



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

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

Communication No. 28/2010

**Views adopted by the Committee at its fifty-first session, 13 February–2
March 2012**

<i>Submitted by:</i>	R.K.B. (represented by counsel, Ozge Yildiz Arslan)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkey
<i>Date of the communication:</i>	14 July 2009 (initial submission)
<i>References:</i>	Transmitted to the State party on 28 October 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	24 February 2012

Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-first session)

concerning

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Submitted by: R.K.B. (represented by counsel, Ozge Yildiz Arslan)
Alleged victim: The author
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The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 24 February 2012,

Adopts the following:

Views under article 7, paragraph 3, of the Optional Protocol

1. The author of the communication is Ms. R.K.B., a Turkish national, born on 1 January 1969. She claims to be a victim of violations by Turkey of her rights under article 1; article 2, paragraphs (a) and (c); article 5, paragraph (a); and article 11, paragraphs 1 (a) and (d), of the Convention on the Elimination of All Forms of Discrimination against Women (Convention). The author is represented by counsel, Ms. Ozge Yildiz Arslan. The Convention and its Optional Protocol entered into force for Turkey on 19 January 1986 and 29 January 2003, respectively.

* The following members of the Committee participated in the adoption of the present communication: Ms. Nicole Ameline, Ms. Magalys Arocha Domínguez, Ms. Violet Tsisiga Awori, Ms. Barbara Evelyn Bailey, Ms. Olinda Bareiro Bobadilla, Mr. Niklas Bruun, Ms. Náela Mohamed Gabr, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Zou Xiaojiao.

** The text of one individual opinion (concurring), signed by Ms. Pramila Patten, is included in the present document.

Factual background

2.1 From June 2000, the author worked as a cashier, pre-accountant and make-up artist at the unisex hairdresser's shop in Kocaeli. On 8 February 2006, her contract was terminated allegedly on the ground that there was a complaint from a customer against her. She did not receive any other information on the motives for her dismissal. In her initial submission to the Committee, the author refers to the testimony of Ms. G.D., who confirmed that, before the author left the workplace, one of the managers of the hairdresser's shop tried to make her sign a document attesting that she had benefited from all her rights. According to the same witness statement, the manager threatened the author that if she did not sign that document, he would "spread rumours about her relationships with other men". Although the author, who is a married woman, was "very scared" that it would harm her, she refused to sign the document in question.

2.2 On 10 February 2006, the author filed an initial claim before the Kocaeli 3rd Labour Court for severance pay and other employment related damages, since her work contract had been terminated without a valid reason. The author submits that, according to article 19 of the Labour Act, the employer has to clearly state the reasons for terminating the contract of an employee. The author asked the Kocaeli 3rd Labour Court to award a damage of 1,750 Turkish liras. By a petition of amendment, she raised her claims to 19,424.14 Turkish liras.

2.3 On 1 May 2006, in its defence, the author's employer submitted to the Kocaeli 3rd Labour Court a letter of response and, on an unspecified date, a copy of the termination of contract statement dated 8 February 2006, indicating that the author had allegedly been verbally warned several times about her behaviour which ran contrary to the business ethics and that she had failed to submit explanations. In those documents, the employer claimed that the author had provoked rumours by displaying, beyond ordinary friendship, "seemingly sexually-oriented relationships with persons of the opposite sex at the workplace". The employer argued before the Kocaeli 3rd Labour Court that in their area of activity it was vital for the employees to refrain from even the slightest offence against morality and it asked for the dismissal of the case. It also argued that the author had no right to ask for severance and notice pay, that her labour claims had been paid in full, that the time limit had elapsed in respect of all claims, that the author had signed payslips without objections and that the salary for February of 2006 had been paid to her via postal order.

2.4 During the court proceedings, the Kocaeli 3rd Labour Court heard witnesses on behalf of both parties. The author's husband testified before the Kocaeli 3rd Labour Court about the moral integrity of his wife and gave evidence to the effect that Mr. D.U., a colleague of the author with whom according to rumours she had a relationship, was only a family friend. He also testified that most of the married men working at the hairdresser's shop with the author had extramarital relationships and that his wife had sometimes expressed her repulsion about this situation. The author's ex-colleague, Ms. G.D., gave evidence, confirming the version of the author to the effect that after the latter had dismissed, Mr. D.U. had asked her to give up the case, otherwise the employer would accuse her of having an affair with a man called Mr. M.Y. Ms. G.D. also confirmed that the author did not have any relationship with Mr. D.U., and that she thought her problems started when she had refused to give her house keys to the second manager of the hairdresser's shop, Mr. M.A., who wanted to bring his girlfriend there, although he was a married man.

2.5 The Kocaeli 3rd Labour Court also heard witnesses on the employer's behalf. As to the alleged reasons for the author's dismissal, a witness for the employer, Mr. H.U., stated that there was a complaint from a customer against her. Amongst the other employer's witnesses, the manager of the hairdresser's shop, Mr. M.A., claimed that the author had a relationship

with one of the managers, Mr. D.U. He added that the author and Mr. D.U. had already had a relationship when they were single and that the relationship continued after they had each married other people some two or three years prior to the author's dismissal. Mr. M.A. also testified that the relationship between the author and Mr. D.U. affected her work. In particular, when Mr. D.U. dealt with female customers, the author would react to it, showing signs of jealousy and causing disturbance to colleagues and customers. He added that the author and Mr. D.U. used to wander off and eat together out of the office and the author made use of her relationship with Mr. D.U. and would occasionally come to work late. For the last five years, she had not applied make-up on customers whom she did not like but her behaviour was tolerated. Mr. M.A. also testified that shortly before the author's dismissal, a customer, Ms. A.A., complained to the shop owner, Mr. A.G., about the fact that the author "was in an indiscreet affair" with a colleague. According to Mr. M.A., the author was requested to provide explanations, failed to do so and was dismissed. Mr. M.A. also stated that his request for other colleagues' home keys (see paragraph 2.4 above) was related exclusively to his private life and had nothing to do with the author.

2.6 The author states that it was from the employer's letter of response and the termination of contract statement submitted in the framework of the court proceedings, that she had "learned for the first time" that her contract had been terminated due to "displaying seemingly sexually-oriented relationships with persons of the opposite sex". On 6 June 2007, the author brought an additional action concerning her unjust dismissal. She stated that, since the employer had contended that her dismissal was a result of her relationship with Mr. D.U., and that Mr. D.U. employment had not been terminated, that conduct by the employer was "a demonstration of gender discrimination at work" under article 5 of the Labour Act.¹ She, therefore, asked the court to award her 4,446 Turkish liras (amounting to four months' gross salary) in accordance with the said provision. On 5 July 2007, the Kocaeli 3rd Labour Court consolidated the two actions for (a) severance pay and unemployment compensation; and (b) compensation due to gender-based discrimination.

2.7 On 14 September 2007, the Kocaeli 3rd Labour Court concluded that the termination of the contract had been without a valid reason. Having examined the termination of contract statement dated 8 February 2006 and the statements of the parties' witnesses, the Court established that the employer did not submit any concrete evidence regarding the author's

¹ Article 5 of Labour Act No. 4857 (2003) "The principle of equal treatment" reads as follows:
No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship.
Unless there are essential reasons for different treatment, the employer must not make any discrimination between a full-time and a part-time employee or an employee working under a contract made for a definite period and one working under a contract made for an indefinite period.
Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his employment contract due to the employee's sex or maternity.
Different remuneration for similar jobs or for work of equal value is not permissible.
Application of special protective provisions due to the employee's sex shall not justify paying him/her a lower wage.
If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up to his/her four months' wages plus other claims of which he/she has been deprived. Article 31 of the Trade Unions Act is reserved.
While the provisions of article 20 are reserved, the burden of proof in regard to the violation of the above stated provisions by the employer rests on the employer.
However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialized shall rest on the employer.

entering into “sexually-oriented relations with persons of the opposite sex”. The court accepted the author’s argument that it was not possible to claim that her actions such as “eating and coming to and leaving work together” with Mr. D.U. violated the business ethics which required an immediate termination of the work contract. As to the content of the complaint of a customer Ms. A.A. against the author, the Kocaeli 3rd Labour Court found that the witnesses had provided contradictory statements. The court concluded that given the author’s severance period, the termination of her employment was unjustified. The employer was ordered to pay severance allowance and payments in lieu of notice to the author in the total amount of 15,295.04 Turkish liras, pursuant to the expert’s assessment of the premium payments made according to established business practice.

2.8 In respect to the claim made by the author that her work contract had been terminated due to gender-based discrimination and that she, therefore, should be compensated pursuant to article 5 of the Labour Act, the Kocaeli 3rd Labour Court concluded that it was not possible to assert that the author was dismissed just on account of the fact that she was “female”. The fact that Mr. D.U. was still employed by the hairdresser’s shop was not enough to prove gender-based discrimination. It was equally not possible to find that the employer acted in breach of the equal treatment obligation as far as the author’s “emotional relationship” with Mr. D.U. was concerned. Whereas such a relationship was asserted to be the reason for her dismissal, it had not been proven by the employer nor accepted by the author. Although the author could claim compensation pursuant to another legal ground as a consequence of the above-mentioned defence of the employer, that attitude of the employer could not be considered contrary to the equality principle provided in article 5 of the Labour Act. The Kocaeli 3rd Labour Court reached this conclusion, having examined the way the author was dismissed; the events that took place prior to her dismissal; the statements of the parties’ witnesses; the use of plural form in the phrase “with persons of the opposite sex” in the statement, requesting the author to provide explanations; reference to the customer complaint as the reason for her dismissal; the fact that the author had denied having an “emotional and immoral” relationship with Mr. D.U. and the fact that the hairdresser’s shop required the employment of especially women.

2.9 On 14 July 2006, the author also initiated criminal proceedings for libel against the manager of the hairdresser’s shop, Mr. M.A., and two other employees, who drew up the termination of contract statement indicating that the author had unethical behaviour by having sexually oriented relationships with persons of the opposite sex at the workplace. On 5 September 2007, the Kocaeli Chief Public Prosecutor issued an indictment for libel against the manager of the hairdresser’s shop, Mr. M.A., and two other employees, who drew up the termination of contract statement. The indictment was submitted by the author to the Kocaeli 3rd Labour Court as evidence. By its ruling of 1 April 2008, the Kocaeli 1st Magistrates Court found the manager of the hairdresser’s shop, M.A., and another employee guilty of libel, concluding that the witness testimony given in connection with the termination of contract statement of 8 February 2006 was entirely about the author’s private life.

2.10 The author filed an appeal against the decision of the Kocaeli 3rd Labour Court before the Court of Cassation and argued that the said decision was contrary not only to the principle of equal treatment in the Labour Act but also to the obligations of Turkey under the Convention. In the application for appeal the author claimed that the reasons for her dismissal constitute gender-based discrimination and asked for the reversal of the Kocaeli 3rd Labour Court’s decision. On 2 April 2009, the Court of Cassation dismissed the appeal, without any reference to the author’s claims of gender-based discrimination under the Convention.

The complaint

3.1 The author claims to be a victim of a violation of article 2, paragraph (a), of the Convention. Although the principle of equal treatment of men and women is guaranteed by article 5 of the Labour Act, neither the Kocaeli 3rd Labour Court nor the Court of Cassation applied this principle. The author adds that she has specifically claimed before the domestic courts that Turkey was a State party to the Convention and that, by virtue of article 90 of its Constitution, the Convention was part of the domestic law and should have been applied by the courts. They, however, disregarded the author's arguments and ignored her evidence with regard to her claim relating to gender discrimination. Furthermore, the Court of Cassation failed to give any justification or explanation on why it dismissed her appeal.

3.2 The author further claims that she is a victim of a violation of article 2, paragraph (c), of the Convention, because the State party failed to protect her from gender-based discrimination, despite the existence of the gender equality principle in article 5 of the Labour Act.

3.3 The author also alleges a violation of article 5, paragraph (a), of the Convention. Despite article 5 of the Labour Act, national courts still rule habitually with similar patterns from the past. Her claim concerning gender-based discrimination was ignored, the courts showed social prejudice and did not challenge the fact that the morality and privacy of the author was questioned by her male employer because she was a woman, whereas the behaviour of male employees was never examined in terms of morality. Moreover, whereas the illegitimate actions of the male employees were ignored, the alleged illegitimate actions of the author were considered as a valid reason for her dismissal, since the Kocaeli 3rd Labour Court concluded that the dismissal was unlawful exclusively because the employer did not submit any concrete evidence regarding the author's entering into sexually oriented relations with persons of the opposite sex.

3.4 The author submits that she is a victim of a violation of article 11, paragraph 1 (a) and (d), of the Convention. Her employer tried to force her to sign a document stating that she had benefited from all her rights, so that she would not have been able to sue him. If not, he threatened to spread rumours that she had a relationship with other men. In this way, she was exposed to gender-based discrimination – "mobbing" – by the employer and the courts failed to address it and to provide her compensation for this. The principle of equal treatment has also been violated through the dismissal of a female employee for her alleged extramarital affair at work.

3.5 Finally, the author claims a violation of article 1 of the Convention. She alleges that by tolerating violations of several provisions of the Convention, the State party did not meet its obligations under article 1 of the Convention.

State party's observations on admissibility and merits

4.1 By its submissions of 28 April 2011, the State party challenges the admissibility of the communication under article 4, paragraphs 2 (b) and (c), of the Optional Protocol to the Convention. On the facts, the State party submits that, according to the employer, the author was often late for work and objected to fulfil some of her tasks. This situation, however, was tolerated by the employer until the day when one of the customers made a complaint. The author was requested to provide explanations in relation to this complaint. She did not respond to that request and decided not to come to work on the following days.

4.2 The State party submits that the claim of a violation of article 2, paragraph (a), of the Convention is incompatible with the provisions of the Convention, manifestly ill-founded and

not sufficiently substantiated, as the author made no reference in her communication to any legislative shortcoming and as the State party has introduced since late 1990s important legislation on women's rights and gender equality. The State party specifically refers to the incorporation of article 2 of the Convention into article 10 of its Constitution in 2004.² It adds that the State party undertook an obligation not only to abstain from gender-based discrimination, but also to take all measures and to adopt policies necessary for women and men to have equal rights and instruments to enjoy them.

4.3 The State party also submits that the claim of a violation of article 5, paragraph (a), of the Convention is incompatible with the provisions of the Convention, manifestly ill-founded and not sufficiently substantiated, as the author does not refer to any social and cultural pattern that the State party would have failed to take appropriate measures to modify. Therefore, there is no clear link between the author's dismissal and a social and cultural pattern.

4.4 The State party further argues that the claim of a violation of article 11, paragraph 1, of the Convention is manifestly ill-founded and not sufficiently substantiated. It considers that the author failed to provide sufficient substantial information on any possible connection between her dismissal and her alleged relationship with Mr. D.U. or on any discrimination between Mr. D.U. and herself. The State party submits that the author was dismissed on the grounds that she failed to have regular work attendance and did not act in line with business ethics, while Mr. D.U. had no work attendance issues and no complaint by any customer had been recorded against him.

4.5 With regard to the merits of the communication, the State party refers to the decision of the Kocaeli 3rd Labour Court, which established that "the plaintiff's work contract was terminated without a valid cause by the defendant" and ordered the defendant to pay her a monetary compensation of approximately 15,000 Turkish liras. The Kocaeli 3rd Labour Court also found that "the fact that Mr. D.U. was not dismissed by the employer [was] not enough to prove gender discrimination ... thus, it concluded that there was no basis for any further compensation". The State party submits that, according to the decision of the Kocaeli 3rd Labour Court rendered on the basis of article 5 of the Turkish Labour Act and contrary to the author's claims, she was not dismissed as a consequence of her relationship with Mr. D.U. but because she failed to have a regular work attendance and did not act in line with business ethics. Therefore, the State party concludes that there are no new elements in the author's claim that would constitute a basis for a decision different than the decision of the Kocaeli 3rd Labour Court.

Author's comments on the State party's observations

5.1 By her submissions of 3 June 2011, the author contends that the State party has a wrong understanding of her claims before the Committee and of the national courts' decisions. The author acknowledges that the State party has adopted some innovative and important changes in its legislation and the Constitution concerning gender equality. However, she claims that these new provisions are not enforced in practice. Therefore, the author is not claiming a lack of legislation but rather a lack of practical implementation of the principle of gender equality.

5.2 With regard to the alleged violation of article 11, paragraph 1 (d), of the Convention, the author argues that the State party wrongfully understood the claims of each

² Article 10 of the Constitution states that "Men and women have equal rights. The State shall have an obligation to ensure that this equality exists in practice".

party to the litigation before the Kocaeli 3rd Labour Court. Thus, she reiterates that, when she was dismissed, the employer told her that the reason for her dismissal was a customer's complaint and did not give any other explanation. The author recalls that the testimony of a witness on her behalf, Ms. G.D., indicated that one of the managers had tried to force her to sign a document, attesting that she had benefited from all her rights, and threatened to spread rumours that she had a relationship with a customer, in case she refused to sign it. The author did not sign the document in question and filed a complaint before the Kocaeli 3rd Labour Court to obtain severance pay and other employment-related damages.

5.3 During the proceedings, however, the employer submitted to the Kocaeli 3rd Labour Court a letter of response and a termination of contract statement, in which he claimed that the author was dismissed because she had had a relationship with a male colleague, displayed this sexual relationship and had unethical behaviour in breach of the business ethics and caused rumours within the workplace. A witness on the employer's behalf, Mr. M.A. also testified that the author had a relationship with her colleague Mr. D.U. Therefore, the author emphasizes that, contrary to the State party's assertion, these claims were made by the employer. In view of the employer's claims, the author filed an additional case for gender-based discrimination in the workplace before the Kocaeli 3rd Labour Court which joined these two cases. The author argues that the employer's allegation that she had been requested by him to provide explanations and had failed to do so, and that she had failed to have regular work attendance and had not acted in line with business ethics, has not been accepted by the Kocaeli 3rd Labour Court. It was precisely for that reason that the Kocaeli 3rd Labour Court ordered the payment of a severance pay and other employment related damages to the author by the employer.

5.4 Furthermore, the author claims that the State party's courts should have considered all together the employer's allegation that she had a relationship with her colleague, the termination of contract statement submitted by the employer, and the testimonies of the witnesses. These elements taken together demonstrate that the rules applied to the employees vary according to the employee's gender, that the female and male workers are not treated equally, especially in the evaluation of their work. Moreover, the State party's courts did not take into consideration the indictment of the Chief Public Prosecutor issued on 5 September 2007 and submitted by the author as evidence (see paragraph 2.9 above). The Kocaeli 3rd Labour Court failed to take these elements into consideration in its decision regarding the author's claim of gender-based discrimination. On appeal, the Court of Cassation failed to give any reasoning for its decision to uphold the Kocaeli 3rd Labour Court's decision. Therefore, the courts violated the author's right to equal treatment under article 11, paragraph 1 (d), of the Convention.

5.5 The author further invokes a violation of article 2, paragraph (a), of the Convention, since the State party did not put into effect article 5 of the Labour Act. She also claims in this regard a violation of article 2, paragraph (c), as the State party failed to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals the effective protection of women against any act of discrimination.

5.6 With regard to the alleged violation of article 5, paragraph (a), of the Convention, the author considers that she established that both the Kocaeli 3rd Labour Court and the Court of Cassation had made their decisions according to the old practices and conventions. The author reaffirms that, although pursuant to article 5 of the Labour Act, courts have to investigate whether an employer practices gender-based discrimination, in her case the courts ignored all the facts and evidence she submitted with regard to gender-based discrimination and approved the stereotyped male-dominant roles and behaviours towards the author. Moreover, in its decision the Kocaeli 3rd Labour Court stated that the author's workplace mainly employed

women, i.e. an assertion that was not raised during the proceedings and did not correspond to the facts. Therefore, in the author's opinion, an assertion of this type also amounted to a prejudice.

State party's further submissions

6.1 On 26 July 2011, the State party reiterates its previous observations on admissibility and merits of 28 April 2011. On the merits, the State party maintains that, contrary to the author's allegation, the decision of the Kocaeli 3rd Labour Court was made pursuant to the equality principle provided in article 5 of the Labour Act. She was not dismissed as a consequence of her relationship with Mr. D.U., but due to her irregular work attendance and lack of compliance with the business ethics.

6.2 On 25 October 2011, the State party provided, upon the Committee's request, a copy of the decisions of the Kocaeli 3rd Labour Court and the Court of Cassation in the original language and English translation.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 On the basis of the information before it and in the absence of any objection by the State party, the Committee considers that the author has exhausted all available domestic remedies and that the requirements of article 4, paragraph 1, of the Optional Protocol have been met.

7.3 In accordance with article 4, paragraph 2 (a), of the Optional Protocol, the Committee is satisfied that the same matter has not been nor is being examined under another procedure of international investigation or settlement.

7.4 The Committee notes that the State party maintains that the communication should be considered inadmissible, in accordance with article 4, paragraph 2 (b) and (c), of the Optional Protocol, on the grounds that the author's claims in relation to article 2, article 5 and article 11 of the Convention are incompatible with the provisions of the Convention, manifestly ill-founded and not sufficiently substantiated. The Committee also notes that the State party asserts that the author made no reference in her communication to any legislative shortcoming; that she did not refer to any social and cultural pattern that the State party would have failed to take appropriate measures to modify; and that the author failed to provide sufficient substantial information on any possible connection between her dismissal and her alleged relationship with Mr. D.U. or on any discrimination between Mr. D.U. and herself.

7.5 The Committee notes that, in response to those arguments, the author submits that the State party has a wrong understanding of her claims before the Committee and of the national courts' decisions. The author states that she is not claiming a lack of legislation but rather a lack of practical implementation of the principle of gender equality; and that the State party failed to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals the effective protection of women against any act of discrimination.

7.6 In this regard, the Committee notes that the author's claims of the gender-based discrimination are primarily based on the fact that her "seemingly sexually-oriented relationships with persons of the opposite sex at the workplace" were invoked as a defence by

the employer and/or its agents during the court proceedings; that a male colleague with whom she was alleged to have a relationship continued working at the hairdresser's shop, while her contract was terminated; and an assumption that extramarital relationships of the male colleagues were tolerated by the employer and never framed in terms of morality.

7.7 The Committee further notes that the Kocaeli 3rd Labour Court concluded that the termination of the author's contract was without a valid reason and ordered the employer to pay her severance allowance and payments in lieu of notice. The Court considered, however, that the evidence before it was not sufficient to find gender-based discrimination. The Committee also notes that the Kocaeli 1st Magistrates Court found the manager of the hairdresser's shop, Mr. M.A., and another employee guilty of libel due to the fact that they addressed purely private life matters in the termination of contract statement, indicating that the author had unethical behaviour by having sexual relationships with persons of the opposite sex.

7.8 In the light of this particular factual background, the Committee is of the view that the author's claims cannot be regarded as manifestly ill-founded, but that the issues of admissibility of the author's claims under the Optional Protocol of the Convention and the level of their substantiation in the present communication are so closely linked to the merits of the case that it would be more appropriate to determine them at the merits stage of the proceedings. The Committee considers, therefore, that the author's claims under article 1; article 2, paragraphs (a) and (c); article 5, paragraph (a); and article 11, paragraphs 1 (a) and (d), of the Convention are sufficiently substantiated for purposes of admissibility, and thus declares the communication admissible.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7, paragraph 1, of the Optional Protocol.

8.2 As to the alleged violation of the State party's obligation under article 2, paragraphs (a) and (c), of the Convention to ensure effective protection of women against any act of discrimination through law and through competent national tribunals and other public institutions, the Committee notes that the State party highlighted the fact that the author did not allege any legislative shortcomings and asserted that since late 1990s, it has introduced important legislation on women's rights and gender equality and in 2004 it also incorporated article 2 of the Convention into article 10 of its Constitution. The State party further observed that it has not only fulfilled its obligation to condemn gender-based discrimination, but has also taken all necessary measures and has adopted policies necessary for women and men to have equal rights and instruments to enjoy them.

8.3 In the present communication, the Committee notes that during the court proceedings before the Kocaeli 3rd Labour Court, the main argument put forward by the employer in its letter of response and termination of contract statement, to justify the dismissal of the author, was an allegation that the author "had provoked rumours by displaying seemingly sexually-oriented relationships with persons of the opposite sex". The manager of the hairdresser shop, Mr. M.A. also testified that the author entertained a relationship with one of the managers, Mr. D.U., which allegedly affected her work, a relationship which according to him dated from the time when they were single and which continued after their respective marriages to others. On the other hand, witnesses testified about the author's moral integrity, the fact that most of the married men in the hairdresser's shop had extramarital affairs and that the author had often expressed her disapproval and her disgust about this state of affairs. The Committee also notes that the author has argued before the domestic courts that the gender-biased defence

brought forward by the employer violated the principle of equal treatment under article 5 of the Labour Act. In this regard, the Committee observes that, pursuant to this article, if the employee shows a strong likelihood of a violation of the principle of equal treatment, the burden of proof that the alleged violation has not materialized rests on the employer.

8.4 The Committee acknowledges that it is for the State party's courts to evaluate facts and evidence in cases before it and it notes that in this present case, after having heard and examined the evidence, the Kocaeli 3rd Labour Court found that the termination of the author's employment was unjustified and unlawful and awarded the author severance allowance. The Committee also notes that the court found that there was no violation of the principle of equal treatment under article 5 of the Labour Act, that it could not be said that the author was dismissed because she was "female" and that the fact that Mr. D.U. with whom the author was alleged to have a relationship, was still in employment, was not enough to prove gender-based discrimination. The Committee notes that during the court proceedings, the employer contended that in their area of activity "it was vital for the employees to refrain from even the slightest offence against morality". The Committee further notes the unchallenged claim by the author that most of the male employees at the workplace were having extramarital affairs and that she had often expressed her disgust at this state of affairs and that Mr. D.U., the manager with whom she was alleged to have an extramarital affair, was still in employment.

8.5 Furthermore, during the trial before the Kocaeli 3rd Labour Court, after a witness testified that the author's problems with Mr. M.A. started when she refused to give him her house keys to bring his girlfriend, the said Mr. M.A. who attacked the author's moral integrity in Court, did not dispute that fact and instead stated to the Court that his request for other colleagues' home keys was related exclusively to his private life and had nothing to do with the author. The Committee is of the view that, although the Court reached a finding of unlawful dismissal and awarded severance allowance, it failed to give due consideration to the claim of gender-based discrimination raised by the author and of the evidence in support thereof. The Committee is of the view that the court gave a very narrow interpretation of the principle of "equal treatment" contained in article 5 of the Labour Act when it stated that it was not possible to assert that the author was dismissed just on account of the fact that she was female and that the fact that Mr. D.U. was still employed by the hairdresser's shop was not enough to prove gender-based discrimination. The Committee is of the view that the Kocaeli 3rd Labour Court paid no regard to the fact that the case for the employer rested on the author's alleged relationship with Mr D.U., a manager, a person in authority, who surely has the duty to display an exemplary conduct and also has the duty "to refrain from even the slightest offence against morality". The Committee observes that the Kocaeli 3rd Labour Court ignored the evidence adduced by the author to the effect that the said Mr. D.U. had even asked her to withdraw her case against the employer, failing which the latter would accuse her of having an affair with another man, one Mr. M.Y.

8.6 The Committee is of the view that neither the Kocaeli 3rd Labour Court nor the Court of Cassation addressed the discrimination faced by the author, pursuant to article 5 of the Labour Act and hence revealed their lack of gender sensitivity. The courts failed to give due consideration to the clear prima facie indication of infringement of equal treatment obligation in the field of employment. The Committee is particularly concerned about the manner in which the Court of Cassation dismissed the author's appeal without even motivating its findings. The Court also ignored the fact that Mr. M.A., the main witness for the employer and one other employee had been found guilty of criminal libel and that the Kocaeli 1st Magistrates Court had found that the allegations contained in the termination of contract statement concerned the author's private life. The Committee recalls its observations

in general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women to the effect that “according to subparagraph (c), States parties must ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of State parties under the Convention”. In these circumstances, the Committee considers that the State party violated its obligations under article 2, paragraphs (a) and (c), read in conjunction with article 1 of the Convention, by not ensuring a practical realization of the principle of equal treatment provided for by the Labour Act and effective protection of women against any act of gender-based discrimination.

8.7 With regard to the author’s claim of a violation of article 5, paragraph (a), of the Convention, the Committee notes that the Kocaeli 3rd Labour Court concluded that the author’s dismissal was unjustified because the employer did not submit any concrete evidence regarding the author’s “sexually-oriented relations with persons of the opposite sex” and that there were contradictions in the evidence of the witnesses. The Committee notes with concern that at no time did the Kocaeli 3rd Labour Court comment adversely on the gender-biased and discriminatory nature of the evidence adduced on behalf of the employer. Instead of rejecting outright such a defence on the part of the employer, which clearly constituted gender-based discrimination against the author in breach of the principle of equal treatment, the Court examined the evidence adduced by the employer and scrutinized only the moral integrity of the author, a “female” employee and not that of the male employees, namely Mr. M.A. and Mr. D.U. Unlike the Kocaeli 1st Magistrates Court, at no time did the Kocaeli 3rd Labour Court or the Court of Cassation reject the evidence adduced by the employer as being “entirely” a matter of the author’s “private life”. The Committee rejects the contention of the State party that the author’s claim is manifestly ill-founded and not sufficiently substantiated as she did not refer to any social and cultural pattern that the State party would have failed to take appropriate measures to modify. The Committee is of the view that, in the present case, the court proceedings were based on the stereotyped perception of the gravity of extramarital affairs by women, that extramarital relationships were acceptable for men and not for women and that only women had the duty to “refrain from even the slightest offence against morality”.

8.8 The Committee emphasizes that full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. The Committee is of the view that gender stereotypes are perpetuated through a variety of means and institutions including laws and legal systems and that they can be perpetuated by State actors in all branches and levels of government and by private actors. In this case, the Committee is of the view that the Kocaeli 3d Labour Court has clearly allowed its reasoning based on law and facts to be influenced by stereotypes and the Court of Cassation by failing altogether to address the gender aspect, has perpetuated gender stereotypes about the role of women and men with it being accepted for the latter to have extramarital affairs. The Committee therefore concludes that that the State party has violated article 5, paragraph (a), of the Convention.

8.9 With regard to the author’s claim of a violation by the State party of her rights under article 11, paragraph 1 (a) and (d), the Committee notes her arguments that, before she left the workplace, she was “mobbed” or harassed by an agent of the employer, namely one of the managers of the hairdresser’s shop, and pressurized to sign a document to the effect that she had been paid all her dues and benefited all her rights, failing which they would spread

rumours that she had “extra marital relationships with other men”. The Committee notes that had she signed the document as a result of the pressure exerted on her, the author would have been precluded from suing her employer. The Committee further notes that, although the author did not sign the document, she stated that being a married woman, she was very scared by the threats. The Committee is of the view that the pressure exerted on the author and the nature of the threat and harassment were made because she is a woman and a married woman and constitute a violation of the principle of equal treatment. The Committee further considers that the employer’s obligation to refrain from gender-based discrimination, including harassment, does not end with the termination of the labour contract. In the present case, the Committee observes that the employer had not only threatened the author with spreading rumours about her alleged extramarital relationships but also argued before the Kocaeli 3rd Labour Court that she displayed “seemingly sexually-oriented relationships with persons of the opposite sex at the workplace”. It further observes that the manager of the hairdresser’s shop and another employee were found guilty of libel by the Kocaeli 1st Magistrates Court due to the fact that, in the termination of contract statement, they indicated that the author had unethical behaviour by having sexual relationships with persons of opposite sex. In the light of the above, the Committee considers that the former employer’s treatment of the author in the context of the unlawful termination of her labour contract by violating her right to work and equal treatment constituted gender-based discrimination under article 11, paragraphs 1 (a) and (d), of the Convention and therefore the author has suffered a violation of her rights under these provisions, which the State party’s courts have failed to address.

8.10 Acting under article 7, paragraph 1, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations under article 2, paragraphs (a) and (c), read in conjunction with article 1, as well as under article 5, paragraph (a) and article 11, paragraphs 1 (a) and (d), of the Convention, and makes the following recommendations to the State party:

(a) Concerning the author of the communication:

Provide appropriate reparation, including adequate compensation, in accordance with article 5 of the Labour Act;

(b) General:

(i) Take measures to ensure that article 5 of the Labour Act and the Convention are implemented in practice by relevant national tribunals and other public institutions in order to provide for effective protection of women against any act of gender-based discrimination in employment;

(ii) Provide for appropriate and regular training on the Convention, its Optional Protocol and its general recommendations for judges, lawyers and law enforcement personnel in a gender-sensitive manner, so as to ensure that stereotypical prejudices and values do not affect decision-making.

8.11 In accordance with article 7, paragraph 4, of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee’s views and recommendations and to have them translated into the official national languages and widely distributed in order to reach all relevant sectors of society.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]

Appendix

Individual opinion by Committee member, Ms. Pramila Patten (concurring)

Although I agree with the majority view expressed by the Committee, that the State party has violated its obligations under article 2, paragraphs (a) and (c), read in conjunction with article 1 of the Convention, with regard to its reasoning, I wish to make a number of additional points. Firstly, with regard to the violation of article 2, paragraph (c), I would like to stress that the obligation of the State party to “ensure ... the effective protection” of women’s human rights under their national systems is a stringent obligation of result. “Effective” protection under article 2, paragraph (c), is about both the provision of a legally binding or effective remedy for a violation of rights as well as a practically available one. In the present case, it can hardly be said that article 5 of the Labour Act offered effective protection to the author.

It is also worth underlining that although the Labour Act in the State party contains a specific provision guaranteeing the principle of equal treatment, article 5 of the Act only provides for compensation up to four months’ wages and does not contain a provision for any possible reinstatement. I also take note that under the same provision, the burden of proof with regard to the violation rests on the employee and only if the employee is able to show a “strong likelihood of such a violation” does the burden of proof shift to the employer.

The Committee has often times recalled that it is not enough to have legislative provisions in place and that the Convention goes beyond mere formal equality and is about substantive equality. According to article 2, paragraph (c), States parties must ensure that courts apply the principle of equality as embodied in the Convention and interpret the law, to the maximum extent possible, in line with the obligations of State parties under the Convention.

In the present case, throughout the proceedings before the domestic courts, the author argued that she had suffered gender-based discrimination and that the principle of equal treatment had been violated. Immediately, upon taking cognizance of the allegations against her, as set out in the letter of response and termination of contract statement, the author filed an additional case against the employer under article 5 of the Labour Act No. 4857 (2003) which provides that no employer shall “discriminate either directly or indirectly” against an employee in the conclusion, conditions, execution and termination of his employment contract on the ground of the employee’s sex or maternity. As the Court consolidated the two cases filed by the author, the case for the author was entirely premised on the gender-based discrimination she had suffered and her dismissal from her employment based on her sex. The author even initiated criminal proceedings for libel against Mr. M.A. and two other employees who had drawn up the termination of contract statement containing the allegations against her. In the present case, both the Kocaeli 3rd Labour Court and the Court of Cassation failed to give due consideration to the claim of gender-based discrimination raised by the author and of the overwhelming evidence in support thereof. The courts gave a very narrow interpretation of the principle of “equal treatment” contained in article 5 of the Labour Act and rejected the claim of the author under article 5 of the Labour Act.

With regard to the claim of a violation of her rights under article 2, paragraph (a), the author did not claim a lack of legislation but rather a lack of practical implementation of the principle of gender equality. In my opinion, the State party demonstrated a lack of a clear understanding of its obligation to guarantee the practical realization of the principle of equality. In its submission to the Committee, the State party reiterated the point that it has introduced important legislation on women's rights and gender equality and that it has fulfilled its obligation to condemn gender-based discrimination, but paid no attention to the observations of the author who acknowledged some innovative and important changes in its legislation and the Constitution concerning gender equality but stressed that these new provisions are not enforced in practice.

Article 2, paragraph (a), underlines the importance of the enjoyment of rights in fact as well as in formal legal terms, a distinction that the Committee clearly and regularly notes. In its treaty-specific reporting guidelines, the Committee even requests information in State parties' reports of a more analytical nature on the impact of laws.

In these circumstances, I am of the view that that the State party violated its obligations under article 2, paragraphs (a) and (c), read in conjunction with article 1 of the Convention, by not ensuring a practical realization of the principle of equal treatment provided for by the Labour Act and effective protection of women against any act of gender-based discrimination.

I fully support the reasoning of the majority view of the Committee that the Kocaeli 3rd Labour Court allowed its reasoning to be influenced by stereotypes rather than based on law and facts and the Court of Cassation by failing to invalidate the finding of the lower court, has perpetuated gender stereotypes about the role of women and men with latter being allowed to have extramarital affairs. I accordingly find that the State party has violated article 5, paragraph (a), of the Convention.

I agree with the majority view of the Committee that there has been a violation by the State party of the rights of the author under both article 11, paragraphs 1 (a) and (d). However, I do not endorse the reasoning expressed in the majority view with regard to the said violations.

In support of her claim of a violation of her rights under both article 11, paragraphs 1 (a) and (d), of the Convention, the author averred that her employer allegedly tried to force her to sign a document stating that she benefited from all her rights, failing which he threatened to spread rumours that she had a relationship with other men. She claimed that as such, she was exposed to gender-based discrimination – “mobbing” – by the employer and that the courts failed to address it and to provide her compensation for this. The author also submitted that the principle of equal treatment has been violated through the dismissal of a female employee for her alleged extra-marital affair at work.

I do not agree with the argument of the State party that the claim of a violation of article 11, paragraph 1, of the Convention is manifestly ill-founded and not sufficiently substantiated and that the author failed to provide sufficient substantial information on any possible connection between her dismissal and her alleged relationship with Mr. D.U. or on any discrimination between Mr. D.U. and herself and that the author was dismissed on the grounds that she failed to have regular work attendance and did not act in line with business ethics, while Mr. D.U. had no work attendance issues and no complaint by any customer had been recorded against him.

I agree with the author's argument that the State party wrongfully understood the claims of each party to the litigation before the Kocaeli 3rd Labour Court. In her submission, she reiterated that during the first proceedings for wrongful dismissal, the employer submitted

to the Kocaeli 3rd Labour Court a letter of response and a termination of contract statement, in which he claimed that the author was dismissed because she had a relationship with a male colleague, displayed this sexual relationship and had an unethical behaviour in breach of the business ethics and caused rumours within the workplace. A witness on the employer's behalf, Mr. M.A. even testified that the author had a relationship with her colleague Mr. D.U. The author also emphasised that, contrary to the State party's assertion, these claims were made by the employer and formed the basis for the case for the employer. The author explained how it was following such allegations by the employer that she filed an additional case for gender-based discrimination in the workplace before the Kocaeli 3rd Labour Court which consolidated the two cases. The author added that the employer's allegations to the effect that she failed to accede to his request for explanations, did not have regular work attendance and did not act in line with business ethics, were all rejected by the Kocaeli 3rd Labour Court which found the termination of her employment to be unlawful and ordered the payment of a severance pay and other employment related damages to the author by the employer.

It is the case for the author that pursuant to article 5 of the Labour Act No. 4857 (2003), which provides that no employer shall "discriminate either directly or indirectly" against an employee in the conclusion, conditions, execution and termination of his employment contract on the ground of the employee's sex or maternity, courts have to investigate gender-based discrimination of both direct and indirect nature perpetrated by employers. With the consolidation by the Court of the two cases filed by the author, the case was entirely premised on the gender-based discrimination the author had suffered and her dismissal from her employment based on her sex. It is the case for the author that the courts ignored all the facts and evidence she submitted with regard to gender-based discrimination including the harassment and pressure exerted on her sign a document concerning her pecuniary rights and entitlements under the threat that rumours would be spread about her alleged relationship with other men. As a result, the author's claim under article 5 of the Labour Act has been rejected and she has been denied compensation under its provisions.

Article 11, paragraph (d) is about the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in evaluation of the quality of the work. The word "remuneration" in article 11, paragraph 1(d), is intended as agreed in the *travaux préparatoires* to incorporate the wide definition of pay in ILO Convention No. 100 so that remuneration includes "the ordinary, basic or minimum wage or salary and any additional emoluments, whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment." The kind of payments and benefits included in such a wide definition are severance pay, unfair dismissal compensation amongst others.

I note that although the Kocaeli 3rd Labour Court found that the author's dismissal was unjustified and unlawful, the author was only paid severance allowance and payment in lieu of notice for the wrongful dismissal and has lost her employment after six years of service. The Kocaeli 3rd Labour Court and the Court of Cassation also rejected the author's claim that she had suffered gender-based discrimination and as such, she was denied compensation pursuant to article 5 of the Labour Act. Neither the Kocaeli 3rd Labour Court nor the Court of Cassation addressed the arbitrary manner in which the author was dismissed and the consequence of the wrongful acts of the employer and the gender-based discrimination on the author's career. It may not be easy for the author, a 40 year old woman, at the time she submitted the complaint in 2009, to find alternative employment.

As the Labour Act in the State party does not contain any provision for any possible reintegration and reinstatement of the author to her post, I would like to stress that the right to work is a fundamental human right, strongly established in international law and firmly rooted

in the foundation of universal human rights. Article 11 of the Convention contains the most comprehensive provision on the right of women to work and in paragraphs 1–3, it defines the core elements of the right to work, which includes the right to job security, the right to equal benefits and equality of treatment in the evaluation of quality of work. Article 11 requires States parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service. Whereas the Committee has often highlighted the centrality of work in the lives of women, in the present case, the author has lost her job despite a finding by the court of the unjustified and unlawful termination of her employment. I therefore conclude that the State party has failed to guarantee the author’s substantive equality at work, that the acts and doings of the employer and his agents has resulted in a denial of the author’s right to employment as well as a denial of job security. In the light of the above, I find that the author also suffered a violation of her rights under article 11, paragraphs 1(a) and (d), of the Convention.

I endorse the recommendations made by the majority of the Committee.

(Signed) Pramila Patten

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee’s annual report to the General Assembly.]
