



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

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**Committee on the Elimination of Discrimination
against Women**

Thirty-eighth session

14 May-1 June 2007

**Decision of the Committee on the Elimination of Discrimination
against Women under the Optional Protocol to the Convention on
the Elimination of All Forms of Discrimination against Women
(Thirty-eighth session)**

Communication No. 10/2005*

Submitted by: Ms. N. S. F.
Alleged victim: The author
State party: The United Kingdom of Great Britain and
Northern Ireland
Date of communication: 21 September 2005 (initial submission)
Document references: Transmitted to the State party on
8 March 2006 (not issued in document form)

The Committee on the Elimination of Discrimination against Women, established
under article 17 of the Convention on the Elimination of All Forms of Discrimination
against Women,

Meeting on 30 May 2007

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Ms. Ferdous Ara Begum, Ms. Magalys Arocha Dominguez, Ms. Meriem Belmihoub-Zerdani, Ms. Saisuree Chutikul, Ms. Dorcas Coker-Appiah, Ms. Mary Shanthi Dairiam, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Ms. Françoise Gaspard, Ms. Ruth Halperin-Kaddari, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Fumiko Saiga, Ms. Hanna Beate Schöpp-Schilling, Ms. Heisoo Shin, Ms. Glenda P. Simms, Ms. Dubravka Šimonović, Ms. Anamah Tan and Ms. Maria Regina Tavares da Silva.



Decision on admissibility

- 1.1 The author of the communication dated 21 September 2005 with supplementary information dated 16 October and 2 December 2005, is Ms. N. F. S. a Pakistani asylum seeker born on 15 November 1976 and currently living in the United Kingdom with her two children. She claims to fear for her life at the hands of her former husband in Pakistan and for her two sons' future and education if the authorities of the United Kingdom deport her. She does not invoke specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women nor demonstrate how the Convention may have been violated but her claims appear to raise issues under article 2 and 3 of the Convention. The author is representing herself. The Convention and its Optional Protocol entered into force for the State party on 7 April 1986 and 17 December 2004 respectively.
- 1.2 The author requested interim measures of protection in accordance with article 5, paragraph 1 of the Optional Protocol.
- 1.3 On 8 March 2006, the Committee requested the State Party not to deport the author and her two children, U. S. and I. S., while their case was pending before the Committee.

The facts as presented by the author

- 2.1 The author got married on 17 May 1996 and had two sons, born respectively in 1998 and 2000, resulting from this union. Her husband's personality and behaviour changed towards the author immediately after the marriage took place and he started to subject her to numerous instances of ill-treatment – particularly when he was affected by alcohol and drugs or after he had incurred gambling losses. He compelled her with threats to obtain money from her parents and he used the money to feed his habits.
- 2.2 She endured marital rape and eventually divorced her husband in August 2002. She subsequently fled to a nearby village with her two sons. She continued to be harassed by her ex-husband after the divorce and had to move two more times. She reported him to the police but did not receive any protection.
- 2.3 In January 2003, the author's ex-husband came to her home with other men armed with knives and threatened to kill her. After this incident, the author decided to flee the country with the help of an agent and funding from her parents.
- 2.4 The author arrived in the United Kingdom on 14 January 2003 with her two children and applied for asylum the same day. She was in transit in Cairo, Egypt, for one day prior to her arrival in the United Kingdom. On 27 February 2003, the

Immigration and Nationality Directorate of the Home Office rejected the author's asylum application.

- 2.5 The author appealed against the "Refusal of Leave to Enter after Refusal of Asylum" by the Immigration and Nationality Directorate of the Home Office, claiming that her removal would be a violation of the 1951 Convention on the Status of Refugees and the European Convention on Human Rights and Fundamental Freedoms. She asserted that her claim was credible; that she had a well-founded fear of persecution by a non-state agent, for the 1951 Convention reason of her membership in a particular social group (women in Pakistan); that Pakistan did not offer her sufficient protection; that there was no real option of internal flight and, in any event it would not be reasonable; and that article 3 of the European Convention on Human Rights and Fundamental Freedoms was violated.
- 2.6 On 16 April 2004, the Adjudicator, sitting as the first instance court, dismissed the author's appeal on both asylum and human rights grounds. The Adjudicator, while sympathizing with the author's situation and accepting the author's factual case, did not accept the author's submission that she could not relocate further away from her ex-husband within Pakistan. As a result, he concluded that he could not see why there would be a serious possibility or reasonable chance of her being at risk of further persecution on return to Pakistan if she relocated within the country. He also found that the difficulties that she might experience on return would not constitute persecution as such and that she would be sufficiently protected in Pakistan, including because the parties were no longer married.
- 2.7 On 31 July 2004, the Immigration Appeal Tribunal refused the author's application for permission to appeal. The decision was communicated to the author on 10 August 2004.
- 2.8 The author challenged the decision of the Immigration Appeal Tribunal by applying for Statutory Review in accordance with the relevant Civil Procedure Rules before the High Court of Justice, Queens Bench Division, Administrative Court.
- 2.9 On 14 October 2004, the High Court affirmed the decision. It found no error of law; that the Adjudicator had been entitled to conclude, for the reasons he gave, that, even accepting the central core of the claimant's story as he did, she would not be at risk if on return to Pakistan she relocated to a place sufficiently far away from her former husband's residence; and that there would be no real prospect of an appeal succeeding. The decision was final.
- 2.10 On 15 October 2004, the author received "notification of temporary admission to a person who is liable to be detained".

- 2.11 The author filed for “discretionary leave” or “temporary protection” to remain in the United Kingdom on humanitarian grounds with the Home Office on 4 January 2005.
- 2.12 On 1 February 2005, the Immigration and Nationality Directorate wrote to the author informing her that she had no further right of appeal and that the decision on her earlier claim would not be reversed. She was reminded that she had no basis to stay in the United Kingdom and should make arrangements to leave the United Kingdom without delay. She was apprised of where to call for help and advice on returning home.
- 2.13 On 29 September 2005, the author made an application to the European Court of Human Rights alleging a violation by the United Kingdom of her rights under article 3 (prohibition of torture) and article 8 (right to respect for private and family life). On 24 November 2005, the European Court of Human Rights, sitting as a Committee of three judges, declared the communication inadmissible on the basis that it “did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols”.
- 2.14 On 8 May 2006, the Home Office refused her request for discretionary leave on humanitarian grounds. The decision indicated that the author had no basis to stay in the United Kingdom and should make arrangement to leave the country without delay. If she failed to do so, the Home Department would take steps to ensure her removal to Pakistan. No deadline was given.

The complaint

- 3.1 The author claims that she came to the United Kingdom to save her life and her children’s future and education. She alleges that as a single woman with two children, she would not be safe outside of the United Kingdom. She claims that if she is deported back to Pakistan, she will no longer be protected and will be killed by her ex-husband and her children’s future and education will be put at risk. She therefore asks that she and her two children be allowed to live in the United Kingdom and be granted temporary protection. The author makes it clear that if she is deported, she will leave her children behind.
- 3.2 She also alleges that both the asylum and human rights based procedures were not fair.

The State party’s observations on admissibility

- 4.1 By its submission of 5 May 2006, the State party challenges the admissibility of the communication, arguing that the author failed to exhaust domestic remedies, that the same matter has been examined by the European Court of Human Rights, and that the communication was not sufficiently substantiated and/or manifestly ill-founded.

4.2 As regards exhaustion of domestic remedies, the State party alleges that there are effective remedies against the decision of 8 May 2006 by the Home Office, which refused the author's request for discretionary leave on humanitarian grounds. It nevertheless acknowledges that because this decision was communicated to the author at the same time as the State party's observations on admissibility, the author could not have exhausted this remedy before actually getting the Home Office decision. Therefore, the Government alleges that now, the author can seek permission to apply for judicial review by the High Court. The State party considers the granting of such permission very unlikely, in the light of the history of the case and the fact that such a request would be based upon the same factual and legal arguments developed previously before the national authorities (and the European Court of Human Rights). The State party notes that no allegation based on discrimination against the author as a woman was ever formulated by the author before the domestic authorities and/or courts and that, as a consequence, the domestic authorities and/or courts have not yet had an opportunity to deal with the author's assertion that the decisions involved sex discrimination. The State party refers in that regard to the jurisprudence of the Human Rights Committee explaining the purpose of the exhaustion of domestic remedies¹. The State party further notes that such an allegation would be relevant for consideration by the Home Office when considering the author's case and, in due course, could therefore form part of the arguments in support of an application for permission to apply to the High Court for judicial review. While recognizing that it might not have been necessary for the author to have referred specifically to any specific articles before the national authorities, the State party maintains that the author has to raise the relevant substantive right(s) in the Convention for an application to be admissible.

4.3 The State party also contends that the communication is inadmissible on the basis that the same matter has already been examined under another procedure of international investigation or settlement pursuant to article 4, paragraph 2 (a) of the Optional Protocol, i.e. the European Court of Human Rights. The State party submits that individual proceedings before the European Convention on Human Rights constitute proceedings of international investigation or settlement². It further refers to the concept of "same matter"³ and maintains that the same author has brought an identical complaint to the European Court of Human Rights⁴, which was given an application number 116/05. The application was dismissed as inadmissible by the

¹ The State party refers to paragraph 8.3 of the Human Right Committee communication 222/78 T.K. v France (CCPR/C/37/D/222/1987).

² The State party refers to Joseph, Schultz and Castan's *The International Covenant on Civil and Political Rights – Cases, Materials and Commentary* (2nd edition, 2004) para 5.06.

³ The State party refers to the jurisprudence on the notion of "same matter" of the Human Rights Committee, communications 75/80 *Fanaly v Italy* (CCPR/C/18/D/75/1980) para. 7.2 and 168/84 *V.O. v Norway* (CCPR/C/25/D/168/1984) para. 4.4. It also refers to the Human Rights Committee communications 993/2001, 994/2001 and 995/2001, para. 6.4.

⁴ The State party adds "even if perhaps slightly more focused in relation to the provisions of the European Convention on Human Rights which were alleged to have been violated".

European Court of Human Rights on the basis that it “did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols”. Therefore, the State party contends that present communication is inadmissible in accordance with article 4, paragraph 2 (a) of the Optional Protocol.

4.4 The State party further submits that the present communication is both not sufficiently substantiated and manifestly ill-founded. The communication is allegedly not sufficiently substantiated as it is based on the same facts as the asylum claim considered and rejected by the national authorities; and does not explain the legal basis on which the author could claim a breach of the Convention by the State party in the way its national authorities treated her asylum and human rights case or in the way the author (and their children) are being treated while residing in the United Kingdom on a temporary basis. The author does not make any assertion that the State party is responsible for any breaches of the author’s Convention rights that may or may not have occurred in her country of origin, which is a State party to the Convention. The author has not identified the Convention provision she is relying on in her communication or before the national authorities and European Court of Human Right and both have considered and rejected her assertion that her removal to Pakistan creates “substantial grounds for believing that there is a real risk” of a violation of her right not to be tortured or subjected to inhuman or degrading treatment or punishment. In addition, the author has produced no new facts or arguments to refute this assessment.

4.5 For the reasons set out above, the State party submits that the communication is inadmissible under article 4(1) and/or article 4(2) of the Optional Protocol.

The author’s comments on the State party’s observations on admissibility

5.1 By her submission of 25 July 2006, the author reiterates the following contention : that she and her two children were victims of brutalities by her husband; that after the family court ruled in her favour for divorce, her ex-husband attempted to kill her and to snatch the children from her; that she had no adequate protection from the Pakistani authorities; and that as a consequence, she had no other option but to save herself and her children by leaving her relatives and her country to seek refuge in the United Kingdom. She claims she is now living free from fear and only wants the best future and education for her children.

5.2 The author claims that on 31 July 2004 she was refused permission from the Immigration Appeal Tribunal to appeal the decision of the Adjudicator. She also claims that she challenged the decision of the Immigration Appeal Tribunal by applying for Statutory Review but that the High Court dismissed it on 14 October 2004. Furthermore, she contends that the High Court decision indicated that the decision was final and that no appeal was possible. The author nevertheless applied on 7 December 2005 for judicial review to the Civil Appeal Office of the Royal Court but her application was rejected on 9 December 2005. The author further claims she had exhausted all remedies in relation to her application

for reconsideration of her case on humanitarian grounds. She also argues that she has availed herself of two extraordinary remedies, namely two letters she sent to the Prime Minister and Her Majesty the Queen respectively, asking for a grant of discretionary leave on humanitarian grounds.

5.3 The author acknowledges that she applied to the European Court of Human Rights under article 3 (prohibition of torture) and article 8 (right to respect for private and family life) but maintains that her application was dismissed because at the time, she had informed the Court that she was awaiting the decision from the Home Office on her application for “discretionary leave” or “temporary protection”. She also maintains that her complaint is not the same matter that has been examined under the European Court of Human Rights.

5.4 The author submitted a copy of the decision of the European Court of Human Rights which reads: “In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols”.

5.5 The author submits that her communication is sufficiently substantiated and not ill-founded.

Additional comments of the State party on admissibility

6. By its submission of 11 September 2006, the State party stated that it did not intend to submit further comments on the author’s submission.

Issues and proceedings before the Committee concerning admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol.

7.2 In accordance with rule 66 of its rules of procedure, the Committee may decide to consider the question of admissibility and merits of a communication separately.

7.3 The Committee considers that the communication submitted by the author raise the issue of the situation in which women who have fled their country because of fear of domestic violence often find themselves. It recalls that in its General Recommendation No. 19 on violence against women, the Committee states that the definition of discrimination against women in article 1 of the Convention includes gender-based violence, i.e. violence that is directed against a woman because she is a woman or that affects women disproportionately. It notes the State party’s challenge to the admissibility of the author’s claim under article 4, paragraph 1, of the Optional Protocol because the author did not avail herself of the possibility of seeking permission to apply for a judicial review by the High Court of the refusal to grant her discretionary leave to remain in the country on humanitarian grounds. In this regard, the Committee notes that the State party

is of the view that the granting of permission to the author to apply for a judicial review is uncertain. It further notes the State party's contention that no allegation of sex discrimination has ever been formulated by the author and, as a consequence, the domestic authorities and/or courts have not yet had an opportunity to deal with such an assertion, which, in the opinion of the Committee, needs to be considered in the light of the State party's obligations under the Convention. As a consequence, and in the light of the State party's view that an allegation of sex discrimination would be relevant for consideration by the Home Office when again considering the author's case and, in due course, could form part of the arguments in support of an application for permission to apply to the High Court for a judicial review, the Committee finds that the author should avail herself of this remedy. For this reason, the Committee on the Elimination of Discrimination against Women finds the present communication inadmissible under article 4, paragraph 1, of the Optional Protocol.

7.4 The Committee sees no reason to find the communication inadmissible on any other grounds.

7.5 The Committee therefore decides:

- (a) That the communication is inadmissible under article 4, paragraph 1, of the Optional Protocol on the basis that all available domestic remedies have not yet been exhausted;
 - (b) That this decision shall be communicated to the State party and to the author.
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