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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 150/2019[*,**]

Communication submitted by:	N.M. (represented by NGO, Center for promotion of women's rights "Her Rights")
Alleged victim:	Natalya Metelitsa
State party:	Belarus
Date of communication:	19 September 2019 (initial submission)
References:	Transmitted to the State party initially on 23 October 2019
Date of adoption of views:	15 May 2023

Background

1. The author of the communication is N.M., a national of Belarus born in 1986. The author claims that Belarus has violated her rights guaranteed under articles 2 (a-d), 5 (a) and (b), 11 (1) (a) and (c), and 11 (2) (a) in conjunction with article 1 of the Convention, given that she was dismissed while on maternity leave and

[*] Adopted by the Committee at its eighty-fifth session (8 – 26 May 2023).

[**] The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Ms. Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar,Dalia Leinarte, Marianne Mikko,Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Genoveva Tisheva and Jie Xia.

thus indirectly discriminated on the ground of sex. The Optional Protocol entered into force for the State party on 30 January 2004. The author is represented by Centre for promotion of women's rights "Her Rights".

2.

Facts as submitted by the author

2.1 On 1 January 2014, the author has been employed as a bailiff by the Principal Department of Justice in Novopolotsk city. Her one-year contract was extended twice until 31 December 2015 and 31 December 2016. On 21 April 2016, she gave birth and on 5 July 2016, her maternity leave was approved for the time until the child reaches age of 3, as provided for in article 185 of the Labour Code.

2.2 On 22 August 2017, the author received a letter from her employer informing her on essential changes in work conditions[1] in that her post will be abolished and replaced by a position of a referent in the framework of implementation of a Presidential Decree No. 142 of 1 May 2017, on optimizing the system of State organs in Belarus. The author was offered a new position, which was a technical one and not a civil service post like that of a bailiff. The author decided to refuse the new position and was dismissed for refusal to accept the change in work conditions in accordance with article 35 (2) (5) of the Labour Code on 29 August 2017.

2.3 On 1 September 2017, the author filed a civil suit to the October District Court in Vitebsk asking to be reinstated at her post and compensated for moral damage suffered. She argued that her dismissal during the maternity leave was unlawful and that the justification for the dismissal offered by the employer was wrong. While the employer relied on her refusal to accept new work conditions under article 32 of the Labour Code, she was essentially transferred to a new post, which is not covered by the mentioned article. She argued that because of the stress caused to her by the dismissal, she had to call an ambulance and that she lost her milk.

2.4 On 9 October 2017, the October District Court rejected the author's suit. The Court found that dismissal in connection to change of work conditions under article 35 (2) (5) of the Labour Code cannot be seen as dismissal on the initiative of employer and therefore, the guarantees concerning women on maternity leave are not applicable in such cases.

2.5 On an unspecified date, the author submitted a cassation appeal to the Vitebsk Regional Court. She pointed out that 4 out of 12 bailiffs had been fired during reorganization by her employer and that the criteria for her transfer to a different post had not been explained to her. She argued that her dismissal was discriminatory on the basis of a presumption that women at maternity leave need their job less than men. The Regional Court rejected the author's appeal on 23 November 2017. The author filed a supervisory review appeal to the Vitebsk Regional Court on 21 March 2018. Her appeal had been rejected on 20 April 2018. On 24 June 2018, the author filed a supervisory review appeal to the Supreme Court, which was rejected on 13 August 2018.

Complaint

3.1 The author claims that her rights under article 2 (a-c) of the Convention had been violated because the State party failed to protect her from discrimination, provide her with an effective remedy and compensation for the damages suffered and

[1] Article 32 (2) of the Labour Code provides a definition of essential changes in work conditions. According to Article 32 (1) the employee continues to work on his/her speciality, qualification, and position.

did not revise the legislation leading to her dismissal in accordance with the principles of the Convention.

3.2 The author alleges a violation of article 5 of the Convention because the authorities, hindered by established prejudices, failed to identify discrimination in her dismissal and to take measures for its elimination (article 5(a)). She also claims that the authorities failed to consider the best interests of the child under article 5(b), whom she was breast-feeding at the time of dismissal, which caused her stress and resulted in loss of milk.

3.3 The author claims a violation of articles 11 (1) (a) and (c) and 11 (2) (a) in conjunction with article 1 of the Convention. She alleges that her right to work, free choice of profession or type of work had been violated because she was dismissed unlawfully and lost her status of state civil servant as a result of discrimination based on her maternity leave. She claims that her dismissal while she was on maternity leave was discriminatory under article 1 of the Convention because the grounds on which she was dismissed mostly affect women.

State party's observations on admissibility

4.1 On 24 December 2019, the State party submitted its observations on the admissibility of the communication. The State party submits that the communication should be declared inadmissible under articles 4 (1) and 4 (2) (c) of the Optional Protocol.

4.2 The State party notes that the author failed to exhaust domestic remedies as she did not submit a supervisory review appeal to the Vitebsk Regional Prosecutor's office and to the Prosecutor General.

4.3 The State party submits that individuals discriminated in the sphere of employment can complaint before courts under article 14 of the Labour Code. The State party also provides statistics about labour disputes examined by courts.[2] More than 30% of the petitioners were reinstated on their posts.

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

5.1 On 23 January 2020, the author submitted comments to the State party's observations on admissibility.

5.2 The author challenges the State party's argument that the communication should be held inadmissible for lack of exhaustion of all available domestic remedies. She contests the effectiveness of the supervisory review appeal to the Vitebsk Regional Prosecutor's office and to the Prosecutor General and refers to the jurisprudence of the Human Rights Committee which does not consider the supervisory review by the prosecutor's office to be an effective remedy which has to be exhausted for the purposes of admissibility.

5.3 The author also claims that the domestic law allows the prosecutor to protest a final court decision to the higher court. She states that even though her case was widely publicised, the prosecutor's office did not take an initiative to protest the final court decision in her case.

5.4 The author also informs the Committee that her former employer is spreading information about her complaint to CEDAW in order to create a negative image of the author at her new workplace.

[2] In 2018 - 9 162 civil cases, in 2017 - 10 919 cases and in 2016 - 12 843 cases.

State party's observations on the merits

6.1 On 7 May 2020, the State party submitted its observations on the merits.

6.2 The State party recalls that, the author worked as a bailiff in the Enforcement Department of Novopolotsk on a contractual basis. By Order No 206-k of 17 May 2016, she was granted social leave to care for a child up to the age of three for the period from 5 July 2016 to 19 April 2019.

6.3 The State party submits a detailed account about the primary and secondary legislation regulating labour matters and disputes. It explains that under Article 32 (1) of the Labour Code of the Republic of Belarus (LC), the employer has the right to change the essential conditions of work for justified industrial, organisational or economic reasons by notifying the employee in writing within a set period of time. Based on paragraph 3.2 of Presidential Decree No. 5 of 15 December 2014 "On strengthening requirements for managerial staff and employees of organisations", in 2017 the employer was obliged to notify the employee at least seven calendar days in advance of a change in the material conditions of employment.

6.4 Presidential Decree[3] No. 142 of 1 May 2017 on the Optimisation of the System of State Bodies (hereinafter Decree No. 142) stipulated the specifics of dismissal of civil servants during the optimisation of state bodies, as well as additional guarantees for employees whose positions are subject to optimisation. In the case of a discrepancy between a presidential decree and a law of the Republic of Belarus, the law shall prevail only when the power to issue the decree has been conferred by law.[4] Article 5 of the LC provides that the LC applies to the employment and related relations of certain categories of workers in the cases and within the limits prescribed by special legislative acts defining their legal status. Decree No 142 is a special piece of legislation that defines the way in which public organs are to be streamlined.

6.5 Pursuant to Decree No 142 and Resolution No 334 of the Council of Ministers of 6 May 2017 "On the implementation of measures to optimise the system of state bodies", the Ministry of Justice issued Order No 109 of 30 June 2017 "On Approving the Structure and Staffing Level of Territorial Enforcement Bodies". This order approved the structure and staffing of the territorial bodies of judicial enforcement, including the Novopolotsk judicial enforcement department, where the author worked.

6.6 While in August 2017 there were 8 bailiff posts in the staffing table of the division, as of 1 September 2017 the staffing table of the division includes 4 bailiff posts and 4 referent/reference officer posts. All positions of bailiffs of the division are held by women. On 22 August 2017, the author was warned about the abolition of her position as a bailiff and was therefore offered another job as a reference officer in the Novopolotsk enforcement department as of 1 September 2017. Thus, she was duly warned about the changes in the structure and staffing of the enforcement department caused by the optimisation of the system of state bodies. The State party submits that the employer had taken steps to secure her employment. However, the author has refused to be transferred to the proposed post of assistant.

6.7 The State party affirms that given the circumstances described above, the employer had legal grounds for terminating the employment relationship with the author in accordance with Article 35(2)(5) of the Labour Code.[5]

[3] Pursuant to Article 1 of the Law of the Republic of Belarus "On Normative Legal Acts of the Republic of Belarus", a presidential decree is a legislative act.

[4] Article 137(3) of the Constitution of the Republic of Belarus

[5] Employee's refusal to continue work due to a change in the material conditions of employment.

6.8 When deciding on the transfer of employees from the position of a bailiff to the position of a reference officer, the main justice department of the Vitebsk Regional Executive Committee was guided by such criteria as length of service, professionalism, and experience in the position of a bailiff as assessed by the employer. The author's indicators were lower than those of other bailiffs of the department. This fact is also confirmed by the fact that on 26 November 2015 the employer considered terminating the author's employment based on her performance, of which she was notified accordingly. However, after the author submitted a certificate of pregnancy, her contract was extended in accordance with labour law.[6]

6.9 The State party contests the information on assignment of the highest civil servant class to the author in her communication as untrue. According to the State party, on 29 January 2014, the author was awarded the 7th (seventh) class of civil servant.[7] The fact that the author's contract was extended after she submitted a certificate of pregnancy and that her employer provided her with an opportunity to be employed under the conditions of optimisation of the public administration system while she was on maternity leave indicates that the arguments that her dismissal was based on gender stereotypes are unfounded.

6.10 On the allegations of violation of Article 11 (1) (a), (c) and 2 (a) in conjunction with Article 1 of the Convention, the State party responds that under article 41 (1) and (2) of the Constitution, citizens are guaranteed the right to work as the most dignified means of self-assertion, that is, the right to choose a profession, occupation and work in accordance with one's vocation, abilities, education and training and in accordance with social needs, to healthy and safe working conditions, and to equal protection of rights and legitimate interests without any discrimination. State policy for the promotion of employment aims at ensuring equal opportunities for all citizens regardless of sex, race, nationality, language, religious or political beliefs, membership or non-membership in trade unions or other voluntary associations, property or occupational status, age, place of residence, physical or mental disabilities, provided they do not hinder the performance of corresponding work duties or other circumstances unrelated to business qualities.

6.11 Pursuant to Article 8(1) of the International Labour Organisation Convention No. 183 concerning the Revision of the Maternity Protection Convention (Revised), 1952,[8] it is unlawful for an employer to dismiss a woman during her pregnancy or absence from work in connection with the leave provided for in Articles 4 or 5 of ILO Convention No. 183 or in the period following her return to work established by national law, except for dismissal for reasons unrelated to pregnancy or childbirth and its consequences or to nursing an infant.

6.12 The State party submits that its legislation contains restrictive rules on the dismissal of pregnant women and women on maternity leave. Under Article 43 (2) of the Labour Code, an employee may not be dismissed on the employer's initiative during a period of temporary incapacity for work (except dismissal under Article 42 (6) of the Labour Code) or when the employee is on leave. The grounds for dismissal on the employer's initiative are listed in Article 42 of the Labour Code. Under article 268 of the Labour Code, an employer may not terminate the labour contract of

[6] Article 2615 of the Labour Code stipulates the employer's obligation to extend the term of the contract: - with a pregnant woman with her consent for the period of pregnancy or for another period as agreed by the parties; - with a working woman who is on maternity leave, a mother (father instead of mother, guardian) who is on maternity leave to care for a child under the age of three - at least until the end of the said leaves.

[7] Under Article 11(2) of the Law on Civil Service in the Republic of Belarus, the highest class and 12 classes are established for civil servants, of which the 12th class is the lowest.

[8] Signed in Geneva on 15 June 2000.

pregnant women or women with children under the age of 3, except in the event of liquidation of the enterprise, termination of a branch, representative office or other separate subdivision of the enterprise located in another area or termination of a self-employed person, or on the grounds set out in article 42, paragraphs 4, 5, 7 and 9, or article 47 of the Labour Code. An employer may not terminate the labour contract of a single mother with children aged between 3 and 14 (or with disabled children under the age of 18), except in the event of liquidation of the organization, termination of a branch, representative office or other location of the organization, termination of a sole proprietorship, or on the grounds set out in article 42, paragraphs 2, 4, 5, 7 and 9, or article 47 of the Labour Code.

6.13 The termination of the employment relationship with the author based on Article 35(2)(5) of the Labour Code[9] (an employee's refusal to continue working due to a change in the material conditions of employment) is not related to her being on parental leave and is not a dismissal on the employer's initiative. Thus, when an employee is dismissed under Article 35(2)(5) of the Labour Code, the procedure and conditions set out in Article 43 of the Labour Code (for cases of dismissal at the employer's initiative) do not apply.

6.14 The author considers her dismissal unlawful because the employer dismissed her while she was caring for a child under the age of 3, which, according to Decree No 569 of the Council of Ministers of 28 June 2013, is a period of temporary incapacity for work, according to the author. The State party notes that sub-paragraph 2.1 of paragraph 2 of the Regulation on the Procedure for Providing Benefits for Temporary Incapacity for Work and Maternity, approved by Decision No 569 of the Council of Ministers of 28 June 2013, provides for the granting of temporary disability allowance in case of caring for a child under the age of 3 in case of illness of the mother or other person who takes care of the child. As for the mother, Article 185 of the Labour Code provides working women, irrespective of their length of service, with a leave to care for a child up to the age of three years after the end of their maternity leave, if they so wish. Accordingly, such a woman is not temporarily incapable of work.

6.15 While caring for a child under the age of 3, both working people on maternity leave and non-working people caring for a child under the age of 3 receive the same amount of state guarantees. Given that the author did not start work at the end of her maternity leave, but took maternity leave to care for a child under the age of 3 (i.e. she had no employment income in the form of wages), her financial situation did not change due to her dismissal during this period.

6.16 The State party asserts that during the period of care for a child under the age of 3 in the Republic of Belarus, social and economic support is provided to all categories of persons caring for a child.

Having regard to the circumstances of the author's case, the State party considers unfounded the arguments that the transfer to the post of referent/reference officer could damage her employment situation and further promotion, as well as restricting her right to choose her employment and her freedom to accept it.

6.17 The State party also notes that, in accordance with Article 45 of the Law of the Republic of Belarus "On Public Service in the Republic of Belarus" length of public service is taken into account when awarding grades of public servants, establishing premiums for length of service, determining the duration of additional leave, retirement, payment of severance pay in cases provided for by this Law, as well as the appointment of pensions and monthly cash allowance. In this case, the periods of

[9] An employee's refusal to continue working due to a change in the material conditions of employment.

employment counted (included) in the length of public service are summed up irrespective of the period of interruption in work. When a civil servant returns to the civil service from which he has previously resigned, he also retains the class assigned to him[10]. Accordingly, if the author were to enter the civil service in the future, she would retain her civil servant class, unless a higher class was provided for in the new position, and all her years of civil service would be considered in granting the above-mentioned material and social guarantees. In this connection, the author's argument about the loss of all the benefits earned and accrued during her public service as a result of her dismissal is unfounded.

6.18 As to allegations under article 5 of the Convention, the State party states that its Labour legislation adheres to gender equality in labour relations. The Labour Code prohibits discrimination in employment relations. Article 14 of the LC stipulates that discrimination, i.e., limitation of labour rights or receipt of any advantages based on sex, race, national or social origin, language, religious or political beliefs, membership or non-membership in trade unions or other public associations, property or employment status, age, place of residence, physical or mental disabilities not preventing performance of the respective labour duties, other circumstances unrelated to business, is forbidden. Discriminatory terms in collective agreements are invalid. Any distinctions, exceptions, preferences, and restrictions shall not be considered discrimination: 1) based on the inherent requirements of the job; 2) necessitated by the need for special state care for persons in need of increased social and legal protection (women, minors, persons with disabilities, persons affected by the Chernobyl disaster, etc.).

6.19 Persons who consider that they have been discriminated against in employment relationships are entitled to apply to a court for the removal of discrimination. In addition, this list of discriminatory circumstances is open, i.e. any conditions that are not related to business qualities and are not conditioned by the specifics of an employee's job function or status may be considered discriminatory, which may be grounds for holding the employer liable in accordance with the legislation of the Republic of Belarus. Article 185 of the Labour Code stipulates that leave to care for a child up to the age of three years is granted, at the family's discretion, to the working father or other relative or member of the child's family if the child's mother goes to work (service), studies (when receiving vocational, specialized secondary, higher or postgraduate full-time education), full-time clinical residency training or if she is an individual entrepreneur, notary, lawyer. Therefore, the law gives the family the right to decide which working parent will take care of the child and, therefore, be on parental leave until the child reaches the age of three. The father on parental leave, however, is subject to the same guarantees as the mother.

6.20 Monthly state social insurance allowance is granted and paid for the time of being on leave to care for a child up to the age of three years in accordance with the procedure established by law. Leave to care for a child up to the age of three years is included in the length of service, as well as in the length of work in the specialty, profession, position in accordance with the legislation. However, being on parental leave is not compulsory. A person on parental leave may go to work either full-time or part-time. To further improve the legislation in terms of providing equal rights and opportunities in the area of employment relations, including those related to the upbringing of children, amendments to the Labour Code were introduced by the Law of the Republic of Belarus "On Amendment of Laws", coming into force on 28 January 2020, in particular: granting paternity leave on the birth of a child; granting a father (stepfather) raising two or more children under the age of fourteen (a disabled child under the age of eighteen) the right to use his leave before the six months of

[10] Article 13(6) of the Law of the Republic of Belarus "On Civil Service in the Republic of Belarus"

employment with the employer expire; granting a father (stepfather) bringing up a disabled child under the age of eighteen the right to plan a summer holiday or other convenient time; Extending the guarantees provided for working women mothers to working single parents raising children; Establishing that women with children under the age of three may be required to work overtime, on public holidays and public holidays, on weekends and on business trips with their written consent.

6.21 The State party considers unfounded the arguments that the failure to adopt legislative and other measures (absence of a law on equality of men and women, comprehensive anti-discrimination legislation) prohibiting any discrimination against women led to a violation of the author's labour rights on discriminatory grounds. The State party policy is aimed at ensuring equal opportunities for all citizens, regardless of sex and age, to exercise the right to employment and work. The Constitution guarantees citizens the right, without any discrimination, to equal protection of their rights and legitimate interests.[11] The right to equal protection of rights and legitimate interests without discrimination is enshrined in the Civil Code of the Republic of Belarus[12], the Code of Administrative Offences[13], the Code of Criminal Procedure[14] and several other laws.

6.22 The State party also refers to Article 3(3) of the Criminal Code stipulating that persons who have committed crimes are equal before the law and are subject to criminal liability regardless of sex, race, nationality, language, origin, property and official status, place of residence, attitude towards religion, beliefs, membership of public associations, as well as other circumstances. A similar norm is contained in part three of Article 4.2 of the Code on Administrative Offences. Article 190 of the Criminal Code establishes liability for deliberate direct or indirect violations or restrictions of rights and freedoms or the establishment of direct or indirect advantages for citizens on the grounds of sex, race, ethnic origin, language, origin, wealth or official status, place of residence, attitude to religion, beliefs, or membership of voluntary associations, thereby causing substantial harm to the rights, freedoms, and legitimate interests of citizens.

6.23 Constitutional guarantees of citizens' right to work, free choice of profession, occupation and work, and the principle of equality in the exercise of these rights are also enshrined in the labour legislation. Under Article 14 (1) of the Labour Code, discrimination, i.e., limitation of labour rights or receipt of any advantages based on sex, race, national or social origin, language, religious or political beliefs, membership or non-membership in trade unions or other public associations, property or employment status, age, place of residence, physical or mental disabilities not preventing performance of the respective job duties, other circumstances unrelated to the specific functions of the job, is prohibited. Discrimination is not allowed either in specific actions or in provisions of legislation, collective agreements and other local legal acts, employment contracts on any employment relationship (recruitment, transfers, termination of the employment contract, remuneration, conditions, and protection of labour). Individuals who consider that they have been discriminated against in employment relationships are entitled to apply to a court to end discrimination.[15] A dispute arising from an employment relationship may be initiated in court by an employee, a prosecutor, a trade union defending the rights and legally protected interests of its members, as well as other organisations and citizens in cases stipulated by the legislation of the State party. Employees are exempt from paying

[11] Article 22 of the Constitution
[12] Article 2
[13] Article 2.12
[14] Article 20
[15] Pursuant to article 14 (4) of the Labour Code

court fees in individual labour disputes.[16] It is prohibited to refuse to conclude an employment contract or to reduce a woman's wages on grounds of pregnancy or having children under the age of three, or for single mothers with children under the age of fourteen (with disabled children under the age of eighteen).[17] If an employer refuses to conclude an employment contract with these categories of women, he or she must inform them of the reasons in writing. A refusal to conclude an employment contract may be appealed in court.

6.24 The State party further notes that the Presidium of the Supreme Court adopted Decision No. 7 of 5 December 2017 "On the Practice of Application by the Courts of Legislation Regulating the Labour of Women and Employees with Family Responsibilities" based on the generalisation of court practice and discussion of issues relating to the implementation of rules prohibiting discrimination in labour relations, as well as compliance with labour guarantees for women and employees with family responsibilities. The Presidium of the Supreme Court has instructed the courts to thoroughly check in court each employee's argument about discrimination by the employer in the sphere of labour relations. Courts are advised to consider the full range of rights and guarantees provided by labour legislation, as well as by the employer's local normative legal acts for female employees and other employees with family obligations. Knowingly dismissing a person from work unlawfully is punishable under Article 199 of the Criminal Code.

6.25 The State party notes that it systematically implements practical measures aimed at gradually eliminating historically established stereotypes in the distribution of family roles in the care and upbringing of children. Thus, women, who have been more diverted from the labour market to family responsibilities, are provided with employment promotion guarantees. The female unemployment rate is lower than that of men and is gradually declining (according to a sample ILO household survey in May 2018, the female unemployment rate was 3.5 per cent (male: 5.8 per cent) and in 2016 it was 4.2 per cent (male: 7.5 per cent). In addition, activities to improve legislation are aimed at increasing equality in employment and family relations. Based on the above, the State party ensures equal rights for men and women; the right to work as an inalienable right of all people, the right to free choice of profession or type of work, the guarantee of employment. In conclusion, the State party maintains that the author's claims of her rights being violated under articles 1 (a) and (c), 11 (1); 2 (a), (b), (c) and (d) and 5 of the Convention are unfounded.

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

7.1 On 11 July 2020, the author submitted comments to the State party's observations on the merits.

7.2 According to the author, the Presidential Decree No. 142 of 1 May 2017, on optimizing the system of State organs to which the State party refers has not been accessible to and has not been made available for scrutiny by civil servants. The Decree was not made available to the author even after her petition to court. Furthermore, the author claims that she suffered indirect discrimination as the adoption of the Decree had discriminatory consequences for her, notably her wrongful dismissal while on maternity leave.

7.3 The author claims that the protection of women's rights that have been violated, as well as the investigation of complaints or information about their violation, were neither within the competence nor the priority of the Belarusian Union for Women (BUW). The author is also unaware of any actual cases of successful protection of

[16] Pursuant to article 241(4) of the Labour Code and article 257(1).6.1 of the Tax Code
[17] Pursuant to article 268 (1) of the Labour Code

women's rights and restoration of social justice through the BUW. Moreover, the main priorities of BUW's work are educational, humanitarian in nature, all of which point to the prevailing stereotype about women as "guardians of the home" as well as to its pro-state character, which excludes the possibility of providing legal aid in cases of individual rights violation by the state.

7.4 The author did, however, acknowledge the initiative of the State party authorities and acceded to the wish of the BUW to look into the situation. As a result, the author nevertheless considers that the meeting with the chair of the BUW Navapolatsk city organisation was ineffective and pointless, as no further action was taken by the BUW to protect her rights. The information contained in the explanatory note that she had no claims against her former employer, concerns the abstract question of the chair of the BUW Novopolotsk city organisation: "What is the author trying to achieve with her complaint? No specific questions were asked about the author's former employer, including whether she had a claim against the former employer. Thus, the information that the author had no claim against her former employer represents a loose interpretation of her words that she wants to get justice.

7.5 With regard to the written explanation by the head of the Novopolotsk enforcement department, the author's former employer, about the absence of threats and pressure, the author informs this written explanation led in turn, to a conversation with her new employer, which concerned her submission of a complaint to the Committee. As the author's new employer is also a public entity and is supervised by her former employer, the Chief Department of Justice of the Vitebsk region, the author reiterates that by submitting the complaint to the Committee, she has not committed any infraction, yet used her right under article 61 of the Constitution to apply to an international body for the protection of her rights. According to the author, it is not clear who initiated the explanatory memorandum, whether the initiative came from one person or whether a working group was set up to investigate the incident, and if so, why no witnesses to the incident were interviewed, and why the results of the investigation were not brought to the author's attention. The author claims that neither her former employer, nor the State party, initiated and conducted a comprehensive and impartial investigation of the facts stated by the author in her communication.

7.6 The author submits that despite the threats and pressure exerted by her former employer and the information available to the author's new employer regarding her complaint before the Committee, she was offered a two-year extension of her employment contract in June 2020. The author expresses her satisfaction with the conditions created by her current employer and the existing relationship with her superiors. She points out that the two-year extension period coincides with a provision of domestic law[18] which enshrines the mandatory nature of the extension of the employment contract with the consent of the child's mother, for a period not less than until the child reaches the age of five years. Given that the author’s child will be 5 years old in two years' time, and that her dismissal now would be impossible and unlawful, the author nevertheless remains concerned that reprisals for filing a complaint with the Committee could, which could lead to a loss of employment after two years.

7.7 As to her civil service class and benefits, the author considers that although in theory the State party arguments are valid, further public service in her hometown is unlikely due to the hostility of the State party, which automatically deprives her of the possibility to continue her career as a public official and to enjoy the benefits mentioned by the State party. As to the information about the highest grade assigned

[18] Paragraph 2 of Decree No 180 of the President of the Republic of Belarus of 12 April 2000

to the author contested by the State party as untrue, she regrets the error and apologises for her unintentional misrepresentation to the Committee.

7.8 Concerning the violation of her rights under article 11 (1) (a) and (c) and 2 (a) of the Convention, the author argues that the State party's position is unfounded and that her dismissal is discriminatory. The State party's notification of 30 November 2015 stated that the author's contract of 1 January 2014 for a period of one year, renewable until 31 December 2015, will not be renewed thereafter. As a result, upon expiry of the said contract, the employment relationship is terminated based on article 35 (2) of the Labour Code, i.e., due to the expiry of the fixed-term employment contract. The said notice does not contain a motive for the non-renewal of the author's contract. Consequently, it cannot be an indication of the author's inferior performance in comparison to other bailiffs.

7.9 The author explains that if her employer had indeed intended to dismiss her due to her poor work performance, the basis for such decision would be article 42, paragraph 3 of the Labour Code - "non-conformity of an employee with the position or work performed". Article 42 (3) of the Labour Code - "lack of conformity of the employee with the position or work performed due to insufficient qualifications preventing the employee from continuing in the job in question". However, an employee's unfitness for the job is determined by objective evidence. However, a person's unfitness for work must be determined based on the specific facts confirming that the employee is not properly performing the work under the employment contract. The author emphasises that in this case the experience and length of service is irrelevant because the qualification, according to Article 1 of the Labour Code, is "the level of general and special training of the employee, as confirmed by the types of documents (certificate, diploma, etc.) established by law". Thus, the author claims that the State party's argument about her record of seniority, professionalism and experience being lower than that of other bailiffs in the department was subjective, as the State party did not provide evidence to the contrary and because the above criteria were never brought to the attention of the author. There was no comparison of data on seniority, professionalism, experience of the work of other bailiffs whose positions have been retained, with the corresponding data of the author whose position has been abolished.

7.10 The author also states that most bailiff positions in the State party are held by women[19] and in her former employer's team were only women so in fact it was only possible to dismiss women. According to her, this suggests a tendency towards gender segregation in enforcement proceedings. Thus, the author underlines that she was not the only female civil servant. She argues that the State party failed to substantiate that her professional performance was inferior to that of other employees in the department and failed to respond adequately to arguments of discrimination before the courts.

7.11 As to her financial situation, the author maintains that it changed during her maternity leave as after her dismissal she was forced to pay the residual value of the work uniform.[20] The author reiterates that her dismissal violated her right to work and constituted indirect discrimination on the basis of being on maternity leave, contrary to article 11 (1) (a) and (c) and 2 (a) of the Convention.

7.12 The author submits that the State party merely enumerates the rules contained in the national legislation without reference to any law implementation. The State

[19] Confirmed by publicly available media sources form Gomel region, Brest region, Minsk district of the Minsk region.

[20] Amounting to 282.93 Belarusian roubles (equivalent of 122.44 euros at the time of payment) which was 101% of her monthly allowance for the care of a child under the age of 3 years

party pursues the tactic of ignoring her arguments, chosen already when she was defending her rights at the national level.

7.13 The author maintains that the State party labour law gives the mother the leading role in caring for a new-born child referring to articles contained in chapter 19 "Peculiarities of regulating the work of women and workers with family responsibilities" of the Labour Code. The provisions envisaged to facilitate the employment of parents are mainly aimed at women, regardless of their marital status. Article 271 stipulates on guarantees for fathers, single parents, other relatives, family members of the child, guardians (custodians). The wording of the provision, the sequence of family members also provides that the hierarchy on "access" to childcare starts with the mother, then the stepmother, if the said leave is not granted to the working father , another relative, a family member of the child, and is also transferred to the same persons in cases where the mother is unable to care for the child due to a group I disability or illness. Article 268 (1) prohibits the refusal to conclude an employment contract and the reduction of wages on grounds relating to single mothers with children under the age of 14 (a disabled child under the age of eighteen). The law in force at the time of the author's complaint did not include guarantees for single fathers or other persons.[21] As to article 185 of the LC, although the right of other family members to take such leave is granted, the structure and order of the text suggests that this article is primarily focused on mothers, and secondarily on other family members. The reference to the parental role in the Labour Code was strengthened with the adoption of the LC amendments that came into force on 28 January 2020. It is clear from the analysis of the provisions of the LC that the upbringing of children and the running of the household are perceived as women's responsibilities. Hence the interpretation of national legislation in the spirit of the stereotype of women as "keepers of the home" was already inherent in the labour law. According to the author, in order to avoid stereotyping, the national courts had to shift the burden of proof and apply the interpretation and analysis of article 14 of the Labour Code, which contains a prohibition of discrimination on the basis of sex. The author reiterates her claim that her dismissal was based on this stereotype.

7.14 Concerning the violation of her rights under article 2 (a) to (d) of the Convention, the author affirms that the State party lacks any comprehensive anti-discrimination law and that there are shortcomings in the practical implementation of the principle of equality of men and women enshrined in the national legislation. The author recalls that the lack of adequate legislation to prohibit all types of discrimination has been highlighted by five UN human rights treaty bodies, including CEDAW,[22] as well as the UN Special Rapporteur on the situation of human rights in Belarus.[23] Moreover, in 2016 CEDAW noted with concern, in its concluding observations on the eighth periodic report of Belarus, the absence of any court decisions referring to the provisions of the Convention.[24] The author also refers to a

[21] The change was made in July 2019 by correcting "single mother" to "single parent".

[22] Committee on Economic, Social and Cultural Rights, "Concluding observations on the combined fourth to sixth periodic reports of Belarus" (13 December 2013), para. 8; Committee on the Elimination of Discrimination against Women, "Concluding observations on the eighth periodic report of Belarus" (18 November 2016), paras. 8 and 9; Committee on the Elimination of Racial Discrimination, "Concluding observations on the combined twentieth to twenty-third periodic reports of Belarus" (21 December 2017), paras. 10 and 11; Human Rights Committee, "Concluding observations on the fifth periodic report of Belarus" (22 November 2018), paras. 15 and 16; Committee on the Rights of the Child, "Concluding observations on the combined fifth and sixth periodic reports of Belarus" (28 February 2020), para. 15

[23] Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/41/52, para. 60.

[24] Concluding observations on the eighth periodic report of Belarus, CEDAW/C/BLR/CO/8, para. 10.

sociological survey conducted at the end of 2018[25], according to which the percentage of applications to the courts in cases of gender discrimination at work sphere is very low. Only 15.3% of respondents were prepared to assert their rights in response to gender discrimination at work, of whom 16.5% were prepared to defend their rights in court. One of the reasons for the lack of discrimination disputes at court is the respondents' belief in the non-recognition of discrimination per se by the courts, but also in the inability to prove discrimination and the realisation that even in the event of a favourable court decision, the employment relationship would be of a hostile nature.

7.15 The author maintains that the adoption of the Presidium of the Supreme Court Decision No. 7 did not contribute to establishing effective protection for her against an act of discrimination. She filed supervisory review appeals before the Regional Court of Vitebsk (21 March 2018) and the Supreme Court of the Republic of Belarus (24 June 2018) following the adoption of Decision No.7. Despite the author's repeated references to the prohibition of discrimination contained in domestic law and in the Convention, the courts failed to apply it. The Supreme Court was the only court whose response to the author's complaint contained a reference to the concept of discrimination in employment relations. The Supreme Court concluded that "the [lower] court reasonably found the arguments of discrimination in employment relations to be unfounded, as the employer did not deprive you [the author] of the right to continued employment, you [the author] were offered the position of a reference officer and the salary corresponding to the staff list". The Supreme Court did not examine the discrimination arguments on the merits, it did not perform a discrimination test, and its conclusion is not supported by references to either the provisions of Belarusian law or the Convention. Consequently, the author affirms that the domestic courts failed to provide her with an effective defence against an act of discrimination.

7.16 The author points out that Decision No. 7 notes the link between the identified errors in the examination of discrimination claims by employees against their employers with insufficient knowledge by individual judges of the legislation governing the work of women and workers with family responsibilities and the judicial practice in this area. In the light of the above, paragraph 5 of Decision No. 7 instructed provincial (Minsk City) courts to periodically review the practice of the courts in considering disputes concerning the protection of women's labour rights and to take steps to ensure the uniform and correct application of the law. Despite this, as stated by the Supreme Court in its reply of 29 June 2020 to an appeal by the Centre for the Advancement of Women, there is no statistical record of cases of discrimination in employment relations heard by the courts.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee notes the State party’s argument that the communication ought to be declared inadmissible under article 4 (1) of the Optional Protocol for non-

[25] Gender discrimination in the labour market. Study on the situation of gender discrimination on the labour market and in recruitment, p. 19, https://www.genderperspectives.by/images/PolNePotolok/_ ----_-_2019.pdf

exhaustion of domestic remedies, because the author has not filed a complaint against the courts' decisions with a prosecutor's office. 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 that connection, the Committee recalls that a petition for supervisory review submitted to a prosecutor's office, dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect constitutes an extraordinary remedy, and thus does not constitute a remedy that must be exhausted for the purposes of article 4 (1) of the Optional Protocol.[26] The Committee therefore considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

8.4 Having found no impediment to the admissibility of the communication, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the State party contested the author's claims that her dismissal was based on discrimination on the ground of sex. It notes that the author's one-year contract was extended twice – until 31 December 2015 and after she gave birth on 21 April 2016 - until 31 December 2016. The Committee also notes that the author's maternity leave was approved for the time until the child reaches the age of 3 years.

9.3 The Committee further takes note of the State party's arguments that the reorganization at the author's workplace led to another job offer by her employer and her refusal thereof to accept the proposed alternative to her position as bailiff led to her dismissal. In particular, the Committee notes the State party's clarifications that while in August 2017 there were 8 bailiff posts in the staffing table of the author's division, as of 1 September 2017 the new staffing table of the division included 4 bailiff posts and 4 referent/reference officer posts; all positions of bailiffs of the division were held by women; and on 22 August 2017, the author has been warned about the abolition of her position as a bailiff and was offered another job as a reference officer in the Novopolotsk enforcement department that she could have taken up immediately as of 1 September 2017. The Committee further notes that according to the State party's legislation[27], if the worker/employee refuses to take the new position offered by the employer, this could be a valid ground for a dismissal. It also notes that the State party, in line with its legislation, has offered the author a position as a civil servant at the executive body, which she has accepted.

9.4 The Committee notes the author's claims of violations of her rights under articles 2 (a-d), 5 (a) and (b), 11 (1) (a) and (c), and 11 (2) (a) in conjunction with article 1 of the Convention. The Committee notes that, the author complains of discrimination by the State party due to the failure of its authorities to: identify discrimination in her dismissal while on maternity leave and protect her from discrimination because the

[26] See, mutatis mutandis, *Malei v. Belarus* (CCPR/C/129/D/2404/2014), para. 8.4., *V.P. v. Belarus* (CEDAW/C/79/D/131/2018), para. 6.3., *Grygory Gryk v. Belarus* (CCPR/C/136/D/2961/2017), para. 6.3; *Andrei Tolchin v. Belarus* (CCPR/C/135/D/3241/2018), para. 6.3; *Natalya Shchukina v. Belarus* (CCPR/C/134/D/3242/2018), para. 6.3.

[27] Labour Code, articles 35 (5) and 36

grounds on which she was dismissed mostly affect women; provide her with an effective remedy and compensation for the damages suffered; revise the legislation leading to her dismissal in accordance with the principles of the Convention; consider the best interests of the child, whom she was breast-feeding at the time of dismissal.

9.5 The Committee considers that direct discrimination against women constitutes differential treatment explicitly based on sex and on gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral insofar as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. The Committee considers that, in order to substantiate a claim of indirect discrimination, it is necessary to establish that a law, policy, programme or practice has a discriminatory effect on women as a group.

9.6 The Committee notes the author's claim about the alleged failure of the State party's authorities to provide protection to the author in the labour dispute meant that she lost her job; and that she did not obtain a remedy despite multiple complaints and petitions addressed to the courts. The Committee notes it does not result clearly from the communication, however, in what way the author, as a woman, was affected disproportionately or differently from all other bailiffs who were women. In this regard, the Committee notes that an employer has the right to change the essential conditions of work for justified industrial, organisational, or economic reasons, while during the optimisation of state bodies, additional guarantees for employees whose positions are subject to optimisation are to be provided.

9.7 The Committee also notes that the author was warned about the abolition of her position as a bailiff and was therefore offered another job as a reference officer in the judicial enforcement department without interruption in employment. The Committee observes that the termination of the employment relationship with the author (an employee's refusal to continue working due to a change in the material conditions of employment) was not related to her being on maternity leave and was not a dismissal on the employer's initiative.

9.8. In the light of the foregoing, and in the absence of any further relevant information on file, while not underestimating the author's claim that she was subjected to indirect discrimination on the ground of sex, the Committee cannot establish the discriminatory nature of the facts alleged in the communication.

10. Therefore, acting under article 7 (3) of the Optional Protocol, the Committee concludes that the author's dismissal did not constitute an indirect discrimination in violation of articles 2 (a - d), 5 (a) and (b), 11 (1) (a) and (c), and 11 (2) (a) in conjunction with article 1 of the Convention.