



**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. 37/2012

**Decision adopted by the Committee at its fifty-ninth session
(20 October-7 November 2014)**

<i>Submitted by:</i>	T.N. (represented by counsel, Tyge Trier)
<i>Alleged victim:</i>	The author and her daughters, M.N. and S.N.
<i>State party:</i>	Denmark
<i>Date of communication:</i>	19 September 2011 (initial submission)
<i>References:</i>	Transmitted to the State party on 23 February 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	3 November 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-ninth session)

concerning

Communication No. 37/2012*

Submitted by: T.N. (represented by counsel, Tyge Trier)
Alleged victim: The author and her daughters, M.N. and S.N.
State party: Denmark
Date of communication: 19 September 2011 (initial submission)

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 3 November 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is T.N., a citizen of the United States of America. She is the mother of M.N. and S.N., born in 2003 and 2005, respectively, who hold dual nationality and are citizens of both the United States and Denmark. She claims that she and her daughters are victims of violations by Denmark of articles 1, 2, 5 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The author was represented by counsel, Tyge Trier, from July to August 2012. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively.

1.2 In accordance with rule 69 of its rules of procedure, the Committee transmitted the communication to the State party on 23 February 2012. On 12 July 2012, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, and upon the author's request, the Committee requested that the State party should take all measures necessary to ensure that, in the determination of child custody and visitation rights, incidents of violence were taken into account and the rights and safety of the author and her children were not jeopardized. The Committee also requested the State party to take measures to ensure the safety and

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Olinda Bareiro-Bobadilla, Niklas Bruun, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Violeta Neubauer, Theodora Oby Nwankwo, Pramila Patten, Maria Helena Lopes de Jesus Pires, Biancamaria Pomeranzi, Patricia Schulz, Dubravka Šimonovič and Xiaoqiao Zou.

well-being of the author and her children and to ensure the proper implementation of the ruling of the High Court of Western Denmark that “the children have regular, comprehensive and unproblematic contact with both parents”.

Factual background on the basis of the submissions by the author

2.1 The author is a citizen of the United States who married a Danish national. The family lived in the United States before moving to Germany. In 2007, the author’s husband decided to leave Germany and return to Denmark. The author claims that her husband, who had begun to beat her when they were living in Germany, told her then that she would not be allowed to see their two daughters again if she did not come with him to live in Aarhus. The author followed him and, since then, has lived in Denmark, where she works as an engineer in a security company. She alleges that her husband continued to beat her after they moved to Denmark, sometimes in front of the children. She also claims that, on 12 April 2009, the Aarhus police came to their home after she had reported being stabbed, beaten and choked by her husband. She claims that, even though she was bleeding and had bruises on her face and hands and her husband did not deny assaulting her, the officers told the author that she was not allowed to leave the house with the children without the authorization of her husband. The police confiscated the children’s passports to prevent the author from leaving the country with them while the violent episode was being investigated. No further action was taken by the police, however, and no special measure of protection was put in place. The author also alleges that she was subsequently not authorized to see the police report on the incident because it was with the prosecutor and that it was later explained to her that the police did not manage to identify the police officers who came to her house on that day.

2.2 The author claims that the violence of her husband towards her and the children worsened in 2010 and that he was beating her on a daily basis. He became unapologetic about the violent episodes and made regular threats that she would never see the children again if she left him. Some members of the author’s family contacted the Embassy of the United States in Copenhagen to request assistance for the author in her difficult situation. One official has been in regular contact with the author and advised her to seek refuge at the Aarhus Krisecenter, a shelter for victims of domestic violence. On 10 May 2010, following another beating, the author went with her children to the shelter, where they lived for a few months. The police came to the shelter later that day to confiscate the passports of the author and her children at the request of the author’s husband, who was afraid that the author would leave the country with the children. At the shelter, the police officers refused to make a report on the domestic violence episode or to take note of the author’s injuries.¹ The author explains that she later went to the police station to file a complaint of domestic violence, but the officer who took the initial complaint did not speak good English. The author was told that she would be further interviewed later, yet no hearing of the author or witnesses was conducted. The author, her lawyer and a representative of the Embassy of the United States² enquired about the status of the complaint, but no reply was provided and no further action was taken by the police to investigate this episode of domestic violence.

¹ The author did not submit a medical certificate in connection with her alleged injuries.

² The author submitted copies of the correspondence (e-mails and letters).

2.3 In May 2010, the author filed for divorce. By a decision dated 30 June 2010, the Regional State Administration of Mid-Jutland decided that the children were to reside temporarily with the author until a court decision or an agreement on residence had been reached. The author's husband contested the arrangement and the Aarhus District Court was seized of the question outside of the divorce proceedings. In the context of the custody proceedings, the author claimed that her husband used to beat her and the children when they were living together and that he continued to beat the children thereafter, whenever the children spent time with him under the joint custody arrangement. She states that the social services contacted the police several times about various incidents between 17 August 2010 and 14 September 2011.³ Between 16 August 2010 and 25 August 2011, hospitals produced several medical reports about injuries sustained by the author's daughters, allegedly owing to their father's behaviour. On 8 April 2011, 19 April 2011 and 31 August 2011, however, the prosecutor decided not to order that criminal investigations be opened.⁴

2.4 The author also states that she was informed by the police in October 2010 that a restraining order had been issued against her husband in accordance with her request, following his attempts to have her deported by claiming that she was working illegally in the country and because he harassed her at work.⁵ It was later revealed, however, that the order had never been issued because the police considered that there was no evidence that her husband had sought to have her deported and/or harassed her. Further attempts by the author to obtain a restraining order also failed.

2.5 The author mentions that the lack of investigation and criminal proceedings against her husband is mainly due to the behaviour of a specific assistant judge at the Aarhus District Court, who constantly interfered in the proceedings, even though he was not originally assigned to deal with the custody issue. The author argues that he was involved at her husband's request and influenced the entire proceedings, discrediting her allegations of domestic violence so that her husband would obtain full custody. The author refers to an occasion when the assistant judge accompanied another representative of the District Court to grab her eldest daughter at her school.

2.6 With regard to the civil custody proceedings, the Aarhus District Court ruled in favour of the author's husband on 13 October 2011, granting him full custody of their two daughters. The basis for the decision was the absence of proof of any violence perpetrated by the author's husband and the District Court's assessment that the daughters would be in a better environment with their father because he would not prevent the children from seeing their mother, contrary to the mother in relation to the father. The judge recognized that the children's relationship with their father was not easy, but considered that to be the result of the open conflict between the parents and the fact that the father spent insufficient time with his children. The

³ The author provided translated copies of e-mails from the social services mentioning some violent episodes of the husband towards the children and the fact that they were reported to the police.

⁴ The author provided copies of the prosecutor's decisions in Danish only. The author indicates only that the prosecutor based the decisions on the conversations that he had with the author's husband, who explained that the past violent episodes were accidents.

⁵ The author provided no further information on the circumstances in which she was informed that a restraining order had been issued.

author appealed against the judgement to the High Court of Western Denmark, which upheld the ruling on 29 March 2012.

Complaint

3.1 The author claims that she and her two daughters are victims of discrimination under the Convention on the basis of their sex and nationality. In one submission, the author also refers to race as a ground for discrimination.

3.2 The author considers that the authorities of the State party have failed to protect her and her children against her husband's violent behaviour, both through their decisions not to institute criminal proceedings against him despite the violent episodes duly reported to the police and by not granting her custody of the children, who remain vulnerable to further domestic violence at the hands of their father. She maintains that the Danish police and judicial authorities are biased against female foreigners who are married to Danish men, given that they give credence only to her husband's version of events and disregard her account, that of a female foreigner. She further claims that, as a foreigner, she cannot have her rights recognized and enforced in Denmark.

3.3 The author further contends that domestic remedies are unreasonably prolonged and are unlikely to bring effective relief because the Danish authorities have shown themselves to be biased against her and her daughters on gender and racial grounds.

State party's observations on admissibility

4.1 On 27 April 2012, the State party challenged the admissibility of the communication. As a preliminary argument, the State party considers that the Committee should reject such communications at the registration stage without requesting the State party to submit observations on such unstructured communications with voluminous documents annexed thereto, in which the author does not rely on any specific right enshrined in the Convention and does not specify the scope of her complaint.⁶

4.2 The State party notes that, from the documents submitted, it appears that the complaint relates primarily to continuing litigation between the author and her husband about the custody of their two daughters.

4.3 The State party indicates that on 30 June 2010 the Regional State Administration of Mid-Jutland temporarily awarded joint custody to the author and her husband until a court decision or an agreement on residence had been reached. The Regional State Administration, with the assistance of the Bailiff's Court,⁷ also decided that the children were to reside with the author, but fixed temporary access for the duration of the proceedings was granted to the author's husband every second weekend for three nights and access for two nights during the following week.

⁶ It is correct that, in her initial complaint, the author did not point out which articles of the Convention had allegedly been breached by the State party.

⁷ In Denmark, the Bailiff's Court is a division of the District Court that helps the parties to enforce claims.

4.4 On 13 October 2011, the Aarhus District Court ruled in favour of the author's husband and awarded him full custody of the children after a thorough consideration of the circumstances of the case. During the proceedings, the judge and a child expert interviewed the author's eldest daughter, Mia, on 17 January 2011. A psychologist also prepared a child welfare report, dated 5 April 2011, for the proceedings. Opinions from the school and the manager of the children's after-school care facility were also obtained.

4.5 In its decision, the District Court considered that an extremely high level of conflict existed between the author and her husband and that they were unable to cooperate on matters involving the children. On the basis of the evidence adduced, the District Court found that there were major disagreements between the parties concerning access arrangements and that they had entirely different opinions on the well-being of the children, including on access visits with the author's husband. One result of the situation was that the author had, on numerous occasions, reported her husband to the police for assaulting the children when they were visiting him, but the reports had not led to prosecution or conviction in criminal proceedings owing to lack of evidence. For the same reason, the author had, on many occasions, refused to hand over the children to her husband during his official access visits. The level of conflict had resulted in disagreement between the parties as to where and how the girls were to receive psychological treatment, even though both parties acknowledged that the girls needed it. In the circumstances, the District Court found that there were weighty reasons for terminating the joint custody arrangement.

4.6 The District Court also found that, according to the child welfare report, both parents had much to offer to their children to further their future development and that the children were attached to and felt secure with both parents and each other as siblings. It was stated in the report that one of the strengths of the author's husband was that he recognized to a great extent that the children needed close contact with their mother as well as peace and stability. It was also stated that his weakness might be that he might adhere too strictly to rules and regulations in some situations. It was indicated that one of the author's strengths was her ability to follow the children and do things together with them at their level. Her weakness, however, was that she was convinced that her husband was violent towards the children, that she must protect the children from him, that she did not recognize the repeated decisions of the Bailiff's Court regarding custody and visitation rights granted to him and that, in the past, she had refused to hand over the girls to him during his authorized access visits. Furthermore, she did not accept the decisions of the Prosecution Service and the rulings in the criminal proceedings against her husband that had all concluded that there was a lack of evidence against him. It also appeared from the child welfare report that the children had a deep need to be kept clear of their parents' mutual conflict to prevent them from experiencing personality or emotional problems in the long run and that they were already suffering harm as a result of the situation.

4.7 The District Court concluded that Mr. N. was the person best able to provide the requisite stability, including keeping the girls out of the conflict between their parents to the greatest extent possible and giving them an opportunity to see both parents and receive the necessary treatment. With regard to access, the District Court noted that it was recognized in the child welfare report that both children had pleasure in and needed contact with both parents.

4.8 The author appealed against the judgement to the High Court of Western Denmark on 14 October 2011. The appeal was pending when the State party submitted its observations. According to the State party, the author is conducting domestic proceedings simultaneously with those before the Committee, meaning that the communication should be declared inadmissible pursuant to article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies.

4.9 The State party also submits that the author makes unsupported claims that have not been raised in substance before the Danish authorities, in particular her claim that she and/or her daughters were victims of gender-based discrimination. Consequently, the domestic authorities have had no opportunity to deal with any potential implied assertion of gender-based discrimination.⁸ For the communication to be admissible, it might not have been necessary for the author to have referred specifically to particular articles of the Convention before the Danish authorities, but she should at least have raised the relevant substantive rights of the Convention before them. The judgement of the Aarhus District Court of 13 October 2011 was made in accordance with standard proceedings regarding custody matters and there is no indication that any issues relating to the rights protected under the Convention were raised by the author during those proceedings, whether explicitly or implicitly. The communication should therefore also be declared inadmissible pursuant to article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies.

4.10 The State party further considers that the communication should be declared inadmissible under article 4 (2)(b) of the Optional Protocol because it is incompatible with the provisions of the Convention. The rights under the Convention, if any, on which the author is relying appear unclear. Furthermore, the author has, in the annexed documents, alleged violations of other human rights instruments, including the Universal Declaration of Human Rights and the Convention on the Rights of the Child.

4.11 According to the State party, the communication should also be declared inadmissible under article 4 (2)(c) of the Optional Protocol because it is clearly not sufficiently substantiated. As previously mentioned, the author has not identified or explained the rights granted by the Convention on which she is relying. She has not indicated what particular act or omission by the Danish authorities allegedly entails a violation of the Convention. Instead, she has put forward unclear and generally unsupported claims against the Danish authorities and specific government officials. The lack of substantiation of the communication renders it impossible for the State party to assess the nature and scope of the author's claim under the Convention.

4.12 Lastly, the State party submits that, for the above-mentioned reasons, the communication should be declared inadmissible under article 4 (2)(d) of the Optional Protocol as an abuse of the right to submit a communication.

Further information submitted by the State party

5. On 25 June 2012, the State party confirmed that the High Court of Western Denmark had rendered its judgement on 29 March 2012 and upheld the decision

⁸ The State party refers to the Committee's jurisprudence in communication No. 10/2005, *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, decision of inadmissibility adopted on 30 May 2007, para. 7.3, and communication No. 8/2005, *Kayhan v. Turkey*, decision of inadmissibility adopted on 27 January 2006, para. 7.7.

about custody and access rights made on 13 October 2011 by the Aarhus District Court.⁹ The State party informed the Committee that the author's application to appeal to the Supreme Court had been rejected by the Appeals Permission Board on 31 May 2012.¹⁰

Author's comments on State party's observations on admissibility

6.1 The author submitted her comments on the State party's submissions on admissibility on 7 July and 1 August 2012. She states that, for the sake of clarity, she considers that she and her daughters are victims of a violation of articles 1, 2, 5 and 16 of the Convention.

6.2 The author argues that her communication is founded on the existence of conclusively proven gender-based domestic violence experienced by her and her daughters, which in itself is a breach of the Convention.¹¹ She claims that she has provided the Committee with a number of documents, including letters, confirming that she has been subjected to domestic violence by her husband. She refers in particular to a letter dated 5 May 2012, in which her obstetrician/gynaecologist, who assisted her in the United States during her pregnancies, attested to the sexual abuse that she suffered at the hands of her husband during their marriage and the physical and psychological consequences thereof. She also provides a letter dated 21 February 2012 from the lead case manager of the Americans Overseas Domestic Violence Crisis Center, a non-governmental organization based in the United States, which also confirms that the author has been a victim of domestic violence at the hands of her husband and that her children have suffered physical abuse, neglect and trauma at his hands.¹²

6.3 She claims that the police failed to ensure that she and her daughters would be protected by a restraining order and that her husband continues to stalk her, even though she does not have custody of her daughters. According to the author, the police also failed to investigate the violence against her and her daughters that officers had directly witnessed during the spring of 2009, because the alleged perpetrator was an ethnic Danish man and the victims were foreign women and girls. According to the author, those elements amount to a breach of article 2 (c) of the Convention.

6.4 The author considers that article 2 (d) of the Convention, which prohibits discrimination against women by State authorities, was breached by the bias demonstrated by the assistant judge against the author and the behaviour that he consistently displayed throughout the domestic violence and custody proceedings.

6.5 With regard to custody rights, the author refers to article 16 of the Convention.

6.6 She argues that domestic remedies with regard to her claims of domestic violence were not exhausted because of the inaction of the police, who failed to investigate her numerous allegations of domestic violence. The author further points

⁹ The State party submitted a translated copy of the decision.

¹⁰ It is to be noted that, following that judgement, the author launched fresh proceedings for custody and access.

¹¹ The author refers to general recommendation No. 19 on violence against women, in which the Committee explicitly recognized such violence as a form of discrimination against women.

¹² The letter was prepared on the basis of the author's own reports to the non-governmental organization. The copy provided by the author with her first comments is dated 17 May 2012.

to the partiality of the judiciary in the domestic violence proceedings (criminal proceedings) and custody proceedings (civil proceedings). She contends that the behaviour consistently displayed by the assistant judge in the custody proceedings, who also interfered in the domestic violence proceedings initiated at the police level, is clear evidence of a biased predisposition against her and her children because she is a female foreigner and her husband is a Danish national. She contends that that bias is also evidence that their access to effective remedies regarding their right to protection under the Convention has been jeopardized. The author further states that the Convention has not been incorporated into national legislation, which shows that the provisions of the Convention are not respected and applied by the Danish courts. In addition, she states that her appeal to the Supreme Court should not be considered to be an effective remedy for the purposes of exhaustion of domestic remedies, given that the Court may only review errors in law and not reconsider the facts.

6.7 She notes that on 10 April 2012 she applied for leave to appeal to the Supreme Court against the judgement of the High Court of Western Denmark of 29 March 2012, alleging, among other things, that she and her daughters were victims of a violation of article 2 of the Convention, but that the Appeals Permission Board rejected her application on 31 May 2012.¹³

Further information provided by the author

7.1 On 4 September 2012, the author informed the Committee that, on 20 June 2012, she had filed a request to the State Administration to obtain temporary custody of her daughters because her husband was planning to move to Gesten and the children would have to change schools. On 11 July 2012, the State Administration had restored temporary custody to the author pending a review of the situation on the basis of the new facts. Holiday periods had been split between both parents. The author explains that her husband had told the Danish authorities that he would spend the holidays with his daughters in Denmark, but she had later been told by her daughters that they were in Germany. The author also learned that her husband had lost his job and had permanently removed the children from their school. The author contacted the police in Aarhus, stressing the risk of violence faced by the children and requesting help to locate the children in Germany and ensure their return to Denmark. The author states that the police merely telephoned her husband in Germany to have him promise that he would return to Denmark with the children and took no further action.

7.2 On 3 September 2012, the Aarhus District Court held a hearing in the proceedings that were initiated on 12 July 2012 by the author's husband against the joint temporary custody decision made by the State Administration on 11 July 2012. The author requested that the District Court refrain from nullifying the decision of the State Administration because her children were happier with the new visitation access and the joint custody arrangement. The judge requested to speak with the author's daughters and to be given sufficient time to read the evidence provided by the author's counsel.

7.3 On 9 October 2012, the Aarhus District Court, relying on the previous findings of the High Court of Western Denmark and the hearing held on 3 September 2012,

¹³ The author provided a translated copy of her application for leave to appeal to the Supreme Court in which she referred to article 2 of the Convention.

decided that full custody should remain with the author's husband. Even though he intended to move to Gesten, which implied that the daughters would need to change schools, and the daughters had expressed a preference to live with their mother, the District Court deemed that the father could best ensure a stable situation for the children because he could guarantee their access to both parents without conflict, whereas the author had previously obstructed the daughters' contact with their father. The author also reiterates the problems that she is encountering at work as a result of the alleged harassment by her husband, who, after seeking to have her dismissed and deported, is continuing to stalk her, spending time in his car in front of her workplace and thus interfering in her attempts to lead a normal life.

7.4 On 16 October 2012, the author informed the Committee that the High Court of Western Denmark had heard her appeal on 11 October 2012 and decided to suspend the implementation of the decision of the Aarhus District Court. A date for a fresh hearing was to be set shortly. The author also reiterated that her husband was stalking her at work in order to obtain her dismissal.

7.5 On 3 January 2013, the author informed the Committee that, in November 2012, a warrant had been issued for her arrest, at her husband's request, on a charge of kidnapping her daughters. According to her, she had access rights to her daughters on the basis of the decision of 11 July 2012 of the State Administration, which had not been quashed by the District Court. It appears, however, that her husband considered that, because he had been granted full custody, the author no longer had access rights.

Additional information provided by the State party

8.1 On 4 February 2013, the State party submitted additional observations on the admissibility of the communication, complementing its observations provided on 23 April 2012.

8.2 The State party recalls the recent domestic proceedings, in particular the decisions of the State Administration of 11 July 2012 and the Aarhus District Court of 9 October 2012. It also informs the Committee that the latter decision was upheld by the High Court of Western Denmark on 3 December 2012 and that, on 12 December 2012, the author applied to the Appeals Permission Board for leave to appeal.¹⁴ In the light of the fact that judicial proceedings are continuing, the State party contends that they have never been at a standstill and that domestic remedies have not been exhausted, given that nothing suggests that the remedy of applying for permission to appeal to the Supreme Court is ineffective and insufficient. The State party reiterates that the author should have raised at the national level the substance of the claims that she is bringing before the Committee.

8.3 The State party also notes that the author is making unsupported allegations against the Danish authorities and individual officials at all levels of the domestic proceedings. It contends that the comprehensive material on the proceedings before the domestic jurisdictions transmitted to the Committee proves that the author's claims have been taken seriously and been subject to trial and review by the relevant domestic bodies. It also shows that the administrative and judicial authorities have regularly examined, assessed and ruled on the matter. According to the State party, by submitting a complaint to the Committee, the author is seeking to obtain a

¹⁴ The application was pending at the time of the State party's submission.

further review of the custody question and a ruling in her favour. The State party reiterates that the communication is an abuse of the right to submit individual communications under the Optional Protocol.

8.4 Furthermore, the State party indicates that the author submitted the same matter to the European Court of Human Rights on 21 May 2012 and that her complaint was registered as application No. 36201/12. It stresses that the author has failed to inform the Committee about her application, her frequent correspondence notwithstanding.¹⁵ The State party notes that the application made by the author to the European Court is extremely broad and comprehensive, referring to alleged violations of articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which are also anti-discrimination provisions. The State party considers that the issue at hand is the same as that brought before the European Court, given that it is presented by the same person, deals with the same facts and events and relates to the same substantive rights. On 20 December 2012, the European Court declared the application inadmissible.¹⁶ The State party therefore considers that, because the same matter has already been examined under another procedure of international investigation or settlement, the present communication is inadmissible under article 4 (2)(a) of the Optional Protocol.

8.5 On 28 February 2013, the State party informed the Committee that, on 21 February 2013, the author's application for leave to appeal to the Supreme Court had been refused by the Appeals Permission Board, rendering final the judgement of 3 December 2012 of the High Court of Western Denmark. The State party reiterated its views that the communication was inadmissible on the basis of the grounds raised in its previous observations.

Further information provided by the author

9. On 4 May 2013, the Committee was informed by the author's boyfriend that she had been arrested and detained by the police because she was considered to be responsible for hiding her eldest daughter, Mia. The author was released on 9 May 2013 after being warned that she would be rearrested if Mia did not appear at a court hearing on 14 May 2013. On 16 May 2013, the author contacted the Committee to explain that Mia had been regularly running away from her father's house since January 2013, but that she had nothing to do with that and could not prevent it. According to the author, Mia had run away again on 2 April 2013 and had not been seen since. The author stated that, although unaware of her daughter's whereabouts, she had nevertheless been detained.

¹⁵ In her numerous submissions during the summer of 2012, the author omitted to mention her application to the European Court and even stated, on 26 June 2012, one month after submitting the complaint to the European Court, that "the matter of violations of United Nations conventions has not already been or is not being examined officially under another procedure of international investigation or settlement as far as the petitioner is aware".

¹⁶ The State party provided a copy of the decision, which is a standard letter informing the author that the European Court, sitting in a single-judge formation, had decided to declare the application inadmissible, given that it had found that the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met.

Further information provided by the State party

10.1 On 9 July 2013, the State party submitted clarifications requested by the Working Group on Communications under the Optional Protocol on 18 March 2013 concerning the action taken by the national authorities with regard to the author's complaints of domestic violence.

10.2 The State party stresses that the police were called to the author's house only once, on 15 April 2009. It appeared to the police that the author and her husband were arguing because the author wished to leave with the two children. The author's husband informed the police that he was afraid that she would leave the country. The police officers suggested that he keep the children's passports. The police were called again an hour later because the author had refused to hand over the passports to her husband as agreed with the officers. The officers did not notice that any of the parties had been subjected to violence and there was no initial report that physical violence had occurred. As a result, none of the protection measures available for persons subjected to domestic violence was put in place. The State party further details the overall strategy developed by the police to combat jealousy killings and other serious cohabitation-related crimes and to raise the awareness of the police of the ways to handle such events.

10.3 The State party further explains that there are 12 cases on record in which the author reported her husband for committing violence against the children and that the police were in contact with the social services in this regard, but not as presented by the author. The social services were informed by the author that she had reported cases of violence against her daughters to the police. The social services therefore contacted the police orally to seek information on the existence and status of the cases, according to the usual practice. At no time did the social services contact the police to provide information or to report incidents. The State party argues that there are no written enquiries to the police from the health authorities concerning episodes of domestic violence.

10.4 The State party provides an overview of the 12 reports of violence made by the author to the police between 16 August 2010 and 30 December 2011. The police investigated each of them. In some cases, medical details about the children's alleged injuries had been provided and were taken into account. In one instance, following the reports of violence made by the author on 16 and 17 August 2010, her husband was charged under the Criminal Code, but was acquitted on 12 November 2010 by the Aarhus District Court. The Court found no proof of the requisite intent to commit violence and it could not be ruled out that he had hit his eldest daughter on the head by accident. In all the other instances of violence reported by the author, investigations were opened and then discontinued owing to lack of evidence or in the absence of suspicion that any criminal offence had been committed. All appeals against those decisions were rejected by the regional prosecutor for North and East Jutland.

10.5 Regarding the author's claim that the police investigated the domestic violence that she suffered but that the prosecutor did not charge her husband and closed the criminal proceedings, the State party notes that the police deny having received such a complaint. It adds that the only report on file is related to a complaint of 12 May 2010 by the author that her husband had pinched her body hard several times and sought to force her into an office. According to the medical certificate provided, there was a slight swelling on the author's left shoulder, but otherwise only

soreness. On 12 October 2010, following an interview with the author's husband, the investigation was discontinued owing to lack of evidence that a criminal offence had been committed, given that the medical examination provided no conclusive evidence, there were no witnesses and the statements of the parties were contradictory. An appeal against the decision was filed with the regional prosecutor, who dismissed it on 9 December 2010, even adding that it was dubious whether the matter fell under the Criminal Code in the light of its trivial nature.

10.6 The State party further explains that, between 2010 and 2012, the author made several complaints of harassment by her husband. On three occasions (19 October 2010, 15 December 2011 and 19 January 2012), she was told how to request a restraining order against him. The State party contends that each report of violence and harassment was assessed but that none were deemed suitable as a basis for issuing a restraining order. All the reports ended without any charge or criminal proceedings owing to a lack of evidence. On 14 May 2012, the author contacted the police to again request a restraining order against her husband and an investigation was launched. It appeared that the author had sent e-mails and text messages to her husband after having asked him not to contact her. Taking into account the limited contact made by the author's husband, the nature of the communications and the limited period during which they occurred (three e-mails in total), there were insufficient grounds for issuing a restraining order against him. The author was informed of the decision on 28 June 2012.

10.7 Regarding the alleged incident that occurred in July 2012, when the author's husband took the children to Germany during his three-week holiday with them, the State party notes that the author, on 18 July 2012, requested police assistance to locate the girls in Germany because she was concerned that her husband had no intention of handing the children over at the end of the holidays. The police telephoned him, and he stated that he was due to return to Denmark the following day and that the children would be handed over to their mother at the agreed time. The police duly informed the author of the conversation and considered that there was no ground for instituting criminal proceedings.

10.8 Lastly, the State party submits additional information on the latest proceedings, in particular the transcript of the court hearing of 14 May 2013, from which it appears that the author failed to attend with her eldest daughter as requested. The State party explains that, since that date, the author is a wanted person and it is assumed that she is abroad with at least her eldest daughter.

Further submission by the author

11. On 1 September 2013, the author submitted comments on the State party's further observations and information. She contests the factual elements presented by the State party, in particular the police intervention at her house in the spring of 2009, which she qualifies as erroneous and not realistic. She maintains that the social services and the hospitals directly reported episodes of violence to the police. She denies that she was informed of the outcomes of her complaints and in particular that her husband was tried and acquitted by the Aarhus District Court on 12 November 2010. She even doubts that the trial took place, given that the State party provided no copy of the judgement. She alleges that the State party falsified the explanations of violence against her daughters presented to the Committee in the context of the police investigations. She states that she was never interviewed in the

case in which she claimed to be a victim of domestic violence. She reiterates her claim that she was informed in October 2010 by the police in Aarhus that a restraining order had been issued against her husband because the police were aware of the domestic violence in the family since April 2009. According to the author, the official transcripts of the court proceedings are erroneous and do not properly reflect her statements. She notes that the State party did not provide some of the documents relating to the custody proceedings. She provides other details about those proceedings and about her divorce proceedings. To support all her claims, she is relying on the explanation and documents already submitted on 3 January 2013.

Issues and proceedings before the Committee concerning admissibility

12.1 At its twenty-fourth session, upon the State party's request, the Working Group on Communications under the Optional Protocol, acting on behalf of the Committee, decided, pursuant to rule 66 of the Committee's rules of procedure, to examine the admissibility of the communication separately from the merits.

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

12.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that, with regard to the custody proceedings, the initial complaint was indeed submitted while the domestic proceedings were under way, but that a final decision was subsequently rendered, on 3 December 2012, by the High Court of Western Denmark, which the State party confirmed as being a final decision on the custody issue because the author's subsequent appeal was denied. The Committee further notes that the author raised in substance and made explicit reference to a violation of article 2 of the Convention in her application dated 4 April 2012 to appeal to the Supreme Court against the decision of the High Court of 29 March 2012, which was made after she had submitted her initial complaint to the Committee. While the appeal was not admitted by the Appeals Permission Board, the domestic authorities still had an opportunity to consider the substantive claim made by the author of the alleged violations of the Convention in order to authorize or deny the application. In the absence of any further pertinent information on file, the Committee considers that, while the initial complaint may have been submitted prematurely to the Committee, article 4 (1) of the Optional Protocol does not, in the present circumstances, preclude it from examining the author's claims under articles 1, 2, 5 and 16 of the Convention.

12.4 The Committee recalls that article 4 (2)(a) of the Optional Protocol precludes the Committee from declaring a communication admissible where the same matter has been or is being examined under another procedure of international

investigation or settlement.¹⁷ The Committee notes the State party's observation that the author filed an application before the European Court of Human Rights on 21 May 2012 on behalf of herself and her daughters, under articles 8 and 14 of the European Convention on Human Rights. The complaint filed by the author (application No. 36201/12) was found inadmissible by the European Court on 20 December 2012 for not meeting the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights. The Committee notes that the Court's decision pertained only to procedural grounds relating to the admissibility criteria and did not provide sufficient reasoning or elements of information to allow the Committee to consider that the European Court had examined the case in the sense of article 4 (2)(a) of the Optional Protocol.¹⁸ The Committee, while deploring the fact that the author submitted her complaint to the European Court while a complaint was being processed by the Committee, considers that there is no impediment arising out of article 4 (2)(a) regarding the admissibility of the communication.

12.5 The Committee notes that, while the author referred to various rights that are protected under international instruments other than the Convention, some of her claims are related to rights guaranteed by the Convention. The Committee therefore considers that there is no obstacle arising out of article 4 (2)(b) regarding the admissibility of the communication, as long as it is limited to the rights enshrined in the Convention.

12.6 The Committee observes, in the light of the documents on file, that the author has submitted numerous unstructured documents, many of which have annexes in Danish without full translation. The Committee further notes that many of the author's arguments were not presented in a comprehensive manner and that they lack consistency and are not supported by documentation.

12.7 The Committee notes that the author claims that she and her daughters were discriminated against by the State party when it failed to protect them from alleged domestic violence by her husband. Her claims are mainly based on the alleged lack of investigation and prosecution of the alleged episodes of domestic violence. The Committee takes note of the State party's argument that the claims are not substantiated and based on groundless facts. The Committee also notes that the State party has submitted detailed information and documents to provide an overview of the investigations conducted by the police in each incident of alleged domestic violence against the author's daughters. The Committee further notes the lack of documentation supporting the author's claim relating to the alleged domestic

¹⁷ See *Kayhan v. Turkey* (note 8 above), para. 7.3 (referring to case law of the Human Rights Committee regarding this issue and citing communication No. 75/1980, *Fanali v. Italy*, views adopted on 31 March 1983: "The concept of 'the same matter' within the meaning of article 5 (2)(a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body."). The claims must be identical to the extent that they must refer to the same facts and events (see communication No. 421/1990, *Trébutien v. France*, decision of inadmissibility adopted on 18 July 1994, para. 6.3). Furthermore, the claims must also relate to the same substantive rights (see communication No. 1115/2002, *Petersen v. Germany*, decision of inadmissibility adopted on 1 April 2004, para. 6.3).

¹⁸ See the jurisprudence of the Human Rights Committee, including communication No. 1636/2007, *Onoufriou v. Cyprus*, decision of inadmissibility adopted on 25 October 2010, para. 6.2, and communication No. 1510/2006, *Vojnović v. Croatia*, views adopted on 30 March 2009.

violence against her. The Committee recalls that it does not replace the national authorities in the assessment of the facts and evidence in conjunction with the investigations of the alleged domestic violence incidents, unless the assessment was clearly arbitrary or amounted to a denial of justice.¹⁹ From the information and documents before it, the Committee concludes that the author has failed to substantiate her claim that no investigation was conducted by the State party's authorities with regard to her allegations of domestic violence.

12.8 The Committee also notes the author's claim that she is the victim of gender-based discrimination that occurred during the custody proceedings, including through the alleged bias of the judiciary and in particular of an assistant judge. The Committee observes that, on 30 June 2010, the Regional State Administration awarded temporary custody of the daughters to the author, a decision that accommodated the daughters' expressed preference to live with their mother. The Committee also observes that, nevertheless, during the civil custody proceedings, on 13 October 2011 the Aarhus District Court granted full custody to the father on different grounds, namely safeguarding the access of the daughters to both parents, and the High Court of Western Denmark confirmed that decision on 29 March 2012. While on 11 July 2012 the Regional State Administration restored temporary custody to the author, the District Court reversed that decision on 9 October 2012 and once again granted full custody to the father. The High Court upheld that decision on 3 December 2012. While it is true that, in the present case, full custody has been granted to the father, who is the national of the State party, the Committee considers that, in the light of all the information provided, for the purposes of admissibility, the author has failed to substantiate her claims of gender-based discrimination in the custody proceedings.

12.9 The Committee therefore considers that, for the purposes of admissibility, the author has failed to substantiate her claims under articles 1, 2, 5 and 16 of the Convention and that the communication should be declared inadmissible under article 4 (2)(c) of the Optional Protocol as not sufficiently substantiated.

13. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (2)(c) of the Optional Protocol and that it will not examine any other grounds of inadmissibility;
- (b) That this decision shall be communicated to the State party and to the author.

¹⁹ See, for example, communication No. 34/2011, *R.P.B. v. the Philippines*, views adopted on 21 February 2014, para. 7.5.