recalls that, under article 2 (a) and (c)–(e) of the Convention, the State party has a duty to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In that regard, the Committee stresses that stereotyping affects women's rights to a fair trial and that the judiciary must be careful not to create inflexible standards on the basis of preconceived notions of what constitutes gender-based violence.²¹ Criminal laws are particularly important in ensuring that women are able to exercise their human rights, including their right to access to justice, on the basis

¹⁷ As reaffirmed by the Committee in paragraph 24 of its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in its jurisprudence. See also *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Goekce et al. v. Austria* (CEDAW/C/39/D/5/2005) and *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Akbak et al. v. Austria* (CEDAW/C/39/D/6/2005).

¹⁸ See the Committee's general recommendation No. 33 (2015) on women's access to justice, paras. 8 and 9. Other general recommendations relevant to intersecting forms of discrimination are general recommendation No. 15 (1990) on the avoidance of discrimination against women in national strategies for the prevention and control of AIDS; general recommendation No. 18 (1991) on disabled women; general recommendation No. 21 (1994) on equality in marriage and family relations; general recommendation No. 24 (1999) on women and health; general recommendation No. 26 (2008) on women migrant workers; general recommendation No. 27 (2010) on older women and the protection of their human rights; general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations; joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices; general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; and general recommendation No. 34 (2016) on the rights of rural women. The Committee has also addressed intersecting forms of discrimination in its views on *Jallow v. Bulgaria* (CEDAW/C/52/D/32/2011), *S.V.P. v. Bulgaria* (CEDAW/C/53/D/31/2011), *Kell v. Canada* (CEDAW/C/51/D/19/2008), *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011) and *M.W. v. Denmark* (CEDAW/C/63/D/46/2012), among others, and in its reports on inquiries of the Committee, in particular those concerning Mexico (CEDAW/C/2005/OP.8/MEXICO) and Canada (CEDAW/C/OP.8/CAN/1).

¹⁹ See general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18, and the report on the inquiry concerning Canada (CEDAW/C/OP.8/CAN/1), para. 197.

²⁰ See, for example, CEDAW/C/BHS/CO/1-5, para. 25 (d), CEDAW/C/CRI/CO/5-6, paras. 40–41, CEDAW/C/FJI/CO/4, paras. 24–25, A/54/38/Rev.1, part one, paras. 127–128, CEDAW/C/KOR/CO/6, paras. 19–20, CEDAW/C/KOR/CO/7, para. 23 (d), and CEDAW/C/UGA/CO/7, paras. 43–44.

²¹ See general recommendation No. 33 (2015) on women's access to justice and *L.R. v. Republic of Moldova*, para. 13.6.

of equality. States parties are obliged, under articles 2 and 15 of the Convention, to ensure that women have access to the protection and remedies offered through criminal law and that they are not exposed to discrimination within the context of those mechanisms, as victims of criminal acts.²²

7.7 In the present case, the compliance of the State party with its obligations under article 2 (a) and (c)–(e) of the Convention to eliminate gender stereotypes needs to be assessed in the light of the level of gender sensitivity applied in the handling of the investigation into the authors' case. In that regard, the Committee notes that the investigative authorities did not initiate a criminal case until seven months after the attack on the authors and that the incident was qualified under article 116 (1) of the Criminal Code, with complete disregard for the homophobic context of the criminal act. None of the authors' subsequent attempts to have the legal classification changed yielded positive results. The Committee also notes that the domestic authorities failed to conduct an effective and timely investigation and take all necessary measures corresponding to the specific nature of the crime against the authors as lesbian women. In that connection, the authors claimed that the investigators in the criminal case failed to act promptly in collecting and securing evidence or identifying possible eyewitnesses of the offence. They also claimed that the investigators failed to keep the authors informed about the course of the criminal proceedings. The Committee also notes that the criminal investigation was resumed after the submission of the complaint to the State party; however, there is no information about the results of that investigation.²³

7.8 The Committee further notes the State party's submission that the Office of the General Prosecutor, having considered the authors' complaint, did not find any evidence that they had been subjected to inhuman or degrading treatment or discrimination based on their sexual orientation. The investigation into their case is still in progress and there are not enough data to establish a motive of hatred towards a particular social group in the actions of an unknown person. The Committee notes that, read in full, these facts indicate that, by failing to investigate the authors' complaint about the violent attack against them, as lesbian women, promptly, adequately and effectively and by failing to address their case in a gender-sensitive manner, the authorities allowed their actions to be influenced by negative stereotypes associated with lesbian women. The Committee therefore concludes that the authorities failed to act in a timely and adequate manner and to provide a remedy for the authors, in violation of the obligations under the Convention.

7.9 The Committee recalls its concluding observations on the combined sixth and seventh periodic reports of the Russian Federation ([CEDAW/C/USR/CO/7](#), para. 41), in which it expressed its concern about acts of violence against lesbian, bisexual and transgender women and called upon the State party to provide effective protection against violence and discrimination against women based on their sexuality, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, including on the grounds of sexual orientation. It also urged the State party to intensify its efforts to combat discrimination against lesbian, bisexual and transgender women, including by launching an awareness-raising campaign aimed at the general public, as well as providing appropriate training to law enforcement officials. In its concluding observations on the eighth periodic report of the Russian Federation ([CEDAW/C/RUS/CO/8](#), paras. 11–12), the Committee remained concerned about reported barriers that women were facing when seeking justice, including social stigma and negative stereotypes, a lack of awareness of their rights and limited

²² See general recommendation No. 33, para. 47.

²³ According to the authors' information dated October 2019.

knowledge of the Convention, the Optional Protocol thereto and the Committee's general recommendations regarding the role of law enforcement officials in the strict application of legislation prohibiting gender-based discrimination against women.

7.10 The Committee considers that the present case shows a failure by the State party in its duty to uphold women's rights, in particular in the context of violence and discrimination against women based on their sexual orientation and to eliminate the barriers that the authors faced in seeking justice in their case, in particular negative stereotypes associated with lesbian women, and to ensure that law enforcement officials strictly apply the legislation prohibiting gender-based discrimination against women.

7.11 In the light of the above, the Committee considers that the manner in which the authors' case was addressed by the State party's police and prosecutorial authorities constitutes a violation of the authors' rights under articles 1, 2 (a) and (c)–(e) and 5 (a) of the Convention. Specifically, the Committee recognizes that they have suffered moral damage and prejudice. They were subjected to fear and anguish by the State organs that ought to have given prompt, impartial and effective consideration to their complaints, in particular the police, which failed to conduct an efficient, impartial and timely investigation into their case and bring the perpetrators to justice.

8. Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the authors' rights under articles 1, 2 (b)–(g) and 5 (a) of the Convention.

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

(a) Concerning the authors of the communication: provide appropriate remedies, including monetary compensation and psychological rehabilitation, commensurate with the gravity of the violations of their rights;

(b) General:

(i) Ensure timely gender-sensitive training for police and investigative authorities on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 19 (1992) on violence against women, No. 28, No. 33 (2015) on women's access to justice and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in order that crimes with homophobic undertones committed against lesbian women be understood as gender-based violence or hate crimes requiring active State intervention;

(ii) Comply with its due diligence obligations to respect, protect and fulfil the human rights of women, including lesbian women, in particular, the right to be free from all forms of gender-based violence;

(iii) Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women for which there are grounds to believe that such violence was motivated by hatred towards lesbian women, fully taking into account the specific context of the offence, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;

(iv) Provide lesbian women who are victims of violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to available, effective and sufficient remedies and rehabilitation in line with the guidance provided in the Committee's general recommendation No. 33.

10. 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 submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations.
