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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. 67/2014

Decision on admissibility adopted by the Committee at its sixty-fourth session (4-22 July 2016)

Submitted by:	X. (not represented by counsel)
Alleged victim:	The author
State party:	Austria
Date of communication:	15 November 2013
References:	Transmitted to the State party on 19 February 2014 (not issued in document form)
Date of adoption of decision:	11 July 2016

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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 (sixty-fourth session)

concerning

Communication No. 67/2014

Submitted by:	X. (not represented by counsel)
Alleged victim:	The author
State party:	Austria
Date of communication:	15 November 2013

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 11 July 2016

Adopts the following:

Decision on inadmissibility

1. The author of the communication is X., a national of Austria, born in 1959, a medical doctor and married since 1989. She claimed that she is a victim of violations by the State party of articles 1 and 6, read together with articles 2 (e), (f) and (g), 3, 12 and 13 (c), of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party on 30 April 1982 and 22 December 2000, respectively. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author submitted that, in Austria, voluntary commercial sex work (referring to sexual behaviour of consenting adults that involves physical contact in exchange for monetary gain) is legal, but regulated at three administrative levels: national (AIDS Act, Venereal Diseases Act), provincial (in the present case, Prostitution Law of Lower Austria) and communal (ordinances). Commercial sex workers are required to register as prostitutes with the local authorities and undergo weekly mandatory vaginal inspections and quarterly mandatory HIV tests. The author maintained that one may distinguish between legal sex work (voluntary commercial sex work of women registered as prostitutes, who obey the regulations of prostitution), illegal prostitution (voluntary commercial sex work of women earning their living by providing direct, formal and open sexual services to their clients, but who, for example, have not registered as prostitutes) and indirect sex

work (legally a grey area, in which women do not rely on sex work as a primary source of income, such as in massage parlours, where women may offer sexual services clandestinely). The author claimed that where sexual behaviour is not visible in public, it is not commercial but rather private life. The author submitted that the above was confirmed repeatedly in the jurisprudence of the Constitutional Court and the Administrative Court.[1] Furthermore, these forms of sex work need to be clearly distinguished, on the one hand, from an unconventional sex life (which may have a commercial appearance but no commercial substance) and, on the other, from trafficking in and criminal exploitation of prostitutes. In theory, an unconventional sex life is protected, as it is private life. However, in the case at issue, the State party had distorted both these distinctions.

2.2 The author submitted that in 2007, the Lower Austria police began an undercover investigation to uncover the author's sex life for the sole purpose of prostitution control. On 19 February 2007, at 8 p.m., an undercover officer entered the home of the author under a false pretence. This was unlawful, as section 131 of the Code of Criminal Procedure explicitly prohibits the police from entering a private home under a false pretence.

2.3 The author later learned that, between 19 January and 19 February 2007, the police had been conducting an undercover investigation against her with the purpose of proving that she was engaged in illegal prostitution. The police collected sexually explicit mail and pictures of the author, although it was clear that such information was of no use in fighting serious crime (illegal prostitution is not a crime, but rather an administrative offence).

2.4 When the undercover officer entered the author's home, he had already made sure through previous e-mail correspondence and a telephone conversation that the author would receive him almost nude in sexy lingerie, by pretending to be a swinger friend who shares her unconventional sex life. He intended to use her nudity to undermine her and prove that she was engaged in illegal prostitution.

2.5 At 8.20 p.m., the officer revealed his true identity and hurried to the entrance to allow two more officers to enter against the will of the author, without giving her an opportunity to dress. He wanted his colleagues to witness her nudity, in order to obtain evidence of illegal prostitution. The author perceived this intrusion as a kind of rape and subsequently suffered from post-traumatic stress. A few minutes later, a fourth officer entered the home. The officers were armed. The author maintains that the police may not intrude into private homes unless justified by a judicial order (in accordance with sections 119 and 120 of the Code of Criminal Procedure) or in the case of an emergency (as defined by sections 33, 38a, and 39 of the Security Police Act). Neither was the intrusion into her home justified by a judicial order (judicial orders to search a home are not issued to enforce administrative laws), nor was there an emergency. Rather, the police entered the home in order to pressure the author and obtain from her a false confession that her unconventional sex life constituted illegal prostitution. The police did not leave her home until 10.15 p.m. The officers' superiors had confirmed their approval for the intrusion in order to

[1] The author referred to rulings by the Constitutional Court: VfSlg 15.632 of 14 October 1999, VfSlg 8.272 of 1978, 8.907, 10.363 and 11.926 and to Administrative Court decisions VwGH 2004/09/0219 of 20 November 2008 and VwGH 2005/09/0181 of 22 November 2007.

prove prostitution,[2] which confirmed the systematic nature of such unlawful police conduct.

2.6 On 20 February 2007, the police filed charges of illegal prostitution against the author before the Tulln Administrative District Authority, based on the evidence obtained the previous day. On 3 July 2007, the District Authority suspended the administrative criminal proceedings against the author when it realized that the sex life of the author was a matter of her private life, not prostitution. However, while the author communicated her concerns about human rights violations to the District Authority on 9 March 2007, it neither initiated an investigation of the police conduct nor informed the author about the existence of a remedy through an administrative complaints procedure.

2.7 The police also filed previously collected mail and pictures and generated new sensitive personal data by linking this information with the name of the author (which the police had known since 12 February 2007). The purpose of this data collection was to collect evidence to prove the administrative charges of illegal prostitution against her at the Tulln Administrative District Authority. The police offered the above-mentioned sexually explicit photographs as evidence. In addition, the police sent copies of these charges to the Tulln Municipal Authority and the Tulln Tax Office, although sections 6, 7 and 9 of the Data Privacy Act provide that such information may be used only for a previously defined legitimate purpose, and only by authorized institutions. Information about the sex life or the health of a person is particularly sensitive (section 4 of the Data Privacy Act) and, under sections 29 and 53 of the Security Police Act, the police may not collect such sensitive information unless it is necessary to fight serious crime. On an unspecified date, the Tax Office initiated proceedings against the author.[3] She eventually won that case in 2012, but it caused her substantial suffering, as for five years the Tax Office repeatedly reiterated false claims of prostitution.

2.8 On 21 August 2008, the author filed a complaint regarding police misconduct before the Independent Administrative Panel of Lower Austria and complained about degrading treatment, violations of her private life, private home, data protection and procedural rights, and discrimination. The complaint was based, among other things, on a notification from the police, received on 8 August 2008 (dated 6 August 2008), that the Security Police Act was the legal basis of the undercover investigation against her. On 15 December 2008, the applicant was notified that there had been no independent control over that investigation; the next day she added that fact to her complaint. On 5 May 2009, however, the Panel rejected her complaint as time barred, since the statutory time limit for the complaint had begun at the end of the undercover investigation, on 19 February 2007.

2.9 On 17 July 2009, the author filed an appeal to the Constitutional Court. On 23 February 2010, the Constitutional Court stated that the case did not give rise to issues of constitutional law and referred it to the Administrative Court. On 14 April 2010, in a letter served to the author's attorney on 19 April 2010, the Administrative Court invited the author to resubmit the appeal in a different format. The author

[2] The author submits in evidence a letter dated 6 August 2008.

[3] No information is available in the author's initial submission, except a reference to the final decision of the Administrative Court of 25 January 2012 (VwGH 2009/13/0011), copy provided in German.

resubmitted the appeal on 12 May 2010. On 21 June 2010, the Administrative Court decided a minor issue (no deferral of payments for the proceedings), but then sections 01 and 17 of the Court merely shuffled jurisdiction back and forth and did not issue a final decision until 20 March 2013, when the Administrative Court confirmed the decision of the Independent Administrative Panel, stating that it raised no points of law. The author submits that the proceedings before the Administrative Court were ineffective due to their excessive duration. In her case, there was a period of inactivity of 2 years and 9 months (from 21 June 2010 to 20 March 2013), while the case was pending for three years (from 23 March 2010 to 20 March 2013).

2.10 The author maintained that the jurisprudence of the Constitutional Court denies the discriminatory character of the prostitution laws, the enforcement of which resulted in the described events, and for this reason it had repeatedly dismissed complaints about this legislation.

Complaint

3.1 The author submitted that she is a victim of discrimination against women, as the State party's prostitution laws discriminate against women and allow law enforcement to focus on the sex life of women, whereas there are no effective safeguards against abuse. This is evident in the present case: existing safeguards against spying on sex life by means of unlawful undercover investigations were ignored by the police and subsequent remedies were made ineffective by procedural shortcomings. As a result of this deficiency in the legal system, the author suffered from violence against women and human rights violations committed by the police (violations of her private life and of private data protection, intrusions into her private home and degrading treatment).

3.2 The author maintained that illegal prostitution is not a crime but an administrative offence and therefore could not have justified an undercover investigation, as, under section 54 of the Security Police Act, such investigations are permitted only for the purpose of combating crimes, and, under section 35, the minimum requirement for such an investigation is having a specific suspicion of involvement in a serious crime. Nevertheless, the police continued the undercover investigation for four weeks, without having defined in advance the point at which the intrusion into her private life could no longer be justified by the information gained. Under section 28a of the Security Police Act, such an investigation must be a means of last resort, and, under section 29, intrusions into private life must be minimized and kept proportional to the crime being investigated. The same applies under the Code of Criminal Procedure, sections 131 and 133 of which require a determination of the duration of an undercover investigation in advance — if the investigation lasts for several weeks, the crime must be particularly serious.

3.3 The author also maintained that she was subjected to degrading treatment by means of forced nudity. She referred to the jurisprudence of the European Court of Human Rights[4] and academic research stating that forced nudity is degrading

[4] Judgment of the European Court of Human Rights in *Tyrer v. United Kingdom* (application No. 5856/72) of 25 April 1978, in which forced nudity was an aggravating factor; and Human Rights Committee, communication No. 240/1987, *Collins v. Jamaica*, views adopted on 1 November 1991.

treatment; that in severity it is comparable to rape,[5] being an "outrage upon personal dignity", which may indicate torture;[6] that victims of forced nudity who survived other acts of torture perceived duress by forced nudity as comparable;[7] that medical research confirmed the severe adverse health effects of sexual humiliation;[8] and that the very threat of forced nudity is degrading.[9] She also maintained that, if male police officers with weapons force women to be naked in their presence, this constitutes inhumane treatment.[10]

3.4 The author further referred to the Committee's conclusions that forced gynaecological examinations are incompatible with human dignity.[11] She also referred to jurisprudence of other international jurisdictions that considered related issues, such as strip searches, during which the presence of persons of the opposite sex was an aggravating factor,[12] the stripping of clothes, also by persons of the opposite sex,[13] or continued nudity in detention.[14] Thus, she maintained, force is not a precondition for nudity to be degrading: the humiliation by a police officer acting as a "peeping Tom" may also reach the threshold of degrading treatment.[15]

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[5] Anne-Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence* (Antwerp, Intersentia, 2005), p. 149; and Robert Cryer and others, *An Introduction to International Criminal Law and Procedure* (Cambridge, Cambridge University Press, 2007), p. 208.

[6] International Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, judgment in case No. IT-95-17-1 of 10 December 1998, para. 264, confirmed on 21 June 2000.

[7] Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford, Oxford University Press, 2008) p. 777, about victims of incommunicado detention in Spain, who survived mock executions; and Witness JJ in *Prosecutor v. Akayesu*, Judgment in case No. ICTR-96-4-T of 2 September 1998, para. 423, who survived rape and the murder of her baby.

[8] Metin Basoglu, Maria Livanou and Cvetana Crnobaric, "Torture vs other cruel, inhuman, and degrading treatment: is the distinction real or apparent?", *Archives of General Psychiatry*, vol. 64, No. 3 (2007), pp. 277-285; N.C. Feeny, T.J. Linares and E.B. Foa, "Sexual assault", *Encyclopedia of Stress* (Cambridge, Massachusetts, Academic Press, 2007); and Jean-Michel Darves-Bornoz, *European Journal of Obstetrics and Gynecology and Reproductive Biology*, vol. 71, No. 3 (1997), p. 59.

[9] Human Rights Committee, communication No. 1353/2005, *Njaru v. Cameroon*, views adopted on 19 March 2007.

[10] Inter-American Court of Human Rights in the case of *Miguel Castro-Castro Prison v. Peru*, 25 November 2006.

[11] Concluding observations of the Committee on the Elimination of Discrimination against Women with respect to Turkey (A/52/38/Rev.1, part one, para. 178).

[12] European Court of Human Rights in the cases of *Valasinas v. Lithuania* (application No. 44558/98) of 24 July 2001; *Iwanczuk v. Poland* (application No. 25196/94) of 15 November 2001; *Lorsé and others v. the Netherlands* (application No. 52750/99) of 4 February 2003; *Salah v. the Netherlands* (application No. 8196/02) of 6 July 2006; and *Frerot v. France* (application No. 70204/01) of 12 June 2007.

[13] Judgments of the European Court of Human Rights, Wieser v. Austria (application No. 2293/03) of 22 February 2007; and *Wiktorko v. Poland* (application No. 14612/02) of 31 March 2009.

[14] Committee against Torture, communication No. 59/1996, *Abad v. Spain*, views adopted on 14 May 1998; and European Court of Human Rights, *Hellwig v. Germany* of 7 July 2011 and *Wiktorko v. Poland*.

[15] European Court of Human Rights, in the context of medical inspections: *Duval v. France* (application No. 19868/08) of 26 May 2011; and of forced gynaecological inspections: European Court of Human Rights, *Yazgül Yilmaz v. Turkey* (application No. 36369/06) of 1 February 2011.

Furthermore, forced nudity constituted a violation of privacy in her case.[16] Forced nudity is also an international crime (article 7 of the Rome Statute of the International Criminal Court). It was first defined in 1998 in the context of war crimes.[17] There were also national-level decisions in which the State party accepted that forced nudity was degrading treatment.[18] Furthermore, forced nudity inflicted by the police constitutes police misconduct, prohibited under section 302 of the Criminal Code.

3.5 The author further stressed that her core complaint is the discrimination against women caused by the very existence of the prostitution laws. She maintained that, under normal circumstances (were the author not targeted by an unlawful police operation), there would not exist a domestic remedy with any prospect of success. The only available remedy would be a complaint, asking the Constitutional Court to declare prostitution laws as unconstitutional. However, in 1976 the Constitutional Court had already declared the obligation of women to register as prostitutes and to undergo gynaecological examinations as constitutional.[19] It followed, with respect to article 4 (1) of the Optional Protocol, that an appeal to the Constitutional Court would be unlikely to bring effective relief.

3.6 Furthermore, the author submitted that the State party's courts may interpret the obligation of non-discrimination differently from the Convention, as they are not bound by the provisions of the Convention, since the Constitutional Court ruled in 1975 that international law does not establish individual rights at the national level.[20] Thus, under usual circumstances, women have no remedy against discrimination caused by prostitution laws.

3.7 The author maintained that, in her case, the discrimination as a result of the prostitution laws was aggravated by an unlawful police operation to enforce those laws. This opened up the option of a remedy through administrative complaint proceedings against police misconduct, which the author took. However, the remedy was ineffective in two ways: its application was unreasonably prolonged, since the duration of the proceedings was excessive and interrupted by a long period of

[16] European Court of Human Rights, in the context of searches: *Wainwright v. United Kingdom* (application No. 12350/04) of 26 September 2006; and of medical inspections: *Juhnke v. Turkey* (application No. 52515/99) of 13 May 2008, and *Y.F. v. Turkey* (application No. 24209/94) of 22 July 2003.

[17] International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu* (case No. ICTR-96-4-T), 2 September 1998, confirmed on 1 June 2001; compared with Diane Marie Amann, "Prosecutor v. Akayesu", *American Journal of International Law*, vol. 93 (1999), pp. 195 ff; Rebecca L. Haffajee, "Prosecuting crimes of rape and sexual violence at the ICTR: the application of joint criminal enterprise theory", *Harvard Journal of Law and Gender*, vol. 29 (2006), pp. 201 ff; Catherine A. MacKinnon, "The ICTR's legacy on sexual violence", *New England Journal of International and Comparative Law*, vol. 14, No. 2 (2008), pp. 211 ff; and Pillay, "Keynote address: Protection of the Health of Women through International Criminal Law: How Can International Criminal Law Contribute to Efforts to Improve the Health of Women?", *Emory International Law Review*, vol. 22 (2008), pp. 15 ff.

[18] Independent Administrative Panel of Vienna, case Nos. 02/13/9595/2001/85 and 02/13/9635/2001 of 17 October 2002.

[19] Constitutional Court Judgments VfSlg 7945/1976, 7994/1977, 7997/1977 and 8080/1977 relating to article 7 of the Federal Constitutional Law and article 2 of the Constitution of 1867, which declare the equality of men and women.

[20] VfSlg 7608/1975, which the Constitutional Court has repeatedly confirmed, according to the author.

inactivity; second, the State party de facto denied the applicant access to a court and declared the complaint inadmissible for unfair reasons. There was also a systematic reason for this, as misconduct of police officers is rarely brought to court, nor does it have other notable consequences for the officer.[21]

3.8 The author also maintained that the existing obligation of sex workers to register as prostitutes and to undergo gynaecological examinations and HIV tests, although couched in gender-neutral terms, affect primarily women, as the vast majority of persons in sex work are women. There are no similar obligations for men, for example as clients of sex workers. There is thus indirect discrimination against women by the mere existence of these laws, and it has detrimental effects for women in sex work. The author was affected, as the police erroneously perceived her as a prostitute who should be pressed into this regime of prostitution control and as "Austrian jurisprudence tolerated this". She maintained that her rights under article 1, in conjunction with articles 2 (f) and (g), of the Convention, were violated, since the purpose of the undercover investigation against her was the enforcement of the prostitution laws and, therefore, she was directly affected by these regulations and their implementation. It followed that the author suffered from discrimination against women caused by discriminatory prostitution laws, in violation of articles 2 (f) and (g).

3.9 The author refers to paragraph 9 of the Committee's general comment No. 28 (2010) on the core obligations of States parties to under article 2 of the Convention and maintains that the State party violated its obligation under article 2 to respect the equal rights of women through legislation. She also maintains, with reference to paragraph 36 of general comment No. 28, that the fact that the State party had made remedies ineffective constituted a violation of article 1, in conjunction with article 2 (e), of the Convention.

3.10 The author noted that the police had admitted that undercover operations, such as that against her, were routine operations. Thus, as a consequence of the prostitution laws, women are targeted by unlawful operations if the police suspect them of illegal prostitution, while their male clients are not. Therefore, women do not enjoy the equal protection of human rights and the case of the author illustrates this. She maintained that she had suffered from discrimination against women caused by unequal protection of women's and men's human rights, in violation of article 3 of the Convention. Such discrimination, which denies women the full enjoyment of core human rights, constitutes violence against women.

3.11 Concerning article 1, in conjunction with article 6, of the Convention, the discrimination is caused by the reversal of the intention of article 6 through the prostitution laws. Rather than protecting women against sexual exploitation, the enforcement of the laws generated new dangers for sexual harassment by the police, for example forced nudity, as suffered by the author. The legal system did not provide protection against such mistreatment.

3.12 Concerning article 1, in conjunction with article 12, of the Convention, the prostitution laws, namely the AIDS Act and the Venereal Diseases Act, impose

[21] Concluding observations of the Committee against Torture concerning Austria (CAT/C/AUT/CO/4-5, para. 20); and concluding observations of the Committee on the Elimination of Racial Discrimination on the combined eighteenth to twentieth periodic reports of Austria (CERD/C/AUT/CO/18-20, para. 13).

different standards for women and men with respect to sexual health. These laws make women, in particular sex workers, solely responsible for sexually transmitted infections, although there is no scientific basis for this, while there are no similar regulations addressing men, in particular clients of sex workers. As a consequence, the author became subject to an unlawful police operation to enforce these laws. She suffered from discrimination against women caused by unequal legal approaches for women's and men's health, in violation of article 12.

3.13 Concerning article 1, in conjunction with article 13 (c), of the Convention, the prostitution laws cause the police to assess the leisure activities of men and women differently as soon as there is a sexual connotation. As a result of gender stereotypes, the unconventional sex life of the author gave rise to a suspicion of illegal prostitution, and the police used unlawful means to interfere. There are no undercover investigations by the police to uncover men suspected of seeking contacts with sex workers. It followed that the author suffered from discrimination against women resulting from gender stereotypes about sex life, in violation of article 13 (c) of the Convention.

State party's observations on admissibility

4.1 On 18 April 2014, the State party submitted that, in the course of routine investigations, on 29 January 2007, officers of the Lower Austrian Criminal Investigation Department investigating trafficking in persons came across an advertisement by the author on an Austrian Internet-based contact forum. It was clear beyond doubt from the text of the advertisement that she was offering sexual acts to men against payment, referred to by her as "TG" (*Taschengeld*, or "pocket money"). An officer of the Investigation Department subsequently contacted her as an "interested client" using an undercover e-mail address, and on 29 January 2007 the author sent him an e-mail offering sexual acts against payment. During further contacts on the telephone and by e-mail, the author (and her husband) gave him her telephone number and address and transmitted photographs depicting her naked, in underwear or having sexual intercourse with various partners. On 19 February 2007, officers of the Investigation Department came to the address given by the author; one of them rang the bell at 8 p.m. as the expected client, while the others were waiting nearby. The author's husband opened the door and let the presumed client into the house. The author was already waiting for him — in underwear — in the living room. After they agreed on the terms of payment, the presumed client disclosed his identity, telling her that he was a police officer, and showed his police identification card. In response to his question, the author said that she neither had a so-called control card for persons working as a prostitute nor had she notified her local community of her activities as a prostitute. After the author brought in her husband, the officer also brought his colleagues into the house. Since the author refused to accompany them to the police station for interrogation, a transcript of her statements was made on the spot.

4.2 The State party noted that the author maintained in her communication that she had been induced by the officers on 19 February 2007 to make a confession and that the officers had not permitted her to dress, thus exposing her to "forced nakedness". In the transcript of her statement of 19 February 2007, signed by the author, there is no indication in that respect. The author did not raise these issues in her subsequent e-mail to the Investigation Department on 20 February 2007. Nor did she expressly challenge the statement of facts by the Independent Administrative Panel of Lower

Austria in her complaints addressed to the Constitutional Court and the Administrative Court. In a written submission of 21 August 2008 (that is, around 15 months after the statutory time limit had expired) the author, represented by her husband, filed a complaint before the Administrative Panel challenging the official act of 19 February 2007. She complained of a violation of several constitutionally guaranteed rights as well as of the "guidelines for interventions by police officers" (Federal Law Gazette No. 266/1993). She also requested a return to the previous state of proceedings regarding the expiry of the six-week time limit for complaints against police measures. By a decision of 5 May 2009, the Administrative Panel dismissed her request and rejected the complaint as being time barred on the grounds that it was not discernible that she had been prevented from filing the complaint in time. The author filed a complaint against the Administrative Panel's decision with the Constitutional Court. By a decision of 23 February 2010, the Constitutional Court refused to hear the complaint, since it raised no constitutional questions and transmitted it for further consideration to the Administrative Court. By a decision of 20 March 2013, the Administrative Court also refused to deal with the complaint since the Administrative Panel had not deviated in its challenged decision from the Court's case law.

4.3 The State party further submitted that, by a decision of 18 January 2008, the author was ordered to pay income tax for her activities as a prostitute for the years 2004 to 2006. Her appeal to the Independent Financial Senate was successful and the tax charge was set aside by a decision of 15 December 2008, since the author's activities were not liable to income tax. An official complaint filed against this decision by the Tax Office with the Administrative Court was unsuccessful (ruling of 25 January 2012). In the Administrative Court's view, the author's submission, namely that the sums received were negligible for her when pursuing the activities at issue, was of decisive relevance. Accordingly, the author's conduct was not financially motivated and did not give the impression of a commercial business — therefore, no taxes had to be paid. A complaint filed by the author with the Data Protection Commission on 20 June 2013 against the Tax Office was dismissed by a decision of 6 September 2013; there was no electronic data storage regarding the author's sex life. The electronic storage of other personal data in connection with the fiscal proceedings was, however, necessary in the light of a possible renewal of the Administrative Court proceedings. The author filed a complaint against that decision with the Constitutional Court. The proceedings before the Constitutional Court are still pending and thus subject to official secrecy in respect of third persons. Since the author did not make that complaint available to the Committee, the State party cannot comment thereon.

4.4 On 19 April 2010, the author lodged an official liability complaint against the Federal Government. She claimed compensation of the costs incurred by her in the tax proceedings, compensation for pain and suffering occasioned by the violation of her human rights and a finding that the Federal Government is liable for any future damage resulting from lasting effects of the alleged human rights violations. The official liability proceedings were terminated by mutual agreement: after the Federal Minister of the Interior, acting as the highest police organ, had paid part of the amount of compensation claimed by the author, without recognizing the author's claims, the author declared at a hearing on 23 April 2012 that she waived her claims for compensation regarding the alleged personal damage and her request for a finding that the Federal Government should be held liable for any future damage.

The remaining subject matter of the proceedings was thus merely the costs of her representation in the fiscal proceedings. The author and the legal representative of the Federal Government agreed to terminate the proceedings also in respect of the author's remaining requests (the award of the costs of her representation in the fiscal proceedings). The author subsequently submitted a letter dated 27 April 2012 to the court with an announcement of the intention of both parties not to attend the next court hearing. After both parties stayed away from the next court hearing of their own free will, the proceedings were terminated with final effect.

4.5 The State party maintained that its Federal Constitutional Law contains comprehensive prohibitions against discrimination and referred to article 2 of the Basic Law on the General Rights of Nationals[22] and to article 7 of the Federal Constitutional Law. Any discrimination on grounds of gender is expressly prohibited. This has also been recognized by the Constitutional Court in its case law for decades.[23] Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is of constitutional standing in the State party and provides that the rights set forth in that Convention shall be secured without discrimination on grounds of gender. All entities acting on behalf of the State party, including the legislature, must have regard to this prohibition against discrimination. The Constitutional Court reviews compliance with this prohibition and can even set aside laws violating that principle.

4.6 The State party further submitted, with regard to regulating prostitution, that, at the level of federal legislation, the Venereal Diseases Act[24] permits the issuance of regulations governing health precautions and the supervision of persons tolerating sexual activities on their own bodies for commercial purposes or performing such activities on others. Based on that provision, the Regulation for the Health Control of Persons Engaged in Prostitution[25] was issued. This regulation requires persons tolerating sexual activities on their own bodies for commercial purposes or performing such activities on others to undergo a medical examination by a public health officer before beginning such an activity and afterwards, at regular one-week intervals, to determine whether they are free of venereal diseases. These persons receive a card (also referred to as a "control card") as proof of the proper conduct of the examination. Moreover, under the AIDS Act of 1993,[26] any person wishing to work as a prostitute must undergo an HIV infection examination by a public health officer before such activity and afterwards at regular intervals, at least every three months. The Lower Austrian Prostitution Act[27] requires persons entitled to use buildings or parts of buildings intended to pave the way for and engage in prostitution activities on a regular basis to notify the municipality in advance, giving their name and address. The above legal provisions apply to men and women alike. Since prostitution is not restricted to women, men engaging in prostitution must also comply with the above legal provisions. There is thus no discrimination against women as a result of these provisions.

[22] Imperial Law Gazette No. 142/1867 (in its current version).
[23] Ruling of the Constitutional Court of 21 March 1952, VfSlg. 2268/1952.
[24] State Law Gazette No. 152/1945, as amended by Federal Law Gazette vol. I, No. 98/2001, section 11, para. 2.
[25] Federal Law Gazette No. 314/1974, as amended by Federal Law Gazette No. 591/1993.
[26] Federal Law Gazette No. 728/1993, as amended by Federal Law Gazette vol. I, No. 98/2001.
[27] Regional Law Gazette No. 1984/89, as amended by Regional Law Gazette No. 2006/106.

4.7 The State party also submitted that, according to the applicable law[28] at the time of the official act of 19 February 2007, persons alleging a violation of their rights due to the exercise of direct administrative power and coercion could file a complaint with an independent administrative panel. Such persons could also file a complaint alleging a violation of their rights by administrative acts other than the exercise of power and coercion by security authorities.[29] Lastly, a complaint could be filed alleging a violation of the "Guidelines for interventions by police officers".[30] For all these remedies, there was a uniform six-week period for filing the complaint. The period was calculated as beginning on the day on which the complainant became aware of the exercise of direct administrative power and coercion (and if he/she was prevented from making use of his or her right to file a complaint due to that exercise, on the day on which the obstacle ceased to exist). An appeal against the Independent Administrative Panel's decision could be made to the Administrative Court and the Constitutional Court.[31] In an appeal to the Constitutional Court, violations of fundamental rights caused by the Panel's decision, as well as the (constitutional) unlawfulness of the laws and ordinances that served as a basis for the impugned decision, could be challenged. Moreover, individuals can directly challenge the (constitutional) unlawfulness of laws and ordinances with the Constitutional Court if that (constitutional) unlawfulness directly results in a violation of their rights. The Constitutional Court can refuse to deal with a complaint if there is insufficient prospect of success or if there is no expectation that a constitutional question would be clarified based on the challenged decision. The Administrative Court could refuse to hear the complaint if the decision did not depend on the determination of a question of law of fundamental relevance; this applied to administrative criminal proceedings only if a low fine had been imposed.

4.8 The State party submitted also that, were personal data processed by administrative authorities, the subject of those data could turn to the Data Protection Commission, which decided on complaints of persons claiming an infringement of their right to secrecy or their right to correction or deletion.[31]

4.9 The State party maintained that the communication was inadmissible under article 4 (1) of the Optional Protocol because the author had failed to exhaust domestic remedies in accordance with the national procedural provisions.[32] In particular, the author filed a complaint with the Independent Administrative Panel of Lower Austria as late as approximately 18 months after the official act of 19 February 2007. According to the legal situation at the time of the official act at issue, the period for filing complaints against acts of power and coercion was six weeks as at the day the author became aware of the exercise of that power and coercion. Since the author was directly affected and involved in the official act of

[28] The State party referred to article 129 (a), para. 1 [2], of the Federal Constitutional Law, Federal Law Gazette No. 1930/1, as amended by Federal Law Gazette No. 5/2007; para. 67 (a) of the Code of General Administrative Procedure, Federal Law Gazette No. 51/1991, as amended by Federal Law Gazette vol. I, No. 10/2004; Security Police Act, section 88, para. 1, Federal Law Gazette No. 566/1991, as amended by Federal Law Gazette vol. I, No. 56/2006.

[29] Security Police Act, section 88, para. 2.

[30] Federal Law Gazette No. 266/1993; Security Police Act, section 89.

[31] Data Protection Act 2000, section 31, Federal Law Gazette vol. I, No. 165/1999, as amended by Federal Law Gazette vol. I, No. 57/2013.

[32] The State party referred to the Committee's jurisprudence in communication No. 1/2003, *B.-J. v. Germany*, decision of inadmissibility adopted on 14 July 2004, para. 8.6.

19 February 2007, the period for filing the complaint with the Panel ended six weeks after that date. The author merely submitted in the national proceedings that she had not been informed of the possibility of filing an appeal and of the legal basis for the undercover investigation until August 2008.

4.10 The State party noted that the author had argued that the six-week period for filing complaints was too short and that, without being informed of the legal basis of the undercover investigation, she had been prevented from filing a complaint in time. The State party argued that these arguments were not convincing, since it would have sufficed to describe the events in the complaint to the Administrative Panel and to allege a violation of rights. It was certainly not a prerequisite for filing a complaint to know exactly on which legal basis the authorities relied in their official act; it was not necessary to refer to the relevant legal provisions in the complaint. The information that the undercover investigation was based on the Security Police Act was irrelevant for filing the complaint with the Panel, inter alia, because, for all complaints against investigation activities and official acts by police officers, there was a uniform filing period of six weeks. The period for filing the complaint had in any event long expired, irrespective of the specific legal basis of the official act challenged by the author. The period for filing complaints with the Panel results from properly promulgated laws and was greatly exceeded, so that the favourable treatment of legal time limits by the Austrian courts for offering legal protection could no longer be applied.[33]

4.11 The State party further maintained that the author had had sufficient and easily accessible possibilities available free of charge to inform herself of the right to file a complaint. For example, the first time a lawyer provides legal information in the State party, that service is free of charge. In addition, anyone can turn to the courts anonymously on the open-court day to obtain information on possibilities of legal protection. The Independent Administrative Panel of Lower Austria offered legal information on specific open days. The Ombudsman's Office also offers legal information to persons seeking legal protection. Given that the author and her husband, who represented her before the Panel, both have a university education, it can be assumed that both would have been in a position to become informed about legal protection opportunities and pertinent time limits. Moreover, the author could have relied on the assistance of a lawyer immediately after the official act of 19 February 2007, as she did subsequently when filing her complaints with the Constitutional Court and the Administrative Court and with respect to the official liability action.

4.12 The State party also maintained that the conduct of the police officers during the official act of 19 February 2007, as well as the complaint regarding inhuman or degrading treatment, could have been comprehensively examined during the proceedings before the Independent Administrative Panel. Had it become obvious as a result of such an examination that the investigation was unlawful, the Panel would have been able to make a finding to that effect. There were thus effective instruments available to the author to examine in detail an allegedly unlawful police activity. That there was no such examination is exclusively due to the author's failure to file a complaint in time. The State party referred to a similar

[33] The State party referred to the Constitutional Court's ruling of 24 September 1996, coll. VfSlg. 14.571/1996.

communication involving a belated legal remedy in which the Committee rejected the communication as inadmissible for non-exhaustion of domestic remedies.[34]

4.13 The State party submitted further that domestic remedies have not been exhausted also because the author voluntarily agreed to a settlement: after receiving part of the damages sought, the author agreed with the Federal Minister of the Interior, as the highest police organ, to conclude the proceedings without a court decision. The author cannot therefore assert before the Committee legal violations because of events in respect of which a comprehensive settlement has already been reached by her at the national level. The author did not submit any circumstances to the effect that the settlement was invalid.

4.14 With regard to the undercover investigation before 19 February 2007, the State party submits that the author was informed of the undercover investigation preceding the official act of 19 February 2007 on the day of the official act and could thereafter have filed a complaint with the Independent Administrative Panel within the prescribed period of six weeks. The applicant expressly noted in the national proceedings that she was aware of the undercover investigation on 19 February 2007.

4.15 Domestic remedies have also not been exhausted with regard to the transmission of data by the Lower Austrian Criminal Investigation Department to the Tax Office challenged by the author. The complaint filed with the Constitutional Court against the negative decision of the Data Protection Commission of 6 September 2013 is pending. The State party maintained that, if a communication is filed with the Committee before the exhaustion of all domestic remedies, the communication should be declared inadmissible.[35]

4.16 The State party submitted that, moreover, domestic remedies have not been exhausted because the author has not suitably substantiated the violation of rights under the Convention now alleged before the Committee in the national proceedings. It is a prerequisite for the admissibility of a communication that the author must have raised in substance at the national level the claim of a violation of rights under the Convention.[36] Since the subject matter of the Convention is the elimination of discrimination against women, the author would have had to claim, in a suitable manner, discrimination based on her gender in the domestic proceedings. However, the author did not raise any such claims in a suitable manner. In her complaint about the official act of 19 February 2007 with the Independent Administrative Panel, the author did not allege that she had been discriminated against as a woman by the conduct of the authorities or by laws of Austria. Her complaint of a violation of other rights without referring to a specific act of discrimination as a woman is not a suitable discrimination claim within the meaning of the Optional Protocol.[37] The discrimination claim in her complaints with the

[34] See *B.-J. v. Germany* (note 32 above), decision of inadmissibility of 14 July 2004, para. 8.6.

[35] Communication No. 15/2007, *Zheng v. the Netherlands*, views adopted on 27 October 2008, para. 7.3; see also Human Rights Committee, communication No. 942/2000, *Jonassen and others v. Norway*, decision of admissibility adopted on 25 October 2002, para. 8.6.

[36] See *Zheng v. Netherlands*, (note 35 above) para. 7.3; see also communications No. 11/2006, *Salgado v. the United Kingdom*, decision of admissibility adopted on 22 January 2007, para. 8.5, and No. 5/2005, *Goekce v. Austria*, views adopted on 6 August 2007, para. 7.2.

[37] Communication No. 8/2005*, Kayhan v. Turkey*, decision of inadmissibility adopted on 27 January 2006, paras. 7.6 and 7.7.

Constitutional Court and the Administrative Court stated by the author as a side remark could not be taken into account by the courts. Owing to the author's non-observance of the time limit, the official act and the discrimination allegation were no longer the subject matter of the proceedings before the Constitutional Court and the Administrative Court.

4.17 The State party maintained that the author's allegation that there was no effective domestic legal remedy to challenge as such the laws regulating the activity of prostitution was also unfounded. The author could have asserted, in a complaint with the Independent Administrative Panel in due time, that the official act and the investigations preceding it were based on laws that were discriminatory against women. Since the Constitution contains a prohibition against discrimination on grounds of gender, that submission could have been examined on the merits and brought by the Panel before the Constitutional Court by filing a request to review the law. Moreover, by claiming that the relevant prostitution laws were discriminatory as such, the author in fact aims at an abstract review of regulations, since she submitted throughout the entire proceedings that she was not and still is not working as a prostitute. However, neither the Optional Protocol nor the legal system of Austria provides a basis for a review of regulations on the initiative of an individual who submits that the challenged regulations are not applicable to her.[38]

4.18 Lastly, the State party submits that the author is also not a victim within the meaning of the admissibility requirements of the Optional Protocol since she voluntarily agreed, in the official liability proceedings, on a comprehensive settlement in respect of the official act of 19 February 2007, the preceding investigations and the fiscal proceedings. In the course of that settlement, the author was awarded by the State party part of the amount of compensation claimed by her and subsequently agreed with the State party to terminate the proceedings with final effect, including in respect of her compensation claim regarding the fiscal proceedings. That termination of the official liability proceedings based on a settlement clearly shows without doubt that the author was of the opinion that the claims asserted by her had been satisfied. The author is thus no longer to be regarded as a victim within the meaning of article 2 of the Optional Protocol, and the communication is inadmissible pursuant to the Optional Protocol.

Author's comments on the State party's observations

5.1 On 18 May 2015, the author reiterated some of her arguments on the merits of the communication and added new arguments.

5.2 Regarding the admissibility of the communication, the author submitted that the State party had misrepresented the scope of her communication by focusing on police misconduct in 2007 and suggesting that the author should complain only about the police conduct. Consequently, the State party discussed as remedies only the complaints procedures relating to the police conduct (at the Independent Administrative Panel or at the Data Protection Agency), but these are not intended to address grievances regarding discriminatory laws or practices. The author highlights that her complaint is about a continuing situation, in which discriminatory prostitution laws allow the police to threaten women with trumped-

[38] Communication No. 13/2007, *Dayras and others v. France*, decision of inadmissibility adopted on 4 August 2009, para. 10.5; see also the ruling of the Constitutional Court of 15 March 1990, coll. VfSlg. 12.331/1990.

up prostitution charges because of their unconventional sex life. The author thereby uses the events in 2007 to substantiate her claim and demonstrate that, due to the regulations relating to prostitution and the administrative practices for their enforcement, women face unacceptable risks of police abuse and that there are no effective safeguards, in particular none to specifically protect women. Similar events could happen again at any moment, and therefore the author was and still is affected by this discrimination, even though she is not a prostitute.

5.3 The author noted that the State party has ignored her allegations of a violation of article 1, in conjunction with article 13 (c), of the Convention, regarding discrimination with respect to leisure activities, and her allegations of violation of article 1, in conjunction with article 2 (e), of the Convention, alleging that the ineffectiveness of the administrative complaints procedures was a consequence of discriminatory practices in the legal system. The State party does not suggest any remedy that the author should and could have taken against the violations.

5.4 The author also noted that the State party argued that she was asking for an abstract review of the prostitution legislation, as she was not a prostitute and therefore not concerned by these regulations. The author contested the above and maintained that the events of 2007 provide ample evidence that she was and continues to be affected by the alleged discrimination. Furthermore, the State party had claimed that the author was not a victim as she accepted compensation and agreed to the deferral of her civil action. Again, the State party ignored the issue of continuing discrimination against women, which was not and could not be removed by a civil action. The author clarified that in 2012 the civil action that she had filed was suspended, maintained that the State party had confused the suspension of the proceedings with a comprehensive settlement and submitted that she received a compensation of €1,850 for non-pecuniary damages, while at the same time she had to cover legal costs of €2,545.94 for this civil action and could not recover her legal costs of €4,636 for income tax proceedings. Furthermore, the State party did not admit that any unlawful acts had taken place. She also clarified that, as until 2012 there had been no effective investigation of the police conduct, the civil action was without prospect of success and that she had agreed to its suspension in the face of mounting legal costs. She referred to the jurisprudence of the Committee against Torture, which in a similar case had observed that a civil action would not even be practicable to provide redress for degrading treatment, because, in the absence of a thorough criminal investigation, it would fail.[39]

5.5 The author also maintained that the police continue to conduct unlawful undercover investigations to identify prostitutes; that thereby women with an unconventional sex life such as herself are easily suspected of being prostitutes and that there are no effective safeguards specifically to protect women against abuse. To avoid the danger of becoming victimized (again), women would have to refrain from engaging in an unconventional sex life. Men with an unconventional sex life are not at such risk. Thus, the author can claim to be a victim of discrimination based on the very existence of these laws and practices. The author referred to jurisprudence of the European Court of Human Rights[40] and the Human Rights

[39] Committee against Torture, communication No. 111/1998, *R.S. v. Austria*, decision adopted on 30 April 2002, paras. 3.5 and 6.

[40] Judgment of the European Court of Human Rights, *Dudgeon v. United Kingdom* (application No. 7525/76) of 22 October 1981, para. 41.

Committee[41] and maintained that, in addition to being affected by the very existence of discriminatory laws and administrative practices, which alone suffices for victim status, in 2007 she became a victim of torturous acts as a consequence of these laws and associated unlawful practices. She concluded that her communication is not an *actio popularis* and that she has victim status.

5.6 The author maintained that she could lose her victim status only upon receiving redress. As the Committee against Torture observed, redress entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition,[42] and the provision of monetary compensation only is inadequate,[43] as the State party must also acknowledge the violations (satisfaction). As its observations show, however the State party did not acknowledge any unlawful act or omission or any kind of discrimination against the author, either in the civil or in any other proceedings. She further refers to the jurisprudence of the European Court of Human Rights, according to which States have an obligation to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. In view of the unchanged legal situation and the unchanged practices of law enforcement, there are no guarantees for non-repetition, either. Taking these comments together, it is clear that the civil action is irrelevant for the consideration of admissibility.

5.7 The author challenged the State party's position that a complaint regarding the conduct of the police submitted within six weeks of the incident of 2007 to the Independent Administrative Panel would have been an effective remedy to challenge discriminatory laws as well and that she had failed to exhaust it. The author maintained that the State party's interpretation of the statutory time limit placed an unrealistic burden on her, as it was overly formalistic and rigid and therefore amounted to denial of access to a court. The author noted that, according to the State party, it did not matter that the police did not inform the author of the available remedies, that it was her responsibility to find out what remedies were available, and that, for the purposes of a complaint, it would suffice to know merely that one has been targeted by a police operation and the Administrative Panel then would investigate the rest *proprio motu*. Indeed, on paper the Code of Administrative Procedures would have obliged the Panel to act in this way and to conduct comprehensive investigations, in particular because the author was not represented by an attorney. However, the actual practice is completely different: complaints by victims of police brutality have regularly been turned down for formalistic reasons.[44] In the author's case, the Panel did not even respond to the author's e-mail of 9 December 2008, in which she reported that the police would not answer her enquiry as to whether there was any independent oversight of the undercover operation.

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[41] Human Rights Committee, communication No. 488/1992, *Toonen v. Australia*, views adopted on 31 March 1994, para. 5.1.

[42] Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties.

[43] European Court of Human Rights, Judgment in the case of *Assanidze v. Georgia*, (application No. 71503/01) of 8 April 2004, para. 198.

[44] The author refers to concluding observations concerning Austria of the Committee against Torture (CAT/C/AUT/CO/4-5, para. 20) and of the Committee on the Elimination of Racial Discrimination (CERD/C/AUT/CO/18-20, para. 13); and to the report on the visit to Austria from 21 to 25 May 2007 of the European Commissioner for Human Rights, Thomas Hammarberg.

5.8 The author also refers to a case similar to hers in which the Independent Administrative Panel rejected the complaint of a woman on the grounds that she had failed to correctly identify the legal basis of the undercover operation against her. The author claims that she could not have submitted a complaint without having a written confirmation by the police that the Security Police Act had been applied regarding the undercover operation against her. The author obtained such confirmation only in 2008, and only then could she and did she submit her complaint. She further submitted that the national legislation stipulates that the statutory time limit for a complaint would not begin before a complainant has acquired sufficient knowledge, and it foresees reinstatement if the authorities violated their legal obligations (for example to indicate on what legal basis the police acted and what remedies were available). In their decisions, however, the national authorities did not even mention the author's arguments in that regard.

5.9 The author also maintained that, contrary to the State party's observations, during these proceedings she did complain about gender discrimination. In 2008, when she submitted her administrative complaint about police misconduct to the Independent Administrative Panel, she complained regarding a violation of section 5.1 of the ordinance under section 31 of the Security Police Act, which prohibits gender discrimination (a copy of this complaint was submitted by the State party). After the Administrative Panel dismissed the case in 2009, on 17 July 2009 the author submitted a complaint under article 144 of the Federal Constitutional Law to the Constitutional Court. Invoking article 7 of the Federal Constitutional Law (non-discrimination principle) she complained regarding gender discrimination, linking police misconduct to discrimination against women under the prostitution laws, pointing out also that the procedural shortcomings of the proceedings at the Independent Administrative Panel had a gender perspective, and submitting motions to declare that she was a victim of gender discrimination. The author had requested the Constitutional Court to decide if discrimination was due to the discriminatory character of legal provisions or due to the discriminatory law enforcement in the case at issue. After the Constitutional Court dismissed the case, on 12 May 2010, she appealed to the Administrative Court, complaining of discriminatory law enforcement. This complaint was also dismissed.

5.10 On 13 February 2015, the author informed the Committee that the data deletion proceedings at the Constitutional Court, to which the State party referred in its observations, had concluded with a final decision by the Constitutional Court, which upheld the decision by the Data Protection Authority and confirmed that, even after eight years, the Tax Office was not obliged to delete defamatory and false information obtained by unlawful means. The author submitted a copy of the decision, dated 10 December 2014, which she had received on 13 February 2015.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with rule 66 of its rules of procedure, the Committee may decide to consider the question of admissibility and the merits of a communication separately.

6.3 With regard to article 4 of the Optional Protocol, the Committee has been informed that the same matter has not already been and is not being examined under another procedure of international investigation or settlement.

6.4 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. In this connection, the Committee takes note of the State party's argument that the communication is inadmissible for non-exhaustion of domestic remedies for the following reasons. First, the non-exhaustion of domestic remedies was due to the author's own inaction in failing to lodge an appeal with the Independent Administrative Panel of Lower Austria within the statutory time limit established in its national law. The Committee observes that the author indeed filed her complaint with the Panel 18 months after the incident of 19 February 2007. In that connection, it recalls that a complainant is required to abide by reasonable procedural requirements such as filing deadlines.[45] The Committee is of the view that the author has failed to give a satisfactory explanation concerning her failure to file her complaint within the statutory time limit and that her alleged lack of knowledge about the legal basis of the undercover investigation could not have prevented her from filing the complaint on time.

6.5 The Committee also notes the State party's argument that, even in the belated appeal submitted to the Independent Administrative Panel, the author never alleged that she had been personally discriminated against as a woman by the conduct of the authorities or by laws of the State party. In line with an established jurisprudence of other international human rights treaty bodies,[46] in particular the Human Rights Committee,[47] the Committee recalls that authors of communications are required to raise in substance before national instances the alleged violation of the rights set forth in the Convention, in order to enable a State party to remedy the alleged violation before the same issue may be raised before the Committee. The Committee is satisfied that, in her complaint to the Independent Administrative Panel, the author complained only of violations of several constitutionally guaranteed rights and of the "guidelines for interventions by police officers" and failed to raise any gender-based discrimination.

6.6 The Committee further notes the State party's contention that domestic remedies have not been exhausted, given the comprehensive settlement reached between the author and the Federal Ministry of the Interior in full and final satisfaction of her claim and the termination of all proceedings with final effect. The Committee observes the failure of the author to disclose the said settlement to the

[45] See, for example, Human Rights Committee. communication No. 1175/2003, *Soo Ja Lim et al. v. Australia*, decision of inadmissibility adopted on 25 July 2006, para. 6.2.

[46] See, for example, *Salgado v. the United Kingdom* (note 36 above), para. 8.5.

[47] See, for example, Human Rights Committee, communications No. 222/1987, *M. K. v. France*, decision on admissibility adopted on 8 November 1989; No. 1356/2005, *Corral v. Spain*, decision on admissibility adopted on 29 March 2005; and No. 1420/2005, *Linder v. Finland*, decision on admissibility adopted on 28 October 2005.

Committee in the first place. The Committee takes note of the fact that at no time did the author seek to challenge at the national level the validity of the settlement reached and it is only in her comments dated 18 May 2015, in response to the State party's observations, that she brought up the quantum of the compensation and her failure to recover her legal costs. The Committee is of the view that, if she was dissatisfied with the terms of the settlement, the author ought to have first challenged it at the national level. In these circumstances, the Committee concludes that all available domestic remedies have not been exhausted in the present case. Accordingly, the Committee concludes that the communication is inadmissible under article 4 (1) of the Optional Protocol.

6.7 The Committee also takes note of the contention of the State party that the communication should be declared inadmissible pursuant to article 2 of the Optional Protocol inasmuch as the author lost her victim status when she reached a comprehensive settlement with the Federal Government, received compensation in full and final satisfaction of her claims and agreed to terminate all proceedings with final effect. The Committee has given due consideration to the author's averment that, as the State party has not acknowledged any unlawful act or omission or any kind of discrimination against her, she cannot be said to have lost her victim status. The Committee, however, finds no merit in her reasoning and is of the view that the author lost her victim status when she concluded the comprehensive settlement in full and final satisfaction of her claims at the national level. The Committee therefore also concludes that the communication is inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 4 (1) of the Optional Protocol because the author lacks the quality of a victim under article 2 of the Optional Protocol and because of the author's failure to exhaust domestic remedies;

(b) That this decision shall be communicated to the State party and to the author.