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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) (e) of the Optional Protocol, concerning communication No. 95/2015*,**

Communication submitted by:	N.P. (not represented by counsel)
Alleged victim:	The author
State party:	Ukraine
Date of communication:	24 June 2015 (initial submission)
References:	Transmitted to the State party on 17 September 2015
Date of adoption of decision:	6 November 2017

* Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Aruna Devi Narain, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

1. The author of the communication is N.P., a Ukrainian national born in 1970. She claims that Ukraine has violated her rights under articles 2 (c), (d) and (e), 11 (1) (a), 15 (2) and 24 of the Convention on the Elimination of All Forms of Discrimination against Women on account of her dismissal from her job at a public hospital on allegedly discriminatory grounds, the unequal treatment that she received before the national courts and the failure by the State party to effectively protect her rights. The Optional Protocol entered into force for Ukraine on 26 December 2003. The author is not represented by counsel.

Facts as submitted by the author

2.1 Between 1997 and 2000, the author worked as an obstetrician-gynaecologist at the town hospital in Ichnya, Chernihiv region, Ukraine. While working there, she was given the responsibility of managing the hospital's family planning department, without commensurate remuneration. On 12 December 1999, the author was reprimanded for failing to examine a group of patients and delegating her duties to a junior staff member. On 22 December 1999, she was reprimanded for negligence in the examination of a pregnant woman. Both disciplinary sanctions imposed on the author related to her work in the family planning department. She was requested to improve the work of the department by the end of the year. In response to the reprimands, on 27 December 1999 she informed the head of the hospital of her refusal to perform managerial duties for the department, which she claimed were of a voluntary nature. On 29 December 1999, an internal evaluation showed no improvement in the work of the department. On 21 January 2000, the author was dismissed from her post as an obstetrician-gynaecologist for systematic failure to fulfil her professional duties.

2.2 In January 2000, the author challenged her dismissal before the Ichnya District Court, arguing that, since the duties that she had failed to fulfil had been of a voluntary nature and fell outside her professional duties, disciplinary sanctions, such as dismissal, should not have been applied. By a decision of 17 May 2000, the District Court rejected the case. On 27 June 2000, the Chernihiv Regional Court quashed this decision on appeal, pointing to flaws in the establishment of the factual and legal circumstances of the case. It ruled, in particular, that the first-instance court should establish whether the disciplinary sanctions applied to the author before her dismissal from the post had been lawful and justified and whether thereafter she had committed a new disciplinary offence giving grounds for her dismissal. Furthermore, it instructed the first-instance court to duly address the argument made by the author that the hospital could not dismiss her, as a young specialist, without obtaining prior approval to that effect from the relevant governmental body. The case was returned to the District Court for a fresh examination. In the course of the new consideration of the case, the District Court complied with the instructions given by the Regional Court. On 26 February 2001, following that fresh examination, the District Court rejected the case, finding that the author had systemically failed to perform her professional duties and that her dismissal on those grounds had been justified. The author again submitted an appeal to the Chernihiv Regional Court, presenting the same arguments that she had put forward before the District Court. On 17 April 2001, the Regional Court rejected the appeal. The author lodged a supervisory review appeal against the above decisions. On 7 May 2001, the Regional Court, acting as a supervisory review court, upheld the decisions.

2.3 Between 2001 and 2010, the author lodged numerous requests with the Supreme Court seeking to reopen the proceedings regarding her labour dispute and to obtain a re-examination of the case on exceptional grounds. According to the author, some of her requests were not even registered by the Supreme Court and others were either returned to her on procedural grounds or rejected through the adoption of relevant

decisions. The documents submitted by the author show that such decisions were adopted on 11 November 2005, 13 February, 9 April, 20 July and 9 November 2009 and 11 March, 21 May and 16 July 2010. On 7 August and 25 October 2010, the author submitted two further requests asking the Supreme Court to reopen the proceedings on exceptional grounds. On 24 November 2011, the Supreme Court rejected the requests as groundless.

2.4 On 30 June 2012, the author lodged an administrative claim before the Kyiv Circuit Administrative Court contending that the Supreme Court had gone beyond the scope of its competence when examining her request of 25 October 2010. On 8 August 2012, the Circuit Administrative Court dismissed the complaint, noting that it was not the proper legal venue to challenge the decision of the Supreme Court of 24 November 2011 as the case could not be adjudicated in an administrative proceeding. On 10 October 2012 and 20 March 2014, the decision of the Circuit Administrative Court was upheld by the Kyiv Appeal Administrative Court and the Supreme Administrative Court of Ukraine, respectively.

Complaint

3.1 The author contends that the State party violated her rights under articles 2 (c), (d) and (e), 11 (1) (a), 15 (2) and 24 of the Convention.

3.2 In particular, she contends that the grounds for her dismissal from her job at the public hospital were discriminatory and that the real reasons for her termination were her conflict with colleagues and her refusal to have sexual relations with the head of the hospital. The State party, in its turn, failed to protect her from gender-based discrimination and to reinstate her in fulfilment of her labour rights. She holds that she was treated unequally throughout the domestic proceedings: the national courts, while examining her labour dispute, gave preference to the arguments and falsified evidence submitted by the respondent, represented by the head of the hospital, who was a man, thereby discriminating against her as a woman; and the administrative courts unlawfully dismissed her claim against the Supreme Court, thus failing to protect her from discrimination.

State party's observations on admissibility

4. In its observations of 29 March 2016, the State party considers that the communication submitted by the author under the Convention is inadmissible. Not only do the factual circumstances of the case not reveal any discrimination against women, but also the author's allegations of a violation of her rights are not corroborated by evidence. Furthermore, the facts presented by the author date back to 2000, whereas the Optional Protocol to the Convention entered into force for the State party in 2003. The State party therefore considers the author's submission inadmissible *ratione temporis*.

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

5. In her comments of 21 April 2016, the author reiterates her complaint and submits that the violations of her rights under the Convention are of a continuous nature, meaning that the State party's reference to the requirement of *ratione temporis* should be considered invalid.

Issues and proceedings before the Committee concerning admissibility

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

6.2 The Committee notes that the author's complaint has two main elements. First, the author challenges her dismissal from her job at the public hospital on grounds of alleged gender-based discrimination and the failure by the national courts to effectively protect her rights by reinstating her to that post. Second, the author contends that she was discriminated against by the national courts throughout the proceedings, including those pertaining to her requests for re-examination of the case in view of the discovery of exceptional circumstances and the proceedings before the administrative courts.

6.3 The Committee takes note of the State party's argument that the relevant complaint is inadmissible *ratione temporis*. In accordance with article 4 (2) (e) of the Optional Protocol to the Convention, the Committee shall declare a communication inadmissible when the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date. The Committee notes that the facts relating to the author's dismissal from her job and the ensuing labour dispute preceded the ratification by Ukraine of the Optional Protocol. From the documents on file, the Committee notes that the most recent review of the author's labour case was undertaken by the Chernihiv Regional Court on 7 May 2001, whereas the Optional Protocol entered into force for the State party on 26 December 2003. In her communication, the author did not show which facts of discrimination had continued after the entry of the Optional Protocol into force, or which exceptional grounds should be considered by the national courts in order to reopen the proceedings in her case.

6.4 The Committee therefore concludes that the alleged violations took place before the entry into force for the State party of the Optional Protocol, which cannot be applied retroactively, and consequently that, in accordance with article 4 (2) (e) of the Optional Protocol, it is precluded *ratione temporis* from examining the present communication.

7. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (e) of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author.