



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

Distr.: General  
3 April 2020

Original: English

## Committee on the Elimination of Discrimination against Women

### Decision adopted by the Committee under article 4 (1) and (2) (c) of the Optional Protocol, concerning communication No. 117/2017<sup>\*,\*\*</sup>

*Communication submitted by:* G.M.N.F.  
*Alleged victims:* The author, her daughter and her mother  
*State party:* Netherlands  
*Date of communication:* 12 April 2017 (initial submission)  
*References:* Transmitted to the State party on 1 May 2017  
*Date of adoption of decision:* 17 February 2020

\* Adopted by the Committee at its seventy-fifth session (10–28 February 2020).

\*\* 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, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Aruna Devi Narain, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Franceline Toé-Bouda and Aicha Vall Verges.



**Background**

1.1 The author is G.M.N.F., a national of the Netherlands, born in 1964. She submits the present communication on behalf of herself, her daughter, J.J.F.-H., a national of the Netherlands and the United States of America, born in 2004, and her mother, A.M.F.-A., a national of the Netherlands, born in 1933. The author claims that the Netherlands has breached articles 1, 2 (a)–(d), 6, 9 (1) and (2), 15 (1), (2) and (4) and 16 (c), (d) and (g) of the Convention. The Convention and the Optional Protocol thereto entered into force for the Netherlands on 22 August 1991 and 22 August 2002, respectively.

1.2 On 1 May 2017, the Committee, acting through its Working Group on Communications under the Optional Protocol, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, requested the State party, through the coordination between the Central Authorities of the Convention on the Civil Aspects of International Child Abduction of the Netherlands and of the United States, and through all relevant consular intervention: (a) to ascertain the exact whereabouts of the author's daughter in the United States; (b) to ensure the security and safety of the author's daughter; and (c) to ensure access of the author to her daughter and their effective and regular communication, pending the examination of the present communication by the Committee.

1.3 On 16 October 2017, the Committee, acting through its Working Group on Communications under the Optional Protocol, decided, under rule 66 of its rules of procedure, to examine the admissibility of the communication together with its merits, and to maintain its request for interim measures.

**Facts as submitted by the author**

2.1 From 1988, the author worked as a college professor in the United States, before returning to the Netherlands in 2012. In 1997, she met H., who was being treated at a drug treatment centre at which she was volunteering. They married in 2001. Their daughter, J.J.F.-H., was born in 2004 in the United States. In 2005, the marriage fell apart, *inter alia*, because H. relapsed into his heroin addiction. A California court awarded primary custody of J.J.F.-H. to the author and awarded visitation rights to H.

2.2 In 2008, J.J.F.-H. returned from a stay at H.'s residence with marked changes in her behaviour, including sudden bedwetting, extreme tantrums and self-mutilation. In 2009, H. admitted to the Nevada County Superior Court that he had relapsed into drug addiction. On 21 June 2010, the Court increased H.'s custody from 20 per cent to 50 per cent and ordered unsupervised visits for 10 weeks of the year. The Court also ordered H. to be regularly tested for drugs, but H. did not comply. The author affirms having no financial means to appeal against the visitation arrangement. The Court had threatened that she would lose custody if she did not comply with the visitation arrangement.

2.3 On 5 September 2012, the author's mother had an emergency in the Netherlands. With H.'s consent, she travelled there with J.J.F.-H. While in the Netherlands, J.J.F.-H. broke down and disclosed that H. had been molesting her during the visits. She stated that, *inter alia*, he had offered white powder to her, he had taken her on drug runs and he regularly locked her in a closet. He had told her that, if she disclosed this to anyone, he would withhold food from her. The author immediately notified the authorities in the Netherlands, which referred the author and her daughter to the Dutch Forensic Outpatient Clinic for Child Abuse and to the State children's mental health institute, GGNet Jeugd, for treatment. Following verbal, non-verbal and neurological testing by child mental health experts and medical doctors, it was concluded that J.J.F.-H. had been the victim of molestation, abuse and neglect and had memory issues

due to possible substance abuse. She was diagnosed with a dissociative identity disorder and suicidal and homicidal ideations, stemming from the disturbed relationship with her father. One of the doctors ordered an immediate halt to the contact via video calls between J.J.F.-H. and H.

2.4 H. denied the allegations and initiated judicial proceedings before the District Court of The Hague, requesting J.J.F.-H.'s return to the United States. Invoking article 13 (b) of the Convention on the Civil Aspects of International Child Abduction, the author argued that J.J.F.-H. could not return. In support, she submitted five reports finding abuse, molestation, neglect and possible drugging of J.J.F.-H. by H., evidence of H.'s admission of his drug addiction and evidence of her own financial situation. J.J.F.-H. testified in court that H. had abused her and that she did not wish to have any contact with him.

2.5 On 25 July 2013, the District Court of The Hague ordered the return of J.J.F.-H. by 9 August 2013. The Court noted that, under the Convention, it was obliged to decide whether J.J.F.-H. should return to the United States, not whether she should be returned to her father. The Court noted that the author could live in the United States and request a different parenting plan. It rejected her argument that J.J.F.-H. would not be able to undergo psychological treatment in the United States, given that she had undergone such treatment there for a long time and her father had committed to making financial contributions in this regard.

2.6 Following the judgment, J.J.F.-H. stopped eating and was hospitalized. On appeal, the author submitted a report by a child psychiatrist dated 7 August 2013, which concluded that her daughter was suicidal and homicidal. J.J.F.-H. reiterated under oath that H. had abused her.

2.7 The Court of Appeal of The Hague rejected the author's appeal on 4 September 2013 and ordered J.J.F.-H.'s return within 72 hours. It concurred with the District Court that the author had insufficiently justified that J.J.F.-H. would be exposed to physical or psychological harm. It recalled that the author had lived in the United States since 1990, that she was still employed by an American employer and that, even though her job contract would eventually conclude, this was not the case at that point in time. Furthermore, the Court asserted that, because the author was an artist and sold her work, it did not appear that she had more or better employment opportunities in the Netherlands than she had in the United States. The Court therefore rejected the argument that the author herself would be brought into an intolerable situation upon return with her daughter. The Court moreover considered that it would be up to the courts in the United States to decide on the author's submissions concerning the parenting plan. It noted that it did not appear that the author's allegations of sexual abuse by H. and his drug addiction were well-founded. The Court acknowledged that J.J.F.-H. greatly resisted her return to the United States, because she did not feel safe with H. The Court noted that her testimony did not reveal a reason to refuse a return order; when asked why she did not feel safe with H., she pointed to a single incident that had occurred several years ago, stating that she did not remember the circumstances or precise facts. Otherwise, she refused to talk about anything other than that she was not being listened to and that she was unwilling to return. The Court found that it did not appear that J.J.F.-H. had yet reached a level of maturity that would justify her opinion being taken into account.

2.8 Before the expiry of the 72-hour period, H. had the police search for J.J.F.-H., without a warrant, including at the house of A.M.F.-A., who suffered a heart condition, post-traumatic stress disorder and a severe anxiety disorder as a result. A.M.F.-A. notified the author of the police search, while the author was on her way to the airport with J.J.F.-H. Considering that H. was likely to have reported the author as a child abductor in the United States, which he later confirmed to have done;

crossing the border with J.J.F.-H. would have led to nine years' imprisonment; the author's permanent residence card for the United States had expired; and GGNet Jeugd had diagnosed J.J.F.-H. with a dissociative identity disorder and suicidal and homicidal ideations; the author "made the excruciating, gut-wrenching and panicked decision" to drive J.J.F.-H. to a third country. While abroad, the author's resources ran out in a few weeks and, as a result, she returned to the Netherlands with J.J.F.-H.

2.9 On 22 April 2014, while the author was taking J.J.F.-H. to school, an armed Special Weapons and Tactics (SWAT) team of six police officers and four Child Protection Board officers forced J.J.F.-H. into a car. She vomited on the way to the airport, where she was handed over to H. From there, they flew to the United States. The author was handcuffed and detained at a police station and was not allowed to call her lawyer.

2.10 Following the deportation, when confronted by members of the parliament, the Minister of Justice and Security indicated that the answers to most of the questions were classified, but explained that the Netherlands had its own policy superseding the Convention on the Civil Aspects of International Child Abduction, which he referred to as "First return the child, then talk". However, the authorities in the Netherlands failed to provide protection, given that, upon arrival in the United States, J.J.F.-H. should have been removed from H.

2.11 The author raised a complaint with the Child Protection Board, claiming that J.J.F.-H.'s interests were insufficiently considered when she was returned to the United States. The Board found the author's claim to be unfounded. She then lodged a complaint with the Office of the Ombudsman for Children,<sup>1</sup> and the Office explained that its conclusions would concern only the manner in which the return was carried out in the Netherlands and would not lead to J.J.F.-H.'s return from the United States.

2.12 H. kept J.J.F.-H. hostage at an undisclosed location in California, demanding money and physically threatening the author through hired criminals at her house in the Netherlands, blocking her contact with her daughter between 9 May 2015 and 22 November 2016.

2.13 The author appealed to the Marin County Superior Court, in California, including an order to show cause against H. for not adhering to the visitation order. The doctor of H. thereupon revealed that he had a neuro-oncological condition and that J.J.F.-H. was in fact being cared for by nine different people.

### **Complaint**

3.1 The author claims that the courts in the Netherlands, the Child Protection Board and the Central Authority dismissed her daughter's reports of child molestation and abuse. They ignored J.J.F.-H.'s statement regarding H.'s drug addiction and criminal activities, as well as H.'s admissions thereto. H. was clearly unfit as a father, but the courts and the Child Protection Board favoured his wishes, and therefore rendered unequal, gender-biased decisions. They excluded J.J.F.-H. and the author, because they are female, in breach of article 1 of the Convention. The courts and the Board denied the author's and A.M.F.-A.'s rights, as a mother and a grandmother, respectively, to enable J.J.F.-H. to exercise her own rights. Those facts, as well as the author's groundless detention with no contact with a lawyer having been allowed, amount to a violation of article 16 (c), (d) and (g) of the Convention.

3.2 The courts in the Netherlands and the Central Authority failed to offer J.J.F.-H. and the author effective protection and appropriate measures against discrimination

---

<sup>1</sup> Regarding the replies by the Office of the Ombudsman for Children, see paragraphs 4.9 and 8 below.

and to protect the author's maternity. The Child Protection Board acted as an extension of the prosecutor in brutally deporting J.J.F.-H. The courts, the Central Authority, the Board and the public prosecutor thereby failed to consider J.J.F.-H.'s best interests as a child, violating article 2 (a), (b), (c) and (d) of the Convention.

3.3 The courts in the Netherlands and the Child Protection Board furthermore failed to acknowledge clear evidence of child trafficking and child sexual exploitation, in breach of article 6 of the Convention.

3.4 By demanding that the author leave the Netherlands, the courts in the Netherlands attempted to render the author stateless. The courts and the Child Protection Board restricted the author's and J.J.F.-H.'s freedom of movement and to choose their residence and domicile, in violation of article 15 (1), (2) and (4) of the Convention. The courts also denied their equal rights by forcing the nationality of H. upon them, violating article 9 (1) and (2) of the Convention.

3.5 In addition, given that the author was denied the right to file summary proceedings against the deportation, she and J.J.F.-H. were denied their equal rights on the basis of an unequal, gender-biased action on the part of the authorities. This amounted to a denial of J.J.F.-H.'s right to be protected, in breach of article 9 (2) of the Convention. It also restricted her freedom to live free from domestic violence, in breach of article 15 (1), (2) and (4) of the Convention.<sup>2</sup>

3.6 The author invites the Committee to request the State party to provide immediate protection to J.J.F.-H. from further ill-treatment, trauma, threats and violence by H. and to ensure her return. She also requests financial compensation for the material and moral losses suffered.

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

4.1 By a note verbale dated 30 June 2017, the State party submitted its observations on the admissibility of the communication.

4.2 The State party recalls that the author travelled to the Netherlands with J.J.F.-H. on 5 September 2012. At H.'s request, the Central Authority of the United States transmitted, on 19 March 2013, an application to the Central Authority of the Netherlands for J.J.F.-H.'s return. On 3 April 2013, the Central Authority of the Netherlands notified the author thereof. The author responded that she wished to enter into mediation with H., but the mediation did not succeed. On 13 June 2013, the District Court of The Hague granted the father's application for the return of J.J.F.-H. on 25 July 2013. The decision was upheld on appeal on 4 September 2013.

4.3 Under the applicable protocol on cooperation in the enforcement of return decisions in international child abduction cases, the public prosecutor decided, at the request of the father's lawyer, to arrange for the immediate return of J.J.F.-H. The author could have challenged this decision through interim injunction proceedings, but she did not. On 22 April 2014, J.J.F.-H. was handed over to H. at Schiphol Airport. Because of the author's vehement resistance to the return of her daughter and the nature of her statements, J.J.F.-H. was unable to say goodbye to her mother. J.J.F.-H. calmed down on the way to the airport and responded well to her father. H. subsequently confirmed their safe arrival in the United States.

4.4 The author subsequently contacted the Embassy of the Netherlands in Washington, D.C., and the Consular Affairs Division of the Ministry of Foreign

<sup>2</sup> The author also alleges violations of the Convention on the Civil Aspects of International Child Abduction and of its Guide of Good Practice, claiming that the Child Protection Board had the authority to protect J.J.F.-H.'s best interests as a child but instead acted as an extension of the public prosecutor, favouring the father's wishes over the human rights of J.J.F.-H. and the author.

Affairs of the Netherlands contacted her. The Division also informed the Embassy and the Consulate General in San Francisco, California, about the case. On 30 April 2014, the Embassy informed the author that the courts in the United States had jurisdiction over custody issues regarding J.J.F.-H. because her habitual residence was in the United States. Her father was granted sole custody. The author was granted access to her daughter. On 2 May 2014, the Consular Affairs Division informed the author that custody proceedings had to be conducted in the United States and that she could apply for an international access arrangement under the Convention on the Civil Aspects of International Child Abduction. She was also referred to the International Child Abduction Centre in the Netherlands.

4.5 On 6 June 2014, at the request of GGNet Jeugd, the Central Authority of the Netherlands sent a child welfare alert to Child Protective Services in Marin County. The Central Authority requested Child Protective Services to cooperate in the spirit of the Convention on the Civil Aspects of International Child Abduction. It replied that it had already launched an investigation and was willing to reinvestigate the matter. On 11 September 2014, Child Protective Services informed the Central Authority that there were no concerns about J.J.F.-H. and closed the file. In February 2015, following its correspondence with the author, the Child Protection Board in the Netherlands submitted questions to Child Protective Services concerning J.J.F.-H.'s welfare and her contact with the author. Its answers were transmitted to the author. The Central Authority of the Netherlands submitted questions to Child Protective Services in September 2015, but it replied that it could not provide confidential information.

4.6 In the meantime, the author had intensive contact with the Central Authority of the Netherlands and the Consular Affairs Division of the Ministry of Foreign Affairs of the Netherlands, fearing that her daughter was missing. The Ministry advised her to contact the police department in Marin County, provided her with the contact details of Marin County Children and Family Services, informed her that she could conduct custody and access proceedings in the United States and referred her to the appropriate authorities and to the International Social Service in the Netherlands. In January 2017, the Consulate General of the Netherlands in San Francisco contacted Marin County Children and Family Services in response to the author's concerns. Marin County Children and Family Services did not see any reason to take action. In February 2017, the Consular Affairs Division reiterated to the author that the courts in the United States had jurisdiction to act. She was also informed that she could file a child welfare alert herself. The State party understands that the author has had supervised contact via video calls with J.J.F.-H., is aware of her place of residence and had initiated proceedings against the father in the United States for not complying with the visitation order. On 14 April 2017, the author provided the Consular Affairs Division with a report of the court hearing and requested its intervention. The Consular Affairs Division and the Consulate General deliberated extensively on how access to J.J.F.-H. could be arranged in order to ascertain her situation.

4.7 On 1 May 2017, the author informed the Consular Affairs Division that H. had died. The following day, she notified the Division of a hearing planned for 4 May 2017 in the United States, following a request from J.J.F.-H. and her paternal uncle to grant him guardianship. The Consular Affairs Division informed the author on 3 May 2017 that the authorities in the Netherlands were unable to intervene. On 7 May 2017, the author notified the Division that the uncle had been granted provisional guardianship.

4.8 On 23 May 2017, the author applied to the Central Authority of the Netherlands for the return of J.J.F.-H. On 31 May 2017, it was decided that the application could not be processed. The author did not file an appeal against this decision.

4.9 By a letter dated 22 March 2016, the Office of the Ombudsman for Children informed the Ministry of Justice and Security about the author's complaint concerning the actions of the Child Protection Board in preparing and executing the forced return of J.J.F.-H. The author's complaint in this regard had been declared unfounded. By a letter dated 14 June 2016, the Ministry of Justice and Security provided an extensive answer to the questions put to it by the Office of the Ombudsman for Children. On 17 February 2017, the Ministry sent a reply to the report of the Office of the Ombudsman for Children of 12 January 2017. The Ombudsman had not yet issued a report setting out her final decision.

4.10 The State party argues that the communication is inadmissible on several grounds. First, it is submitted partly on behalf of J.J.F.-H., without justifying the absence of her consent. Being a minor does not obviate the need for such consent. The communication should therefore be declared inadmissible under article 2 of the Optional Protocol insofar as it was submitted on J.J.F.-H.'s behalf.

4.11 Second, the outcome sought by the author, a restoration of her contact with J.J.F.-H. and her return to the Netherlands, falls outside of the jurisdiction of the State party. J.J.F.-H.'s residence is in the United States, and the courts in the United States can therefore take measures with regard to J.J.F.-H. It is not for the authorities in the Netherlands to intervene in judicial proceedings in the United States. The State party has provided the author with information on all remedies available to her in the United States but sees no evidence that the author has exhausted them. Given that the United States is not a party to the Optional Protocol to the Convention, the communication is inadmissible under article 3 of the Optional Protocol.

4.12 Third, the communication is manifestly ill-founded and therefore inadmissible under article 4 (2) (c) of the Optional Protocol. The communication does not involve discrimination based on sex. Had the author been male, there would have been no difference in the action taken.

4.13 The State party is of the view that the authorities in the Netherlands acted with the utmost care and in the best interests of the child. The Ministry of Foreign Affairs of the Netherlands acted within the limits of its powers as set out in the Vienna Convention on Consular Relations. The Child Protection Board and the Central Authority of the Netherlands also acted within the scope of their powers under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children and the Convention on the Civil Aspects of International Child Abduction.

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

5.1 On 14 August 2017, the author noted that the State party did not address all her claims (paras. 2.1–2.8). The State party does not address the extortion that occurred in the District Court or the Court of Appeal of The Hague or the various other discriminatory elements pointed out by her, nor does it address its "First return the child, then talk" policy.

5.2 Against the State party's contention that she did not avail herself of any remedies against the decision of the public prosecutor to arrange the return of J.J.F.-H. to the United States, the author claims that she was not notified that H. had requested the return of her daughter. Otherwise, she would have challenged the request.

5.3 The author claims that the State party does not address her claim that the Child Protection Board should have informed itself of the case by contacting her, her counsel, J.J.F.-H. and GGNet Jeugd. The Board has admitted that it did not inform itself on the case. It did not hold J.J.F.-H.'s best interests as a child as a paramount consideration. Had it done so, it would not have enforced her daughter's return.

5.4 The State party does not explain whether the return was executed in accordance with the protocol on cooperation in the enforcement of return decisions in international child abduction cases, given that SWAT officers brutally attacked the author and J.J.F.-H. The event was extremely intimidating and traumatizing. Witness statements contradict the State party's claim that the author resisted the return. J.J.F.-H. was forced to submit to the abuse of power by the authorities and had no other choice than to accept the situation. The State party also failed to address the author's unlawful arrest (see para. 2.9).

5.5 The author contests that Child Protective Services conducted an investigation: it performed a home visit. She also contests that the State party received a response from Child Protective Services, claiming that the reply was sent by H.'s counsel instead. The author is of the view that the State party never contacted Marin County Children and Family Services. The author filed a police report of child abduction after she had been informed that J.J.F.-H. was residing with unknown people. The author visited them on 2 August 2017, but they refused to grant her contact with her daughter and complained to the police that the author was a child abductor. The police were unwilling to process her missing child report. She contacted the Marin County Children and Family Services, but was advised that as a non-resident of the locality, they could not take action on her behalf.

5.6 The author disputes the State party's observation that J.J.F.-H. was not subjected to child abduction as defined in the Convention on the Civil Aspects of International Child Abduction. She argues that she has received full parental custody, in the United States and the Netherlands, upon the death of H.<sup>3</sup> Because the State party refused to provide assistance, she filed a "complaint for return of child" in the United States. She was obliged to study United States law and had no time to avail herself of remedies against the decision not to process her application to the Central Authority of the Netherlands.

5.7 The author observes that the State party does not mention A.M.F.-A. in its observations, even though, in her mid-80s, she has had to witness the excruciating suffering of her daughter and granddaughter.

5.8 Against the State party's argument on the lack of consent from J.J.F.-H. to act on her behalf, the author observes that she only had supervised contact via video calls with J.J.F.-H. from 22 November 2016 to 8 May 2017 and that, according to the supervised visitation rules of the Marin County Superior Court, no mention could be made of any legal matters during those calls. On 7 August 2017, the Marin County Probate Court appointed J.J.F.-H.'s paternal uncle and E., a woman with whom J.J.F.-H. lived following H.'s death, as her joint guardians, ordering that contact could be initiated only by J.J.F.-H.

5.9 On the matter of absence of jurisdiction of courts in the Netherlands in the light of the J.J.F.-H.'s residence in the United States, the author argues that J.J.F.-H. is Dutch and the state of California cannot retain a Dutch citizen when her sole parent, with custody, lives in the Netherlands.

5.10 As for the State party's contention that she has not exhausted remedies in the United States, the author notes that her communication pertains to the Netherlands. She claims to have exhausted all remedies there.

---

<sup>3</sup> The author refers to the legal opinion of a Dutch lawyer dated 13 May 2017, in which he concludes that, under Dutch law, the author became the sole parental authority upon the death of H. The author does not mention that, on 26 May 2017, that is, before submitting her comments, the same lawyer (in an email later provided by the State party) had retracted his opinion because the author had neglected to inform him that H. had been awarded sole custody in the United States.



5.11 Concerning the State party's argument that the communication does not point to discrimination based on sex, the author claims that she knows of no fathers – but, to the contrary, of countless mothers – who have suffered similar cruelty at the hands of the State party regarding their Dutch children held in the United States. The State party egregiously interfered with her rights as a mother to the benefit of the American father of her child.

5.12 The author disputes the State party's claim that she requested the authorities in the Netherlands to intervene in the guardianship proceedings in the United States. She instead requested that they claim jurisdiction over J.J.F.-H. while a custody vacuum existed, following the death of H., upon which the author came to have sole legal custody under the law of both States. The State party therefore wrongly invoked the argument of J.J.F.-H.'s habitual residence. The law in the United States would have allowed such an intervention by the authorities of the Netherlands. However, the latter ignored all of the author's requests, and J.J.F.-H.'s paternal uncle was awarded temporary guardianship. However, he abandoned her with E., who subjected her to child abuse by making her extremely frightened of the author. She requests the State party to provide her with a pro bono lawyer in the United States for her case before the federal court.

#### **State party's observations on the merits**

6.1 By a note verbale dated 16 February 2018, the State party submitted its observations on the merits. It notes first that the courts in the United States had awarded sole custody to H. The lawyer who drafted a legal opinion confirming the author's claim to have sole custody following H.'s death was unaware of that decision when he rendered his opinion, which he retracted for that reason on 26 May 2017. The State party considers that J.J.F.-H. is not living with her uncle and E. unlawfully, given that they were awarded joint guardianship by a court.

6.2 The State party recalls that the request to return J.J.F.-H. to the United States was made under the Convention on the Civil Aspects of International Child Abduction, which forms the applicable legal framework, together with the International Child Abduction Implementation Act. Article 1 of the Convention provides that the prompt return of children wrongfully removed to or retained in a contracting State is considered to be in their best interests. The Court of Appeal of The Hague is the highest court competent to decide on cases relating to the Convention; cassation is only possible in the interest of the uniform application of the law. If an abducting parent refuses to cooperate with the return, the other parent can set in motion the protocol on cooperation in the enforcement of return decisions in international child abduction cases through the public prosecutor responsible for enforcing the order, together with the Child Protection Board and the police.

6.3 Against the author's contention that no remedy was available to her to contest the return, the State party notes that the author could have, but did not, challenge the public prosecutor's decision to enforce the return. Alternatively, she could have accompanied her daughter to the United States, but she did so only on 2 August 2017. The State party has no evidence of the correctness of the author's claim that she would have been arrested in the United States.

6.4 The State party emphasizes that the Convention on the Elimination of All Forms of Discrimination against Women is aimed at the elimination of all forms of discrimination against women and that the communication does not involve discrimination based on sex. The State party reiterates that there would have been no difference in the actions taken had the author been male. The author insufficiently substantiates her claims under the articles that she invokes.

6.5 The courts in the Netherlands ruled in line with the applicable national and international law and concluded that the author was wrongfully retaining J.J.F.-H. in the Netherlands. With respect to the author's claim that the forced return was executed in an inappropriate manner, the State party submits that the return had to be enforced, given the author's unwillingness to cooperate. Although the return was emotionally fraught for the author, it was carried out with due care and in the best interests of the child. The State party notes that forced return proceedings are rare in the Netherlands and that the outcome of each procedure depends to a large extent on the parents' attitudes.

6.6 As to the authorities' alleged insufficient efforts to ensure J.J.F.-H.'s safety in the United States, the State party notes that decisions concerning custody and arrangements relating to the child are taken by the courts in the child's country of habitual residence. The authorities in the Netherlands continued to advise the author and provide her with information on how she could defend her interests concerning J.J.F.-H. in the courts in the United States after J.J.F.-H.'s return there. They went beyond their statutory obligation in always taking the greatest care to respond to the author's extensive correspondence.

6.7 The State party reiterates that the communication should be declared inadmissible under articles 2 and 4 (2) (c) of the Optional Protocol and that its conduct has in no way whatsoever led to a violation of the Convention.

#### **Author's comments on the State party's observations on the merits**

7.1 On 7 May 2018, the author submitted comments in which she objected to the fact that the State party had disregarded her response to the lawyer who had rendered a legal opinion on custody. In that response, the author explained that no court in the United States had ever decided on custody of J.J.F.-H. The author claims to have been under duress in 2014, when she agreed in the judicially supervised settlement to allow H. to hold sole custody. The State party neglected to claim jurisdiction over J.J.F.-H. upon the death of H. The author had appealed before the Court of Appeal, First Appellate District, in California against the guardianship ruling pending at the time of the submission of her comments. She denies the State party's allusion to a possibility of cassation. She claims that the Child Protection Board never looked at the conclusions of GGNet Jeugd, from which they would have ascertained that H. was a drug addict who was confirmed to have abused J.J.F.-H. The author contests the State party's claim that J.J.F.-H.'s habitual residence was in the United States and notes that she was registered as a Dutch resident from September 2012 until April 2014.

7.2 The author observes that E. has cut off all contact between her and her daughter, since 8 May 2017. The State party has failed to acknowledge that J.J.F.-H. was shuffled between the homes of nine different individuals, including unknown men, for months. Judging from previous contact with J.J.F.-H., she continues to suffer from psychological and/or psychiatric disorders and/or traumas. No information is available regarding J.J.F.-H. from the State party or from anyone else. Her posts on her social media accounts suggest that she is using drugs and is severely depressed.

7.3 Against the State party's claim that she did not challenge the public prosecutor's decision to enforce J.J.F.-H.'s return, the author notes that the prosecutor had neither informed either her or her lawyer of H.'s request to enforce the return order, nor of the prosecutor's decision thereon.

7.4 The author admits that there was no evidence for her claim that she would have been arrested in the United States, but no evidence to the contrary exists either. Given that she is a victim of domestic violence at the hands of H., whose criminal cohorts

threatened her in the Netherlands, she did not attempt to enter the United States until after H.'s death.

7.5 The author submits that the State party's arguments are based on misstatements of facts and of documentation and a misunderstanding of the author's arguments. The State party did not ensure her well-being and did not assist in the return of her daughter. Defending her rights with no legal or State party's assistance has become a full-time occupation for the author, which continues to retraumatize her. The State party must provide her with a lawyer in the United States.

#### **State party's additional submissions**

8. By a note verbale dated 4 July 2018, the State party submitted a copy of the final report of the Office of the Ombudsman for Children of 13 June 2018, in which it had assessed the author's case. The Ombudsman concluded that the author's complaint, assessed in the light of the Convention on the Rights of the Child, was unfounded.

#### **Issues and proceedings before the Committee**

9.1 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. 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.

9.2 The Committee notes the State party's claim that the communication is inadmissible because it was submitted on behalf of J.J.F.-H., without her consent. The Committee observes that, according to article 2 of the Optional Protocol, communications on behalf of other individuals must be submitted with their consent unless the author can justify acting without such consent. The Committee notes the author's claim that, between 22 November 2016 and 8 May 2017, she had only supervised contact with J.J.F.-H. and that, under the visitation rules, she was not allowed to make any reference to legal matters. Subsequently, the Marin County Superior Court ordered the author not to contact J.J.F.-H. These affirmations remained unrefuted by the State party. Accordingly, in the circumstances of the present case, the Committee considers that the absence of specific consent by J.J.F.-H. does not preclude it from examining the communication.

9.3 The Committee notes that the State party challenges the admissibility of the communication on the grounds that the outcome sought by the author, namely, a restoration of her contact with J.J.F.-H. and her return to the Netherlands, falls outside the jurisdiction of the courts in the Netherlands, given J.J.F.-H.'s residence in the United States. The Committee notes that the State party claims that it is not for the domestic courts to intervene in judicial proceedings in the United States and that the author should seek to obtain redress in the United States. The Committee observes that the author has lodged a communication against the State party, the substance of which concerns mainly the conduct and decisions of the authorities in the Netherlands. The Committee therefore considers that J.J.F.-H.'s residence in the United States does not preclude it from assessing whether all available domestic remedies were exhausted in the State party, as required under article 4 (1) of the Optional Protocol.

9.4 In this connection, the Committee notes that the author, in an email of 9 September 2015 addressed to the Ministry of Foreign Affairs of the Netherlands, claimed that the Convention on the Civil Aspects of International Child Abduction mostly affected women. However, the material on file does not show that the author has otherwise sought remedies before the courts in the Netherlands or other

authorities invoking the alleged discrimination against her based on sex. The Committee recalls its jurisprudence, according to which authors of communications under the Optional Protocol must have raised in substance at the domestic level the claim that they wish to bring before the Committee and to provide the domestic authorities and/or courts with an opportunity to address that claim.<sup>4</sup> The Committee notes that the author has not put forward arguments to substantiate that she should be absolved from exhausting domestic remedies or that the available remedies in the Netherlands would have been unduly prolonged or unable to bring her effective relief. The Committee recalls that mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting them.<sup>5</sup> In the light of the foregoing, and in the absence of any further information of pertinence on file, the Committee concludes that the present communication is inadmissible, under article 4 (1) of the Optional Protocol, for non-exhaustion of domestic remedies.

9.5 The Committee further notes that the State party challenges the admissibility of the communication as manifestly ill-founded under article 4 (2) (c) of the Optional Protocol. The State party submits, in particular, that the facts as submitted in the communication do not involve discrimination based on sex and that there would have been no difference in the action taken by the State party's authorities had the author been male.

9.6 The Committee observes that the author argues that she is aware only of mothers but not fathers, who, like her, have been disadvantaged in the treatment that they have received from the State party regarding their Dutch children held in the United States. The Committee further observes the author's claims that the State party's courts, the Child Protection Board and the Central Authority rendered unequal, gender-biased decisions, excluding her and her daughter on the basis that they are female. The author also claims that the courts and the Child Protection Board failed to acknowledge clear evidence of child trafficking and child sexual exploitation and to protect the author's maternity as well as her right and that of A.M.F.-A., as a mother and a grandmother, respectively, to enable J.J.F.-H. to exercise her own rights. The author further claims that the State party's courts and authorities denied her right to file summary proceedings, thereby violating her equal rights on the basis of an unequal, gender-biased action. She also claims that the Dutch courts and authorities attempted to render her stateless and to force the nationality of H. upon her and J.J.F.-H. and restricted their freedom of movement and right to live without being subjected to domestic violence.

9.7 The Committee recalls that article 1 of the Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". It also recalls that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case, unless it can be established that this evaluation was biased or based on harmful gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.<sup>6</sup> The Committee notes that the decisions and conduct of the State party's authorities were upheld on appeal and that the information on file does not show that the evaluations made by the authorities suffered from any such defects. It also notes that the author's claim that mothers are disproportionately affected by the State

<sup>4</sup> *Zheng v. Netherlands* (CEDAW/C/42/D/15/2007), para. 7.3.

<sup>5</sup> *Ibid.*

<sup>6</sup> *M.S. v. Philippines* (CEDAW/C/58/D/30/2011), para. 6.4.

party's application of the Convention on the Civil Aspects of International Child Abduction does not show that the decisions and conduct of the State party towards the author involved distinctions, exclusion or restrictions made on the basis of sex. Accordingly, and in the absence of any further information of pertinence on file, the Committee declares the communication inadmissible under article 4 (2) (c) of the Optional Protocol.

10. The Committee therefore decides that:

- (a) The communication is inadmissible under article 4 (1) and (2) (c) of the Optional Protocol;
  - (b) This decision shall be communicated to the State party and to the author.
-