United Nations CEDAW/C/87/D/158/2020

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
13 March 2024

Original: English

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (1) of the Optional Protocol, concerning communication No. 158/2020*,**

Communication submitted by:	S.S. (represented by counsel, Maryam Alemi)
Alleged victim:	The author
State party:	Austria
Date of communication:	25 June 2020
References:	Transmitted to the State party on 26 June 2020 (not issued in document form)
Date of adoption of decision:	12 February 2024

1.1 The communication is submitted by S.S., a Serbian national of Albanian ethnicity born in 1996. The author claims that her deportation from Austria to Serbia would violate her rights under article 2 (c) and (d) of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 30 April 1982 and 22 December 2000, respectively. The author is represented by counsel, Maryam Alemi.

1.2 On 26 June 2020, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested that the State party refrain from deporting the author to Serbia pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

1.3 On 23 October 2020, the State party requested that the interim measures be lifted and that the admissibility of the communication be considered separately from the merits. On 12 February 2021, the Committee, acting through its Working Group on Communications under the Optional Protocol, denied both requests.

* Adopted by the Committee at its eighty-seventh session (29 January–16 February 2024).

** The following members of the Committee participated in the examination of the present communication: Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Nahla Haidar, Maya Morsy, Ana Peláez Narváez, Rhoda Reddock, Elgun Safarov, Genoveva Tisheva and Jie Xia.

Facts as submitted by the author

2.1 The author, who is originally from Serbia, belongs to the Albanian minority. She is illiterate. She explains that she never went to school, as she was forbidden to do so by her father, and therefore she remained very dependent on her parents. She suffers from mixed depressive and anxiety disorder.[1]

2.2 At the age of 22, she was forced by her family to marry a man in Austria. On one occasion when she returned to Austria from Serbia, she discovered that her husband was having an affair with another woman and she tried to leave him, but her husband and his family became violent towards her and confined her at home.

2.3 One night she managed to escape and, with the help of the police, she was admitted to a shelter in Austria. She reported her ill-treatment to the police, but the charges were dropped owing to a lack of sufficient evidence.

2.4 After some time, she divorced her husband. After she left her husband, her family in Serbia started to threaten her; at one point, her father informed her that a new 39-year-old husband had been found for her in Germany and that she should marry him or otherwise be killed. As a result of her refusal of another forced marriage, her own family, some of whom live in Serbia and some of whom live in Austria or Germany, have threatened many times to kill her.

2.5 Her father instructed her brother, who lives in Germany, to kill her because she had brought dishonour upon the family. She also received threats from her former brother-in-law, who works as a police officer in Vienna. She found refuge at a secret shelter operated by Orient Express in Austria.[2]

2.6 On 11 July 2019, she applied for asylum in Austria, but her application was rejected on 16 August, on the basis of the argument that the Serbian authorities would be able to protect the author if she were deported. The author refutes that argument given her personal circumstances (special vulnerability) and the general country information on Serbia.

2.7 The author appealed the first-instance decision and asked for the enforcement of her deportation to be suspended. Her request to halt her deportation was granted. However, on 5 May 2020, the administrative court rejected her asylum application. She submitted a request for legal aid, which was still pending at the time her communication was submitted. She notes that she would be able to ask for the suspension of the enforcement of her deportation only if legal aid were granted and a formal legal appeal brought before the Supreme Administrative Court. Her deportation could be carried out before she would be able to file for appeal. The author also submitted a complaint to the Constitutional Court concerning her request for legal aid.

2.8 While the author was living at a secret women's shelter operated by Orient Express, the police informed her that she had a letter to collect from the police station. When the author went to the police station on 24 June 2020, she was arrested. The author states that, despite her vulnerability, she had not had time to pack her belongings, to arrange to be accompanied or to take her medication with her. She was placed in immigration detention, with her deportation scheduled for 26 June.

2.9 Regarding the exhaustion of domestic remedies, the author argues that the specificities of the proceedings in Austria mean that she could be deported before she

[1] Medical report dated 7 May 2020.

[2] A non-governmental association that operates a women's counselling centre, a crisis shelter, transitional housing and a learning centre in Vienna.

is able to file for further appeal. It could take months for the courts to decide if legal aid can be granted and up to a year for the case to come before the highest courts.

Complaint[3]

3. The author alleges a violation of her rights under article 2 (c) and (d) of the Convention and refers to the non-refoulement principle and to the Committee's general recommendations No. 28 (2010) on the core obligations of States parties under article 2 of the convention; No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; No. 33 (2015) on women's access to justice; No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19; and No. 38 (2020) on trafficking in women and girls in the context of global migration. The author claims that the State party would breach its obligations under article 2 (c) and (d) of the Convention if it were to deport her to Serbia, where she would be subjected to grave forms of gender-based violence. She argues specifically that the implementation of her deportation before she had the opportunity to obtain legal aid would violate her rights under article 2 (d) of the Convention.

State party's observations on admissibility

4.1 On 23 October 2020, the State party submitted observations on the admissibility of the communication. It affirms that a communication to the Committee is admissible only if all available domestic remedies have been exhausted before the submission. The exhaustion of domestic remedies requires that the national authorities and courts have had an opportunity to examine and decide on the author's claims with regard to a possible violation of the Convention.[4]

4.2 The State party first recounts the facts of the case and recalls that the Federal Administrative Court, in its judgment of 5 May 2020, served to the author on 8 May, dismissed the complaint against the administrative decision of the Federal Office for Immigration and Asylum of 16 August 2019 as unfounded. On 10 June 2020, the Federal Office for Immigration and Asylum conducted a non-refoulement review and concluded that the deportation of the author to Serbia was legal. On 24 June, the author was taken into custody for the purpose of deportation to Serbia and brought to the police detention centre. The deportation of the author was scheduled for 26 June.

4.3 With respect to the legal context, the State party notes that appeals against judgments of the Federal Administrative Court can be filed with the Supreme Administrative Court within six weeks of the delivery of the decision in question. A complaint may also be filed with the Constitutional Court of Austria. Such appeals, however, have to be filed by a lawyer and are subject to fees. Persons with low income may apply for legal aid and for an exemption from the court fee. Both the complaint to the Constitutional Court and the appeal to the Supreme Administrative Court can be combined with a request for suspensive effect in order to prevent deportation. In the present case, the author filed applications, dated 24 June 2020, with both the Constitutional Court and the Supreme Administrative Court requesting legal aid to file an appeal; the applications were received, respectively, by the Supreme

[3] The author refers to various documents in her complaint, including the report on the results of the survey on violence against women led by the Organization for Security and Cooperation in Europe, the concluding observations of the Committee on the Elimination of Discrimination against Women on the fourth periodic report of Serbia (CEDAW/C/SRB/CO/4) and the evaluation report by the Group of Experts on Action against Violence against Women and Domestic Violence on the duties of Serbia under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

[4] See *X v. Austria* (CEDAW/C/64/D/67/2014), para. 6.5.

Administrative Court on 26 June and by the Constitutional Court on 29 June. On 25 June, the author submitted a communication to the Committee and, in compliance with the Committee's request for interim measures, the author's removal from Austria was subsequently suspended and she was released from detention.

4.4 From the State party's submission, it appears that several other procedural steps have been carried out since the submission of the complaint. Notably, the Supreme Administrative Court, in its order of 6 July 2020, requested that the author provide, within two weeks, a statement concerning a possible delay in submitting the application for legal aid.[5] Furthermore, in its decision of 27 July, the Supreme Administrative Court rejected the application for legal aid, stating that it had not been submitted within the deadline of six weeks. The "application for reinstatement to the previous legal position" (i.e. the author's justification for the delay) was not granted either.

4.5 Furthermore, the Constitutional Court, in its order of 28 August 2020, served on 1 September, requested, in connection with the author's application for legal aid, that the author indicate, within two weeks, the date on which the Federal Administrative Court judgment was delivered or provide information about any obstacles preventing the fulfilment of this request; the consequences of a failure to comply were indicated in the court order. As the author failed to provide her comments, the Constitutional Court rejected her application for legal aid on 2 October.

4.6 In view of the circumstances of the case, the State party argues that the author failed to exhaust domestic remedies because she did not avail herself of the available legal remedies in a timely manner.[6] The author stated in the proceedings before the Supreme Administrative Court that she had submitted her application for legal aid late because an adviser, who was not legally trained, had assumed that the Federal Administrative Court decision was received on 13 May 2020 (the actual date of delivery was 8 or 11 May).[7] The State party recalls, however, that, in accordance with the jurisprudence of the treaty bodies, possible errors of counsel are not attributable to Austria and do not exempt the author from her obligation to comply with the deadlines for lodging legal remedies.[8] As a result, the present communication appears to be inadmissible pursuant to article 4 (1) of the Optional Protocol.

4.7 Without presenting any additional arguments, the State party requests that the Committee lift its request for interim measures.

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

5.1 In her submission of 25 January 2021, the author contests the State party's challenge to the admissibility of the complaint. The author submits that she applied for legal aid within the specified time limit and in good faith. She clarifies that she was not represented by counsel during the relevant period but sought advice before submitting her appeal. In any event, the author notes that the legal aid application has no suspensive effect and therefore is not an effective remedy, as demonstrated by the fact that the author was already at the airport and about to board when the State party intervened to stop her deportation owing to the Committee's granting the interim measures request. In addition, even if her applications for leave to appeal had not been rejected, the remedies at hand are extraordinary, available only in exceptional

[5] The author contests the assertion that she received such a request.

[6] See *X v. Austria*, para. 6.4.

[7] The actual date is not consistent in the submissions.

[8] See Human Rights Committee, *Soo Ja Lim et al. v. Australia* (CCPR/C/87/D/1175/2003), para. 6.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; and *Calle Savigny v. France* (CCPR/C/85/D/1283/2004), para. 6.3.

cases[9] and allow for only a limited review related to the questions of law. In addition, Serbia is considered a safe third country in Austria, and therefore there has not been a single case successfully brought to the higher courts by Serbian nationals since the introduction of such remedies in 2014.

5.2 With regard to her failure to file for appeal in a timely manner, the author notes that, in contrast to the cases examined earlier by the Committee and cited by the State party, she received no erroneous legal advice and there has been no period of inactivity on her part. Her alleged delay is attributable to the measures instituted in response to the coronavirus disease (COVID-19) pandemic and a mistake subsequently made by the postal service. In this respect, the author submits that, prior to the rules regulating the delivery of court documents during the COVID-19 pandemic, letters addressed to persons living in the shelter maintained by Orient Express were sent to a mailing address because the shelter's physical address needed to be kept confidential. Therefore, a notification was left at the office of Orient Express, and the woman concerned would go to the respective post office to take possession of her letters and sign the proof of delivery. Under the temporary rules in effect at the time, proof of service was no longer requested, and letters were placed directly into the mailbox of the shelter. According to the new rules, in such cases addressees would be notified of the delivery by written, oral or telephone communication with the addressees themselves or with persons who may be assumed to be able to communicate with them; service would not be affected if it appeared that the addressee was unable to become aware of the service in due time because of absence from the place of delivery. In any event, the author argues that the temporary relaxed rules were in force only until 30 April 2020; therefore on 8 May, the date on which the Immigration Authority indicates that the letter was delivered to the offices of Orient Express, the postal service should have left a notification as usual or, at a minimum, should have notified the author or the employees of Orient Express of the delivery. Instead, the letter was left in the mailbox with no indication of the date of delivery. As the letter was not collected by social workers at Orient Express until 13 May and not transmitted to the author until 19 May, the author reasonably assumed that the date of delivery was, at the earliest, 13 May and that she therefore had six weeks from that date to submit her application. The author further notes that although she sought advice in this respect, she was not represented by counsel during the relevant period since her legal representation started on 25 June 2020, the day after she had been placed in detention and the power of attorney had been signed. Otherwise, her letter would have been served to her counsel (Caritas Vienna) and not the office of Orient Express.

5.3 The author concludes that she took all reasonable steps to submit her application for legal aid in good faith. The application was rejected because of a failure on the part of the postal service to follow the special relaxed rules put in place in response to the pandemic, a mistake that should not be attributed to the author. In addition, the author notes that the Supreme Administrative Court rejected her request for legal aid without reflecting on the arguments she provided to justify her delay, which is clearly arbitrary.

State party's additional observations on admissibility and the merits

6.1 On 16 April 2021, the State party reiterated its observations on admissibility and submitted observations on the merits.

[9] For the appeal to the Supreme Administrative Court, the application for legal aid must demonstrate that there is a case to answer; the application for leave to appeal must be submitted by a lawyer and must demonstrate that there is an open question of law beyond the facts of the case to demonstrate that the case may have an impact on other cases.

6.2 First, the State party reiterates the facts in detail and refers to the presentation of the legal situation relevant in the case at hand, as set out in the observations it submitted in October 2020 on the admissibility of the communication.

6.3 As to admissibility and the merits, the State party also refers to its observations of October 2020 and the specific reasons presented therein as to why the communication is inadmissible. The author failed to exhaust domestic remedies even though she received legal advice from Caritas in the proceedings pending before the Federal Administrative Court, the Constitutional Court and the Supreme Administrative Court, and her application for reinstatement to the previous legal position filed with the Supreme Administrative Court was submitted by her attorney-at-law.

6.4 The State party submits that the author was late in filing the applications available to her as remedies against the judgment of the Federal Administrative Court of 5 May 2020 rejecting her application, namely, the applications for legal aid to file an extraordinary appeal on points of law with the Supreme Administrative Court and a complaint with the Constitutional Court. Consequently, both the Supreme Administrative Court and the Constitutional Court had to reject the applications to which she had recourse. In both cases, the author was given the opportunity, before those applications were rejected, to make a statement regarding the date on which the contested judgment issued by the Federal Administrative Court was served and the reasons for not complying with the statutory deadline. In the proceedings before the Constitutional Court, the author failed to even respond to the relevant request.

6.5 Concerning the legal measures imposed in the context of COVID-19, which provided for a temporary simplification of rules to enable the contact-free service of documents, the State party reiterates that the Supreme Administrative Court, in its decision of 27 July 2020 (case No. Ra 2020/01/0212-7), obviously took into account the arguments concerning the difficulties resulting from the imposition of the special rules, which had already been presented in the author's application for reinstatement, and thus did not solely refer to the date of service recorded by the Federal Administrative Court but also to the date of service indicated by the author. In her comments of January 2021, the author argued for the first time that the judgment of the Federal Administrative Court had been served to her in an unlawful manner or that the postal service had committed an error (about which no further detail was specified). However, the author's allegations have not been substantiated: the author did not indicate in any detail, even in her reply, what error in service could have occurred.

6.6 The State party argues that the appeal brought before the Supreme Administrative Court and the complaint with the Constitutional Court constitute effective legal remedies. The State party rebuts the author's arguments that, on the one hand, there are procedural obstacles and difficulties in gaining access to the higher courts, which would then often take months to decide on an application for legal aid, and that, on the other hand, cases like hers have never been successful before the higher courts because Serbia is considered a safe third country.

6.7 In 2020, the Supreme Administrative Court handed down a decision within one month, having immediately given the author the opportunity to comment on the correct date of service of the judgment contested by her. The Constitutional Court took a little over three months after having likewise requested that the author indicate the date on which she was served the contested judgment or provide information about any obstacles preventing the fulfilment of its request, while drawing her attention to the consequences of a failure to comply. Likewise, with respect to the applications for legal aid filed by the author in 2021, the Supreme Administrative Court issued its decision within one month, and the Constitutional Court issued its decision in less

than two months. In this context, it should not go unmentioned that, in ordinary circumstances, both courts generally decide promptly on applications for legal aid, and requests for the suspensive effect of an appeal or complaint are generally decided upon on the same day whenever possible.

6.8 The effectiveness of a legal remedy cannot be measured based on how poor the author thinks her chances for success will be or on whether a legal remedy will always lead to the outcome sought by the applicant. Furthermore, given the extensive case law of the two courts on asylum and immigration law cases, which documents the comprehensive review of individual decisions handed down by the Federal Administrative Court, the author's allegation that resorting to the higher courts had been hopeless from the beginning is entirely untenable. In this context, it must be noted that the Constitutional Court, in its decision of 26 March 2021, granted the author legal aid to submit a complaint against the decision of the Administrative Court of 8 January 2021.

6.9 With regard to the designation of Serbia as a safe country of origin, it must be noted that, in the case at hand, the Federal Administrative Court did not limit its assessment to this finding and has already carried out a thorough analysis of the specific threat scenario described by the author.

6.10 On the merits, the State party submits that the author's claims are neither sufficiently substantiated nor correct in terms of substance. The State party affirms that, as evidenced by their decisions, the Federal Office for Immigration and Asylum and subsequently the Federal Administrative Court conducted an in-depth and thorough review of the author's specific situation and of the general situation of women in Serbia who are exposed to the threat of domestic violence. Based on their reviews, those institutions correctly came to the conclusion that Serbia would provide the author with sufficient protection against gender-based violence.

6.11 The State party emphasizes that the author herself considers that the Federal Administrative Court adequately appraised her vulnerable situation. The author's concerns are instead focused on the Federal Administrative Court's conclusion as to the threat the author is exposed to in Serbia and specifically that country's ability and willingness to protect victims of domestic violence. In that context, the author only cursorily explains, while referring to her vulnerability, that the Federal Administrative Court failed to take into consideration in its judgment certain standards for the protection of victims stipulated by the Committee in its general recommendations Nos. 32, 33, 35 and 38; by the European Union in Directive 2011/95/EU of the European Parliament and of the Council of the European Union on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; and by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

6.12 The Federal Administrative Court addressed in its judgment, in depth and with a critical eye, both the general situation in Serbia and the situation of women in Serbia. Serbia was deemed to be a "safe country of origin". [10] The Federal Administrative Court concluded that it was not likely that the author would be exposed to an inhuman or degrading situation upon her return to Serbia, even if she could not return to her family unit or had no other social network, as she was eligible to receive social benefits. With regard to her passport (which is valid until 2028), there was also no risk that she would be denied access to State benefits and facilities

[10] Under section 19 (5) (2) of the Code of Procedure for the Federal Office for Immigration and Asylum in conjunction with section 1 (6) of the regulation on safe countries of origin.

owing to a lack of documents. Moreover, despite the existing shortcomings, there was no evidence that victims of domestic violence were systematically denied protection.

6.13 With regard to the author's specific situation, the Federal Administrative Court stated that, before coming to Austria, she had lived in a larger city, where legal assistance services were more easily accessible. As of that time, the author had not even attempted to obtain protection in Serbia against a new forced marriage or from the threats issued by her family. There was no concrete discernible reason why she would not be granted the protection to which victims of gender-based violence are generally entitled in Serbia. In accordance with the case law of the higher courts, a difficult life situation facing the author upon the return to her home country, in particular with regard to finding employment and accommodation or from an economic point of view, did not suffice as grounds for assuming, with reasonable probability, that the prohibition of inhuman or degrading treatment within the meaning of article 3 of the Convention would be violated. A situation in which a scarcity of supplies poses a risk to physical safety might constitute a violation of the rights guaranteed under article 3 of the Convention, but no such situation exists in Serbia at this time.

6.14 In accordance with the Committee's case law, significant weight should be given to the assessment conducted by the State party authorities, unless it can be established that the evaluation in question was clearly arbitrary, amounted to a denial of justice or was biased or based on gender stereotypes that constitute discrimination against women.[11]

6.15 Even the author does not, in her communication, proceed on the assumption that the Federal Administrative Court based its judgment on arbitrariness. Nor does she otherwise oppose, in any substantiated manner, the arguments of the Federal Administrative Court because, while the reports she cited did show need for improvement (e.g. further development of assistance for victims and a lack of sufficient data on women's shelters operated by the State, in particular in rural areas),[12] her statements provided no reason to conclude that there are material defects in Serbia regarding the granting of protection for those affected by gender-specific violence.[13] The author also does not mention in her communication whether she had already attempted, or intended to attempt in the future, to establish contacts with the Serbian authorities or with protection facilities for women in Serbia in order to seek protection or admission.[14] The communication also does not point out the extent to which Serbia would be unable to provide protection commensurate with the author's vulnerability as acknowledged by the Federal Administrative Court.

6.16 Lastly, the State party submits that the author does not invoke any irregularities in the examination by the Federal Administrative Court that would justify the allegations that the proceedings were arbitrary.[15]

[11] See *F.H.A. v. Denmark* (CEDAW/C/75/D/108/2016), para. 6.8; *S.A.O. v. Denmark* (CEDAW/C/71/D/101/2016), paras. 6.8 and 6.9; *A.N.A. v. Denmark* (CEDAW/C/73/D/94/2015), para. 8.5; and *M.K.M. v. Denmark* (CEDAW/C/71/D/81/2015), para. 10.10.

[12] See the report by the Group of Experts on Action against Violence against Women and Domestic Violence on the duties of Serbia under the Istanbul Convention, cited by the author in her complaint.

[13] See the concluding observations of the Committee on the fourth periodic report of Serbia (CEDAW/C/SRB/CO/4), paras. 23 and 24, and, mutatis mutandis, *R.S.A.A. et al. v. Denmark* (CEDAW/C/73/D/86/2015), paras. 8.5–8.7.

[14] See *Y.W. v. Denmark* (CEDAW/C/60/D/51/2013), para. 6.4, and *Y.C. v. Denmark* (CEDAW/C/59/D/59/2013), para. 6.4.

[15] See *A.N.A v. Denmark*, para. 8.5, and *M.K.M. v. Denmark*, para. 10.10.

Authors' comments on the State party's additional observations on the merits

7.1 The author provided comments on the State party's additional observations on 23 August 2021 and reiterated her points with regard to the exhaustion of domestic remedies, the effect of the COVID-19 pandemic regulations, the issue of legal representation and the effectiveness of the legal remedies.

7.2 The author also informs the Committee that the federal asylum and immigration authority formally instructed her to submit a new asylum application. Under Austrian law, the submission of a new application is permitted only if there are new facts. In this case the facts were the same – both the threats and the situation with respect to accessing the women's shelters were the same as in the original asylum case. The author followed the authorities' instructions and submitted a new asylum application. At the time of submission, the new application was being processed and the author believes would be contingent on the Committee's decision.

7.3 In sum, the author maintains that she had exhausted all remedies available to her before she was threatened with deportation on 26 June 2020. Despite the submissions made regarding the deadlines missed as a result of the situation at the offices of Orient Express during the COVID-19 lockdown, those submissions were ignored. The author claims that the authorities had no intention of waiting for the decision on the application for legal aid following the decision denying her asylum on 5 May 2020. Furthermore, she emphasizes that no legal aid has been granted for cases before the higher courts following cases denying asylum to persons from Serbia. The non-refoulement assessment on 10 June 2020, which was conducted before the deadlines for legal aid would have expired, indicates that the authorities were ready to quickly deport the author.

7.4 Numerous attempts have been made to reopen the asylum case on the basis of evidence of the lack of ability of Serbia to protect her in this particular case. The author would first have to follow an administrative procedure to access a shelter in her hometown, Novi Sad. All those attempts have been rejected by not only the Federal Administrative Court but also by the higher courts.

7.5 The author submits that an assessment of the risk of refoulement must assess not only the general situation but also the individual situation of a given applicant in the country in question. Independent reports initially presented by the author in her asylum claim and later obtained by the Federal Office for Immigration and Asylum all mention deficiencies in the system of protection in Serbia. Given the credible threats against the author, the authorities were obliged to assess those weaknesses in relation to the author's specific case and the implications thereof for her if she were to be forcibly returned to Serbia. The author maintains that no such assessment was performed.

7.6 The State party authorities treated the request for interim measures as not binding, and thus the author could still be deported. Therefore, applications were made for a declaration to be issued stating that, on the basis of the interim measures request, proceeding with a deportation would be unlawful. A request for urgent processing of the applications was also filed so that the authorities would not wait for the legally defined time limit of six months to expire. Those applications were rejected. Legal aid has been granted, and submissions have been made to the two higher courts regarding the binding nature of interim measures of international bodies.

7.7 In conclusion, the author continues to maintain that she faces a real risk of retribution from her family if she is returned to Serbia and that Serbia is not able to offer her effective protection.

Additional information from the author

8. On 24 March 2022, the author informed the Committee that her new asylum application had been rejected by the Federal Administrative Court as inadmissible. The victims' protection organization supporting the author in Austria has contacted women's shelters in Serbia, which have either not replied or have confirmed that the author must return to Novi Sad, where her family lives, before any assessment can be conducted as to whether she needs further help.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

9.3 In accordance with article 4 (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 notes that the author claims to have exhausted all domestic remedies, while the State party has challenged the admissibility of the communication on this ground.

9.4 The Committee notes the author's claims that Austria would violate article 2 (c) and (d) of the Convention if she were deported to Serbia as she would face a risk of gender-based violence by her family and Serbia would not provide her with effective protection against such violence. The Committee notes the author's arguments that both her asylum applications were rejected, that she was not represented until 25 June 2020 and that legal aid was not granted to her, except in the matter concerning the binding nature of interim measures requested by international bodies.

9.5 The Committee notes the State party's argument that the author failed to exhaust domestic remedies because she did not avail herself of the available and effective legal remedies in a timely manner, even though she received legal advice from Caritas in the proceedings pending before the Federal Administrative Court, the Constitutional Court and the Supreme Administrative Court, and her application for reinstatement to the previous legal position filed with the Supreme Administrative Court was submitted by her attorney-at-law. It further notes the State party's uncontested argument that in the proceedings before the Constitutional Court concerning the request for legal aid, the author failed to even respond to the relevant request for information. The Committee also notes that the author submitted a second asylum application that has been rejected by the Federal Administrative Court as inadmissible, and that the author failed to appeal that decision. In these circumstances, the Committee concludes that all available domestic remedies have not been exhausted in the present case. Accordingly, the Committee concludes that the communication is inadmissible under article 4 (1) of the Optional Protocol.

10. The Committee therefore decides:

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

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