



Convention on the Elimination of All Forms of Discrimination against Women

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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. 129/2018^{*,**}

<i>Communication submitted by:</i>	Oksana Shpagina (deceased) (represented by counsel, Tatiana Kochetkova and Mikhail Golichenko)
<i>Alleged victim:</i>	Oksana Shpagina (deceased)
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	25 March 2018 (initial submission)
<i>References:</i>	Transmitted to the State party initially on 30 July 2018
<i>Date of adoption of views:</i>	23 February 2023

Background

1. The author of the communication is Oksana Shpagina (deceased), a national of the Russian Federation born in 1980.¹ The author claims that the Russian Federation has violated her rights guaranteed under articles 2 (f) and (g), 3 and 12 of the Convention, given that the State party has failed to provide her with evidence-based, gender-sensitive drug dependence treatment, notably opioid substitution therapy, and that the State party's authorities have subjected her to severe criminal sanctions, including imprisonment, for the activities related to the use of drugs, which constitute

* Adopted by the Committee at its eighty-fourth session (6 – 24 February 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 Alfonso, Ms. Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar, Dalia Leinarte, Rosario Manolo, Marianne Mikko, Maya Morsy, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja and Genoveva Tisheva.

¹ The author died on 10 January 2019. Since the author's passing, the author's lawyers have continued with the present case at the official request of her mother-in-law, who takes care of the author's child.



a direct manifestation of the author's drug dependence. The Convention and the Optional Protocol entered into force for the State party on 3 September 1981 and on 28 October 2004, respectively. The author is represented by lawyers, Tatiana Kochetkova and Mikhail Golichenko.

Facts as submitted by the author

2.1 The author was an orphan, widow and single mother, having a minor daughter who was born in 2011. She suffered from chronic drug (opioid) dependence and lived with HIV, tuberculosis and hepatitis C.

2.2 In 2011, when the author became pregnant, she started to take due care of her health to prepare for childbirth. She consulted a gynaecologist, who informed her that her medical condition would not allow her to give birth to a healthy baby and advised her to undergo induced labour, which she could barely afford financially. This information made the author suffer to the point of attempting to commit suicide and relapsing into drug use. The gynaecologist did not inform the author of the possible measures to take to deliver a healthy baby. Eventually, the author decided to give birth. She was admitted to a rehabilitation clinic for drug users to overcome her drug dependence. The doctors there neglected the author and refused to treat her because of her pregnancy. Only after she lied that she would undergo induced labour was she provided with health care. However, although she was hospitalized, she was treated only with sedatives, and the general conditions in the clinic were appalling. The author was discharged from the clinic after nine days of treatment, in an unstable medical condition and without any follow-up treatment on an outpatient basis, even though the length of her treatment should not have been less than three weeks, according to medical regulations.

2.3 On 28 August 2011, the author gave birth to a healthy baby girl. However, as a result of her feelings of humiliation and inferiority caused by her narcologists and gynaecologists, she developed a fear of doctors and medical procedures, coupled with the understanding that other pregnant women who suffered from drug dependence might experience the same plight.

2.4 In May 2012, the author became a client of the social support non-governmental organization Project April, based in Tolyatti, Samara Oblast, Russian Federation. The author informed Project April of her experience in the State party regarding lack of access to effective drug dependence treatment and social support during pregnancy, including lack of access to opioid substitution therapy, which is prohibited in the State party by federal laws.

2.5 In August 2012, the author filed a complaint with the Ministry of Health of Samara Oblast, specifying the need to prevent similar cases, i.e. those in which it is impossible for pregnant women with drug dependence to access evidence-based, gender-sensitive drug dependence treatment. The author requested the authorities to conduct an investigation into her own case to ensure that the doctors involved officially apologized, and to inform her about the laws and regulations on medical services for pregnant women using drugs. In September 2012, the Chief Drug Treatment Specialist of Tolyatti apologized to the author on behalf of the doctors involved in her treatment for the inconveniences and stress that she experienced. On 10 December 2012, the Ministry of Health responded that, although the author had received an official apology, the medical assistance provided to her was in accordance with the laws and regulations in force. The Ministry did not specify any measures undertaken with a view to preventing similar cases in the future.

2.6 On 29 December 2012, the author filed a complaint with the Avtozavodskiy District Court of Tolyatti, claiming that her rights to health, freedom from discrimination and freedom from ill-treatment had been violated, including by the

medical authorities' failure to conduct an investigation into the alleged violations and to take effective measures to prevent similar violations in the future. The author requested the court to order the Ministry of Health of Samara Oblast to remedy its violations, notably by means of identifying gaps in the existing laws and regulations regarding access to medical care for women with drug dependence during pregnancy. On 20 February 2013, the Avtozavodskiy District Court rejected her claim, indicating, inter alia, that the author's baby had been born healthy, which, according to the Court, was evidence that the medical supervision strategy in the author's case had been medically sound.

2.7 On 11 March 2013, the author appealed the first instance court's decision to the Samara Regional Court, claiming that the Avtozavodskiy District Court had failed to take into account her vulnerability as a woman with a child suffering from chronic health conditions, including drug dependence. On 26 April 2013, the Samara Regional Court upheld the lower court's decision. On 10 September 2013, the author submitted a cassation appeal to the Presidium of the Samara Regional Court. On 7 November 2013, her cassation appeal was rejected by the decision of a single judge of the Samara Regional Court. In particular, the decision stated that a citizen's complaint could not serve as a sole basis for amending existing laws and regulations, and that the lower courts had not established any instances of cruel treatment of the author by her doctors.

2.8 On 18 May 2013, the author filed a joint complaint with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women and girls, its causes and consequences. On 15 July 2013, the Special Rapporteur on the right to health and the Special Rapporteur on violence against women communicated with the State party, alleging discrimination against the author on the grounds of her mental health condition and her drug dependence. On 24 October 2013, the State party responded that the author's rights had not been violated, as she had received proper and timely treatment within the framework of the State party's legislation.

2.9 After April 2013, the author experienced frequent health problems, including several relapses into illicit drug use, which is common for patients with chronic drug dependence. From September 2013 to November 2014, she attempted to stop using drugs and underwent rehabilitation treatment at different rehabilitation centres in Tolyatti. Notably, the author first underwent a course of detoxification at the Tolyatti drug treatment clinic, which was followed by another relapse into illicit drug use on the day that she left the clinic. Later, in November 2013, the author enrolled in a one-year rehabilitation course for drug users at the Living Water rehabilitation centre, which was operated on the basis of Protestant principles and was the only rehabilitation centre in Samara Oblast providing services to women with children. While in the Living Water rehabilitation centre, the author, like all other patients, was held in isolation from the outside world, including her representatives from Project April.

2.10 Soon after the author was discharged from the Living Water rehabilitation centre in November 2014, her partner, the father of her minor daughter, passed away. This notwithstanding, she managed to stay abstinent for several months and found a job. However, by May 2015, she had started using drugs again and unsuccessfully tried to find non-religious rehabilitation centres for women with children. Some centres offered her their services, but she could not afford the fee, which was several times her monthly income. The author never applied for social support services, including

financial support, for fear that she would be deprived of her parental rights pursuant to article 69 of the Family Code of the State party.²

2.11 On 1 June 2015, the police broke into the author's apartment and arrested her for making and possessing a narcotic drug (desomorphine) in a significant amount for personal use, which is penalized under article 228 (1) of the Criminal Code. On 11 January 2016, the Avtozavodskiy District Court found the author guilty and sentenced her to a conditional (suspended) sentence of one year of imprisonment. She did not appeal the conviction, for fear of upsetting the police, although she believed that the court had not considered her vulnerability as a woman living with drug dependence and had punished her for an offence directly stemming from her chronic health condition. No treatment for her drug dependence or social support was offered to her during the investigation or after the conviction. She could not find any rehabilitation facility that would admit her with her child, due to the absence of such facilities in the State party. As a result, since the author was unable to abstain without special assistance, she continued using drugs, while trying to reduce her dosage and taking the drugs only at her apartment, in the absence of her child.

2.12 On 24 January 2016, the police broke into the author's apartment again and arrested her and a friend for preparing a narcotic drug (desomorphine) for personal consumption. On 15 August 2016, the Avtozavodskiy District Court sentenced the author to three years and four months of imprisonment for preparing and possessing 0.33 grams of a narcotic drug with no intent to sell (article 228 (2) of the Criminal Code) and for systematically providing her apartment for drug consumption (article 232 of the Criminal Code). In the light of her previous sentence, that sentence was not suspended.

2.13 On 24 August 2016, the author appealed the conviction to the Samara Regional Court, claiming that the first-instance court had failed to consider her vulnerability, including her drug dependence, which had been an underlying cause of her behaviour. On 21 October 2016, the Samara Regional Court upheld the conviction on appeal. On 6 March 2017, a single judge of the Samara Regional Court refused to transfer the author's cassation appeal for consideration by the Presidium of the Samara Regional Court. Likewise, on 25 September 2017, a single judge of the Supreme Court of the Russian Federation refused to transfer the author's cassation appeal for consideration by the Supreme Court.

2.14 During the appeal and the cassation proceedings, the author claimed that the domestic courts had failed to consider that she suffered from chronic drug dependence, that effective methods of drug dependence treatment, such as opioid substitution therapy, were not available in the State party and that there were no drug dependence treatment and/or rehabilitation facilities for women with children in the State party. She also stated that, despite her counsel's request, no forensic medical examination had been conducted to assess her mental and physical condition.³ The author further claimed that such a severe criminal penalty for an act that was a direct consequence of her chronic illness had caused her to experience feelings of inferiority and humiliation. She insisted that the State party's courts had applied the most severe sanction (non-conditional imprisonment) to demonstrate the highest degree of public condemnation of drug users, despite recognizing the chronic and relapsing nature of

² According to article 69, chronic drug dependence can be a sole ground for the deprivation of parental rights.

³ Article 196 (3.2) of the Code of Criminal Procedure reads as follows: "The appointment and carrying out of a forensic examination is mandatory if it is necessary to establish: ... a mental or physical condition of a suspect or an accused person, when there are grounds to believe that he or she is a drug addict".

drug dependence and the fact that the author's use of drugs was a direct manifestation of her drug dependence.

2.15 The author claims that she has exhausted all available domestic remedies. She explains that she did not avail herself of the supervisory review of her conviction since this procedure requires discretionary exercise of power and constitutes an extraordinary remedy, which should not be exhausted for the purposes of article 4 (1) of the Optional Protocol. The author further argues that her complaint before the Special Rapporteurs should not preclude the Committee from considering the communication under article 4 (2) (a) of the Optional Protocol, since the Special Rapporteurs cannot issue a binding decision on the merits of the case, nor could this procedure allow the author to obtain individual redress for any alleged violation.

2.16 On 10 January 2019, the author passed away in one of the hospitals in Tolyatti.

Complaint

3.1 The author claims a violation of articles 2 (f) and (g) and 12 of the Convention, since the State party has not provided her with evidence-based, gender-sensitive drug dependence treatment, notably opioid substitution therapy, and that the State party's authorities subjected her to the most severe criminal sanctions for activities related to the use of drugs.

3.2 The author argues that the State party failed to ensure to her access to safe, evidence-based and gender-sensitive drug dependence treatment, such as opioid substitution therapy, including during pregnancy, in violation of article 12 of the Convention.⁴ This resulted in the author's multiple relapses into illegal drug use and, ultimately, her arrests and criminal convictions for the drug use-related behaviour. Likewise, the author submits that the lack of drug dependence treatment and rehabilitation facilities for women with children in the State party constitutes a significant discriminatory obstacle for drug-dependent women with children to accessing the necessary health care.

3.3 The author further claims that the State party has failed to take appropriate legal and policy measures to address discrimination against women, thus violating articles 2 (f) and (g), in conjunction with article 12, of the Convention. The State party has breached these provisions, in particular, by: (a) maintaining the legal ban on opioid substitution therapy and failing to provide legal, political and financial support for women with drug dependence to access opioid substitution therapy, contrary to the recommendations of the Committee, as well as those of the Committee on Economic, Social and Cultural Rights;⁵ (b) failing to provide legal, political and financial support to ensure access to gender-sensitive drug dependence treatment services for women with children; (c) maintaining chronic drug dependence as the sole legal basis for the deprivation of parental rights; and (d) maintaining criminal law provisions that subject women who use drugs and drug-dependent women to criminal sanctions for activities related to drug consumption, including for possessing drugs for personal use.

3.4 In particular, the author stresses that women using drugs are especially vulnerable to gender-based discrimination⁶ and that available treatment services in

⁴ The author refers to the Committee's general recommendation No. 24 (1999), paras. 11–12.

⁵ The author refers to [CEDAW/C/RUS/CO/8](#), paras. 35–36, and [E/C.12/RUS/CO/6](#), paras. 50–51.

⁶ The author refers to *Pimentel v. Brazil* ([CEDAW/C/49/D/17/2008](#)), para. 3.2: "...special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups and that the duty to eliminate discrimination in access to health care includes the responsibility to take into account the manner in which societal factors, which can vary among women, determine health status."

the State party are offered on a uniform basis designed around the clinical and other needs of men. For instance, when the author was admitted to the public drug treatment clinic and the private rehabilitation centres, she was assigned to the general ward, together with men. The author also underlines the absence of gender-sensitive drug dependence treatment clinical protocols and guidelines, including with regard to pregnant women and women with children, which would have served as a basis for the professional training of medical personnel, improving access to gender-sensitive quality medical care, and would have allowed those in need of gender-sensitive treatment to access information about available methods of medical care.

3.5 The author further claims that, by outlawing opioid substitution therapy, the State party has denied her the effective drug dependence treatment that would have allowed her to safely carry on her pregnancy and provide care to her child without fear of deprivation of her parental rights, arrest and prosecution for illegal drug use.⁷ The author explains that the World Health Organization (WHO) has expressly recognized opioid substitution therapy as the preferable drug dependence treatment method for pregnant women, as opposed to opioid detoxification.⁸ However, abstinence was the only course of action that the health-care providers could offer in the author's situation, although it was known to be ineffective, increasing the risk of relapse and overdose.

3.6 The author also stresses that the State party has undertaken no legal measures to ensure that women with children are not subjected to discrimination on the basis of article 69 of the Family Code of the State party, which prevented the author from applying for social support, including financial support, with a view to undergoing private drug dependence treatment and rehabilitation, as well as temporarily supporting her child during such treatment. According to the author, although article 69 applies equally to drug-dependent fathers and mothers, it primarily affects drug-dependent single mothers. The author explains that the threat of being deprived of parental rights, which impeded her access to social and financial support services, as well as to drug dependence rehabilitation, was a major factor contributing to her relapses into illegal drug use and, eventually, her arrest and prosecution.

3.7 Finally, the author indicates that the State party maintains the provisions of the Criminal Code that criminalize all activities related to drug use, including possession with no intent to sell, subjecting the most vulnerable groups of people to prosecution for the use of drugs and drug possession, which are often a manifestation of their chronic health condition. The author explains that, as her case has demonstrated, the State party does not provide drug-dependent women with evidence-based, gender-sensitive drug dependence treatment but, at the same time, penalizes them for their behaviour related to the use of drugs, revealing indifference to the special needs of people with drug dependence, including pregnant women and women with children. According to the author, the State party's official policy of "zero tolerance" for drug use sanctions stigmatization of, discrimination against and abuse of drug users, who are deemed as "unfit" for society unless they stop using drugs. Such vulnerability, the author clarifies, is even more significant for women, and especially women with children, since they are perceived to bear greater social responsibility for raising and supporting a child. As a result, women who use drugs are the most ill-treated, since they are seen to be acting irresponsibly in relation to not only themselves but also their children.

⁷ The author explains that article 31 of the Federal Law on Narcotic Drugs and Psychotropic Substances prohibits the use of narcotic drugs and psychotropic substances for the treatment of drug dependence.

⁸ The author refers to the 2014 World Health Organization (WHO) *Guidelines for the Identification and Management of Substance Use and Substance Use Disorders in Pregnancy*, p. 97.

3.8 In the light of the foregoing, the author requests the Committee to establish that she has been a victim of discrimination against women in the field of health care, contrary to article 12 of the Convention. The author also requests the Committee to find that the State party has failed to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women, as well as to repeal all national penal provisions that constitute discrimination against women, in violation of articles 2 (f) and (g), read in conjunction with article 12 of the Convention.

State party's observations on admissibility

4.1 On 28 January 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 In particular, the State party notes that the author never submitted a cassation appeal to the Supreme Court of the Russian Federation in relation to the court decisions of 20 February 2013 and 26 April 2013, whereby the courts refused to satisfy the author's requests to order the Ministry of Health of Samara Oblast to remedy the alleged violations of her rights. According to the State party, the effectiveness of the cassation appeal procedure before the Supreme Court is evidenced by the statistics for 2013, when the lower courts' decisions regarding the author's complaints were issued.⁹ Likewise, the State party observes that the author did not challenge the decision dated 25 September 2017 of the judge of the Supreme Court of the Russian Federation to refuse to transfer her cassation appeal for consideration. Such a possibility was provided for at that time in article 401.8 (3) of the Code of Criminal Procedure, which the author failed to exhaust.¹⁰ The communication should, therefore, be declared inadmissible under article 4 (1) of the Optional Protocol.

4.3 The State party also explains that combating illicit trafficking of drugs, psychotropic substances and their analogues is an important part of the State party's national security. The State party underlines that the use of drugs as such is not criminalized, but only entails administrative responsibility, and that the Constitutional Court of the Russian Federation has already reviewed the complaints of citizens about the restrictions on the use of certain narcotic drugs for the treatment of drug dependence. Notably, the Constitutional Court concluded that the provisions of the Federal Law on Narcotic Drugs and Psychotropic Substances prohibiting the use of methadone for the treatment of drug dependence did not violate the rights of complainants.¹¹ The State party further indicates that article 69 of the Family Code, contested by the author, serves primarily to protect the rights of the child, who should not be used by parents suffering from chronic drug or alcohol dependence as a legal shield in their contacts with authorities. The State party observes that, in any event, since autumn 2015, the author's daughter has been living with her grandmother, the

⁹ The State party indicates that, in 2013, the Judicial Board on Civil Cases of the Supreme Court considered 528 cassation appeals, satisfied complaints and motions in 519 cases, reversed 288 decisions, upheld 73 appeal decisions, returned 72 appeal decisions for new consideration, upheld 23 cassation decisions and satisfied 35 cassation or supervisory review appeals by adopting other decrees.

¹⁰ According to the former article 401.8 (3) of the Code of Criminal Procedure (currently article 401.10 (5) of the Code of Criminal Procedure), the Chair of the Supreme Court of the Russian Federation or his or her deputy can disagree with the decision of a judge of the Supreme Court to refuse to transfer a cassation appeal to a court of cassation for consideration and can issue a decision to annul such a decision and to transfer the cassation appeal regarding a criminal case to a court of cassation for consideration.

¹¹ Decree of the Constitutional Court of the Russian Federation No. 1009-O of 26 May 2016.

author was never deprived of her parental rights on the ground of her chronic drug dependence and the author's having a minor child was noted by the courts as a mitigating circumstance in her conviction. Based on the foregoing, the State party argues that the author's allegations are not related to any personal interference with her rights under the Convention but, rather, address the State party's alleged failure to comply with its positive obligations in adopting measures of a general character for the protection of women's rights in a particular area of social relations. Therefore, the author has not demonstrated her victim status, and the communication is not sufficiently substantiated. For that reason, the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol.

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

5.1 On 28 June 2019, the lawyers submitted comments to the State party's observations on admissibility. According to the lawyers, the State party has not demonstrated that the communication should be held inadmissible for either reason indicated in its observations on admissibility.

5.2 The lawyers challenge the State party's argument that the communication should be held inadmissible under article 4 (2) (c) of the Optional Protocol. They stress that the communication provides a detailed account of how the State party discriminated against the author by failing to provide her with evidence-based, gender-sensitive drug dependence treatment services, including the opioid substitution therapy endorsed by WHO, even during her pregnancy.

5.3 The lawyers further refute the State party's contention that they have not exhausted all available and effective domestic remedies. Notably, they recall that the State party referred to the statistical report on the cassation complaint procedure before the Supreme Court of the Russian Federation, which showed that, in 2013, the Supreme Court considered cassation appeals for 528 civil cases, 519 of which were satisfied. However, the lawyers indicate that those numbers are misleading, since, according to the same report, in 2013, the Supreme Court received a total of 72,178 cassation appeals, and only 528 of them (0.7 per cent) were considered on the merits. The lawyers argue that the cassation procedure therefore constitutes an extraordinary means, which need not be exhausted for purposes of article 4 (1) of the Optional Protocol,¹² and that the appeal decision of the Samara Regional Court dated 26 April 2013 constituted the last available and effective domestic remedy in the author's civil case. The author, however, took an additional unnecessary step and submitted a cassation appeal to the Presidium of the Samara Regional Court, which was rejected by the decision of a single judge of 7 November 2013.

5.4 In the alternative, the lawyers recall that, if a domestic remedy is unlikely to be effective, because it does not offer a reasonable prospect of a favourable outcome, such a remedy need not, as an exception, be exhausted under article 4 (1) of the Optional Protocol.¹³ The lawyers argue that the cassation review by the Supreme Court is not an effective remedy, which warrants an exception with regard to the exhaustion of domestic remedies. According to the lawyers, the Supreme Court could not offer the appropriate redress for the violations suffered by the author, as it would not have addressed the multiple barriers that the author had faced in attempting to access gender-sensitive quality medical care, notably the discriminatory mistreatment, abuse and neglect of pregnant women who use drugs within the health-care system. The lawyers further claim that the cassation appeal before the Supreme

¹² The lawyers refer to *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), para. 10.3, and *Webby Chisanga v. Zambia* (CCPR/C/85/D/1132/200), para. 6.3.

¹³ The lawyers refer to *Dung Thi Thuy Nguyen v. Netherlands* (CEDAW/C/36/D/3/2004), para. 9.3, and *Karen Noelia Llantoy Huamán v. Peru* (CCPR/C/85/D/1153/2003), para. 5.2.

Court would not have offered to the author any reasonable prospect of a favourable outcome, given the courts' tolerance of the alleged violations based on their lawfulness alone.

5.5 On the same grounds, the lawyers refute the allegations by the State party that the author failed to exhaust all available domestic remedies within the criminal proceedings against her, notably, that the author did not submit another cassation appeal to the Chair of the Supreme Court of the Russian Federation or his or her deputy. The lawyers therefore request the Committee to accept their communication and consider it on the merits.

State party's observations on the merits

6.1 On 2 July 2021, the State party submitted its observations on the merits.

6.2 The State party recalls that, on 14 February 2019, the Presidium of the Samara Regional Court, following the consideration of the cassation submission of the Deputy Prosecutor of Samara Oblast, amended the court decisions regarding the author's convictions. Notably, the Presidium excluded from the Avtozavodskiy District Court's decision dated 11 January 2016 the reference to the commission of a crime in a state of intoxication caused by the use of narcotic drugs as an aggravating circumstance. This led to a reduction of the term of the author's imprisonment to three years and three months.

6.3 The State party further explains that the author's conviction is in line with the applicable provisions of criminal law of the State party, which does not exclude criminal liability for illicit acquisition, possession, transportation, manufacturing or processing of narcotic drugs in significant, large and especially large amounts. In this respect, the State party argues that article 38 of the Single Convention on Narcotic Drugs of 1961 allows its parties to independently establish methods of treatment for drug dependence.¹⁴ Accordingly, the Federal Law on Narcotic Drugs and Psychotropic Substances prohibits the use of opioid substitution therapy for the treatment of drug dependence, which is reaffirmed by the provisions of the Decree of the President of the Russian Federation No. 733 of 23 November 2020 on the approval of the strategy of the State anti-drug policy of the Russian Federation for the period until 2030. The State party further notes that the European Court of Human Rights has not established the advantages of opioid substitution therapy over conventional methods of drug dependence treatment and has characterized the use of opioid substitution therapy as controversial.¹⁵ The State party also reiterates its arguments regarding the decision of the Constitutional Court on the issue of restrictions on the use of certain narcotic drugs for the treatment of drug dependence and the application of article 69 of the Family Code.

6.4 Finally, the State reiterates its argument that the communication is manifestly ill-substantiated. Notably, the State party notes that the mere fact that it, according to the author's allegations, does not comply with its positive obligations in adopting measures of a general character cannot be evidence of any particular violation of the rights of the author. The State party argues that the author received timely and proper medical care both before and after her conviction. Notably, after the author was incarcerated, she never filed complaints regarding improper medical assistance with

¹⁴ Article 38 of the Single Convention on Narcotic Drugs of 1961 reads as follows:

"1. The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.

2. If a Party has a serious problem of drug addiction and its economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts."

¹⁵ European Court of Human Rights, *Abdyusheva and Others v. Russia*, App. Nos. 58502/11, 62964/10 and 55683/13, Judgment (Merits and Just Satisfaction), 26 November 2019.

the administration of the correctional colony, the domestic courts or the European Court of Human Rights. During her incarceration, the author was not required to register with the drug dispensary, nor did she display any symptoms that would have required coercive treatment measures. By contrast, on 18 February 2018, owing to the author's positive attitude towards her studies and her work, as well as her participation in cultural and sports events at the correctional colony, she was transferred to a cell with less security.

6.5 In the light of the foregoing, the State party concludes that the author did not demonstrate her victim status regarding any of the rights guaranteed under the Convention, that the communication is manifestly ill-founded and that there has been no violation of the author's rights under the Convention.

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

7.1 On 23 December 2021, the lawyers submitted comments to the State party's observations on the merits.

7.2 According to the lawyers, the State party has failed to demonstrate that the author did not establish how exactly her rights had been violated. The lawyers reassert that the initial communication provides a detailed account of how the State party has discriminated against the author. The lawyers particularly stress that the State party continued to refuse the author access to opioid substitution therapy even after the Special Rapporteurs had informed it about the author's case and the violations of her rights, including the right to health and the right to be free from the discrimination. The lawyers also point out that the only drug rehabilitation centre that provided rehabilitation services for women with children in Samara Oblast resembled a private prison, rather than a health facility. The administration of the rehabilitation centre totally controlled the author's behaviour, including to such an extent that the author was precluded from pursuing her case before the State party's domestic courts and the international human rights bodies. The lawyers claim that such substandard rehabilitation cannot prevent relapses into drug use as soon as a patient leaves a facility.

7.3 The author's counsel further recall, with regard to the author's arguments on the prohibition of opioid substitution therapy, that the State party has referred to the *Abdyusheva and others v. Russia* judgment of the European Court of Human Rights to corroborate its stance that such therapy has no advantages over conventional abstinence-based treatment. According to the lawyers, in that case the Court did not in fact review the question of whether opioid substitution therapy was a preferable method of treatment. Moreover, the lawyers argue that *Abdyusheva and others* is significantly different from the author's case, for the reasons set out below. First, the Convention for the Protection of Human Rights and Fundamental Freedoms does not guarantee the right to health, which prompted the Court to resort to a narrow interpretation of article 8 of that Convention (right to respect for private and family life) instead and to conclude that the decision of the State party to impose a federal ban on opioid substitution therapy was within its margin of appreciation. By contrast, the present communication concerns the application of the Convention with respect to the right to health and the right to be free from discrimination. Second, unlike the author, Ms. Abdyusheva in *Abdyusheva and others* was not pregnant, nor was she a single mother with a child or had she been prosecuted twice for activities resulting from chronic drug dependence.

7.4 The lawyers also challenge the State party's assertion that the author received medical care according to the law and gave birth to a healthy child. In its submission, the State party implies that the assessment of the quality of medical care during pregnancy should be exclusively based on the health condition of a newborn baby.

The lawyers argue that, by doing so, the State party neglects the pain and suffering of the author as well as the health risks to which the fetus was subjected due to the author's lack of access to opioid substitution therapy. According to the group of obstetricians who assessed the author's case at the request of her lawyer, the child was born with a low birth weight and pre-term, which are the typical complications of poor access to comprehensive prenatal care, including opioid substitution therapy. According to the report, that the author's child appeared healthy was in spite of the author's substandard prenatal care, not because of any safe, effective and evidence-based treatment.

7.5 The lawyers additionally note the State party's reliance on the decision of the Constitutional Court dated 26 May 2016, which, according to the State party, affirmed that the prohibition of opioid substitution therapy could not violate the author's rights. The lawyers disagree with this assertion, since the Constitutional Court did not consider the case on the merits, including from the perspective of the constitutional guarantees of the right to health and the right to be free from discrimination. Instead, according to the lawyers, the Constitutional Court rejected the case by alleging that the Single Convention on Narcotic Drugs and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 empowered the State party to take any measures of drug control with respect to methadone or buprenorphine, which, in the view of the lawyers, neglected the fact that access to controlled substances for medical purposes is one of the tenets of both Conventions. In particular, the lawyers reiterate that both methadone and buprenorphine are on the WHO list of essential medicines for drug dependence treatment.¹⁶

7.6 The lawyers further note that the State party justifies the author's conviction and imprisonment by referring to the domestic criminal law that does not allow for exceptions to criminal liability for possessing narcotic drugs in a significant and/or large amount. According to the lawyers, the respective provisions of the Criminal Code, coupled with aggressive law enforcement, focus on people who use, rather than sell, narcotic drugs, thus constituting one of the prerequisites for the resulting violations of the author's rights. The lawyers argue that the terms "significant amount" and "large amount" are misleading: under the law, a "significant amount" for desomorphine is 0.05-0.25 grams and a "large amount" is 0.25-10 grams. When the author was first arrested on 1 June 2015, the police found 0.191 grams of desomorphine in her possession; during the second arrest on 24 January 2016, the police found 0.33 grams of the substance in her possession. On both occasions, the author possessed desomorphine for her own use. Moreover, the lawyers doubt the appropriateness of the author's conviction for "systematically providing her apartment for drug consumption", which was based on the fact that the author was merely using desomorphine in her own apartment with another drug user. Considering the State party's indifference to the author's chronic health condition and the gender-related hardships of being a single mother with a small child, the lawyers re-emphasize that the author's sentence of 39 months of imprisonment was grossly disproportionate and amounted to gender-based discrimination.

7.7 Finally, the lawyers address the State party's argument that, during the author's incarceration, she did not request drug dependence treatment. The lawyers stress that the initial submission did not concern the author's treatment in prison; rather, it stated that the author's imprisonment per se was grossly disproportionate, considering the author's health condition. However, the lawyers also note that no evidence-based treatment is available in the State party's prisons and that the best option for a person with drug dependence or mental illness is to conceal such problems from the prison administration, since drug dependence complaints would only result in the toughening

¹⁶ Both substances are in the complementary list for disorders due to psychoactive substance use.

of the conditions of incarceration with no chance for early release. Therefore, the absence of requests for medical assistance by the author does not imply that her imprisonment was reasonable and did not involve any gender-based discrimination.

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 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. In this respect, the Committee notes that the State party's argument is that the present communication should be held inadmissible on the grounds of non-exhaustion of domestic remedies, in accordance with article 4 (1) of the Optional Protocol. The State party observes that the author, as a civil plaintiff, could have submitted a cassation appeal to the Supreme Court of the Russian Federation in relation to the court decisions of 20 February 2013 and 26 April 2013, but has never done so.

8.4 The Committee takes note of the lawyers' objections as to the effectiveness of cassation proceedings in civil cases. The Committee notes that the proceedings in question are aimed at challenging decisions that have entered into force, on points of law only. The decisions on whether to refer a case for hearing and examination by a cassation court are discretionary in nature, given that they are made by a single judge and do not have a time limit.¹⁷ In addition, the Committee notes that the State party, despite having provided some statistics (see para 4.2 above) on the recourse to cassation proceedings in 2013, has not submitted examples to demonstrate a reasonable prospect that such procedures would have provided an effective remedy in the circumstances of the present case. The State party has also not given an indication of how many of those cases dealt with access to gender-sensitive drug dependence treatment and pregnancy-related medical services for pregnant women or women with children using drugs. On the contrary, the lawyers have demonstrated that those statistics, on closer inspection, do not corroborate the State party's argument. The lawyers have also argued that, in principle, a review in cassation of the author's civil case would not have offered her any reasonable prospect of a favourable outcome (see para. 5.4 above). Furthermore, the author did attempt to have her civil case reviewed by a cassation court, notably by the Presidium of the Samara Regional Court; however, her cassation appeal was dismissed by the decision of a single judge of the Samara Regional Court.

8.5 Likewise, the Committee notes the State party's argument that the author did not challenge the decision of the single judge of the Supreme Court of the Russian Federation to refuse to transfer her cassation appeal against her criminal conviction for consideration before the Chair of the Supreme Court of the Russian Federation or his or her deputy, which was possible pursuant to article 401.8 (3) of the Code of Criminal Procedure.

8.6 The Committee takes note of the lawyers' objections regarding the ineffectiveness of cassation proceedings in criminal cases in the State party, as well as the lack of a reasonable prospect of a favourable outcome should the author have

¹⁷ *X. and Y. v. Russian Federation* (CEDAW/C/73/D/100/2016), para. 8.4.

submitted another cassation appeal to the Chair of the Supreme Court of the Russian Federation or his or her deputy.

8.7 The Committee therefore considers that it is not precluded, under article 4 (1) of the Optional Protocol, from examining the present communication.

8.8 The Committee also notes the State party's argument that the present communication should be held inadmissible under article 4 (2) (c) of the Optional Protocol, since it is not sufficiently substantiated.

8.9 The Committee notes the lawyers' counterargument that it was extremely difficult, if not impossible, for the author to receive evidence-based, gender-sensitive drug dependence treatment when she was pregnant, and that she could not find any government-funded or affordable private rehabilitation centres for drug users that would have admitted her as a woman with a minor child. The Committee concludes that the author has sufficiently substantiated their/ her/ claim for the purposes of admissibility and that it is not precluded on those grounds from proceeding to a consideration of the merits.

8.10 The author's claims as submitted to the Committee also raise issues under article 3 of the Convention. The Committee considers these claims to be sufficiently substantiated, for the purposes of admissibility, and proceeds to consider them on the merits.

8.11 The Committee also considers that it has no reason to find the communication inadmissible on any other grounds and accordingly finds it admissible.

8.12 Having found no impediment to the admissibility of the communication, the Committee 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 her lawyers and by the State party, in accordance with article 7 (1) of the Optional Protocol.

9.2 The Committee takes note of the author's claim that, in violation of her rights under article 12 of the Convention, taking into consideration the Committee's general recommendation No. 24 (1999) on women and health, including reproductive health, as well as its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the State party has failed to ensure her protection against discrimination in the field of health care. In the present case, the author faced multiple barriers in accessing affordable and medically appropriate, evidence-based and gender-sensitive drug dependence treatment and rehabilitation services at the time of her pregnancy. The domestic courts of the State party dismissed all complaints submitted by the author regarding the alleged violations of her rights to health, to freedom from discrimination and to freedom from ill-treatment.

9.3 The Committee recalls that, while access to health care in general, including reproductive health, is a basic right under the Convention, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups.¹⁸ The Committee also recalls that State parties' measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women, and that State parties' policies and measures on health care should address distinctive features and factors that differ for women in comparison to men.¹⁹ Such factors

¹⁸ General recommendation No. 24 (1999), paras. 1 and 6.

¹⁹ *Ibid.*, paras. 11–12.

include socioeconomic factors that vary for women in general and some groups of women in particular, as well as psychosocial factors that vary between women and men. Likewise, the Committee notes that States should ensure that both public and private health-care providers meet their duties to respect women's rights to have access to health care.²⁰ The Committee also notes that States parties should take measures to eliminate barriers that women face in timely and affordable access to health-care services, including high fees for such services.²¹

9.4 The Committee notes the author's submission that the State party has failed to ensure her access to safe, evidence-based and gender-sensitive drug dependence treatment during pregnancy, in violation of article 12 of the Convention. The Committee also takes note of the author's reference to the absence in the State party of gender-sensitive drug dependence treatment clinical protocols and guidelines, with regard to pregnant women.

9.5 The Committee further notes the author's claim that the State party has failed to take appropriate legal and policy measures to address discrimination against women, violating paragraph 2 (f) and (g) and 3, in conjunction with article 12, of the Convention. In this respect, the Committee primarily recalls that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right, even where discrimination was not intended.²² The Committee also recalls the obligation of States parties to take steps to eliminate customary and all other practices perpetuating the notion of stereotyped roles for men and women.²³

9.6 The Committee notes the author's argument that the State party does not provide legal, political and financial support for pregnant women with drug dependence to access such therapy. In this respect, the Committee observes that, in 2015, it called upon the State party to develop programmes of substitution therapy, in line with the recommendations of WHO, for women using drugs.²⁴

9.7 The Committee takes note of the State party's counterarguments, with respect to the prohibition of opioid substitution therapy, that the State party enjoys discretion in establishing methods of treatment for drug dependence, and that the European Court of Human Rights did not find that opioid substitution therapy had any absolute advantages in comparison with more traditional methods of drug dependence treatment.²⁵

9.8 The Committee considers that the State party's intolerance for drug use may, in some cases, cause social stigmatization of drug users, which, owing to gender stereotypes, would be more significant for women in general, and pregnant women in particular.

9.9 The Committee also recalls that it is generally for the authorities of States parties to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased, based on gender stereotypes that constitute discrimination against women or was clearly arbitrary or amounted to a denial of justice.²⁶ In the present case, the Committee does not consider that the facts as submitted disclose bias, discrimination against women, or arbitrariness or a denial of justice in the

²⁰ Ibid.

²¹ Ibid., para. 21.

²² Ibid., para. 5.

²³ Ibid., para. 9.

²⁴ CEDAW/C/RUS/CO/8, para. 36.

²⁵ *Abdyusheva and Others*.

²⁶ *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.7.

author's criminal convictions. The Committee also does not find that the provisions of the Criminal Code penalizing the manufacturing and possession of narcotic drugs with no intent to sell have an effect of direct or indirect discrimination against women in general, or against the author in the present case in particular.

9.10 The Committee considers that the State party has an obligation to protect the rights of the child, and that article 69 of the Family Code is in line with the general protection of the rights of the child.

9.11 In the light of the foregoing, the Committee decides that due weight must be given to the author's allegations, insofar as they concern the barriers to accessing gender-sensitive drug dependence treatment and rehabilitation during pregnancy.

10. In accordance with article 7 (3) of the Optional Protocol and taking into account the foregoing considerations, the Committee considers that the State party has infringed the rights of the author under article 12 and articles 2 (f) and (g) and 3, read in conjunction with article 12 of the Convention, taking into consideration the Committee's general recommendations No. 24 (1999) and No. 28 (2010).

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

- (a) Concerning the author of the communication:
 - (i) Provide full reparation including adequate financial compensation to the author's daughter.
- (b) General:
 - (i) Review and amend the legislation and regulations to prevent and address discrimination against women in the field of health care, in particular, ensuring that pregnant women have access to safe, evidence-based and gender-sensitive drug dependence treatment and rehabilitation services;
 - (ii) Ensure the availability of drug dependence treatment and rehabilitation facilities, both public and private, that provide their services to women, including pregnant women and women with children, on the basis of affordability and acceptability, in line with the General recommendation No. 24, para. 22;
 - (iii) Put in place clinical protocols and guidelines related to gender-sensitive drug dependence treatment with regard to pregnant women.
 - (iv) Provide professional training for medical personnel and medical authorities on improving access to gender-sensitive drug dependence treatment and available methods of medical care;
 - (v) Develop and implement effective measures, with the active participation of all relevant stakeholders, such as women's organizations, to address the gender stereotypes, prejudices, customs, and practices that result in indirect discrimination against women who use drugs, in particular pregnant women, in the field of health care and in general.

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 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 also requested to publish the present views and recommendations and to have them widely disseminated in the State party, in order to reach all sectors of society.
