



# 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 (1) of the Optional Protocol, concerning communication No. 111/2017<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	R.R. and M.R. (represented by counsel, Kevät Nousiainen, Merja Pentikäinen and Marjo Rantala)
<i>Alleged victims:</i>	M.M., K.M. and C.M. (deceased)
<i>State party:</i>	Finland
<i>Date of communication:</i>	23 December 2016 (initial submission)
<i>References:</i>	Transmitted to the State party on 26 January 2017 (not issued in document form)
<i>Date of adoption of views:</i>	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, Gunnar Bergby, Marion Bethel, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Rhoda Reddock, Wenyan Song, Franceline Toé-Bouda and Aicha Vall Verges.



**Background**

1. The authors<sup>1</sup> are R.R. and M.R., Finnish nationals. They submit their complaint on behalf of their daughter M.M., a Finnish national born in 1967, and her daughters K.M. and C.M., Finnish nationals born in 2003 and 2006, respectively, all deceased in 2011. They claim that Finland has violated the alleged victims' rights under articles 1, 2 (a)–(g), 3, 5 and 16 (1) of the Convention. The Convention and the Optional Protocol thereto entered into force for Finland on 4 October 1986 and 29 March 2001, respectively. The authors are represented by counsel, Kevät Nousiainen, Merja Pentikäinen and Marjo Rantala.

**Facts as submitted by the authors**

2.1 M.M. was subjected to violence by her husband, J.M., who also abused their daughters. He killed them all on 21 December 2011. At the time, the daughters were aged eight and five years.

2.2 M.M. had a diagnosis of Catch-22 syndrome (also known as DiGeorge syndrome). She met J.M. in a centre for persons with intellectual disabilities in Vantaa in the late 1990s and they got married. J.M. had cerebral palsy and received support from the municipal care services for persons with intellectual disabilities. He stopped receiving that care when his mother died in 1998. Both M.M. and J.M. received social support. The city of Vantaa provided rehabilitative employment to M.M. and she worked until she got pregnant in 2002.

2.3 After K.M.'s birth in 2003,<sup>2</sup> M.M. and J.M. were offered family assistance services, but J.M. declined them. Seven child welfare notifications were submitted between 2003 and 2011, with the last one being registered two months before K.M.'s death. They concerned lack of care, neglect of her daily needs, the incapacity of her parents to care for her and, ultimately, suspicion of sexual abuse perpetrated by her father. K.M. attended a municipal day-care centre and started school in 2009.

2.4 C.M. was born in 2006.<sup>3</sup> She was diagnosed with Catch-22 syndrome and was hospitalized for over a year after her birth owing to a sarcoma.<sup>4</sup> In August 2010, she began attending a special supported municipal day-care centre, against the will of her parents. From 15 June 2007 to 11 October 2011, five child welfare notifications concerning C.M. were submitted.

2.5 The child welfare authorities started no investigation into the family situation until autumn 2011, when M.M., helped by her mother, went to stay at a shelter with K.M. and C.M. The investigation revealed that staff at C.M.'s day-care centre had noticed that M.M., K.M. and C.M. were scared of J.M. and that she asked his permission for everything. Once, C.M. had a bruise on her cheek and, when asked, she explained that her father had hit her. While the staff were concerned about the situation in the family, they did not report it to either the child welfare authorities or the police. Staff also stated that when C.M. attended the day-care centre, they kept its doors locked out of fear of J.M.

2.6 Staff at the hospital treating C.M. also expressed concern to child welfare officials. The officials believed that J.M. controlled M.M. When they visited the family, J.M. was the one to talk and M.M. asked permission to speak. According to a

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<sup>1</sup> With regard to the authorship of the communication and the issue of legal standing, see also paras. 6.1, 7.1 and 8.2.

<sup>2</sup> Date not provided.

<sup>3</sup> Date not provided.

<sup>4</sup> Cancer of the supportive tissue.

psychologist, M.M. was not able to assess what was in her best interests and was dependent on her husband.

2.7 None of the observations of various officials over the years resulted in a police investigation or risk assessment of the situation for M.M., K.M. and C.M.

2.8 On 18 September 2011, M.M., K.M. and C.M. arrived at a shelter. A child welfare notification was submitted on the same day. M.M.'s mother called the Vantaa Social Emergency and Crisis Centre, claiming that K.M. had been sexually abused by her father. The Centre also submitted a child welfare notification. On 27 September 2011, the child welfare services made a request for a police investigation into the reported sexual abuse.

2.9 M.M. told the shelter personnel that she was afraid of J.M. After a few weeks at the shelter, M.M. became more independent and applied for a divorce.

2.10 In September 2011, the social services held their first meeting concerning the family. Two shelter employees, one child welfare official, M.M. and her parents, R.R. and M.R., concluded that J.M. should not have any telephone contact with his daughters in the light of the suspected sexual abuse. M.M. was informed that J.M. should not have any contact with the girls. On 5 October 2011, M.M. informed the police about the psychological violence that she had suffered for years and claimed that J.M. had touched her and their daughters inappropriately.

2.11 J.M. persisted in calling M.M. at the shelter, and the calls upset her. They met at least once in October 2011. The shelter personnel saw K.M. talking to J.M. on the telephone and crying on many occasions.

2.12 On 11 October 2011, the social services held a second meeting. The officials stated that M.M. was not able to guarantee her daughters' safety as J.M. controlled her. An emergency out-of-home placement for the girls was found. J.M.'s visitation rights were restricted. By the end of November 2011, M.M. wanted to withdraw her testimony against J.M. His visitation rights were reinstated, but the visits were monitored. The police investigation into the alleged sexual abuse did not proceed to the public prosecutor.

2.13 On 20 December 2011, two child welfare officials met M.M. and J.M. at their home. J.M.'s sister also participated in the meeting. The officials informed them that it had been decided that M.M. and J.M. could meet their daughters only with a third party present. J.M.'s sister was designated as the third party. The girls were to spend Christmas with J.M.'s sister and their parents could visit them there. J.M. was also informed that the child benefit payment normally paid to the parents would henceforth be paid to the reception home.

2.14 On 21 December 2011, the girls arrived at their parents' home at noon, accompanied by two child welfare officials, for a two-hour visit. J.M. and M.M. told the officials that they could escort the girls to the car as they were also going out. The officials went out but decided to wait and, after a while, one of them knocked, with no response. J.M. told her on the telephone to wait for a while. The officials heard a scream. At 3.01 p.m. the officials called the police; at 3.31 p.m. a police patrol arrived. The police found M.M., K.M. and C.M. stabbed to death in the bathroom, together with J.M., who had harmed himself.

2.15 On 20 July 2012, the Vantaa District Court convicted J.M., under reduced criminal responsibility, for the murder of M.M., K.M. and C.M. The judgment was not appealed. In May 2014, he was killed in prison by two inmates.

**The complaint**

3.1 The authors state that there were no applicable domestic remedies available in the case that could have effectively prevented the violations of the victims' rights and that, even if there had been remedies available, the victims could not have availed themselves of them on their own. From K.M.'s birth in 2003 to September 2011, when M.M. sought assistance at the shelter, a number of notifications were submitted to child welfare authorities. The authorities did not take M.M.'s vulnerable situation into consideration and did not provide her with the support services that she needed in order to act. They were mandated to initiate various protective measures but had failed to do so.

3.2 The authors claim that the victims were subjected to gender-based violence. They suffered abuse and violence, including physical, psychological and sexual harm, threats and coercion. The State party failed to offer them effective protection. The authorities had been aware of the difficult circumstances in which the family had lived for years. Over the years, the family had been in contact on numerous occasions with the municipal care services for persons with disabilities, the public health-care authorities, municipal social and child welfare officials and the staff at a public day-care centre. The personnel at these authorities had noticed the aggressive and controlling behaviour of J.M. It was, or should have been, evident that J.M. had used psychological and physical violence, and even allegedly sexual violence, against his wife and daughters. He was known to have threatened M.M. with killing their daughters. Despite that, the authorities provided no help, and no concrete or effective action was taken to protect them. The authorities did not pay attention to the particular vulnerability of the family and did not request a restraining order on J.M., which could have been imposed under the Act on Restraining Orders in order to protect M.M., K.M. and C.M. Their failure to act diligently culminated in December 2011 in the death of M.M., K.M. and C.M. These numerous omissions by the authorities amount to a violation of the victims' rights under articles 1–3 of the Convention. The authors also claim that the State party has not made the rights contained in the Convention effective through national legislation, in violation of article 2 of the Convention.

3.3 The authors claim that M.M.'s rights under article 16 (1) were violated as the authorities accepted that J.M. acted on behalf of M.M. in matters relating to the whole family. The authorities were aware of the strict control exercised by J.M. over his family. Nevertheless, they accepted his repeated refusals of assistance. M.M. was unable to enjoy her equal rights and responsibilities as a spouse and a parent. She was held responsible for not being able to protect her children from their father, and the children were taken into custody to the detriment of her parental rights.

3.4 The authors argue that the case demonstrates the State party's failure to act in accordance with article 5 of the Convention. The omissions by the authorities disclose problematic gender perceptions and a lack of understanding of gender-based violence. Such violence is seen as a social, welfare, health or domestic problem, rather than as a serious human rights issue concerning the lack of protection against violence perpetrated by private persons, and no comprehensive model has been adopted to address gender-based violence.

**State party's observations on admissibility**

4.1 In a note verbale dated 27 March 2017, the State party challenged the admissibility of the communication. As a preliminary objection, the State party observes that R.R. and M.R., according to a "letter of authorization" that they signed on 30 November 2016, authorized Kevät Nousiainen, Merja Pentikäinen and Marjo Rantala to submit an individual communication on their behalf to the Committee.

R.R. and M.R. are the biological parents of M.M. and the grandparents of K.M. and C.M. M.M. had not been appointed a public guardian. The State party observes that the Committee has not stated which individuals are to be considered as the authors of the communication.

4.2 As to the facts, on 21 December 2011, J.M. killed his wife, M.M., and his daughters, K.M. and C.M. On 30 May 2012, the public prosecutor charged J.M. with murder. On 20 July 2012, the District Court convicted J.M. of three counts of murder committed under reduced criminal responsibility and sentenced him to 14 years of imprisonment. J.M. was ordered to pay R.R., M.R. and P.R. (M.M.'s brother) 24,000 euros in monetary compensation for suffering and expenses incurred. J.M. died in prison in May 2014.

4.3 It remains questionable whether the communication constitutes a valid exercise of the right to petition under article 2 of the Optional Protocol. R.R. and M.R. were not the custodians or lawful representatives domestically of M.M., K.M. or C.M. Most of the alleged violations concern only M.M. and it is impossible to assess whether she would have consented to the submission of the communication.

4.4 Under rule 68 (2) and (3) of the Committee's rules of procedure, "in cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent" and "where an author seeks to submit a communication in accordance with paragraph 2 of the present rule, she or he shall provide written reasons justifying such action".<sup>5</sup> R.R. and M.R. have failed to explain the reasons for submitting a communication on behalf of M.M., K.M. and C.M. They did not initiate any proceedings concerning the substance of the communication before domestic authorities and courts following the final judgment of 20 July 2012 in the case against J.M. It was not until 30 November 2016, more than four years later, that they signed a "letter of authorization". The State party highlights the importance of reasonable procedural requirements, such as submitting communications as soon as possible. The Committee should declare the communication inadmissible for these reasons alone.

4.5 R.R. and M.R. are not themselves victims of any violation under the Convention. It seems, however, that they consider themselves authors in the communication. They took part, as injured parties, in the domestic proceedings, which ended on 20 July 2012, but did not appeal the District Court judgment to the Court of Appeal or the Supreme Court. Thus, the communication is incompatible *ratione personae* with the provisions of the Convention and is inadmissible.

4.6 Several new allegations have been brought before the Committee, yet the domestic remedies exhausted have not been specified in the communication. The State party notes that articles 1, 2 (a)–(g), 3, 5 and 16 (1) of the Convention are invoked in the communication, however, none of those provisions was ever invoked before the domestic courts. The communication thus should be declared inadmissible for non-exhaustion of domestic remedies.

4.7 M.M. had not initiated any proceedings concerning the substance of the communication or invoked any of the articles of the Convention before the domestic courts or other authorities. The European Court of Human Rights has noted that "the rule of exhaustion of domestic remedies ... obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the

<sup>5</sup> The European Court of Human Rights has, in cases where the alleged violation of the European Convention on Human Rights was not closely linked to the death or disappearance of the direct victim, generally declined to grant standing to any other person unless that person could, exceptionally, demonstrate an interest of their own. See *Nassau Verzekering Maatschappij N.V. v. Netherlands* (application No. 57602/09), decision of 4 October 2011, para. 20.

remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system”.<sup>6</sup> It is not the role of the Committee to function as a court of first instance. Following the events of 21 December 2011, no individual mentioned in the communication initiated any of the possibilities provided for under domestic legislation.

4.8 The State party affirms that “everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task shall have the right to request that the civil servant or other person in charge of a public task be sentenced to a punishment and that the public organization, official or other person in charge of a public task be held liable for damages, as provided by an Act”.<sup>7</sup> Furthermore, the State party explains in detail the role of the Ombudsman and the procedure before that institution.<sup>8</sup> It also states that a public official shall be sentenced for violation of official duty to a fine or to imprisonment for at most one year and for negligent violation of official duty to a warning or to a fine.<sup>9</sup> The State party submits that no report of an offence was filed against the social workers present on 21 December 2011, but they were interviewed as witnesses during the pre-trial investigation. It is also possible to lodge an administrative complaint<sup>10</sup> or a complaint concerning actions of the social and welfare authorities with the Regional State Administrative Agency.<sup>11</sup> Consequently, all the domestic remedies have not been exhausted as required under article 4 (1) of the Optional Protocol.

4.9 The State party recalls that R.R. and M.R. had access to court and that their claims for compensation were thoroughly considered by the District Court. They did not appeal to the Court of Appeal or the Supreme Court. Their demand for compensation before the Committee should be rejected on the grounds of non-exhaustion of domestic remedies.

4.10 The District Court noted in its judgment that it had been presented with a substantial account concerning the family before the tragic events of 21 December 2011, but that that account, which was drawn from many angles, was not directly connected to the events of 21 December. For instance, the Court did not consider the fact that, according to some of the witnesses, J.M. had responded negatively to all offers of outside help for the family or interference in the family’s affairs to be directly connected with the murders. The judgment was not appealed and thus became final. The matter has thus been resolved domestically.

4.11 As to the authors’ allegations related to gender-based violence and its consequences in general, and for M.M. in particular, and to the State party’s failure to identify cases of violence against women and domestic violence, the State party recalls that these allegations have not been invoked before the domestic courts and appear to be mainly of a general nature and not related to the facts concerning the individual case of M.M., K.M. and C.M. They are based only on the District Court judgment of 20 July 2012 and the pre-trial investigation report. The intention of the researchers (Kevät Nousiainen, Merja Pentikäinen and Marjo Rantala) to find a case and submit a communication to the Committee and thus the *actio popularis* nature of the communication are demonstrated by the meeting held on 1 December 2016 in

<sup>6</sup> See, for example, *Akdivar and others v. Turkey* (application No. 21893/93), judgment of 16 September 1996, para. 65.

<sup>7</sup> Constitution of Finland, chap. 10, sect. 118.

<sup>8</sup> Ibid., chap. 10, sect. 109; and Parliamentary Ombudsman Act (197/2002), sects. 2, 3, 8 and 11.

<sup>9</sup> Criminal Code (39/1889), as amended by Act 604/2002, chap. 40, sects. 9 and 10.

<sup>10</sup> Administrative Procedure Act (434/2003), part I, chap. 8a, sect. 53a.

<sup>11</sup> Local Government Act (410/2015), part I, chap. 3, sect. 10 (2); and Act on the National Institute for Health and Welfare (668/2008), sect. 2.

order to discuss the details of the communication and an article<sup>12</sup> related to the communication. The State party concludes that the communication is manifestly ill-founded within the meaning of article 4 (2) (c) of the Optional Protocol and should, therefore, be declared inadmissible under article 4 of the Optional Protocol.

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

5.1 In a note verbale dated 26 July 2017, the State party submitted its observations on the merits.

5.2 The State party argues that the purpose of the individual complaint mechanism cannot be that, many years after the death of the persons involved in the substance of the matter, any other persons, on the basis of the limited material to which they have access, may present allegations concerning the private lives of the deceased. The State party emphasizes again the *actio popularis* nature of the communication.

5.3 The State party reiterates that domestic remedies have not been exhausted as required under article 4 of the Optional Protocol and that the communication is inadmissible on those grounds, in addition to being manifestly ill-founded within the meaning of article 4 (2) (c) of the Optional Protocol.

5.4 As to the merits, the State party emphasizes that it does not accept any of the allegations presented in the communication.

5.5 The State party observes that certain official documents are subject to secrecy provisions.<sup>13</sup> The communication involves sensitive information concerning several individuals, which is to be kept secret for 50 years after the death of the person whom the relevant document concerns (information on social welfare clients, including the support measures and social welfare services received by them, as well as information on their health or disability status and the medical care or treatment received by them). For that reason, neither the researchers nor R.R. and M.R. had access to that information when submitting the communication, and it is the State party's understanding that they did not have the right to access it.

5.6 A petitioner or another person whose right, interest or obligation is concerned in a matter can have access, granted by the authority considering the matter, to documents that are not public, if they may influence the consideration of the matter. However, neither the researchers nor R.R. and M.R. have the status of a party because they have not used the available domestic legal remedies to address the substance of the communication. The State party's social welfare and health-care legislation also protects the private life of deceased individuals. The State party cannot grant the researchers or R.R. and M.R. access to the social welfare or health-care information concerning M.M., K.M. and C.M. The State party cannot take a position on the services or support measures received by them, on their health or disability status or on individual measures taken by the social welfare and health-care authorities because they remain confidential. Moreover, no domestic court has reviewed those measures. The District Court, on 20 July 2012, agreed to the request of the prosecutor and the injured parties that the trial documents be kept secret for 60 years as they involved information on the private life of the family and on health, disability or social welfare issues.

5.7 Despite the Court decisions on secrecy, in the context of the communication, the researchers took part in events of non-governmental organizations and gave interviews. They relied only on the pre-trial report and the judgment of the District

<sup>12</sup> Published in the October 2017 issue (9/2017) of a Finnish magazine called *Image*.

<sup>13</sup> In accordance with the Act on the Openness of Government Activities (621/1999), chap. 6, sect. 24, subsect. 1, para. 25.

Court, while the State party has had access to all documentation. The State party concludes that the researchers have based their allegations on limited documentation and that their interpretation has been biased.

5.8 The State party argues that the allegations presented in the communication are general, vague, unsubstantiated and do not reflect the specific circumstances of M.M., K.M. and C.M. The allegations are based on limited documentation and thus constitute mere assumptions. The allegations that M.M., K.M. and C.M. “were victims of gender-based violence against women, and that they suffered abuse and violence comprising physical, mental and sexual harm” are unsubstantiated.

5.9 The State party recalls that, prior to her death, M.M. did not initiate any proceedings concerning the substance of the communication or invoke any of the Convention’s provisions domestically. Neither the Convention nor the Optional Protocol includes provisions on monetary compensation, as requested by the authors. The State party explains that there is a comprehensive network of public legal aid offices to guarantee the right to counsel for persons with a low or medium income, paid partly or entirely from State funds.

5.10 By creating good practices among them, different authorities and organizations offer crime victims timely and appropriate assistance. For instance, cooperation between a victim’s legal counsel, social workers and the organization Victim Support Finland helps victims. The staff of public legal aid offices are provided with regular training and workshops on victim status and contact with victims, networking among local authorities and mediation.

5.11 If the victims of crime cannot manage their affairs independently, a guardian may be appointed to assist them, including in managing their financial and personal affairs. The victim or a relative can apply for the appointment of a guardian from a guardianship authority or a court. Anyone concerned about a victim’s situation can contact the guardianship authorities about that victim and her or his need for guardianship.

5.12 The State party elaborates on the measures to combat violence against women taken in the period 2008–2016. Under the Ministry of Social Affairs and Health, a cross-sectoral working group on the prevention of intimate partner violence and domestic violence prepared an action plan to reduce violence against women covering the period 2010–2015, containing nearly 70 measures and addressing separately violence against women with disabilities and women in a vulnerable position.

5.13 Legislation to prohibit violence against women extensively in all sectors of society was enacted, with particular attention paid to women with disabilities. The Act on the Status and Rights of Social Welfare Clients (812/2000) provides that, in providing social welfare services, the client’s wishes and opinion must be of primary concern in respect to his or her right to self-determination. Services provided to persons with disabilities are optional. In the present case, the authorities responsible for child welfare and care for persons with intellectual disabilities tried to provide support and help the family in many different ways, but M.M. and J.M. refused any support. The authorities considered that M.M. was legally competent to make decisions concerning herself and that her diagnosed intellectual disability did not limit her legal competence. In the shelter, M.M. was offered support and assistance so that she could live independently and care for her children. When she decided to return to J.M., she was advised on how to act in the event of any problems at home. J.M., too, was offered services to support him and the well-being of the whole family. The State party regrets that, for confidentiality reasons, information on the support and services cannot be revealed.



5.14 The Child Welfare Act is aimed at safeguarding the growth and development of children and supporting parents. It provides that, in all child welfare and social welfare activities, the interests of the child prevail and permits an emergency placement of a child without the consent of the parents or the child if the statutory criteria are fulfilled. Children may be taken into care if their health or development is seriously endangered, and if other measures cannot remedy the situation of the child, or if the measures are insufficient. An emergency placement is possible if the child is in immediate danger. The State party argues that, in the present case, it was appropriate and necessary to safeguard the well-being of the children. The authorities ensured the legal security of the parents by advising them and referring them to legal aid services.

5.15 With regard to the criminal investigation, the State party submits that, on 5 October 2011, the police recorded a criminal complaint concerning two incidents of sexual abuse of a child. M.M. was interviewed as a witness on two occasions, on 5 and 17 November 2011, and J.M. was questioned as a suspect on 11 November 2011. The parties and three witnesses were interviewed concerning the matter very soon after the investigation had been requested. Thus, the investigation was conducted within a reasonable time. The progress made in the investigation was decisively influenced by the fact that the complainants and their mother died on 21 December 2011. Contrary to the authors' allegations, the investigation record (No. 8060/R/34818/11) was referred to the prosecutor for the consideration of the charges together with the investigation record (No. 8060/R/44271/11) concerning the homicide of M.M., K.M. and C.M. on 21 December 2011.

5.16 The delay of 20 minutes between the telephone call to the police and the arrival of the patrol seems reasonable. The police had determined that the call was urgent and two police patrols were sent immediately.

5.17 Regarding a restraining order, the State party observes that the police, on the basis of the information available, did not have reasonable grounds for imposing such a temporary order on J.M., and, in any event, a restraining order would not have made a significant difference in practice because M.M. subsequently decided to return to J.M. The children, for their part, were staying in a shelter and were later placed by the child welfare authorities in a reception home.

5.18 The State party maintains that it is committed to implementing the Convention and that Finnish legislation conforms to its requirements. The Criminal Code specifically includes intimate partner violence. The fact that no restraining order was put in place in this case does not mean that the system of restraining orders does not protect any victims of violence.

5.19 The State party states that it has increased funding for assistance services provided to victims. The Act on Victim Charges (669/2015) entered into force on 1 December 2016. State funding for victims was strengthened, for example, through the new Nollalinja telephone helpline, intended for victims of intimate partner violence and violence against women.

#### **Authors' comments on the State party's observations**

6.1 On 16 December 2017, the researchers confirmed that they were the authors of the communication. They explained that they were legal scholars with expertise in women's rights and that R.R. and M.R. were interested parties because M.M. had been their daughter and K.M. and C.M. had been their only granddaughters. R.R. and M.R. had been recognized as injured parties in the case. The researchers obtained their consent to pursue the case as the closest relatives of the victims to whom the tragic loss had caused suffering.

6.2 The authors emphasize that they do not claim a failure of the State party to prosecute and punish the perpetrator of the homicides, but contest the State party's omissions in preventing gender-based violence against women and protecting its victims.

6.3 They reiterate that, owing to secrecy provisions, no third parties, including M.M.'s parents and the researchers, had access to information on the measures taken by public officials in order to assess possible remedies taken while the victims were still alive. The researchers have no standing in the case under domestic law, and the access of R.R. and M.R. to remedies was curtailed de facto by the ambiguity of the legislation concerning the authorities' obligations in cases of suspected gender-based violence against women. Concerning the exhaustion of domestic remedies for the purpose of admissibility, the authors find it relevant to consider only those remedies that were available to them after the death of the victims. R.R. and M.R. did not receive the compensation ordered by the Court that convicted J.M. of the murders and should be considered, as interested parties before the Committee, to be entitled to compensation.

6.4 The authors maintain that the Constitution imposes an obligation on the authorities to actively protect human rights. The Parliamentary Ombudsman monitors legality but has no powers to provide a remedy for victims.

6.5 As to the possibility of filing a case against the social workers present on the day of the killings under the Criminal Code for violation or negligent violation of official duty with regard to the monitored visit, the authors maintain that those provisions are inapplicable in the case. There were no relevant provisions or regulations on crucial official duties concerning the duty of the social workers to monitor the meeting of the parents and their children. The State party has not disputed the authors' claim of lack of such material provisions and regulations. The Act on Equality between Women and Men provides for compensation, but only the victim can claim it. In a case in which the victim has died as a result of gender-based violence, the Act is not applicable. The authors stress that the Ombudsman for Equality notes, in the statement referred to by the State party, that he has no competence in matters concerning gender-based violence against women.

6.6 The authors contend that the communication is not manifestly ill-founded and contest the State party's claim regarding the *actio popularis* nature of the communication as incomprehensible. The communication sheds light on the events, including long-term gender-based violence against three victims, that culminated in their murders. Thus, the Committee's attention is drawn to structural problems in the domestic legislation and the practices applied, in violation of articles 1, 2 (a)–(g), 3, 5 and 16 (1) of the Convention.

6.7 The victims were denied access to justice. The State party has not disputed the vulnerability of the victims and seems to agree that the emergency custody decision was based on the fact that M.M. considered herself unfit for sole custody of the children. Neither has the State party indicated that M.M. would have been offered ex officio legal assistance or a safety risk assessment. She was killed while the process of taking her children into State care was pending. Taking all of this into account, the authors find it unreasonable to expect that M.M. could have invoked her rights and those of her daughters in national or international forums.

6.8 The different administrative complaints invoked by the State party offer only a formal possibility to appeal against public authorities' decisions but give no effective access to justice for victims. Owing to non-disclosure of all information concerning decisions by social officials, further legal assessment seems impossible. The State party offers no explanation as to the lack of ex officio measures taken to protect M.M., K.M. and C.M. Neither the Act on Special Care for Persons with Intellectual

Disabilities nor the Act on Disability Services and Assistance was able to guarantee the protection of M.M., K.M. and C.M.

6.9 Under the Child Welfare Act, some officials are obliged to notify the child welfare authorities if a child is in need of care. However, the Act does not require explicitly that domestic violence against a child or a parent be taken into account in the decision-making. The same applies to the Social Welfare Act. Legal provisions that could have prevented the killings of M.M., K.M. and C.M. and protected them against violence were either missing or were neglected.

6.10 The authors state that the State party fails to explain why no restraining order was imposed ex officio, as it could not have been expected that M.M. would apply for one. The provisions under the Police Act and the Act on the Status and Rights of Social Welfare Clients were rendered useless. The information recorded by the authorities regarding M.M., K.M. and C.M. did not lead to any action. Legal provisions on notifications lack clarity in cases of violence against women.

6.11 M.M. could not have invoked the Act on Equality between Women and Men or the Non-Discrimination Act if public officials had discriminated against her. These acts provide no remedy and the present case demonstrates how fundamental structural problems and inactivity of the State party's decision makers amount to indirect discrimination against women. The State party fails to implement its obligations of due diligence to prevent violence and protect the victims of gender-based violence against women under its jurisdiction.

6.12 According to the authors, the State party failed to provide protection to the victims owing to the lack of a comprehensive model to prevent and eliminate violence against women, including effective legislation and practices to protect against gender-based violence against women, especially in the context of domestic violence.<sup>14</sup> M.M., as a woman with disabilities, should have been given special attention to guarantee her access to justice. The victims were in need of legal and policy responses that would have taken into account their vulnerability at an intersection of several grounds of discrimination.

6.13 All of these facts are based on public documents – the pre-trial investigation report and the judgment – and can therefore be disclosed to the Committee, with the exception of the names of the victims, their relatives and the perpetrator. On the basis of the information available, the authorities did not do all that could reasonably have been expected of them in order to avoid a real and immediate threat to the victims' human rights. If the State party considers that the confidential documents contain information that profoundly changes the conclusions drawn from the information available, the information in those confidential documents should be disclosed to the authors on the basis of the principle of equality of arms.

6.14 The authors have acted with extreme caution in their public appearances so as not to reveal specific information on the case or to disclose the names of the victims or other details concerning the family. The events in which they participated were organized by prominent national non-governmental organizations working on women's rights and human rights, with an important role in human rights litigation.

6.15 In a letter dated 27 January 2017, the authors state that a social worker in Vantaa had noted that her professional assessment on J.M.'s worrying behaviour and the need to protect M.M., K.M. and C.M. were ignored despite the fact that she had submitted

<sup>14</sup> The authors refer to the Committee's jurisprudence on the importance of the existence of a comprehensive strategy to prevent and eliminate violence against women. See, for example, *González Carreño v. Spain* (CEDAW/C/58/D/47/2012) 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).

several notifications. In her view, the Hakunila child welfare unit had ignored established procedure because of the parents' disabilities.

6.16 Since the State party's legal system is based on a dualist model in the application of international law, human rights norms must be incorporated into national laws and practices in Finland in order for victims to be able to invoke them directly domestically.

6.17 Regarding the lapse of time between the events at the national level (including the domestic criminal proceedings for the homicides) and the submission of the present communication, the authors note that there are no time requirements in the admissibility criteria of the Optional Protocol.

### **Additional submissions by the parties**

7.1 In a note verbale dated 30 May 2018, the State party reiterated its previous observations and indicated that despite having received a letter of authorization, the researchers refer to R.R. and M.R. as merely "interested parties". It contests the *actio popularis* nature of the communication and reiterates that the researchers are not victims of any violation under the Convention. Therefore, the communication is incompatible *ratione personae* and inadmissible under article 4 of the Optional Protocol. It may also constitute an abuse of the right to submit a communication. The State party also reiterates that domestic remedies have not been exhausted.

7.2 On the merits, the State party claims that, under the Child Welfare Act, public authorities are obliged to take measures if the well-being of a child is at stake. Contrary to the authors' claims, public authorities have taken a wide range of measures to reduce violence against women, with full respect for the due diligence principle, to develop services for victims and to improve cooperation between different authorities.

7.3 On 20 August 2018, the authors reiterate that the State party authorities failed to act in accordance with the requirement of due diligence both several years before the killing of the victims and on the day of the femicides. They specify that they are acting on behalf of M.M., K.M. and C.M., R.R. and M.R. are referred to as "interested parties". The authors submit that a committee had been established in 2016 with good intentions but with little independent authority and very limited resources to combat violence against women. Finally, the authors recall their earlier remarks on the status of the Convention domestically.

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

#### *Consideration of admissibility*

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

8.2 Regarding article 2 of the Optional Protocol, the Committee observes that the State party raises a preliminary objection as to the authors' legal standing to submit a communication. The Committee further observes that the authors could not have obtained M.M.'s consent, owing to her death. However, M.M.'s parents, R.R. and M.R., who are the next of kin from whom the authors could have appropriately sought consent, have authorized the authors to act on their behalf. The Committee considers that, in the present case, the authors have appropriately justified acting on behalf of M.M. without her express consent as they have obtained her parents' consent. With reference to rule 68 (2) of its rules of procedure, given that in cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent, the Committee recalls that communications may be submitted not only by alleged victims but also, when justified, by their representatives without the victims' explicit consent. In the particular circumstances of the present

case, the Committee concludes that it is not precluded by article 2 of the Optional Protocol from considering the present communication.

8.3 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. In that connection, the Committee notes the authors' contention that there were no effective domestic remedies available to the victims or to the authors with regard to the claims related to years of gender-based violence and domestic violence, resulting in the death of the victims. The Committee notes the State party's observation that M.M. was legally competent to make decisions concerning herself; that her diagnosed intellectual disability did not limit her legal competence; that while she and her daughters were in the shelter, M.M. was offered support and assistance so that she could live independently and care for her children; that she was encouraged and provided with support to leave J.M.; and that, after she had decided to return to J.M., she was advised on how to act in the event of any problems at home.

8.4 The Committee further notes the State party's observation that neither the victims nor R.R. and M.R. had raised any claims related to gender-based discrimination before the domestic authorities and courts prior to submitting a complaint to the Committee. The State party has also stated that R.R. and M.R. had access to court as injured parties, their claims for compensation had been thoroughly considered by the District Court, and they could have appealed to the Court of Appeal and the Supreme Court, but they did not do so. Furthermore, R.R. and M.R. did not initiate other criminal or administrative proceedings against the police or social workers handling the case and therefore the authorities' actions were not reviewed by a domestic court or appellate body. The Committee also notes the State party's observation that, in the context of the criminal investigation into the complaint of 5 October 2011 concerning the incidents of sexual abuse of a child, the parties and witnesses were interviewed promptly and the investigation was carried out within a reasonable period of time, while the progress made was decisively influenced by the fact that the complainants and their mother died on 21 December 2011.

8.5 The Committee recalls that, under article 4 (1) of the Optional Protocol, authors must use all remedies in the domestic legal system that are available to them. It also recalls its jurisprudence, according to which authors must have raised, in substance, at the domestic level, all claims that they wish to bring before the Committee,<sup>15</sup> so as to give domestic authorities and courts an opportunity to remedy the situation.<sup>16</sup>

8.6 The Committee considers that, in the circumstances of the present case, the State party's authorities have not been given an opportunity to consider the authors' claims of indirect gender discrimination and gender-based violence, which are at the heart of the present communication to the Committee, depriving them of the opportunity to assess those claims. Accordingly, the Committee concludes that the present communication is inadmissible under article 4 (1) of the Optional Protocol.

8.7 In the light of this conclusion, the Committee decides not to examine any other grounds for inadmissibility.

9. The Committee therefore decides that:

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

<sup>15</sup> *Kayhan v. Turkey* (A/61/38, part one, annex I).

<sup>16</sup> *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005).