



**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. 45/2012

**Views adopted by the Committee at its sixty-first session
(6-24 July 2015)**

<i>Submitted by:</i>	Anna Belousova (represented by counsel, Evgeny Tsepennikov and Anastasiya Miller)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	12 September 2012 (initial submission)
<i>References:</i>	Transmitted to the State party on 18 January 2013 (not issued in document form)
<i>Date of adoption of views:</i>	13 July 2015

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Annex

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

concerning

Communication No. 45/2012*

Submitted by: Anna Belousova (represented by counsel, Evgeny Tsepennikov and Anastasiya Miller)

Alleged victim: The author

State party: Kazakhstan

Date of communication: 12 September 2012 (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 13 July 2015,

Adopts the following:

Views under article 7 (3) of the Optional Protocol

1.1 The author of the communication is Anna Belousova, a Kazakh national, born in 1981. She claims that Kazakhstan has violated her rights under articles 2 (e), 5 (a), 11 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel. The State party became a party to the Convention and the Optional Protocol thereto on 26 August 1998 and 24 August 2001, respectively.

1.2 By a note verbale of 18 January 2013, the State party requested that the admissibility of the communication should be examined separately from its merits. On 3 July, the Committee, acting through its Working Group on Communications under the Optional Protocol, decided not to accede to the State party's request.

Facts as presented by the author

2.1 In 1999, the author, who lives in a rural area, began working as a technical staff member in a cloakroom at a primary school in Pertsevka, Kazakhstan. During each school year, she was employed from 15 September to 15 May, and her contract

* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Bakhita Al-Dosari, Nicole Ameline, Barbara Bailey, Niklas Bruun, Louiza Chalal, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Lia Nadaraia, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

was renewed on a yearly basis. In December 2010, A. became the new director of the school and soon thereafter began requesting the author to perform various duties that fell outside the scope of her job description.

2.2 In January 2011, A. had a discussion with the author during which he tacitly indicated that her continued employment would be dependent upon her engaging in a sexual relationship with him. The author categorically refused. In response, A. asked her to pay him 10,000 tenge¹ if she wanted to continue to be employed at the school.

2.3 A. continued to harass the author, asking her to enter into a sexual relationship with him. She continued to refuse. In May 2011, A. demanded that the author should engage in a sexual relationship with him, failing which she would lose her job for the next school year. When she refused, A. requested 10,000 tenge from the author, whose monthly salary was only 15,000 tenge.² Given that the author refused to have a sexual relationship with A. or to pay him, her contract was not renewed for the following school year.

2.4 On an unspecified date, the author made an oral complaint about her situation and the harassment by her employer to the Head of the Rudnyy City Department of Education. On an unspecified date, a three-person committee carried out an inspection at the school and questioned A. It concluded that the author's allegations were unfounded. The author was neither approached nor questioned.

2.5 In June 2011, the author submitted complaints to the Director of the Department of Preschool and Secondary Education of the Ministry of Education and Science, the Head of the Rudnyy City Department of Education, the Head of the Qostanay Regional Department of Education and the Office of the Prosecutor of Rudnyy City about her situation and the harassment by her employer and requested protection from him.

2.6 On 9 June 2011, a committee established by the Rudnyy City Department of Education carried out an official investigation. The author, A. and other employees working at the school were questioned, and A. denied the author's accusations of harassment and attempts to extort money. In that connection, the author notes that she was not afforded an adequate opportunity to give her account. The committee concluded that the author's allegations were unfounded. On the basis of the committee's findings of 9 June, the Qostanay Regional Department of Education and the Ministry of Education and Science dismissed the author's complaint on 15 June and 29 June, respectively.

2.7 On 13 June 2011, the author submitted a complaint about the sexual harassment by her employer and the attempts to extort money from her to the Investigation Section of the Department of Internal Affairs of Rudnyy. She invoked articles 120, on rape, and 181, on extortion, of the Criminal Code. On 21 June, an investigator of the Department of Internal Affairs of Rudnyy decided not to initiate criminal proceedings concerning the author's complaint, notwithstanding the fact that witnesses E. and Sh. testified that they had overheard a conversation between the author and A. during which he had mentioned the sexual relationship and had asked to be paid.

¹ Approximately \$68.

² Approximately \$100.

2.8 On 5 July 2011, the author appealed to the Office of the Prosecutor of Rudnyy City, stating that the Office's refusal to initiate criminal proceedings was based mostly on the findings of the investigation committee of 9 June. The author noted that, because she had recorded on a cellular phone an instance of A.'s sexual harassment and attempts to extort money, she could provide the Office with a recording of that conversation. On 18 July, the Office quashed the negative decision of 21 June and transferred the author's case to the Department of Internal Affairs of Rudnyy for additional investigation. On 16 August, the same investigator of the Department again decided not to initiate criminal proceedings under articles 120 and 181, nor under article 123, forcing someone to enter into sexual relationship, of the Criminal Code on account of the lack of corpus delicti in relation to A.'s acts. On the same date, the author appealed to the Office of the Prosecutor of Rudnyy City, to no avail. The author notes that the witness statements of E. and Sh. and the fact that she had recorded A.'s demands had been ignored. On 25 and 30 November, she complained to the Office of the Prosecutor of the Qostanay Region, but, on 8 December, it upheld the decision not to initiate criminal proceedings.

2.9 On an unspecified date, the author gave an interview to a local newspaper, *Khoroshee Delo*, concerning her situation and the sexual harassment by her employer. The interview was published on 8 and 15 June 2011.

2.10 On 7 July 2011, A. initiated civil proceedings against the author before the Rudnyy City Court claiming that the author had imparted information damaging his honour, dignity and professional reputation. On 26 July, the Court decided that the author's claims concerning sexual harassment and attempts to extort money were unfounded and awarded A. compensation for non-pecuniary damages in the amount of 1 tenge and for court expenses in the amount of 51,512 tenge. The Court ordered the author to withdraw the complaints that she had submitted to the Rudnyy City Department of Education and the Qostanay Regional Department of Education and to inform the school's staff about the decision during a general school staff meeting. On 4 August, the author appealed against that judgement to the Qostanay Regional Court, but the Regional Court upheld the lower court's ruling on 1 September. Her appeal in cassation was dismissed by the Cassation Chamber of the Qostanay Regional Court on 9 November.

2.11 On an unspecified date, the author complained about her case to the Office of the President of Kazakhstan. Her complaint was forwarded to the Office of the Prosecutor General for examination, and the latter in turn forwarded it to the Office of the Prosecutor of the Qostanay Region. On 5 January 2012, the Office of the Prosecutor of the Qostanay Region informed the author that there were no grounds to justify initiating criminal proceedings.

2.12 In March 2012, the author was obligated to comply with the Rudnyy City Court order to pay A. the compensation awarded. In addition, she complied with the order to publicly apologize to him during a general school staff meeting, which caused her psychological suffering and depression and, as a consequence, she sought psychological help at a crisis centre for protection of women from violence. On 29 March, the author was diagnosed with depression and post-traumatic stress disorder.

2.13 On 2 July 2012, the author appealed to the Office of the Prosecutor General against the decision of 5 January of the Office of the Prosecutor of the Qostanay Region. In her appeal, she submitted that the institutions, when examining her

complaint, had violated her rights under articles 2 (e), 5 (a), 11 and 14 of the Convention. On 24 August, the Office of the Prosecutor General informed the author that criminal proceedings against A. under articles 120, 181 and 123 of the Criminal Code had not been initiated owing to the lack of *corpus delicti* in relation to A.'s acts. It noted that the decision of 19 November 2011 of the Department of Internal Affairs of Rudnyy, in part concerning article 123 of the Code and by which it had refused to initiate criminal proceedings against A., had been unlawful because, pursuant to articles 33 and 123, criminal proceedings under article 123 should be initiated by a victim before a court. In that regard, the author submits that she feared initiating criminal proceedings against A. within the private complaint procedure, given that, upon submitting such a complaint, she would be obligated to sign a statement indicating her awareness that she could be held criminally responsible for alleging or claiming false or untrue facts or accusations and given that the national courts had already established that her claims concerning sexual harassment and attempts to extort money were unfounded, in the context of the civil proceedings initiated by A. Moreover, she considers that submitting it would serve no purpose, because the courts would again refer to the previous decisions that her claims were unfounded.

Complaint

3.1 The author claims a violation of her rights under article 2 (e) of the Convention, given that the relevant institutions of the State party did not take appropriate action to eliminate the discriminatory treatment to which she was subjected by A.

3.2 In addition, the author claims that the State party has failed to take all appropriate measures as required under article 5 (a) of the Convention to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women, given that none of the national institutions found A. guilty of violating her rights.

3.3 The author maintains that, according to the Committee's general recommendation No. 19, and in the context of article 11 of the Convention, equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace, which includes such unwelcome sexually determined behaviour as physical contact and advances, remarks of a sexual nature, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

3.4 The author states that she is living in a rural area and that she and other women from that area belong to a specific group that is particularly subjected to discrimination, given that the prevailing attitude in rural areas is based on traditional patriarchal values. The author's claim raises issues under article 14 of the Convention.

3.5 In the light of her claims, the author requests the Committee:

(a) To find a violation of her rights guaranteed by articles 2 (e), 5 (a), 11 and 14 of the Convention;

(b) To recommend that the State party's institutions review, according to the principles of the Convention, the civil proceedings that were initiated against her by A.;

(c) To recommend that the State party's institutions review the decisions against initiating criminal proceedings concerning her case;

(d) Invite the State party to take all measures necessary to ensure the free realization of women's rights and to increase the level of knowledge about gender equality;

(e) To recommend that activities for the modification of the social and cultural patterns of men and women be based on gender equality and carried out in both cities and rural areas.

State party's observations on admissibility

4.1 By a note verbale of 18 January 2013, the State party challenged the admissibility of the communication. It maintains that the author's claims concerning sexual harassment, the national institutions' alleged failure to take appropriate measures and the violations of the author's rights under articles 2 (e), 5 (a), 11 and 14 of the Convention are inadmissible. In that regard, the State party submits that the author has not exhausted all available domestic remedies because she has not lodged a private complaint before a court requesting to hold A. criminally responsible for sexual harassment, as she should under articles 32 (2) and 33 (1) of the Criminal Procedure Code and article 123 of the Criminal Code.

4.2 The State party further maintains that the author's complaints about sexual harassment, attempts to extort money and demands to perform duties other than those mentioned in her job description were duly examined by the institutions, including the Department of Internal Affairs and the Office of the Prosecutor of Rudnyy City. School employees were questioned, and it was established that the author's claims were unfounded. On 22 June 2011, the Investigation Section of the Department of Internal Affairs of Rudnyy decided not to initiate criminal proceedings under articles 120, 181 and 123 of the Criminal Code owing to the lack of corpus delicti in relation to A.'s acts. The negative decision was quashed by the Office of the Prosecutor of Rudnyy City and the Office of the Prosecutor of the Qostanay Region, mainly in order to examine the audio recording of the conversation between the author and A. The recording was examined, but it did not corroborate the author's claims of sexual harassment. Accordingly, on 19 November, the Department of Internal Affairs of Rudnyy adopted its final decision to refuse to initiate criminal proceedings owing to the lack of corpus delicti in relation to A.'s acts. In that connection, the State party notes that that decision was later upheld by the Office of the Prosecutor of the Qostanay Region and by the Office of the Prosecutor General.

4.3 The author's claims were also investigated by the Rudnyy City Department of Education and the Qostanay Regional Department of Education, which found them groundless. The State party notes that the fact that the author was not sexually

harassed by A. is also supported by the fact that, since assuming his responsibilities as the school's director, A. never punished the author for disciplinary reasons and the author continued to perform her usual duties until the school's closure. Moreover, the Office of the Prosecutor of Rudnyy City explained to the author that pursuant to articles 32 (2) and 33 (1) of the Criminal Procedure Code and article 123 of the Criminal Code she was required to lodge a private complaint before a court.

4.4 With regard to the civil proceedings initiated by A. against the author, the State party notes that, on 26 July 2011, the Rudnyy City Court established that the author's allegations in her complaints to the Rudnyy City Department of Education and the Qostanay Regional Department of Education concerning the sexual harassment by A. and the demands to pay him if she wanted to keep her job were unfounded. Because she had been imparting information damaging to A.'s reputation, the Court ordered the author to withdraw her allegations and pay compensation for non-pecuniary damages in the amount of 1 tenge and for costs and expenses in the amount of 51,512 tenge. In addition, the Court established that the author did not complain about the alleged sexual harassment while she was employed but only after her dismissal.

4.5 Furthermore, according to national legislation and court practice in cases involving the protection of honour, dignity or professional reputation, a person who claims that the imparted information is true carries the burden of proof, whereas a person who claims that his or her honour, dignity or professional reputation has been affected must only prove that such information has been imparted. The State party submits that the author did not fulfil that obligation. In that connection, it notes that the witnesses mentioned by her were questioned, but that their statements were found to be irrelevant because they did not witness the alleged harassment and attempts to extort money and only repeated information that they had obtained from the author. In that regard, the State party notes that the judgement of the Rudnyy City Court was later upheld by the Qostanay Regional Court, on appeal, and by the Cassation Chamber of the Qostanay Regional Court.

4.6 In conclusion, the State party notes that the judgement of the Rudnyy City Court entered into force on 9 November 2011. Pursuant to article 388 of the Civil Procedure Code, the author could have lodged an appeal within the supervisory review procedure within one year from that date, or until 9 November 2012. It notes that the Supreme Court has never reviewed the judgement.

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

5.1 On 6 May 2013, the author reiterated that, according to national law, when lodging a private complaint she would be obligated to sign a statement that she is aware of the criminal responsibility for false accusations pursuant to article 351 of the Criminal Code. Given that, after examining her complaints, the local and regional prosecutors' offices and the Office of the Prosecutor General did not establish the facts of attempts to extort money and sexual harassment on the part of A. and that that conclusion would most likely be used by the prosecution in the context of the private complaint proceedings, she justifiably feared initiating such proceedings. In addition, the judgement adopted within the civil proceedings initiated by A. against the author established a precedent, given that, under article 131 (2) of the Criminal Procedure Code, a judgement that has entered into

force is binding on other courts examining the same circumstances and facts. Lodging a private complaint under article 123 of the Criminal Code would therefore not constitute an effective remedy. In that regard, the author notes that only effective and available remedies need be exhausted. She reiterates that lodging a private complaint would place her in danger of being held criminally liable.

5.2 With regard to the investigations carried out by the national institutions, the author notes that the State party does not explain how exactly the audio recording was examined and whether a forensic examination of the recorded material was ordered. She further observes that, according to the State party, the final decision on the refusal to initiate criminal proceedings was adopted on 19 November 2011. In that regard, the author maintains that she was never notified of that decision and learned of it only by chance, at the stage of the cassation proceedings in the context of the civil proceedings initiated against her by A.

5.3 The author argues that the investigations carried out by the Rudnyy City Department of Education and the Qostanay Regional Department of Education were not comprehensive because she was not afforded the opportunity to describe her story adequately and comprehensively. She reiterates that, on the basis of the investigation committee's findings of 9 June 2011, the Qostanay Regional Department of Education and the Ministry of Education and Science dismissed her complaints without visiting the school.

5.4 The author notes that the period of her labour contract expired in May 2011, at which point A. notified her that her contract would not be renewed. The school continued its operations until September 2012, when it was closed owing to its inadequate conditions.

5.5. The author notes that she has never received a decision from the Office of the Prosecutor of Rudnyy City informing her that she may lodge a private complaint. On 9 August 2012, she was informed by the Office of the Prosecutor General that the decision of 19 November 2011 of the Department of Internal Affairs of Rudnyy, in part concerning article 123 of the Criminal Code, was unlawful, given that, pursuant to article 123 of the Code, criminal proceedings should be initiated by a victim before a court.

5.6 With regard to the State party's argument that she made claims of sexual harassment only after the termination of her contract, the author notes that she did not complain about it while she was still employed by the school because she hoped to continue to work there and she was the sole wage earner in her family during that period.

5.7 With regard to the State party's observation that during the civil proceedings against her she provided no evidence in support of her allegations, the author notes that the court disregarded the statements of her witnesses because they had not directly seen the events alleged by her. At the same time, however, the court took into account the statement of the witness for A., even though that witness had not directly seen those events either. Furthermore, during the hearing of her case, she repeatedly requested the judge to have several witnesses questioned and to include the audio recording of her conversation with A. in the list of evidence, but her requests were denied.

State party's observations on the merits

6. On 28 August 2013, without providing further details, the State party indicated that, in the light of the recommendations of the Office of the Prosecutor General, the author's case had been sent for re-examination. On 15 November 2013, the State party submitted its observations on the merits of the case, reiterating its arguments set out in paragraphs 4.1 to 4.6 above.

Author's comments on the State party's observations on the merits

7.1 On 11 February 2014, the author submitted comments on the State party's observations on the merits, noting that the State party's observations of 15 November 2013 contained no information concerning the newly initiated investigation of her case. She indicates that she has not been notified about the new investigation and no one has questioned her or obtained any statements from her. She adds that, in October 2013, she received a telephone call from the same investigator of the Department of Internal Affairs of Rudnyy who had dealt with her case in the past, requesting her to present herself at the police station in order to sign some documents. The investigator refused to explain the nature of those documents.

7.2 On the same day in October 2013, a prosecutor from the Office of the Prosecutor of Rudnyy City telephoned her to ask whether she had received a decision on the refusal to initiate criminal proceedings and why she had not submitted a complaint to the court. The author explained that she had received no documentation and that she had requested to initiate criminal proceedings that would entail a forensic examination of the audio recording, which would enable her to submit a complaint supported by the examination of the recording to a court, but her request had been dismissed.

7.3 Also on the same day in October 2013, the investigator who had previously dealt with her case brought some documents to her home. He requested her to sign them, but the author refused because she was unaware of the content and did not wish to sign anything in the absence of her lawyer. The author indicated that she would present herself at the police station with her lawyer the following day and sign them. The following day, she duly presented herself, accompanied by her lawyer, where they learned that the documents concerned the refusal to initiate criminal proceedings regarding the author's allegations of sexual harassment by A. Given that those documents were issued in 2012 and dated as such, her lawyer advised her not to sign them, because she should have been notified about them in 2012 and not a year later. The lawyer noted that the documents should have been sent to the author by mail, but she never received them.

7.4 As to the State party's argument that she has not exhausted all available domestic remedies because she has never lodged a private complaint pursuant to article 123 of the Criminal Code, the author reiterates that she has reasonable and justified fears of initiating such proceedings. Furthermore, she notes that the State party has not explained how the national institutions examined the audio recording of her conversation with A. without performing a forensic investigation. In addition, regarding the State party's argument that she continued to work at the school until its closure, she reiterates that she was informed that her labour contract would not be extended in May 2011, but the school continued to operate until September 2012, when it was closed owing to its unsafe conditions.

Further observations by the State party

8. On 7 November 2014, the State party reiterated its arguments that the author had not exhausted all available remedies and that her claims were unfounded.

Issues and proceedings before the Committee*Consideration of admissibility*

9.1 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.

9.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.³ In that connection, the Committee notes the State party's argument that the communication should be declared inadmissible under that provision because the author has failed to exhaust all available domestic remedies. In particular, the State party submits that the author has not lodged a private complaint before a court requesting it to find A. criminally responsible for sexual harassment under articles 32 (2) and 33 (1) of the Criminal Procedure Code and article 123 of the Criminal Code. In addition, the State party submits that no appeal in the context of supervisory review proceedings has ever been filed with the Supreme Court against the judgement of the Rudnyy City Court of 26 July 2011, in the civil proceedings initiated against the author by A. The Committee also notes the author's submission that, according to national law, when lodging a private complaint, she must sign a statement to the effect that she is aware of her criminal responsibility for false accusations pursuant to article 351 of the Criminal Code. Given that, after examining her complaints, the local and regional prosecutors' offices and the Office of the Prosecutor General did not establish the facts of attempts to extort money and sexual harassment on the part of A. and that that conclusion would most likely be used by the prosecution in the context of the private complaint proceedings, the author has justified fears of initiating such proceedings. Moreover, the judgement adopted in connection with the civil proceedings initiated by A. against the author constituted a precedent, given that, under article 131 (2) of the Criminal Procedure Code, a judgement that has entered into force is binding on other courts examining the same circumstances and facts. Lodging a private complaint under article 123 of the Criminal Code would therefore be unlikely to bring effective relief to the author.

9.3 In the context of the author's claims under articles 2 (e), 5 (a) and 11 of the Convention, read in conjunction with the Committee's general recommendation No. 19, the Committee observes that, on 13 June 2011, the author submitted a complaint about the sexual harassment by her employer and his attempts to extort money from her to the Investigation Section of the Department of Internal Affairs of Rudnyy. However, an investigator from the Department decided, on 21 June 2011, not to initiate criminal proceedings concerning the author's complaint, notwithstanding the fact that two witnesses testified that they had overheard a

³ See, for example, communication No. 48/2013, *E. S. and S. C. v. United Republic of Tanzania*, views adopted on 2 March 2015, para. 6.3.

conversation between the author and A. during which he had mentioned the sexual relationship and demanded to be paid. Furthermore, after the examination of the author's appeal concerning the refusal to initiate criminal proceedings, the Office of the Prosecutor of Rudnyy City referred the author's case to the Department of Internal Affairs of Rudnyy for additional investigation. Subsequently, on 16 August 2011, the same investigator again decided not to initiate criminal proceedings. The Committee also takes note that the author appealed against the decision not to initiate criminal proceedings several times thereafter, but to no avail. Furthermore, within the civil proceedings initiated by A. against the author, the Rudnyy City Court concluded on 26 July 2011 that the author's claims about sexual harassment and attempts to extort money were unfounded and did not correspond to the reality. That judgement was later upheld by the Qostanay Regional Court within the appeal and cassation proceedings. In that regard, the Committee takes note of the author's submission that the judgement adopted in connection with the civil proceedings initiated by A. constituted a precedent and that, pursuant to article 131 (2) of the Criminal Procedure Code, a judgement that has entered into force is binding on other courts examining the same circumstances and facts. Accordingly, lodging a private complaint under articles 32 (2) and 33 (1) of the Criminal Procedure Code and article 123 of the Criminal Code would be unlikely to bring effective relief. The Committee has also given due consideration to the author's argument that, because the national courts found her claims about sexual harassment unfounded in the civil proceedings initiated by A., she therefore fears lodging a private complaint about the sexual harassment, given that, pursuant to article 351 of the Criminal Code, she would have to sign a statement indicating her awareness of her criminal responsibility for false accusations.

9.4 Furthermore, the Committee notes that the State party has no legal provision prohibiting sexual harassment in the workplace. In that connection, the Committee recalls that it already expressed its concern regarding the lack of legal provisions in national law prohibiting sexual harassment in the workplace in its concluding observations on the State party's combined third and fourth periodic reports, in 2014, and recommended that the State party should urgently adopt comprehensive legislation to combat such harassment, in line with the Committee's general recommendation No. 19.⁴

9.5 Lastly, the Committee observes that the State party has neither indicated whether the remedy available under articles 32 and 33 of the Criminal Procedure Code and article 123 of the Criminal Code has been successfully applied in the interests of a victim in cases concerning sexual harassment by an employer, nor specified the number of such cases. In addition, the State party has failed to demonstrate that supervisory review proceedings pursuant to article 388 of the Civil Procedure Code, which are designed to allow petitioners to seek the review of court decisions that have acquired the status of *res judicata*, would have constituted an effective remedy in the present case.

9.6 In the circumstances, and taking into account the fact that the author had complained to several administrative authorities in the education sector about the sexual harassment at her workplace and attempts to extort money by A. and that they all dismissed her claims, in addition to the absence of any explanation on the part of the State party as to how domestic remedies would have been effective in

⁴ See [CEDAW/C/KAZ/CO/3-4](#), paras. 28-29.

securing the rights of the author, the Committee concludes that, in the present case, domestic remedies would be unlikely to bring the author effective relief. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication.⁵

9.7 With regard to the author's claim under article 14 of the Convention, while taking into account her submission that she lives in a rural area, the Committee considers, on the basis of the material before it, that the author has provided no further information or arguments in relation to how her rights under article 14 have been violated. The Committee therefore considers that the author has not sufficiently substantiated that claim for the purposes of admissibility and concludes that it is inadmissible under article 4 (2) (c) of the Optional Protocol.

9.8 The Committee considers that the author has sufficiently substantiated her remaining claims, raising issues under articles 2 (e), 5 (a) and 11 of the Convention, read in conjunction with the Committee's general recommendation No. 19, for purposes of admissibility. Accordingly, the Committee proceeds to the consideration of the merits.

Consideration of the merits

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

10.2 The Committee notes that the author was employed as a technical staff member at the primary school in Pertsevka since 1999 and that her employment contract had been renewed on an annual basis for every school year without exception until 2011. It was in January 2011 that A., who had been appointed as the school's new director in December 2010, proposed to the author that she engage in a sexual relationship with him and tacitly indicated that her continued employment would depend on her acceptance of his proposition. The Committee takes note of the version of the author to the effect that the sexual harassment by A. persisted and, in May 2011, when she continued to categorically refuse to engage in a sexual relationship with A., the latter also sought to extort money from her by demanding a sum of 10,000 tenge and, when the author refused to pay, her employment contract was not renewed. The Committee further notes that no explanation has been provided by the State party or any of the institutions to which complaints were made by the author as to the reasons for the sudden non-renewal of her contract. The Committee has given due consideration to the State party's argument that the author's contract was not renewed owing to the school's closure, but notes that, according to the author, the school was functioning after May 2011, at least until September 2012, a statement that was not contested by the State party.

10.3 In the light of the foregoing, the issue before the Committee in the present case is whether the State party has taken all appropriate measures to ensure the effective protection of the author's right not to be discriminated against by any person, organization or enterprise and has taken prompt and appropriate action to address and put an end to the claimed discriminatory treatment in the form of sexual

⁵ See, for example, communication No. 32/2011, *Jallow et al. v. Bulgaria*, views adopted on 23 July 2012, para. 7.6.

harassment by A. in violation of articles 2 (e), 5 (a) and 11 of the Convention, read in conjunction with general recommendation No. 19.

10.4 The Committee recalls that, in accordance with paragraph 6 of its general recommendation No. 19, the term “discrimination”, within the meaning defined in article 1 of the Convention, encompasses gender-based violence against women that includes acts that, among other things, inflict mental or sexual harm or suffering, threats of such acts or coercion. Furthermore, in accordance with paragraph 17 of the recommendation, equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace, and such discrimination is not restricted to action by or on behalf of Governments. Rather, under article 2 (e) of the Convention, States parties may also be responsible for private acts should they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation, as stated in paragraph 9 of the recommendation.

10.5 In that connection, the Committee acknowledges that it is for the State party’s institutions and courts to evaluate facts and evidence in cases.⁶ In the present case, however, in order to determine whether the author has practically enjoyed the realization of the principle of equality between women and men and of her human rights and fundamental freedoms, the two questions before the Committee are whether the State party’s institutions acted with due diligence when investigating the author’s allegations and whether the State party has violated its obligation to effectively protect the author against gender-based violence.

10.6 The Committee observes that the first institution to examine the author’s claims of sexual harassment by A. was a three-person committee of the Rudnyy City Department of Education. During its investigations, that committee did not ask the author for her account of the story. The second investigation was carried out on 9 June 2011 by another committee established by the Rudnyy City Department of Education, which concluded that the author’s story was unfounded. In that regard, the Committee notes the author’s submission that she was not afforded an adequate opportunity to clarify her claims. Furthermore, in the light of the author’s complaint of 13 June 2011, an investigator of the Department of Internal Affairs of Rudnyy decided, on 21 June 2011, not to initiate criminal proceedings concerning the author’s complaint, notwithstanding the fact that two witnesses testified that they had overheard a conversation between the author and A. during which he had mentioned the sexual relationship and demanded to be paid.

10.7 The Committee notes that, after the examination of the author’s appeal concerning the refusal to initiate criminal proceedings, the Office of the Prosecutor of Rudnyy City transferred the author’s case to the Department of Internal Affairs of Rudnyy for additional investigation. Subsequently, on 16 August 2011, the same investigator again decided not to initiate criminal proceedings. The author appealed against the decision not to initiate criminal proceedings several times thereafter, to no avail. The Committee notes the author’s submission that the statements of the two witnesses and the audio recording of A.’s demands were ignored by the national institutions. It also notes the author’s argument that the national courts, within the civil proceedings initiated against her by A., had refused, without justification, to question several witnesses who could testify on the author’s behalf, or to adduce as

⁶ See, for example, communication No. 28/2010, *R. K. B. v. Turkey*, views adopted on 24 February 2012, para. 8.4.

evidence the audio recording of A. making demands. In that regard, the Committee notes the State party's statement that the recording had been examined, but the State party has provided no information as to how exactly the recording was examined and whether its authenticity has been verified.

10.8 In the light of the foregoing, the Committee is of the view that, in the present case, the State party's institutions and courts failed to give due consideration to the author's complaint of gender-based violence, which took the form of sexual harassment in the workplace, and to the evidence in support of that complaint, and that they thus failed in their duty to apply gender sensitivity to the examination of the complaint. Moreover, the national institutions and courts failed to give due consideration to the clear prima facie indication of an infringement of the equal treatment obligation in the field of employment, given the context of the present case. The author was in a vulnerable position as a subordinate to A. and the renewal of her labour contract was wholly dependent on A.'s discretion. In that regard, the Committee recalls that it is stated in paragraph 36 of general recommendation No. 28 that under subparagraph (e) of article 2:

States parties should also adopt measures that ensure the practical realization of the elimination of discrimination against women and women's equality with men. This includes measures that: ensure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies ... The obligations incumbent upon States parties that require them to establish legal protection of the rights of women on an equal basis with men, ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination and take all appropriate measures to eliminate discrimination against women by any person.

10.9 In the light of the foregoing, and in the circumstances of the present case, the Committee considers that the State party violated its obligations under article 2 (e), read in conjunction with article 1, of the Convention.⁷

10.10 As to the author's claim of a violation of article 5 (a) of the Convention, the Committee emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and a consequence of discrimination against women. Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors.⁸ In the present case, the authorities did not explore any reasons why the author's employment contract was not renewed after service of more than 10 years. Furthermore, the Rudnyy City Court referred to the fact that the author did not complain about the alleged sexual harassment while she was still employed, but only after her dismissal, as a circumstance rendering her allegation less credible. In the circumstances, which all reveal a lack of sensitivity to the author's vulnerable position as a sole female wage earner subordinate to A., and in light of the conclusion above, the Committee reiterates that the State party violated its obligations under article 2 (e), read in conjunction with article 1, of the Convention,

⁷ See, *ibid.*, para. 8.6.

⁸ See, *ibid.*, para. 8.8.

and that the State party's institutions failed to give due consideration in a gender-sensitive manner to the author's complaint about gender-based violence in the workplace and the evidence in support of that complaint, and that they thus failed to give due consideration to the prima facie indication of the infringement of the equal treatment obligation in the field of employment. The Committee is of the view that, by failing to investigate the author's complaint about sexual harassment promptly, adequately and effectively, even though the civil proceedings initiated by A. against the author were handled in less than three weeks, and by failing to address the author's case in a gender-sensitive manner, the national institutions allowed their reasoning to be influenced by stereotypes. The Committee therefore concludes that the State party violated article 5 (a) of the Convention.

10.11 With regard to the author's claim of a violation by the State party of her rights under article 11 of the Convention, in the light of the information made available by the author and the State party, the Committee considers that the author's claim concerns issues under articles 11 (1) (a) and (f) of the Convention. The Committee notes, in the light of its conclusions that there has been a violation of article 2 (e), read in conjunction with article 1, of the Convention, the author's claim that, in January 2011, A., the school's director, invited her for a discussion. During the discussion, he tacitly indicated that her continued employment with the school would depend on her engaging in a sexual relationship with him, an arrangement she categorically refused. Thereafter, A. continued to harass the author with those sexual demands and, because she continued to refuse, he requested her to pay him 10,000 tenge if she wished to continue to work there. Given that the author refused to comply with those requests, she was notified in May 2011 that her labour contract would not be extended for the following school year. The school continued to function until September 2012. The Committee notes the author's submission that, as a consequence of the termination of her contract and the civil proceedings initiated against her by A. following her complaints of harassment, which resulted in the order of the Rudnyy City Court to pay A. the compensation awarded and to apologize to him during a general school staff meeting, she suffered from depression and had to seek psychological help at a crisis centre for protection of women from violence. In that regard, the Committee notes that the author was diagnosed with depression and post-traumatic stress disorder on 29 March 2012.

10.12 The Committee recalls that, in accordance with paragraphs 17 and 18 of its general recommendation No. 19, equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace, which includes such unwelcome sexually determined behaviour as physical contact and advances, direct or implied sexual remarks, and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

10.13 The Committee is of the view that the pressure exerted on the author and the nature of the threat and harassment, as well as the attempts to extort money, all stem from her being a woman in a subordinate and powerless position and constituted a violation of the principle of equal treatment. The Committee considers that the employer's obligation to refrain from gender-based discrimination, including harassment, did not end with the termination of the author's labour contract. The

Committee observes that A. initiated civil proceedings against the author for libel, which resulted in a court order against her to pay compensation for moral damages and to publicly apologize to A. Consequently, the author suffered from depression and post-traumatic stress disorder. In those circumstances, the Committee considers that A.'s treatment of the author, by demanding that she enter into a sexual relationship with him, her supervisor, if she wished to continue to work at the school and refusing to extend her labour contract for the following school year, violated the author's rights to work and to equal treatment and constituted gender-based discrimination under articles 11 (1) (a) and (f) of the Convention. The author has therefore suffered a violation of her rights under those provisions, which the State party's institutions have failed to address promptly, adequately and effectively.

11. Acting under article 7 (3) of the Optional Protocol, and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations under article 2 (e), read in conjunction with articles 1, 5 (a) and 11 (1) (a) and (f), of the Convention, and recommends that the State party:

(a) Concerning the author of the communication: provide appropriate reparation, including adequate financial compensation, for moral and material damages caused to the author as the result of the violation of her rights under the Convention, including compensation:

- (i) For the loss of income from September 2011 until September 2012, when the primary school in Pertsevka was closed;
- (ii) For legal costs and expenses incurred in connection with the author's numerous complaints against A., as well as all costs incurred in relation to the civil proceedings instituted by A.;
- (iii) For suffering caused by the sexual harassment and attempted extortion, as well as by the public apology that the author had to make to A., which together caused her to suffer from depression and post-traumatic stress disorder;

(b) General:

- (i) Adopt, without delay, comprehensive legislation, in particular in the field of labour, to combat sexual harassment in the workplace, in line with the Committee's general recommendation No. 19, including a comprehensive definition of sexual harassment in the workplace in line with the international norms and standards, establishing effective complaints procedures, remedies and sanctions;
- (ii) Ensure that, in the implementation of article 351 of the Criminal Code, victims are not required to sign any statement if it may effectively constitute an impediment to their right to access to justice;
- (iii) Take the measures and action necessary to raise awareness of the public at large, including in rural areas, of sexual harassment in the workplace as a punishable offence, as well as promote policies to combat such harassment, covering both public and private spheres of employment;
- (iv) Provide regular, gender-sensitive training on the Convention, the Optional Protocol thereto and the Committee's jurisprudence and general

recommendations for judges, lawyers and law enforcement personnel, so as to ensure that stereotypical prejudices do not affect decision-making;

(v) Take effective measures to ensure that the Convention is implemented in practice by all national tribunals and other public institutions, in order to provide for the effective protection of women against all forms of gender-based discrimination in employment;

(vi) Ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence, taking into account the State party's cooperation with the Council of Europe.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is requested to have the Committee's views and recommendations translated into Kazakh and Russian, to publish them and to have them widely disseminated, in order to reach all sectors of society.
