



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**
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11-29 July 2011

Views

Communication No. 23/2009

Submitted by: Inga Abramova
(represented by counsel, Roman Kisliak)

Alleged victim: The author

State party: Belarus

Date of communication: 3 April 2009 (initial submission)

On 25 July 2011, the Committee on the Elimination of Discrimination against Women adopted the annexed text as the Committee's views under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 23/2009.

Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (forty-ninth session)

Communication No. 23/2009*

Submitted by: Inga Abramova (represented by counsel)

Alleged victim: The author

State party: Belarus

Date of communication: 3 April 2009 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 25 July 2011,

Adopts the following:

Views under article 7, paragraph 3, of the Optional Protocol

1. The author of the communication, dated 3 April 2009, is Inga Abramova, a national of Belarus born in 1986. She claims to be a victim of violation by Belarus of her rights under article 2, paragraphs (a), (b), (d), (e) and (f), article 3 and article 5, paragraph (a), read in conjunction with article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”). The author is represented by counsel, Roman Kisliak. The Convention and its Optional Protocol entered into force for the State party on 4 March 1981 and 3 May 2004, respectively.

Facts as presented by the author

2.1 On 10 October 2007, the author, who is a journalist and activist of the “For Freedom” movement, was hanging blue ribbons in the city of Brest, Belarus, in order to draw public attention to the “European March” campaign that was to be held in Minsk on 14 October 2007. At 7.50 p.m., she was arrested by a police officer of the Interior Division of the Brest Regional Executive Committee and taken to the

* The following members of the Committee participated in the examination of the present communication: Ms. Ayse Feride Acar, Ms. Nicole Ameline, Ms. Olinda Bareiro-Bobadilla, Ms. Magalys Arocha Dominguez, Ms. Violet Tsisiga Awori, Ms. Barbara Evelyn Bailey, Ms. Meriem Belmihoub-Zerdani, Mr. Niklas Bruun, Ms. Naela Mohamed Gabr, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Lopes de Jesus Pires, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Zou Xiaojiao.

Interior Department of Lenin District of Brest City. She was accused of hanging blue ribbons and posters calling for participation in the “European March”, which constitutes “minor hooliganism”. In the early morning of 11 October 2007, at 1.45 a.m., she was placed in the temporary detention facility (“IVS facility”) of the Interior Department of Lenin District. On the same day, her case was examined by the Lenin District Court, which found the author guilty of minor hooliganism. The court imposed on the author an administrative sanction in the form of five days of administrative arrest. She was released from detention on 15 October 2007.

2.2 The author claims that the cell where she was detained was located underground and was used to detain persons on criminal charges as well as those under administrative arrest. She claims that all staff working in the IVS facility were male. From time to time a nurse came to visit the detainees, but she was not an employee of the Interior Department.

2.3 She further submits that the IVS facility consisted of nine cells, two of which were intended to house women. She was detained in a cell of 4 by 3 metres with a height of 2.7 metres. The cell was designed to accommodate six persons, and was equipped with a table, six bunk beds and a wooden commode. All the furniture was nailed to the floor.

2.4 The author submits that the cells were cold; the heaters were turned off although the outside temperature was as low as 1° C. She claims that detention in such conditions amounted to torture. The cell was equipped with a washstand with one cold water tap and a toilet bowl. The toilet was located inside the cell and was separated from the rest of the cell only on one side by a small screen of 50 by 50 centimetres. Thus, if a cellmate was sitting on a bed situated opposite the toilet, she could see anyone using the toilet. Male prison staff periodically watched the prisoners through the door peephole. Since the screen did not obstruct the view of the toilet from the door, they could observe the author using the toilet. It was unpleasant and embarrassing for her to use the toilet in such circumstances. She claims that having to use the toilet without a proper separation between it and the rest of the cell amounted to degrading treatment.

2.5 She adds that the bedding provided was dirty and the cells were full of spiders. Her cell was full of smoke as her cellmates were smokers and the ventilation did not disperse the tobacco smell. The lighting was also poor, the window was small and the glass was so dirty that the daylight did not penetrate. She saw daylight only once during her five-day detention, when she was allowed a 15-minute walk outside. The light provided by the light bulb in the cell was not sufficient to read by and she had to get up and stand next to it to be able to read. The light was switched on around the clock, which prevented her from sleeping. She was fed only twice a day.

2.6 The author claims that she suffers from kidney problems and therefore must avoid catching cold. After the first night spent in the cold cell, she developed severe back pain. At her request, an ambulance team intervened and provided her with medical aid. She also had headaches and fever. The author claims that she has had many health problems since her detention in such conditions.

2.7 Before her admission to the IVS facility, she was taken to a railway station for a body search. There were no female staff at the IVS facility to perform the search. At the time of her admission to the IVS facility, one of the guards allegedly poked her with his finger on the pretext of checking whether she was wearing a belt. She

said, “Hands off”. After a moment, he poked her buttock with his finger. In response to her second “Hands off”, he said that she should be grateful that they were not undressing her. Another security guard allegedly threatened to strip her naked.

2.8 The guards made frequent humiliating comments about the author. For example, when they saw her standing next to the light bulb reading, one of the guards commented that she needed “to see a psychiatrist”. On several occasions, the guards “joked” that she would be “taken outside and shot”. Furthermore, instead of calling her by her name, they called her “the fourth”, as that was the number of the bed she was occupying in her cell. At one point, a prison guard threw a dead rat into the cell that she was sharing. When she and her cellmates jumped on their beds screaming in fear, the guard was laughing.

2.9 The author availed herself of the following domestic remedies:

- (i) *Complaint to the competent authorities (in accordance with the Law of the Republic of Belarus “On Petition” and the Law “On Internal Affairs Organs”)*

On 19 December 2007, the author submitted a complaint of violation of her rights in detention to the head of the Interior Department of Lenin District and to the head of the Interior Division of the Brest Regional Executive Committee. By a letter of 3 January 2008, the author was informed by the head of the Interior Department that her allegations had not been verified. The author filed another complaint with the head of the Interior Division of the Brest Regional Executive Committee on 5 February 2008; her petition was forwarded to the head of the Interior Department of Lenin District, who informed her on 27 February 2008 that her claims had not been confirmed.

- (ii) *Complaint to the Prosecutor’s Office, in conformity with the Law of the Republic of Belarus “On the Public Prosecutor’s Office”*

On 19 December 2007, the complaint was lodged with the Prosecutor of Lenin District of Brest City. The Prosecutor informed the author that her claims had not been confirmed and her allegations had not been verified. The author’s complaint of 5 February 2008 submitted to the Prosecutor of Brest Region remained unanswered.

- (iii) *Application to the courts under the civil procedure*

On 11 February 2008, the author filed an application with the Lenin District Court, under the civil procedure, in accordance with article 353 of the Belarusian Code of Civil Procedure, of violation of her right under article 7 of the International Covenant on Civil and Political Rights not to be subjected to inhuman treatment and her right under the Convention not to be subjected to discrimination on the basis of her sex. On 14 February 2008, the court stated that it refused to initiate civil proceedings on the grounds that it did not have jurisdiction over her case. She appealed against the decision to the Judicial Board on Civil Cases of the Brest Regional Court on 7 March 2008, which rejected her appeal on 10 April 2008.

- (iv) *Application to the courts under the administrative procedure*

On 11 March 2008, the author submitted a complaint of violation of her rights not to be subjected to inhuman treatment and not to be discriminated against on the basis of her sex to the Lenin District Court of Brest City under the procedure for

administrative offences as established by article 7, paragraph 1, of the Procedural Executive Code of the Republic of Belarus on Administrative Offences. In a decision dated 14 March 2008, the court refused to initiate civil proceedings, although the author claims that she had not requested the court to start civil proceedings but to recognize, in accordance with the procedure set out in chapter 7 of the Procedural Executive Code of the Republic of Belarus on Administrative Offences, that the actions (and omissions to act) of the detention facility staff violated her rights. On 28 March 2008, the author appealed against this decision to the Brest Regional Court. On 28 April 2008, the Judicial Board on Civil Cases of the Brest Regional Court quashed the decision of the Lenin District Court and referred the case back for new consideration. On 12 May 2008, the Lenin District Court dismissed the author's complaint on procedural grounds. The court stated, inter alia, that at the time of submission of her complaint the administrative process against her had already been terminated, since the court's decision had entered into force. The author claims that this argument is not true, as the legal process is not terminated as long as there is the possibility to appeal.

Complaint

3.1 The author claims that she is a victim of violation by Belarus of her rights under article 2, paragraphs (a), (b), (d), (e) and (f), article 3 and article 5, paragraph (a), read in conjunction with article 1 of the Convention. She claims that during her detention she was subjected to inhuman and degrading treatment and that detention in a cold cell amounted to torture. She further claims that such conditions of detention may have had an adverse effect on her reproductive health.

3.2 The author claims that temporary detention facilities of the Ministry of the Interior are not adapted for the detention of women. Allegedly, only one such detention block, located in Minsk, is staffed by female employees; the rest are staffed exclusively by men. The author claims that the Ministry of the Interior refused on numerous occasions to confirm or deny this information and to provide the number of temporary detention facilities where no female staff are employed, invoking the legislation of the Republic of Belarus on protection of State secrets, which restricts access to such information. She submits that this situation in the temporary detention facilities is a result of discrimination in the hiring of women as staff.

3.3 The author submits that her conditions of detention were worse than those of male prisoners, since she was the object of sexual harassment and was subjected to degrading treatment by male personnel. She invokes rule 53 (3) of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), which stipulates that "Women prisoners shall be attended and supervised only by women officers", and claims that the breach of rule 53 (3) constitutes a violation of her right not to be discriminated against on the basis of her sex, as set forth in the Convention.

3.4 The author claims that she has exhausted all available domestic remedies and that they proved to be ineffective. She also claims that the same matter has not been examined under another procedure of international investigation or settlement.

Observations of the State party on admissibility and merits

4.1 By a note verbale of 25 March 2010, the State party confirms that the author was detained for five days for minor hooliganism. It acknowledges that the author complained of the conditions of her detention to the courts and other State organs. However, the legal proceedings concerning the author's allegations were discontinued and her complaints were turned down because no procedure for consideration by the courts of such complaints is provided for under the procedural legislation. The examination of such complaints falls under the competence of the head of the IVS facility or other persons authorized by him. The procedure in question is regulated by Decree No. 234 of the Ministry of the Interior of 20 October 2003 "On approval of the internal regulations of temporary detention facilities of internal affairs authorities". The State party argues that the author has not submitted any complaints to the administration of the IVS facility or to the Ministry of the Interior. Therefore, she has not exhausted all available domestic remedies. It also maintains that the author's allegations have not been confirmed and thus should be considered as unsubstantiated.

4.2 The State party further submits that persons arrested for administrative offences for which the sanction of administrative arrest is provided under national legislation can be detained in temporary detention facilities of the Ministry of the Interior. These facilities are also regulated by Decree No. 234 as described in paragraph 4.1 above. Under section 18.7 of the Procedural Executive Code of Belarus, persons arrested for administrative offences are detained in strict isolation. Men, women and persons with previous convictions are detained separately. A detainee is allocated floor space of not less than 4 m². The author was detained in cells No. 3 and No. 5, the size of which is 15.3 m² and 13.6 m², respectively. These cells were intended to house women.

4.3 The State party states that, under the internal rules of temporary detention facilities, the persons arrested or detained for administrative offences are provided with bedding and shelves to keep items of personal hygiene and cutlery. Cells are equipped with a table and benches, sanitary facilities, a tap with drinking water, a drawer for toiletries, a radio, a waste bin and ventilation. Detainees can also use their own bedding, clothes and shoes. Upon admission to the detention facility, the author was offered clean bedding; however, she refused and used her own bedding provided by her family.

4.4 Placement of detainees in cells takes into account their personality and psychological state. If possible, smokers are detained separately. The cells are equipped with ventilation systems, windows for natural lighting, light bulbs and heaters. Detainees are allowed to walk outdoors for not less than an hour per day. The author refused to walk outdoors because of bad weather.

4.5 As to the author's claim that she was offered only two meals per day, the State party submits that the food ration of detainees is regulated by the decree of the Council of Ministers of 21 November 2006 and that meals are provided three times per day in the temporary detention facility.

4.6 The author requested emergency medical aid, and an ambulance arrived 10-15 minutes later. After examining her, the doctor confirmed that the author could be detained in the IVS facility. Cells are regularly inspected by the centre of hygiene and epidemiology, which also provides disinfection services.

4.7 The State party concludes that the author's complaint under the Convention is inadmissible. It claims that the form of the complaint and its content do not correspond to provisions of the Convention.

Author's comments on the observations of the State party on admissibility and merits

5.1 In a submission dated 4 February 2011, the author reiterates her initial claims and refutes the State party's argument that the communication is not substantiated and should be declared inadmissible.

5.2 She further refutes the State party's contention that no complaints were submitted to the administration of the temporary detention facility. The author claims that the head of the IVS facility himself treated her badly, insulting her by saying that she was "not a woman". She had described all these facts in the article "Five days" published in *The Brest Courier* newspaper. A copy of the article was enclosed with the complaints she had submitted to the authorities. However, she stated that it was useless to address complaints to the detention facility's personnel, including the head of the facility, in particular because national legislation prohibits the consideration of petitions by State officials whose own actions/omissions to act are being challenged.

5.3 The author further contests the State party's argument that she did not submit complaints about the conditions of her detention to the Ministry of the Interior; she claims to have filed numerous complaints with the internal affairs organs. On 19 December 2007, a petition was submitted to the head of the Interior Department of Lenin District and to the head of the Interior Division of the Regional Executive Committee of Brest. On 5 February 2008, she filed a second complaint with the head of the Interior Division of the Regional Executive Committee of Brest. All those petitions were forwarded to the head of the Interior Department of Lenin District. Furthermore, after the publication of the article "Five days" in *The Brest Courier*, in December 2007 a member of the House of Representatives of the National Assembly filed a deputy's motion with the Minister of the Interior requesting an explanation as to why minor offenders were being detained in IVS facilities in such inhumane conditions. The Minister requested all materials concerning the author's case from the Interior Division of the Regional Executive Committee of Brest. She was subsequently questioned about the conditions of her detention and the alleged violations of her rights. This information was provided to the Minister of the Interior. The author thus submits that her complaints were examined by internal affairs organs at all levels: district, regional and national.

5.4 The author reiterates that she filed complaints with the internal affairs organs and the Prosecutor's Office, and also addressed the courts under the civil procedure and the procedure for administrative offences. However, her attempts to exhaust domestic remedies were futile, as none of those remedies proved to be effective.

5.5 In respect of the merits of the communication, the author recalls that the subject of her communication under the Convention concerns primarily the discrimination she faced as a woman during her detention in the IVS facility, and not the conditions of detention as such. She maintains that in the IVS facility of the Interior Department of Lenin District where she was detained from 11 to 15 October 2007, as in most temporary detention facilities of the Ministry of the Interior, the staff was comprised exclusively of men from 2002 to 2009. This information was

confirmed by the head of the Interior Department of Lenin District in his letters to the author dated 7 August 2008 and 8 September 2008. The author claims that these circumstances constitute discrimination against the women who would have wished to work in IVS facilities as police officers, warders or security guards, and is a violation of the State party's obligation to ensure to women, on equal terms with men, the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government, as set out in article 7 (b) of the Convention. Furthermore, this circumstance demonstrates discrimination against the author on the basis of her sex during her detention in a facility staffed exclusively by male personnel, because this inevitably led to the impairment of her rights and freedoms, especially of her right not to be subjected to torture and other cruel, inhuman or degrading treatment and the right to humane treatment and respect for her dignity, as prescribed in articles 7 and 10 (1) of the International Covenant on Civil and Political Rights. She recalls the following concrete facts which impaired her rights under articles 7 and 10 (1) of the Covenant, violations that affected her to a greater degree than the male prisoners of the same IVS facility:

- (a) The possibility of male staff to observe her through the door peephole and video surveillance, including when she was dressing or using the toilet;
- (b) The prison personnel's attitude at the time of her admission to the detention facility, when she was inappropriately touched by a male guard and threatened with being stripped naked;
- (c) The guards' statements that she would be "taken out and shot";
- (d) The guards' mockery when she was reading standing next to the light bulb and their statements that she needed "to see a psychiatrist";
- (e) The guards' practice of calling her "the fourth" when addressing her instead of using her name; male detainees were not treated in such a manner;
- (f) The guard's mockery at the reaction of her cellmates when he threw a dead rat into their cell in order to scare them;
- (g) The insults of the head of the detention facility, who entered the office during the meeting with her lawyer screaming that she had "put blue ribbons all over the city". When the lawyer asked him to show more respect for a woman, the head of the detention facility said she was "not a woman" and verbally insulted her.

5.6 The author considers that the above facts constitute inhuman and degrading treatment of her and discrimination against her on the basis of her sex, in the sense of article 1 of the Convention. She claims that such actions were possible because of the exclusively male composition of the personnel. The State party was under an obligation to provide better conditions for her detention than for men, in view of the fact that she is a young woman of reproductive age. The detention in a cold cell and in poor sanitary conditions was more detrimental to her health than to that of male prisoners. She fell ill while in detention and her condition required medical assistance. The author draws the Committee's attention to the fact that the State party in its observations has failed to address her specific claims under the Convention and limited itself to commenting only on the conditions of detention.

5.7 By her submission of 17 March 2011, the author informs the Committee about changes that have been made in the personnel policy of the IVS facility of the

Interior Department of Lenin District after the registration of her communication by the Committee. In December 2010 and January/February 2011, information that female police officers are working in the IVS facility came to the author's attention. In order to confirm this information, the author and her counsel addressed letters to the head of the IVS facility with a request to officially confirm or refute the information, as well as to provide information on the number of female staff and the dates that they became part of the personnel. In a letter of 14 March 2011, the head of the IVS facility confirmed that women are at present working in the IVS facility, but did not indicate their number or the date of their employment. Despite these positive changes, the author maintains that her communication should be examined by the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the State party's argument that the communication shall be declared inadmissible under article 4, paragraph 1, of the Optional Protocol for non-exhaustion of domestic remedies, because the author did not submit complaints on conditions of her detention to the administration of the IVS facility or the Ministry of the Interior. In accordance with article 4, paragraph 1, of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee recalls its jurisprudence, according to which the author must have raised in substance at the domestic level the claim that he/she wishes to bring before the Committee¹ so as to enable domestic authorities and/or courts to have an opportunity to deal with such a claim.² In this respect, it notes that the author submitted complaints regarding the conditions of detention and the disrespectful attitude of male prison personnel towards her to the internal affairs organs, inter alia, the head of the Interior Department of Lenin District and the head of the Interior Division of the Regional Executive Committee of Brest. The author also filed a complaint with the Prosecutor's Office and brought suits under both civil and administrative procedures in the competent courts. Furthermore, after a deputy of the House of Representatives of the National Assembly submitted a motion to the Ministry of the Interior in December 2007, the author was questioned about detention conditions and violation of her rights, and the results were presented to the Ministry of the Interior. The State party has not contested this information. Therefore, the Committee considers that the author diligently pursued domestic remedies, by addressing her complaints to the competent authorities of the internal affairs organs, to the Prosecutor's Office, as well as to the national courts. In the light of the uncontested information provided by the author as regards the

¹ See communication No. 8/2005, *Kayhan v. Turkey*, decision of 27 January 2007 (CEDAW/C/34/D/8/2005), para. 7.7.

² See communication No. 10/2005, *N.S.F. v. The United Kingdom*, decision of 30 May 2007 (CEDAW/C/38/D/10/2005), para. 7.3.

exhaustion of domestic remedies, and in the absence of any information from the State party as to the existence of other available and effective domestic remedies of which the author could have availed herself, the Committee concludes that the requirements of article 4, paragraph 1, of the Optional Protocol have been met.

6.3 With regard to article 4, paragraph 2 (a), of the Optional Protocol, the Committee has been informed that the same matter has not already been and is not being examined under another procedure of international investigation or settlement.

6.4 The Committee considers that the author's allegations relating to articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1 of the Convention, are sufficiently substantiated for purposes of admissibility, and thus declares the communication admissible.

6.5 In view of the foregoing, the Committee does not share the State party's view that the form and content of the author's communication do not correspond to the provisions of the Convention and that it should be declared inadmissible. Therefore, the Committee concludes that the present communication complies with the admissibility criteria set out in articles 2, 3 and 4 of the Optional Protocol.

Consideration of the merits

7.1 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 for in article 7, paragraph 1, of the Optional Protocol.

7.2 The Committee takes note of the author's claim that her detention for five days in poor, unhygienic and degrading conditions, in a temporary detention facility staffed exclusively by men where she was exposed to humiliating treatment, constitutes inhuman and degrading treatment and discrimination on the basis of her sex, within the meaning of article 1 of the Convention, and constitute a violation by Belarus of its obligations under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1 of the Convention.

7.3 The Committee observes that the State party has only summarily refuted these claims, considering them unsubstantiated. It has not provided any clarifications on the substance of these allegations, but limited itself to a general description of the detention premises (e.g., the size of the cells, the existing equipment, furniture, etc.), including reference to national administrative acts regulating, for example, the food ration of prisoners. In the view of the Committee, although this description may be of relevance, it does not necessarily address the substance of the author's claims: for instance, the author did not contest the existence of a light bulb in the cell, but specifically complained that it provided insufficient light; likewise, she did not complain about the lack of a heater in the cell, but claimed it was turned off at all times. Furthermore, the State party did not comment in any way on the author's allegations that staff working in the detention facility were exclusively male and that, as a result, she was subjected to gender-based discrimination. In this regard, the Committee recalls its recent concluding observations on the State party's report (CEDAW/C/BLR/CO/7), in which it expresses grave concern about inhuman and degrading treatment of women activists during detention, and urges the State party to ensure that the complaints submitted by those women are promptly and effectively investigated (paras. 25 and 26).

7.4 In accordance with article 3 of the Convention and rule 53 of the Standard Minimum Rules for the Treatment of Prisoners, the Committee recalls that women prisoners shall be attended and supervised only by women officers. It further recalls its general recommendation No. 19 (1992) on violence against women, according to which discrimination against women within the meaning of article 1 encompasses gender-based violence, i.e., “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty” (para. 6).³ The Committee reiterates that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms”, including the “right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment”, constitutes discrimination within the meaning of article 1 of the Convention (para. 7 (b) of the recommendation).

7.5 The Committee recalls that the fact that detention facilities do not address the specific needs of women constitutes discrimination, within the meaning of article 1 of the Convention. Thus, in line with article 4 of the Convention, principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) states that special measures designed to address the specific needs of women prisoners shall not be deemed to be discriminatory. The need for a gender-sensitive approach to problems faced by women prisoners has also been endorsed by the General Assembly by its adoption, in its resolution 65/229, of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

7.6 In the present case, besides the poor conditions of detention, the author claims that all staff working in the detention facility were exclusively male. As a woman prisoner, she was supervised by male guards, who had unrestricted visual and physical access to her and other women prisoners. The Committee recalls in this respect that, according to rule 53 of the Standard Minimum Rules for the Treatment of Prisoners:

(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers.

This important safeguard based on non-discrimination against women in line with article 1 of the Convention has been reaffirmed by the Committee in its concluding observations on States parties’ reports,⁴ as well as by the Human Rights Committee in paragraph 15 of its General Comment No. 28 (2000) on the equality of rights

³ See also general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 19.

⁴ See, for example, concluding observations of the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Yemen (CEDAW/C/YEM/CO/6).

between men and women and the report of the Special Rapporteur on violence against women, its causes and consequences (see E/CN.4/2000/68/Add.3, para. 44).

7.7 The Committee notes that, upon admission to the detention facility, the author was inappropriately touched by one of the guards and was threatened with being stripped naked. Furthermore, the guards were in a position to watch her through the door peephole in the course of private activities, such as using the toilet, which was located inside the cell and was blocked from view on only one side by a screen intended to give an impression of privacy, but which did not obstruct the view of the toilet from the door. She also felt humiliated by the offensive statements of the guards and by the degrading name, “the fourth”, used by guards. These allegations have not been challenged by the State party. The Committee recalls that respect for women prisoners’ privacy and dignity must be a high priority for the prison staff. The Committee considers that the disrespectful treatment of the author by State agents, namely male prison staff, including inappropriate touching and unjustified interference with her privacy constitutes sexual harassment and discrimination within the meaning of articles 1 and 5 (a) of the Convention and its general recommendation No. 19 (1992). In that general recommendation, the Committee observed that sexual harassment is a form of gender-based violence, which can be humiliating and may further constitute a health and safety problem. Therefore, the Committee concludes that the State party failed to meet its obligations under articles 2 and 5 (a) of the Convention.

7.8 The Committee recognizes that the author of the communication suffered moral damages and prejudice due to the humiliating and degrading treatment, the sexual harassment and the negative health consequences suffered during detention.

Recommendations

7.9 Acting under article 7, paragraph 1, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1 of the Convention, and with general recommendation No. 19 (1992) of the Committee, and makes the following recommendations to the State party:

1. Concerning the author of the communication:

Provide appropriate reparation, including adequate compensation, to the author, commensurate with the gravity of the violations of her rights;

2. General:

(a) Take measures to ensure the protection of the dignity and privacy, as well as the physical and psychological safety of women detainees in all detention facilities, including adequate accommodation and materials required to meet women’s specific hygiene needs;

(b) Ensure access to gender-specific health care for women detainees;

(c) Ensure that allegations by women detainees about discriminatory, cruel, inhuman or degrading treatment are effectively investigated and perpetrators prosecuted and adequately punished;

(d) Provide safeguards to protect women detainees from all forms of abuse, including gender-specific abuse, and ensure that women detainees are searched and supervised by properly trained women staff;

(e) Ensure that personnel assigned to work with female detainees receive training relating to the gender-specific needs and human rights of women detainees in line with the Convention as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(f) Formulate policies and comprehensive programmes that ensure the needs of women prisoners are met, in respect of their dignity and fundamental human rights.

7.10 In accordance with article 7, paragraph 4, of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any 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 Committee's views and recommendations and to have them translated into the official national languages and widely distributed in order to reach all relevant sectors of society.
