



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

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Fifty-eighth session

20 June-18 July 2014

Communication No. 47/2012

Decision adopted by the Committee at its fifty-eighth session

Submitted by:	Angela González Carreño (represented by counsel Women's Link Worldwide)
Alleged victims:	The author and her deceased daughter, Andrea Rascón González
State party:	Spain
Date of communication:	19 September 2012 (initial submission)
Document references:	Transmitted to the State party on 15 November 2012 (not issued in document form)
Date of adoption of decision:	16 July 2014

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Annex

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

Communication No. 47/2012* *González Carreño v. Spain*

Submitted by:	Angela González Carreño (represented by counsel Women's Link Worldwide)
Alleged victims:	The author and her deceased daughter, Andrea Rascón González
State party:	Spain
Date of communication:	19 September 2012 (initial submission)
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Date of adoption of decision:	16 July 2014

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 16 July 2014,

Adopts the following:

Decision under article 7 of the Optional Protocol

1. The author of the communication is Angela González Carreño, of Spanish nationality, born on 22 April 1960. She alleges that she was the victim of violations by the State party of articles 2 (a-f), 5 (a) and 16, singly and jointly with articles 2 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel. The Convention and its Optional Protocol entered into force for Spain on 4 February 1984 and 6 October 2001 respectively.

Facts as presented by the author

2.1 The author married F.R.C. in 1996. Her daughter, Andrea, was born in February of that year. During their time together, before and after the marriage, the author was subjected to physical and psychological violence by F.R.C. For that reason the author left the marital residence several times during 1999.

* The following members of the Committee participated in the examination of the present communication: Ms. Nicole Ameline, Ms. Barbara Bailey, Ms. Olinda Bareiro-Bobadilla, Mr. Niklas Bruun, Ms. Náela Gabr, Ms. Hilary Gbedemah, Ms. Nahla Haidar, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Dalia Leinarte, Ms. Theodora Nwankwo, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Pires, Ms. Biancamaria Pomeranzi, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Xiaoqiao Zou.

2.2 On 3 September 1999, after an episode in which F.R.C. threatened her life with a knife in Andrea's presence, the author left the marital residence definitively. On 3 and 7 September 1999 she reported the facts to the Guardia Civil (police) and the Juzgado de Primera Instancia e Instrucción núm. 2 de Arganda del Rey (Madrid) (Court of First Instance No. 2 of Arganda del Rey (Madrid)). On 10 September 1999, the author filed before the Juzgado de Primera Instancia e Instrucción de Navalcarnero (Court of First Instance of Navalcarnero (Madrid)) to report the abuses against her and her husband's psychiatric problems. At the same time she applied for a trial separation, with her daughter remaining under her guardianship and custody and a limited regime of visits between father and daughter, supervised by social services personnel. The author gave up the use of the marital residence.

2.3 On 22 November 1999, the court ordered a trial separation for a period of 30 days, pending submission of a formal petition for separation; granted care and custody of Andrea to the author; established a regime of visits between father and daughter limited to Fridays from 5 to 8 p.m. and Sundays from 10 a.m. to 2 p.m.; established an economic contribution of 360 euros which F.R.C. was to pay for the benefit of Andrea; and granted use of the marital residence to F.R.C.

2.4 After the trial separation the author continued to be subjected to harassment and intimidation by F.R.C., including death threats in the street and by telephone. During his visits with Andrea, F.R.C. questioned the child about the author's relationships, spoke ill of her, repeatedly called her a "whore" and accused her of having relationships with other men. This caused tension and anxiety in Andrea, who was afraid of her father and began to reject spending time with him. He, in turn, accused the author of manipulating the girl and instigating the rejection. On one occasion, in 2000, he approached them at the entrance to the building where they lived, insulting the author and attempting to pull the girl away. The author managed to get into her car with Andrea and go to the police. F.R.C. followed them and, upon reaching the police station, in front of a police officer, continued to insult her, threatening to kidnap the girl. Seizing her by the hair while the author had Andrea in her arms, he tried to throw her to the ground. Another time, on 30 August 2000, when the author was in her car with Andrea, F.R.C. followed them in his car, putting them in a dangerous situation. The author stopped and F.R.C. approached her, shouting and demanding that she hand over the girl, while banging on the car. This triggered a nervous outburst in the child, who began crying that her father should leave. When the visits stopped being supervised (see para. 2.13), F.R.C. took the lead in several violent incidents at the social services centre where he went to pick up and return the child.

2.5 The author asserts that she filed more than 30 complaints before the Guardia Civil and the courts of mixed jurisdiction (juzgados en materia civil y penal), and repeatedly sought protective orders to keep F.R.C. away from her and her daughter. She had also sought a regime of monitored visits and payment of child support. Systematic non-compliance by F.R.C. with the obligation to pay support placed the author in a difficult position in light of her modest means, as she had difficulty finding work given her poor educational level and work experience, her age and her family responsibilities. For that reason, in 2000, as part of the separation procedure under way, she found it necessary to apply to the court for the use of the family residence, which she had previously given up. Article 96 of the Civil Code provides that the use and enjoyment of the family dwelling, in divorce proceedings, is granted to the spouse who has the guardianship and custody of a minor.

2.6 Despite many complaints, F.R.C. was only convicted once, on 24 October 2000, on a charge of harassment. The Juzgado de Instrucción núm. 1 de Coslada (Trial Court No. 1 of Coslada) considered it proved that F.R.C. had been stalking and disturbing the author, constantly harassing her. However, the penalty imposed was only a fine of 45 euros.

2.7 The courts issued protective orders for the author. However, only one of them, issued on 1 September 2000 by the Juzgado de Instrucción núm. 5 de Coslada (Trial Court No. 5 of Coslada) and valid for two months, included Andrea. F.R.C. appealed it and the court left it unenforced with respect to Andrea, considering that the order hampered the visit regime and could seriously harm relations between father and daughter. Other court orders protecting the author were violated by F.R.C. without legal consequence to him.

2.8 In the framework of the guardianship and custody of Andrea, the author asserted that visits with her father were negatively affecting the child's mental health and requested a psychological examination. For that reason the court called Andrea to appear on 11 December 2000. During the appearance the girl said, among other things, that she did not like being with her father "because he did not treat her well" and "tore up her paintings".

2.9 On 31 January 2001, the Juzgado de Primera Instancia núm. 1 de Navalcarnero (Court of First Instance No. 1 of Navalcarnero) drew up a provisional schedule of supervised visits monitored by social services, starting on 8 February 2001 and limited to Thursdays from 6 to 7 p.m. at the Mejorada Velilla social services centre.

2.10 On 30 May 2001, the social worker in charge of monitoring sent a report to the court suggesting that the interaction between father and daughter might best take place in another context, so that they could relate to each other more naturally. She also said that F.R.C., through his daughter, transmitted messages indirectly to the author, to which Andrea did not know how to react. The author wrote to the court to express her disagreement with the report and requested that the supervised visit regime be continued.

2.11 In September 2001, at the author's request, the court authorized a psychological evaluation of herself, Andrea and F.R.C. The corresponding report, dated 24 September 2001, proposed that visits should gradually be normalized so that by the end of six months, Andrea should be able to spend almost a full day with her father, with no overnight and without the social worker; and making it possible to be with her father a full weekend with no overnight. If at the end of a year the relationship had been completely normalized, the possibility for Andrea to begin spending the night in the father's home might be considered.¹

2.12 On 27 November 2001, the court entered the order of marital separation, which disregarded the numerous complaints of abuse made by the author and did not refer to habitual ill-treatment as being the cause of the separation. Regarding the regime of visits, the order retained the restricted regime with supervision for a period of one month, gradually expanding it in accordance with the behaviour of F.R.C. Depending on a favourable report from the visit supervision centre, a second stage of six months was envisaged, during which the Thursday visits would last from school dismissal until 8 p.m. and would be unsupervised. After six months, depending on a favourable report from social

¹ With regard to F.R.C., the report observes "an obsessive-compulsive disorder with aspects of pathological jealousy and a tendency to distort reality which could degenerate into a disorder similar to paranoia".

services, the visits would take place on alternate weekends, with no overnights, and would last from noon to 7 p.m. on Saturdays and Sundays. After another six months, depending on a favourable report from social services, the visits would be expanded to alternate weekends, with overnights, with the possibility of also including half of vacations. At the same time, F.R.C. was granted use and enjoyment of the family dwelling. The decision did not make reference to the continued non-payment of support by F.R.C.

2.13 Despite numerous incidents of violence by F.R.C. during the year and a half of supervised visits, the Juzgado núm. 1 de Navalcarnero (Court No. 1 of Navalcarnero) entered an order of 6 May 2002 authorizing unsupervised visits. The court based itself on a report of social services which did not expressly recommend that there be no change in the system of supervised visits. In that report, social services indicated that F.R.C. “was affectionate with the child, constantly showing love and affection ... The dynamic of the relationship reveals that he does not adapt to the child’s stage of growth, asking questions and making statements that are inappropriate in form and content, giving rise to situations that are far from beneficial to the child. It often seems that he cannot put himself in the other’s place, that there is a lack of empathy. This is shown in his failure to adjust to the child’s young age and failure to understand normal situations that occur in this context.”

2.14 The author appealed this decision without success. On 17 June 2002, the court decided that although “social services cannot predict how the visits will go without their presence and although they do point to some shortcomings in the father’s behaviour, they also stress that relations between him and his daughter are gradually normalizing”. The court designated the social services office as the pick-up and drop-off point for the child. The decision indicates that it is not subject to appeal.

2.15 During the months of unsupervised visits, social services issued several reports which referred to Andrea’s wish, for the moment, not to spend more time with her father beyond the existing regime; that there were probably objectionable situations consisting of repeated questions about the private and emotional life of the mother and confusing comments by the father to the girl; and that the regime of visits had to be closely monitored. In a report of 5 February 2003, social services informed the court that, as reported by the child to her mother, during the visit of 30 January 2003, F.R.C. had insistently questioned the child about the author’s current partner and proffered insults against that partner, and that similar things had happened on other occasions.

2.16 On 24 April 2003, three years after the author had petitioned for the use of the family residence, a judicial hearing on the matter was held. At the end of that hearing, as the author was leaving the building, F.R.C. approached her and told her that he was going to take away what mattered most to her.

2.17 On the afternoon of the same day, the author took Andrea to social services for the planned visit with her father. When she later returned to pick her up, they had not arrived. After waiting for an hour, and there being no answer from F.R.C. to her telephone calls, the author went to the police to report the facts and ask that the police go to F.R.C.’s home. When police officers appeared at the dwelling, they found the lifeless bodies of Andrea and F.R.C. F.R.C. had a weapon in his hand. The police investigation concluded that F.R.C. had shot the girl and then committed suicide. On 12 June 2003, the Juzgado de Instrucción núm. 3 de Navalcarnero (Investigative Court No. 3 of Navalcarnero) declared F.R.C.’s criminal liability for Andrea’s death extinguished as he had committed suicide.

2.18 On 23 April 2004, the author filed with the Ministry of Justice a claim for compensation for miscarriage of justice, alleging negligence by the administrative and judicial authorities. The author maintained that both the judicial organs and the social services had failed in their obligation to protect the life of her daughter, despite the many occasions when she had informed the courts and police about the danger the girl faced with her father. The author claimed the right to receive compensation as the only viable form of redress.

2.19 On 3 November 2005, the Ministry of Justice denied the claim, taking the view that the judicial organ had acted properly regarding the regime of visits; and that the author's disagreement fell within the category of a judicial dispute and had to be processed accordingly. The claim for compensation could only go forward once a judicial error had been found by the Supreme Court. To take that decision the Ministry held consultations with the Consejo General del Poder Judicial (General Council of the Judiciary) and the Consejo de Estado (Council of State), and the author was heard. On 15 December 2005, the author submitted an administrative appeal with the Ministry of Justice which was denied on 22 January 2007 for the same reason.

2.20 On 14 June 2007 the author lodged an administrative appeal before the Audiencia Nacional (High Court) alleging improper functioning of the administration of justice, not only through the action of the courts which granted the regime of unsupervised visits, but through the functioning of the social services and the Ministerio Fiscal (Attorney General's Office) in eliminating the regime of supervised visits. The appeal was denied on 10 December 2008. On 27 February 2009, the author filed an appeal in cassation with the Tribunal Supremo (Supreme Court), which denied the appeal on 15 October 2010.

2.21 On 30 November 2010 the author appealed in *amparo* before the Constitutional Court, alleging violation of her constitutional rights to an effective remedy, to security, to life and physical and moral integrity, not be subjected to torture or cruel or degrading treatment or punishment, and to equality before the law. On 13 April 2011 the Court denied the appeal as lacking constitutional relevance.

The complaint

3.1 The author alleges that the facts described constitute a violation of articles 2, 5 and 16 of the Convention.

3.2 The actions of the police and the administrative and judicial authorities constitute a violation of her right not to suffer discrimination, protected by article 2 (a-f). This violation occurred on two levels. Firstly, the State failed to act with due diligence, with all means available to it and without delay to prevent, investigate, prosecute and punish the violence against the author and her daughter by F.R.C. and which culminated in the daughter's murder. Secondly, after the child's death the State party did not provide an effective judicial response or appropriate redress to the author for the damages suffered through the negligence of the State.

3.3 The State party violated article 2 (e) of the Convention because it did not protect the author and her daughter as victims of domestic violence. The author repeatedly informed authorities of the violence they had been suffering and of her fears for their lives and physical and mental integrity. Despite more than 30 appeals for protection and complaints filed with authorities and courts, mother and daughter continued to be the object of verbal, physical and psychological assaults. On many occasions, the author requested mediation from social

services, fearing the abuser would harm the child as a form of mistreatment against her. However, the authorities took no effective measures of protection.

3.4 During the years in which the author was a victim of domestic violence, there existed in Spain a lack of protection and investigation of domestic violence by authorities and the judiciary. In a 2001 report, the General Council of the Judiciary criticized this situation and called attention to the neglect of victims and the impunity enjoyed by perpetrators. Although measures were adopted between 1993 and 2003, the inequality and discrimination against victims continued. The State's inability to forge effective tools to combat domestic violence has led to situations such as the present case, which constitutes a violation of article 2 (a), (b) and (f).

3.5 The unresponsiveness of the administration and courts to the violence suffered by the author points to the persistence of prejudices and negative stereotypes, taking the form of an inadequate appreciation of the seriousness of her situation. That situation arose in a social context marked by a high incidence of domestic violence. The attitude of public authorities towards the author as a woman victim of violence and mother of a child murdered by her father, and towards her daughter as a child victim of intra-family violence, was inadequate. Accordingly, the action of the administration and courts constituted a violation of article 2 (d).

3.6 The courts never carried out an effective investigation to clarify responsibilities arising from the administrative and judicial negligence that culminated in the murder of Andrea. Moreover, the author has received no redress, which constitutes a violation of article 2 (b and c).

3.7 The State party failed to discharge its obligations under article 2, subparagraphs (a), (b) and (f) through the lack of a normative framework protecting women from domestic violence at the time when the events took place. Moreover, despite legislative reforms introduced since 2004, the legal framework still has not established a system of redress in cases of negligence by institutions and adequate protection of minors who live in an environment of violence and who are consequently also victims. The State's duty of diligence requires the adoption of legal and other measures to protect victims effectively.

3.8 With regard to article 5 of the Convention, the author asserts that the existence of prejudices by the authorities showed itself in their inability to correctly gauge the gravity of the situation she and her daughter were facing and her suffering due to the situation of the child. Further, no inquiry was ever conducted into the consequences for the child of living in an atmosphere of violence and her condition as a direct and indirect victim of that violence. Instead, the authorities responsible for providing protection chose to follow the stereotypical view that even the most abusive should enjoy visitation rights and that it is always better for a child to be raised by its father and mother; thus failing to appreciate the rights of the child and disregarding the fact that she had expressed fear of her father and rejected the contact. The courts took it for granted that it is better to have contact even with a violent father. The circumstances of the case called for the authorities and courts to evaluate whether the visits respected the child's right to life, to live free of violence, and the principle of the best interests of the child.

3.9 States have the obligation to protect children's right to be heard. In the present case, the judicial decisions did not respect that right. Several reports from social services indicated that F.R.C. did not appreciate the age of the child and interacted inappropriately with her, but this point was not considered by the

courts. Based on stereotypes, the right of visitation was seen merely as a right of the father and not as a right of the child as well. The best interests of the child would have required if not eliminating the visits, at least limiting them to supervised visits of short duration.

3.10 F.R.C. was not sanctioned for his repeated assaults on the author or his non-payment of child support. Despite a request by the author, F.R.C. was also not required to engage in therapy with a view to normalizing his relationship with his daughter. The authorities' assessment of the risk to the author and her daughter seems to have been obscured by prejudice and stereotypes that lead to questioning the credibility of women victims of domestic violence.

3.11 Based on the foregoing, the author maintains that the State party did not discharge its duty of diligence and violated article 5 (a), together with article 2 of the Convention.

3.12 Regarding article 16, the author alleges that she was discriminated against in the decisions relating to her separation and divorce. The authorities, bowing to their prejudices, did not take into account the situation of violence being experienced by the author and her daughter in making decisions about the terms of the separation and the visiting regime. Nor did they take steps to ensure that F.R.C. would carry out his obligation to contribute to the support of the child, despite the author's repeated demands. All of this placed the author in an extremely vulnerable position. Not until 21 April 2003, three days before the child's murder and three years after the author had first filed her complaint against F.R.C. for non-payment of support, did the office of the prosecutor take action against him. At that point, the debt he owed to the author amounted to 6,659 euros. These facts constitute a violation of article 16, especially with respect to the lack of regard for the principle of the best interests of the child, singly and jointly with articles 2 and 5 of the Convention.

3.13 F.R.C. used his daughter to hurt both of them and used his right of visitation for that purpose. There was continued insistence by social services and the courts seeking to "normalize" the relationship between the child and the abuser, without taking into account the child's interests and opinions. The authorities did not effectively evaluate whether the abuser was a person who deserved having visits, supervised or not, with a child whom he constantly abused. To the contrary, the authorities assumed the right of a father to maintain contact regardless of his actions in the family context. The administrative and judicial authorities allowed F.R.C. to shirk his obligations under article 16, paragraph 1 (c), (d) and (f). This occurred in a context of discrimination in which prejudices and stereotypes influenced the decisions of these authorities, in violation of articles 2, 5 and 16 of the Convention.

State party's submission on admissibility

4.1 On 14 January 2013, the State party made a submission on admissibility, maintaining that the communication was inadmissible because domestic remedies had not been properly exhausted. It alleged as a subsidiary argument that the communication was unsubstantiated.

4.2 In all of the answers to the claim of pecuniary responsibility of the State, the administration and courts informed the author that the appropriate way to seek and obtain, as the case may be, compensation for a miscarriage of justice was not to seek damages for the malfunctioning administration of justice but

rather through judicial error, as provided for in article 292.1² and following of the Organic Law on the Judiciary. In the decision of 15 October 2010, the Supreme Court recalled its jurisprudence that judicial error occurs when “the judge disregards unquestionable facts in a relationship that breaks the harmony of the legal order or the decision which mistakenly interprets the legal order, if it is an interpretation that cannot be sustained by any interpretative method in judicial practice”. Abnormal operation of the administration of justice encompasses any defect in the action of judges or tribunals, conceived as an organic complex in which persons, services and activities are encompassed. Each calls for a different procedure. Whereas compensation for error should be preceded by a judicial decision expressly acknowledging it, a claim for abnormal operation of the administration of justice does not require a prior judicial decision and is brought directly before the Ministry of Justice as prescribed by article 292 of the Organic Law on the Judiciary.

4.3 The author alleges that the action of the courts and social services was erroneous and that the tragedy should have been avoided because court decisions on the visiting regime and the reports on which they were based reveal that they were mishandled, showing that there were 47 complaints against her ex-husband which went unanswered. These circumstances clearly imply judicial error, whose recognition should be established through a review appeal before the Supreme Court.³ Not having filed it, the author has not exhausted domestic remedies.

4.4 As a subsidiary argument, the State party maintains that no infringement of the Convention, particularly articles 2 and 5, was committed since the Spanish authorities did not act negligently. The facts can be attributed only to F.R.C. Nor can one ascribe to the State negligence in the protection of integrity with regard to events prior to the entry into force of the Optional Protocol in Spain, which cannot be considered because they are not continuing acts.

4.5 The State party approves the assessment of the Audiencia Nacional (High Court) to the effect that the judicial organ that dealt with the separation considered the circumstances and psychological reports and adopted decisions on guardianship and custody of the child and the regime of visits, choosing a gradual and very detailed regime with successive stages which the father-daughter contacts would go through and the number of hours and supervision to which the relationship would be subject. During the months when the regime of unsupervised visits was being applied, there were positive reports about the regime, to the extent that the possibility was envisaged of moving to a broader system of visits without perceived risks to the child.

4.6 The High Court concluded that it did not find the existence of a miscarriage of justice but rather a set of judicial decisions which, considering the concrete circumstances and consistently following the regime of visits and psychological reports on the parents and child, with involvement by the Ministerio Fiscal (Attorney General’s Office) throughout and with constant writings of allegations by the parents and follow-up reports issued by social services, reached such conclusions as they saw fit regarding the manner in which communication between a separated father and his daughter should be channelled. The murder thus did not seem connected with abnormal functioning of a court or its personnel.

² Article 292.1: Damages caused to any assets or rights through judicial error, as well as those resulting from abnormal operation of the Administration of Justice, shall grant those who have suffered damage the right to compensation from the State, except in cases of force majeure, pursuant to the terms of this Title.

³ According to article 293.1 of the Organic Law on the Judiciary.

Author's comments on the State party's submission concerning admissibility

5.1 On 11 March 2013, the author made comments on the observations of the State party, indicating that she had litigated in the domestic courts in order to show that there was a miscarriage of justice and not merely a judicial error. Her litigation strategy was in keeping with the concept of miscarriage of justice contained in the Organic Law on the Judiciary, which characterized it as "any defect in the operation of the courts or tribunals, conceived of as an organic complex comprising various persons, services, means and activities".⁴ The various authorities had acted in a negligent and uncoordinated manner, including the psychosocial personnel related to the courts and social services. Accordingly, it was decided to litigate in order to show the malfunctioning of the administration of justice.

5.2 The State party alleges that the author should have used the procedure for pecuniary liability for judicial error. However, it does not provide information on the effectiveness of the procedures, for example through statistical data or examples of similar cases in which victims have obtained redress through this means. In the final analysis, the State party has not shown that this remedy would have been more effective than the one used.

5.3 With regard to the State party's argument relating to lack of substantiation, the author maintains that it should be rejected in the framework of admissibility, since the considerations expressed by the State in that regard pertain to the substance of the case. The author further expresses disagreement with those considerations and believes that the version of events presented by the State party is distorted.

5.4 Regarding the State party's contention that the acts involved are not continuing acts, the author points out that the violence endured by her and her daughter was continuous and culminated in the child's death, which occurred after the entry into force of the Protocol. The violence persists down to the present, in that she has not received compensation of any kind.

State party's observations on the merits

6.1 On 14 May 2013, the State party submitted observations on the merits of the communication. The State party asserts that, before the domestic courts, the author submitted a pecuniary liability claim in the amount of 1 million euros for miscarriage of justice in regard to the visiting regime that had been authorized. The author did not allege a violation of the Convention. Her claim did not include issues relating to miscarriage of justice in relation to herself. Therefore, the reply of the administrative authority was only to that petition and it is to that issue that the complaint before the Committee should be confined, since otherwise domestic remedies would not have been exhausted.

6.2 In reference to the visit scheme, the authorities conducted continuous monitoring of father-daughter relations and subjected the daughter and the parents to an exhaustive psychological evaluation on 24 September 2001. The resulting report indicated that "the father was observed to have an obsessive-compulsive disorder with aspects of pathological jealousy and a tendency to distort reality" which affected his relationship with his wife. However, in his conclusions, the psychologist did not find "warning signs or risks to the child in the interaction" with her father. The report recommended a gradual rapprochement between the child and her father.

⁴ See para. 2.18, *supra*.

6.3 In the light of the circumstances, the decree of separation, issued on 27 November 2001, assigned guardianship and custody to the mother and provided for continued exercise of joint parental authority. In the months that followed, after observation of father-daughter relations, a report was requested from social services on how well the visits had gone and whether it was advisable to move on to the second system provided for in the decision (unsupervised visits). The report stated that although the father was very insistent and dominant in his relationship with his daughter, not adapting well to her age, there was nothing unusual about the father-daughter relationship. In the light of that report, on 6 May 2002, the court considered that there was no reason to prevent starting the second visitation scheme. The author appealed this decision but the court maintained it. However, the court determined that the decision was not irrevocable and would be reconsidered if there were signs of harm to the child. At the court's request, social services issued a new report on 3 December 2002 which concluded that "there was satisfactory psychosocial development in the child"; that "it was important to bear in mind the child's wish, for the moment, not to spend more time with the father than that allocated in the visit scheme"; and that "it was felt necessary to maintain continuous monitoring of the visit regime". In the light of this report, the office of the Attorney General considered that the time had not yet come to transition to an overnight regime. In a new report, on 8 January 2003, it was decided to continue the existing regime. On 13 February 2003, the court decided to continue the existing visit scheme and adopted measures for garnishment of the father's wages.

6.4 The authorities did not act negligently and the events can only be attributed to F.R.C. The decision of the High Court expresses the view of the Government and also firmly makes clear that the procedural approach followed by the author was inadequate, that the judicial organ which dealt with the separation considered the concurrent circumstances and psychological reports and adopted decisions on care and guardianship of the child and on the visit scheme, opting for a gradual and very detailed scheme with different stages through which the father-daughter relationship might go. In May 2002, by judicial decision, supervised visits were replaced by unsupervised visits. This regime was maintained for several months, during which it was continuously monitored and positive reports were issued. It was even contemplated to move on to a broader system of visits, without any perceived danger to the child, until, in the afternoon of 24 April 2003, the father murdered her.

6.5 Despite the complex family context and the deadly conclusion, there is not the slightest clue among the exhaustive psychological reports and the reports of each and every one of the supervised visits that there existed a danger to the life or physical or mental health of the child. There was never a moment in which the child was not being monitored and watched over by the social services under the court, always working in her interest. Nothing in her immediate setting could have foreshadowed the dramatic reaction of F.R.C. The weapon in his possession was illegal, since he did not have a weapons licence, nor was he known to be a gun enthusiast.

6.6 With regard to the author's complaints of a general character, under articles 2, 5 and 16 of the Convention relating to structural questions concerning discrimination against women in Spain, the State party rejects the author's assertions that at the time of the events there was in Spain no defence against gender violence and that discriminatory practices, actions and stereotypes prevailed on an institutional and judicial scale. The State party provides a list of actions undertaken to eradicate all forms of discrimination against women since 1987, including the Comprehensive Plans of Action against Domestic Violence I

and II; amendments to the Penal Code and the Law on Criminal Justice aimed at precisely defining crimes against freedom and sexual security and the adoption of measures of protection for victims of ill-treatment. The law of 2004 on Measures of Comprehensive Protection against Gender Violence contains procedural measures allowing for prompt and expeditious procedures in both the civil and penal sphere, with measures of protection for women and their children side by side with urgent precautionary measures. Courts dealing with violence against women (Juzgados de Violencia sobre la Mujer) have been created, as a specialized investigative court, as well as specialized prosecutorial offices. Law 35/1995 was also adopted, on 11 December, providing aid and assistance to victims of violent crimes against sexual freedom.

6.7 With regard to articles 5 and 16 of the Convention, the State party mentions activities carried out with a view to the training of justice system employees, the development in 2004 of a Practical Guide for application of the law, the creation in 1994 of a Monitoring Centre on the Image of Women (Observatorio de la Imagen de las Mujeres), and the creation of Family Meeting Points. Noteworthy measures applying the law of 2004 are those aimed at awareness-raising; prevention and detection; the creation of administrative units to deal with gender violence; and amended definitions of offences.

Author's comments concerning the State party's observations

7.1 The author presented her comments on the State party's observations on 9 August 2013.

7.2 The author rejects the State party's argument that the complaint before the Committee is rooted in the claim of pecuniary compensation formulated on 27 April 2004, and points out that the State deliberately does not respond to the many complaints she submitted for persecution, harassment and violence, which she had mentioned in her claim of compensation. Those complaints were not taken into consideration when the authorities decided to authorize unsupervised visits. The State also does not respond to the author's complaints concerning continuous violence suffered by the child, also a victim of domestic violence, with respect to whom no protection was provided by the authorities.

7.3 Contrary to what is stated by the State party, the initial communication includes all the complaints, criminal and civil, that the author interposed from 1999 to 2003, i.e. before Andrea's death, in addition to actions initiated after her death. In the civil sphere, the author filed a complaint for each failure to pay child support since March 2000, but not until 21 April 2003, three days before Andrea's death, did the prosecutor file charges against F.R.C. The courts also dismissed the author's petition to be allowed to use the family residence in light of the non-payment of support. The first such complaint was on 24 April 2000 but the hearing did not take place until 24 April 2003, the day of Andrea's death. In the criminal sphere, of the more than 30 complaints filed by the author, only one led to a misdemeanour conviction, the sentence being a fine of 45 euros. Regarding the administrative proceeding begun after Andrea's death, its purpose was to address the miscarriage of justice, in the broad sense, in which both had been involved, including the procedures for separation, custody, the visit scheme, use of the family dwelling, non-payment of support, and complaints regarding threats, abuse and violence.

7.4 The author disagrees with the statement of the State party that she did not exhaust domestic remedies in regard to the acts of which she herself was the victim. Both she and her daughter were victims of the same violence, so it is pointless to draw distinctions between them.

7.5 The information included by the author in her initial communication regarding the context of the events is important to show that the lack of diligence in her case is typical of the lack of diligence that habitually characterizes domestic violence cases. When there is evidence of systematic patterns of violence against women, or when the incidence of violence against women is inordinately high, as reflected in a high rate of domestic violence, it is clear that the State knows or should know of the risks faced by women who have complained of violence from their partners or former partners. Consequently it is unacceptable for the State to argue that the risk faced by the author and her daughter was unforeseeable. The State not only knew of the situation in Spain with regard to domestic violence, but also knew specifically about the situation of the author and her daughter.

7.6 In order to discharge its duty of diligence, it is not enough for the State to adopt legislation on the subject; it is necessary for the legislation to be applied. In Spain, State negligence in protecting women and minors from domestic violence persists to the present time, despite the adoption of legislative measures. In addition, legislation is still lacking to establish a system of redress for victims when there has been negligence. The law is also deficient in regard to protecting minors who live in violent settings and who are therefore also victims of the violence.

7.7 The State party makes no comment on the lack of a satisfactory assessment of the best interests of the child or the violation of her right to be heard in judicial proceedings. On many occasions Andrea showed fear of her father, owing to the climate of violence to which she had been exposed and she consistently rejected physical and emotional contact with him. This meant that the authorities and courts had to evaluate whether the visits with her father respected her right to life and to live free of violence, in addition to the principle of giving priority to the interests of the child.

7.8 The author requests the Committee to make the following recommendations to the State party: (a) complete redress and/or appropriate compensation, including, inter alia, payment with interest of unpaid child support; reimbursement with interest for the rent the author had to pay during the three years she was denied use of the family dwelling; pecuniary and non-pecuniary costs; symbolic redress, including, inter alia, the creation of a fund in memory of Andrea for child victims of domestic violence, tailored to organizations active in that field; (b) compensation to the author for physical and mental damages; (c) impartial and exhaustive investigation into the failures that occurred in implementing orders of protection, including ascertaining the responsibility of public officials; (d) public apology to the author for the failures in protecting her and her daughter; (e) impartial and exhaustive investigation into the failures that occurred regarding Andrea's right to be heard; (f) impartial and exhaustive investigation into the failures that occurred regarding the authorization of unsupervised visits. The author also asks that a recommendation be made to the State party to review its legislation on domestic violence, including aspects relating to the application of measures of protection, response to complaints of domestic violence and visiting and custody rights of an abusive parent.

Deliberations of the Committee

Consideration of admissibility

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

the Convention. In accordance with article 72 (4) of its rules of procedure, it must do so before considering the merits of the communication.

8.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.3 The author complains before the Committee that she and her daughter were the object of violence by her ex-spouse and the father of her daughter during several years and that this violence culminated on 24 April 2003 with the murder of the child during one of the unsupervised visits authorized by judicial decision some months previously. She asserts that prior to the murder she had made known to the administrative and judicial authorities the abuses she was enduring from her ex-husband and asked for protection.

8.4 The Committee notes that some of the abuses and complaints before the authorities occurred before 6 October 2001, the date of entry into force of the Optional Protocol for Spain. The Committee lacks jurisdiction *ratione temporis* to examine these facts individually, in accordance with article 4, paragraph 2 (e) of the Optional Protocol. Accordingly, the Committee will take them into account only to the extent that they explain the context of events that occurred after the entry into force of the Protocol for Spain.

8.5 The Committee also observes that after the entry into force of the Protocol there were two especially important judicial decisions regarding the events leading up to the child's death, namely, the order of 5 May 2002 of the Juzgado núm. 1 de Navalcarnero (Court No. 1 of Navalcarnero) authorizing the regime of unsupervised visits; and the decision of 17 June 2002, denying the appeal by which the author had objected to said regime. The latter decision was not subject to appeal. Since these two decisions were taken after the entry into force of the Protocol, the Committee is not barred under article 4, paragraph 2 (e) of the Protocol from examining facts deriving from those decisions.

8.6 With respect to the exhaustion of internal remedies, the Committee notes the observations of the State party that the author did not exhaust those remedies, since she should have alleged before the courts the apparent existence of a judicial error instead of a miscarriage of justice. With regard to this objection, the Committee considers that it must determine whether, in light of the Convention, the author exerted reasonable efforts to bring before national authorities her complaints regarding the violation of rights arising from the Convention. In that regard the Committee notes that, after the death of her daughter, the author interposed several administrative and judicial appeals alleging miscarriage of justice on the part of the State. In particular, two appeals were addressed to the Ministry of Justice, one to the High Court (Audiencia Nacional) and one appeal in cassation to the Supreme Court. In those appeals, the author alleged improper functioning of the administration of justice because the courts, the social services and the Fiscalía (attorney general) had failed in their obligation of due diligence and had erred in allowing an unsupervised visiting scheme between father and daughter. All of those appeals were rejected. In addition, the author filed an appeal in *amparo* before the Constitutional Court in which she alleged the violation of her fundamental rights with regard to the circumstances that led to the death of her daughter and the lack of redress by the State. This appeal was also rejected, as the Court found that it lacked constitutional relevance. In light of the author's explanations about the purpose of her appeals, not limited to identifying judicial error, and considering that the State party has not pointed to other possible legal avenues that could have been effective to respond to the specific and complete demands of the author, the

Committee considers that internal remedies have been exhausted with regard to the complaint concerning the establishment by the authorities of an unsupervised visiting regime and the lack of redress for the negative consequences resulting from that regime.

8.7 Regarding the State party's objection to admissibility under article 4 (2) of the Optional Protocol, the Committee considers that the author's complaints regarding the introduction of the unsupervised visit scheme and redress for the death of Andrea have been sufficiently substantiated for purposes of admissibility. Consequently, and there being no other reasons to prevent it, the Committee considers that the communication is admissible and proceeds to consider it on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in light of all the information placed at its disposal by the author and by the State party, in accordance with the provisions of article 9, paragraph 1, of the Optional Protocol.

9.2 The question before the Committee is that of the responsibility of the State for not having fulfilled its duty of diligence in connection with the events that led to the murder of the author's daughter. The Committee is satisfied that the murder took place in a context of domestic violence which continued for several years and which the State party does not question. This context also includes the refusal of F.R.C. to pay support and the dispute concerning the use of the family dwelling. The Committee considers that its task is to review, in light of the Convention, decisions taken by the national authorities within their purview and to determine whether, in making those decisions, the authorities took into account the obligations arising from the Convention. In the present case, the decisive factor is therefore whether those authorities applied principles of due diligence and took reasonable steps with a view to protecting the author and her daughter from possible risks in a situation of continuing domestic violence.

9.3 The Committee notes the State party's argument to the effect that the behaviour of F.R.C. was unforeseeable and that nothing in the psychological and social services reports could lead one to predict a danger to the life or physical or mental health of the child. In light of the information contained in the record the Committee cannot agree with this assertion for the following reasons. In the first place, the Committee notes that the final separation of the spouses, decreed on 27 November 2001, was preceded by many violent incidents directed at the author, which the child often witnessed. The courts issued protective orders, which F.R.C. would disregard without this implying any legal consequences for him. The only time he was convicted was in 2000, for conduct constituting harassment, but the punishment was limited to a fine amounting to 45 euros. In the second place, despite the author's requests, the orders of protection issued by the authorities did not include the child, and an order issued in 2000 in the child's favour was left without effect, as the result of an appeal filed by F.R.C., in order not to jeopardize relations between father and daughter. In the third place, the social services reports repeatedly stressed that F.R.C. was using his daughter to transmit messages of animosity to the author. They also pointed to F.R.C.'s difficulties in adjusting to the child's young age. In the fourth place, a psychological report of 24 September 2001 observed in F.R.C. "an obsessive-compulsive disorder with aspects of pathological jealousy and a tendency to distort reality which could degenerate into a disorder similar to paranoia". In the fifth place, during the months of unsupervised visits, several reports from social

services pointed to the likelihood that there were inappropriate situations consisting of repeated questions by the father of the daughter concerning the private life of the mother, as well as the need to maintain continuous monitoring of the visit regime. The Committee also observes that F.R.C., from the start of the separation, systematically and without reasonable justification shirked his obligation to provide child support. Although the author complained of this situation repeatedly, adducing her difficult economic situation, it was not until 13 February 2003 that the judicial authorities took measures to garnish F.R.C.'s wages. Similarly, the author had to wait three years for the court to hold a hearing concerning her request for the use of the marital dwelling.

9.4 The Committee observes that during the time when the regime of judicially determined visits was being applied, both the judicial authorities and the social services and psychological experts had as their main purpose normalizing relations between father and daughter, despite the reservations expressed by those two services on the conduct of F.R.C. The relevant decisions do not disclose an interest by those authorities in evaluating all aspects of the benefits or harms to the child of the regime applied. It is also noteworthy that the decision which ushered in a regime of unsupervised visits was adopted without a prior hearing of the author and her daughter, and that the continued non-payment of child support by F.R.C. was not taken into account in that context. All of these elements reflect a pattern of action which responds to a stereotyped conception of visiting rights based on formal equality which, in the present case, gave clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a vulnerable position. In this connection, the Committee recalls that in matters of child custody and visiting rights, the best interests of the child must be a central concern and that when national authorities adopt decisions in that regard they must take into account the existence of a context of domestic violence.

9.5 The Committee considers that the authorities of the State party initially took actions to protect the child in a context of domestic violence. However, the decision to allow unsupervised visits was taken without the necessary safeguards and without taking into account that the pattern of domestic violence that had characterized family relations for years, unquestioned by the State party, was still present. It is enough to recall in that regard that the judicial decision of 17 June 2002 referred to certain improper actions by F.R.C. in regard to his daughter; that at the time F.R.C. continued not to pay child support with impunity; and that he continued using the family dwelling in spite of the author's claims in that regard.

9.6 The Committee recalls its general recommendation No. 19 (1992), according to which gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.⁵ This discrimination is not limited to acts committed by or on behalf of Governments. Thus, for example, under article 2 (e) of the Convention, States parties commit to taking all appropriate steps to eliminate discrimination against women practised by any person, organization or enterprise. On this basis, the Committee considers that States may also be responsible for acts of private persons if they do not act with due diligence to prevent violations of rights or to investigate and punish acts of violence and to compensate victims.⁶

⁵ General recommendation No. 19 (1992) on violence against women, paras. 6 and 7.

⁶ *Ibid.*, para. 9.

9.7 The Committee recalls that under article 2 (a) of the Convention, States parties have the obligation to ensure by law or other appropriate means the realization and practise of the principle of equality of men and women, and that pursuant to articles 2 (f) and 5 (a), States parties have the obligation to adopt appropriate measures to amend or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. States parties also have the obligation, in accordance with article 16 (1), to adopt all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relationships. In that regard, the Committee stresses that stereotypes affect women's right to impartial judicial process and that the judiciary should not apply inflexible standards based on preconceived notions about what constitutes domestic violence.⁷ In this case, the Committee considers that the authorities of the State party, in deciding on the establishment of an unsupervised scheme of visits, applied stereotyped and therefore discriminatory notions in a context of domestic violence and failed to provide due supervision, infringing their obligations under articles 2 (a), (d), (e) and (f); 5 (a); and 16, paragraph 1 (d) of the Convention.

9.8 The Committee notes that the author of the communication has suffered harm of the utmost seriousness and an irreparable injury as a result of the loss of her daughter and the violations described. Moreover, her efforts to obtain redress have been futile. The Committee therefore concludes that the absence of reparations constitutes a violation by the State party of its obligations under article 2 (b) and (c) of the Convention.

9.9 The Committee notes that the State party has adopted a broad model for dealing with domestic violence which includes legislation, awareness-raising, education and capacity-building. However, in order for a woman victim of domestic violence to see the practical realization of the principle of non-discrimination and substantive equality and enjoy her human rights and fundamental freedoms, the political will expressed by that model must have the support of public officials who respect the obligations of due diligence by the State party.⁸ These include the obligation to investigate the existence of failures, negligence or omissions on the part of public authorities which may have caused victims to be deprived of protection. The Committee considers that, in the present case, that obligation was not discharged.

10. In accordance with article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and taking into account all of the foregoing considerations, the Committee considers that the State party has infringed the rights of the author and her deceased daughter under articles 2 (a-f); 5 (a); and 16, paragraph 1 (d) of the Convention, read jointly with article 1 of the Convention and general recommendation No. 19 of the Committee.

11. The Committee makes the following recommendations to the State party:

(a) With regard to the author of the communication:

(i) Grant the author appropriate reparation and comprehensive compensation commensurate with the seriousness of the infringement of her rights;

⁷ Communication No. 20/2008, *V.K. v. Bulgaria*, Decision of 25 July 2011, para. 9.11.

⁸ Communication No. 5/2005, *Goecke v. Austria*, Decision of 6 August 2007, para. 12.1.2.

(ii) Conduct an exhaustive and impartial investigation to determine whether there are failures in the State's structures and practices that have caused the author and her daughter to be deprived of protection;

(b) In general:

(i) Take appropriate and effective measures so prior acts of domestic violence will be taken into consideration when determining custody and visitation rights regarding children and so that the exercise of custody or visiting rights will not endanger the safety of the victims of violence, including the children. The best interests of the child and the child's right to be heard must prevail in all decisions taken in this regard;

(ii) Strengthen application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence;

(iii) Provide mandatory training for judges and administrative personnel on the application of the legal framework with regard to combating domestic violence, including training on the definition of domestic violence and on gender stereotypes, as well as training with regard to the Convention, its Optional Protocol and the Committee's general recommendations, particularly general recommendation 19.

12. In accordance with article 7, paragraph 4, 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 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 and have them widely distributed in order to reach all relevant sectors of society.

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