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Decision of the Committee on the Elimination of Discrimination against Women declaring a communication inadmissible under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Communication No. 12/2007*†

Submitted by:	Groupe d'Intérêt pour le Matronyme
Alleged victim:	G. D. and S. F.
State party:	France
Date of communication:	26 May 2006 (initial submission)
Document references:	Transmitted to the State party on 24 April 2007 (not issued in document form)

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 4 August 2009,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Ferdous Ara Begum, Magalys Arocha Dominguez, Violet Awori, Barbara Bailey, Meriem Belmihoub-Zerdani, Niklas Bruun, Saisuree Chutikul, Cees Flinterman, Naela Mohamed Gabr, Ruth Halperin-Kaddari, Yoko Hayashi, Soledad Murillo de la Vega, Violeta Neubauer, Pramila Patten, Silvia Pimentel, Victoria Popescu, Zohra Rasekh, Dubravka Šimonović and Xiaoqiao Zou. Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Nicole Ameline did not participate in the examination of this communication, as she is a national of the State party concerned.

† The text of one individual opinion (dissenting), signed by Dubravka Šimonović, Saisuree Chutikul, Ruth Halperin-Kaddari, Yoko Hayashi, Violeta Neubauer and Silvia Pimentel, is included in the present document.

Decision on admissibility

1. The authors of the communication dated 26 May 2006 are G. D. and S. F., two French nationals who claim to be victims of a violation by France of article 16, paragraph 1 (g), of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "the Convention"). They are represented by Groupe d'Intérêt pour le Matronyme, an organization based in Saint-Gely-Du-Fesc, France. The Convention and its Optional Protocol entered into force for the State party on 13 January 1984 and 9 September 2000, respectively. A reservation was entered by France on ratification to article 16, paragraph 1 (g), of the Convention.

The facts as presented by the authors

2.1 G. D. is a 28-year-old unmarried teacher with no children. At birth, she was automatically given her father's last name, "G.", pursuant to a customary rule in force at the time, according to which a child born in wedlock was given the family name of his/her mother's husband. The author's parents separated in 1984 owing to alleged serious marital violence and divorced in 1986. Her father was found to be fully at fault in the divorce proceedings. The author was raised exclusively by her mother and her mother's family and was abandoned by her father and his family. She claims that from her early childhood up to the present time, she has used her mother's family name and has been known as G. D. However, she is officially registered under the family name of her father. According to the author, because a family name constitutes an individual's identity as well as a linkage with a family, she had wanted to change her official family name since her psychological, familial, social and administrative identity rests with her mother. To that end, she has pursued multiple and lengthy procedures.

2.2 In 1986, the author availed herself of article 43 of Law No. 85-1372 of 23 December 1985 concerning equality of spouses, which allows any person to add as "nom d'usage" to his/her family name the parent's family name which was not transmitted. Since that time, the author has used her "nom d'usage" as shown on her passport, where her "nom d'usage" appears as a hyphenated name (D.-G.).

2.3 On 5 January 1999, the author applied to the "Garde des Sceaux" (Minister of Justice) to change her family name from "G." to "D.". Her arguments in support of her application were the general principle of gender equality as well as the fact that she has been using the name of G. D. since the age of seven.

2.4 On 14 April 1999, the "Garde des Sceaux" (Minister of Justice) rejected her application on the grounds that her use of her mother's family name was too recent and that her personal reasons did not warrant a derogation from the law establishing the father's surname as the family name. The "Garde des Sceaux" (Minister of Justice) also referred to article 43 of Law No. 85-1372 of 23 December 1985, under which the author was allowed to use her "nom d'usage".

2.5 On 10 June 1999, the author appealed to the Paris Administrative Tribunal against the decision of the "Garde des Sceaux" (Minister of Justice).

2.6 In a written submission to the Paris Administrative Tribunal dated 29 November 2000, the "Garde des Sceaux" (Minister of Justice) argued that the author's application had been dismissed because her use of the name "D." was too recent and that case law consistently required that the use of a family name be constant, uninterrupted and last for more than 90 years and for three generations or

more. The "Garde des Sceaux" (Minister of Justice) argued that these requirements had not been fulfilled by the applicant.

2.7 On 29 March 2002, the Paris Administrative Tribunal dismissed her appeal on the grounds that her use of the name "D." had been too recent, that there had been no violation of articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights and Fundamental Freedoms and that the "Garde des Sceaux" (Minister of Justice) had not manifestly erred in the way in which it had dealt with the personal considerations put forward by the author.

2.8 On 31 December 2004, the author filed a new application to the "Garde des Sceaux" (Minister of Justice) to change her family name from "G." to "D.-G.".

2.9 On 20 May 2005, the author's second application was dismissed by the "Garde des Sceaux" (Minister of Justice) for the same reasons given in the decision dated 14 April 1999. The author came to know about the decision only on 3 October 2005.

2.10 On 2 November 2005, the author appealed to the "Garde des Sceaux" (Minister of Justice) using the "recours gracieux" (discretionary remedy) procedure claiming that she had a lawful interest in seeking a name change. Her appeal was dismissed on 28 November 2005 on the grounds that the author's wish to bear her mother's family name did not constitute, in itself, a lawful interest pursuant to article 61-1 of the Civil Code and that the author's use of her mother's family name had been too recent.

2.11 On 14 July 2006, the author submitted a third application to the "Garde des Sceaux" (Minister of Justice) to change her family name. On 20 March 2008, her application was again dismissed and the author was notified of this decision on 30 April 2008. On 30 June 2008, the author appealed to the Paris Administrative Tribunal.

2.12 The second author, S. F., is a 39-year-old woman. She is unmarried and has no children. At birth, she was automatically given her father's family name, "C.", pursuant to a customary rule then in force, according to which a child born in wedlock automatically receives the family name of his/her mother's husband. Since 1972 her parents lived separately and were divorced in 1977. There had been violence in the family, and in 1978 her father was convicted of abandoning his family. The author claims that she has had only one family over the years, namely her mother's family, and that her only actual family ties were with her mother's family.

2.13 In 1988, the author availed herself of article 43 of Law No. 85-1372 of 23 December 1985, which allows any person to add to his/her family name the parent's family name which was not transmitted as "nom d'usage". Since then, the author has used her "nom d'usage" as shown on her national identity card, where her "nom d'usage" appears as the hyphenated name, "F.-C.".

2.14 On 29 September 1993, in accordance with article 61-1, of the Civil Code, which allows a person who establishes a lawful interest to apply for a change of name, the author submitted a first application to the "Garde des Sceaux" (Minister of Justice) to change her family name to "F." on the ground of gender equality.

2.15 On 15 December 1995, the "Garde des Sceaux" (Minister of Justice) dismissed her request on the grounds that the reasons provided did not warrant a derogation

from the law establishing the father's surname as the family name. The author was notified of this decision on 12 February 1996.

2.16 On 28 March 1996, the author appealed to the "Garde des Sceaux" (Minister of Justice) using the "recours gracieux" (discretionary remedy) procedure in order to determine whether her interest in requesting a name change was lawful. Her "recours gracieux" was, however, dismissed. On 14 October 1996, the author filed a new appeal ("recours gracieux") to the "Garde des Sceaux" (Minister of Justice) on the basis of an alleged error in the interpretation of "lawful interest". On 27 November 1996, the "Garde des Sceaux" (Minister of Justice) dismissed her request on the grounds that the author's reasons to change her name, which were of an emotional nature, did not constitute a lawful interest within the meaning of article 61-1 of the Civil Code. It also noted that although the author was claiming a prolonged use of the surname the author was requesting, this was not enough as it needed to be constant and uninterrupted and last for more than 90 years and for three generations or more. These requirements had not been fulfilled by the author, according to the "Garde des Sceaux" (Minister of Justice).

2.17 On 23 October 2000, the author, represented by counsel, submitted a second application to the "Garde des Sceaux" (Minister of Justice) to change her family name on the same grounds as before. This request was dismissed on 23 April 2001 for the same reasons as before. The author received notification of this decision on 21 January 2002 because the initial notification had been sent to the wrong address (the author's address as it appeared in her civil birth record rather than under her "nom d'usage").

2.18 After two lawyers allegedly refused to represent her and to appeal against the decision to the Paris Administrative Tribunal, on 30 July 2004, the author, assisted by a new counsel, filed a third application to change her family name based on her having a lawful interest in changing her name and the fact that she was already using her mother's family name as her own. In this application, for the first time, it was averred that the author, after the separation of her parents, had suffered psychological and physical abuse by her father which was in fact of a sexual nature.

2.19 On 30 December 2004, the author's request was dismissed by the "Garde des Sceaux" (Minister of Justice), on the grounds that her contention that her father had been violent towards her after her parents' divorce had not been substantiated and that accordingly she had still failed to show that she had a lawful interest in changing her name on those grounds. The author received the dismissal notification on 1 March 2005, once again because it had been sent to the wrong address.

2.20 On 24 March 2005, the author appealed against this decision to the Paris Administrative Tribunal for ultra vires ("excès de pouvoir") action. The "Garde des Sceaux" (Minister of Justice) did not reply within the three-month deadline it had from the date of notification on 6 April 2005. On 1 March 2006, the Paris Administrative Tribunal sent a reminder to the "Garde des Sceaux" (Minister of Justice) to submit its observations, and further, on 22 March 2006, the Paris Administrative Tribunal sent a notice to the "Garde des Sceaux" (Minister of Justice) to file its defence within one month. In July 2008, the author was notified that a hearing of the "Garde des Sceaux" would take place in September 2008 before the Paris Administrative Tribunal, more than three years after the author's appeal.

2.21 S. F. alleges that in all correspondence from the "Garde des Sceaux" (Minister of Justice) an incorrect address was used on purpose, even though the law provides that an address under the "nom d'usage" must be systematically used for correspondence. The author alleges that this behaviour amounts to sexual and moral harassment and is in violation of some European Parliament and Council Directives.

The complaint

3.1 G. D. and S. F. claim to be victims of violations of their rights under the Convention in view of the fact that the State party did not take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure, on a basis of equality of men and women, the same personal rights as husband and wife, including the right to choose a family name and to transmit the family name to children. They submit that French legislation governing family names continues to be discriminatory towards women despite the adoption of the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, which entered into force on 1 January 2005, and the purpose of which was to establish equality between men and women in the transmission of family names to children. They allege that this new legislation is still discriminatory towards women because it gives the father a veto right by allowing him to oppose the transmission of the mother's family name. They also allege that despite the fact that France ratified the Convention in 1983, it remains impossible for anyone born before 1 January 2005 to take the family name of their mother as their official name. The authors claim therefore that French legislation governing family names contravenes the principle of equality between parents and constitutes a violation of article 16, paragraph 1 (g), of the Convention.

3.2 Although the authors availed themselves of the provisions of article 43 of Law No. 85-1372 of 23 December 1985 on equality between spouses in marriage and were able to hyphenate their family name with the family name of their mother, their "nom d'usage" appears only on their national identity cards, but not on their French nationality certificates or on their birth certificates. Therefore the "nom d'usage" is limited and does not reflect a person's civil status. Furthermore, the legislation does not allow for the transmission of the "nom d'usage" to children.

3.3 The authors further claim that, despite lengthy and costly procedures under article 61-1 of the Civil Code, which provides that every person who has a lawful interest can change his/her name, they were unable to do so. The refusal caused them personal, administrative, civic, civil, social, professional and juridical damages and constitutes a violation of their fundamental rights. S. F. contends in particular that her inability to change her family name has had an impact on her willingness to get married and have children.

3.4 The authors also allege violations of other international instruments, such as Recommendations 1271 (1995) and 1362 (1998) of the Parliamentary Assembly of the Council of Europe on discrimination between men and women in the choice of a surname and in the transmission of parents' surnames to children; the Committee of Ministers' Resolution (78) 37 of the Council of Europe on equality of spouses in civil law; the European Convention on Human Rights and Fundamental Freedoms (articles 5, 8 and 14); and the 1789 French Declaration on Human Rights.

3.5 As to the admissibility of the communication, the authors claim that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

3.6 Regarding the State party's reservation concerning the right to choose a family name contained in article 16, paragraph 1 (g),[1] the authors contend that the Committee's position is clear as shown in its most recent concluding comments on France: "While welcoming the State party's stated intention to lift its reservations to articles 5 (b), and 16, paragraph 1 (d), to the Convention, the Committee is concerned that the State party has not expressed its intention to withdraw its reservations to articles 14, paragraphs 2 (c) and (h), and 16, paragraph 1 (g), of the Convention" (A/58/38, part two, chap. IV, para. 251). The authors also refer to the Committee's statement on reservations: "Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn" (A/53/38/Rev.1, part two, chap. I, para. 17).

3.7 As to the exhaustion of domestic remedies, the authors contend that the procedure for change of name provided for in article 61-1 of the Civil Code is the only available remedy but it is unlikely to bring effective relief. The authors base their reasoning on the rulings of the "Garde des Sceaux" (Minister of Justice) in their cases and in similar cases whereby, in practice, a name change under the Civil Code is granted only if the father's family name is deemed as "dishonourable" because it has a foreign connotation to it, is ridiculous or is associated with a criminal conviction, or if the mother's family name has been established through continuous use for 90 years and for over three generations. The authors therefore contend that the notion of lawful interest is interpreted in a sexist and arbitrary way. The authors provide statistics relating to the change of name in France where it appears that 15 per cent of the requests are made on the basis of personal or emotional grounds, and in 80 per cent of these cases, the requests are rejected.

3.8 In addition, the authors allege that the average time for completion of a name change under the Civil Code is at least 10 years and that the application of all available domestic remedies is therefore unreasonably prolonged. They also claim that the cost for such a procedure is disproportionately high.

The State party's submission on admissibility

4.1 By its submission of 22 June 2007, the State party challenges the admissibility of the communication on the main ground that it is incompatible with article 16, paragraph 1 (g), of the Convention in the light of the reservation entered to this article by France. The State party further contends that the authors are not victims under article 2 of the Optional Protocol.

4.2 The State party requests that the reservation it has entered upon ratification of the Convention to article 16, paragraph 1 (g), with regard to the choice of the family name be taken into account. The State party is of the view that, although article 17

[1] The reservation reads as follows: "The Government of the French Republic enters a reservation concerning the right to choose a family name mentioned in article 16, paragraph 1 (g), of the Convention."

of the Optional Protocol prohibits reservations to the Optional Protocol, its article 2 must be read in the light of the Convention as ratified by the State party, i.e., with the reservations and declarations entered by the State party. The State party therefore contends that the communication should be declared inadmissible as incompatible with the provisions of the Convention.

4.3 Secondly, the State party points out that article 2 of the Optional Protocol provides that communications may be submitted by individuals under the jurisdiction of a State party "claiming to be victims of a violation of any of the rights set forth in the Convention by that State party". It refers to General Recommendation No. 21, in which the Committee clarified the meaning of "same personal rights as husband and wife, including the right to choose a family name", in article 16, paragraph 1 (g), and argues that article 16, paragraph 1 (g), aims to enable a married woman or a woman living in a husband-and-wife relationship to keep her maiden name, which, according to the Committee, is part of her identity. The State party states that since article 16, paragraph 1 (g), of the Convention guarantees married women and women living in a husband-and-wife relationship the right to retain their maiden name and to transmit it to their children, G. D. and S. F., who are not married, do not live in husband-and-wife relationships and do not have children, cannot be victims of the violation of a right whose beneficiaries are married women or mothers.

4.4 As to the authors' wish to bear their mothers' family name, the State party further notes that the authors do not offer any proof that they suffered sex-based discrimination by bearing their fathers' family name. It further contends that from the perspective of the children, there is no discrimination as the family name they are given is not dependent on their sex and that neither the former legislation nor the new legislation of 18 June 2003 changes this. The State party argues that the authors' mothers might have been considered as victims because they were unable to transmit their family name to their children. The State party contends that, should the Committee decide in a different way, it would need to make an *in abstracto* assessment of French domestic legislation, which would be contrary to the purpose of article 2 of the Optional Protocol. Such an assessment has already been undertaken within the framework of the reporting procedure established by the Convention. The State party therefore contends that the communication is inadmissible because the authors are not victims within the meaning of article 2 of the Optional Protocol.

The authors' comments on the State party's observations on admissibility

5.1 On 19 August 2007, the authors reiterated their arguments with regard to the Committee's standpoint on the reservation France entered to article 16, paragraph 1 (g), and added that the State party had been urged by the Committee to expedite the steps necessary for the withdrawal of all its reservations to the Convention (see A/58/38, part two, chap. IV, para. 252). The authors note that, contrary to the Committee's request, the State party has maintained its reservation as evidenced by its sixth periodic report (see CEDAW/C/FRA/6). As a consequence, they ask the Committee to disregard the State party's reservation to article 16, paragraph 1 (g).

5.2 With regard to the scope of article 16, paragraph 1 (g), of the Convention, the authors assert that this article should be interpreted broadly to cover all members of a family rather than just husband and wife. They further claim that because the

transmission of a family name is a personal right belonging to the husband and the wife, this personal right also belongs to the children, who receive a family name from their parents. They reiterate that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, does not guarantee equality between parents in transmitting their respective family names to their children, since in the case of a disagreement, the father has the right to veto the mother's wish.

5.3 As to the State party's contention that the authors are not victims within the meaning of article 2 of the Optional Protocol because they are not married, do not live in husband-and-wife relationships and do not have children, the authors maintain that article 16, paragraph 1 (g), also relates to the transmission of family names irrespective of the matrimonial status of the children.

5.4 With regard to the State party's allegation that the authors did not substantiate their claim of sex-based discrimination by bearing their fathers' family names, the authors reiterate that they have had to bear their fathers' family names reflected in their civil status documents based on discriminatory and sexist customary rules in force at the time of their birth.

5.5 The authors dispute the State party's contention that the French system governing the passing on of family names is not discriminatory from the perspective of the children as the family name they are given is not dependent on their sex and that neither the former legislation nor the new legislation of 18 June 2003 changed this. The authors argue that it is indeed because the French system is discriminatory towards women that they brought a communication claiming a violation of article 16, paragraph 1 (g), of the Convention and that this discrimination affects both girls and boys.

The State party's further submission on admissibility and observations on merits

6.1 By its submission of 24 October 2007, the State party reiterated, as its main argument, that the communication ought to be declared inadmissible in the light of the reservation it had entered upon ratification to article 16, paragraph 1 (g), of the Convention. In addition, the State party reiterates that the authors lack the quality of victim because they are not married; have no children; and have not shown that they were subjected to discrimination based on sex either in regard to the family name that they received at birth or in the procedures that they have used to request a name change.

6.2 The State party reiterates its request that the Committee take into account the reservation it entered upon ratification of the Convention to article 16, paragraph 1 (g), when making a determination on the admissibility of the communication.

6.3 The State party renews its contention that the authors cannot claim to be victims of a violation of discriminatory legislation governing family names in regard to article 16, paragraph 1 (g), of the Convention, because the authors are neither married nor mothers. The State party therefore argues that this part of the authors' complaint is ill-founded. The State party reiterates that, should the Committee decide to entertain this part of the complaint, it would need to make an evaluation *in abstracto* of French legislation. Such an evaluation would be contrary to article 2 of the Optional Protocol, apart from the fact that such an evaluation of French legislation was already made through the reporting process (article 18 of the Convention).

6.4 The State party also draws the Committee's attention to the progress achieved in the establishment of equality between men and women in the law governing transmission of family names to children. The State party submits that under the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, parents can henceforth choose their child's family name together. The child may be given either the father's or the mother's family name, or both names. The State party further points out that the transmission of the father's surname against the wishes of the mother is now the exception and takes place only when maternal and paternal filiations are established simultaneously and the parents disagree on the choice of the child's family name. The State party further explains that the rationale behind this exception is in the best interests of the child, i.e., to have a name from birth as guaranteed by the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. In that regard, the State party also refers to article 16, paragraph 1 (d), of the Convention, which provides that the interests of the children shall be paramount. This would prevent litigation on the transmission of a family name and avoid placing a child at the centre of a conflict involving his or her parents. It therefore reiterates that the Act of 4 March 2002 on family names, as amended by the Act of 18 June 2003, constitutes a considerable step towards the equality between men and women in the family as well as a reform of major importance. The State party further asks the Committee to take into consideration the decision by the European Court of Human Rights of 27 September 2001, in the case of *G.M.B. and K.M. v. Switzerland*, in which the Court stated that the respondent State, i.e., Switzerland, "must be afforded a wide margin of appreciation in matters relating to the transmission of family names". The State party therefore concludes that the Act of 4 March 2002, as amended by the Act of 18 June 2003, is the result of the necessary reconciliation between the interest of the child to have and keep his/her family name, the interest of society for stability in terms of civil status, and the interest in having equality between spouses in the transmission of family names.

6.5 As for the authors' contention that article 61-1 of the Civil Code (the procedure for a change of name) is incompatible with the Convention, the State party reiterates the argument that the authors have not demonstrated that they were subjected to any sex-based discrimination. The State party further contends that the requests for a name change by the authors were rejected because they were unable to show that they had a lawful interest in changing their family name and not because they were being subjected to sex-based discrimination; the "Garde des Sceaux" (Minister of Justice) treats men and women the same way in such cases. The State party explains that the practice of the "Garde des Sceaux" (Minister of Justice) shows that authorization to take the mother's family name has been given when the applicant has proved that his/her father was guilty of violence or abandonment.

6.6 The State party also contends that the authors have not exhausted domestic remedies and could, therefore, still elaborate more on their interest in changing their family names. In particular, concerning S. F., the State party submits that she could have appealed through the courts against the dismissal of her application to change her family name by the "Garde des Sceaux" (Minister of Justice), instead of opting to initiate a new application in 2000 to the "Garde des Sceaux" (Minister of Justice), which was also rejected. The State party further explains that S. F. did not appeal against the latter decision and instead submitted a third request to change her family

name in 2004, which was still pending as at 24 October 2007. With regard to G. D., the State party explains that after the Paris Administrative Tribunal turned down her appeal in 2002, instead of appealing against that decision to the administrative court of appeal, she initiated a new application to change her name in 2004, which was dismissed in 2005 by the "Garde des Sceaux" (Minister of Justice). No appeal ("recours contentieux") was lodged against that decision.

6.7 The State party concludes that the authors, who lack the quality of victim to claim a violation of article 16, paragraph 1 (g), of the Convention, have also failed to establish that they suffered any sex-based discrimination or that any sex-based discrimination took place with regard to the procedures to change their family name, and that furthermore, they have not exhausted all available domestic remedies.

6.8 The State party requests the Committee to declare the communication inadmissible *ratione personae* and *ratione materiae* or, alternatively, should the communication be deemed admissible, to declare it ill-founded.

The authors' additional information

7. On 16 October 2008, the authors provided updated information with regard to the additional judicial steps they had taken. On 19 June 2008, G. D. appealed against the decision of 20 March 2008 by the "Garde des Sceaux" (Minister of Justice) to the Paris Administrative Tribunal. With regard to S. F., the Paris Administrative Tribunal dismissed her appeal on 26 September 2008.

The Committee's interim decision

8. At its forty-second session, the Committee considered the case and was of the view that it also appeared to raise issues under articles 2, 5 and 16 (1) of the Convention. The parties were invited to provide observations in relation to those provisions.

The authors' comments in reply to the Committee's interim decision

9.1 By their submission of 16 January 2009, the authors contend that the Committee's interim decision does not alter their earlier submissions and maintain that the State party has contravened article 16, paragraph 1 (g), of the Convention. The authors argue that the State party is in breach of its obligations under article 2 (a) to (g) because the French legislation governing family names continues to be discriminatory towards women and because it remains impossible for anyone over 18 years of age, irrespective of their sex, to change the patronymic name, given to them in an authoritarian and arbitrary way on the patriarchal ground of the primacy of men over women. They further claim that this discriminatory legislation, which contravenes the principle of equality between men and women and individual liberty, overlaps with a customary rule which prohibits changing one's name. Lastly, they submit that the status of the mother's family name is denied in a radical, manifest and sexist way.

9.2 With regard to article 5, the authors argue that the State party's legislation perpetuates a situation of inferiority of women in favour of men, the latter holding a veto right which allows them to oppose the transmission of the mother's family name to children.

9.3 With regard to article 16, paragraph 1, the authors contend that the State party has not taken all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, because of the impossibility for a woman or a man to have her/his mother's name established in her/his person's civil status.

The State party's observations in reply to the Committee's interim decision

10.1 By its submission of 24 April 2009, the State party provides its comments on the Committee's interim decision by emphasizing that its main objection to the admissibility of the communication relates to the reservation to article 16, paragraph 1 (g), entered upon ratification of the Convention, and that the other grounds of inadmissibility are that the authors lack the quality of victim, that they have not exhausted domestic remedies and that they have not suffered any sex-based discrimination.

10.2 The State party, while noting that the Committee's interim decision will result in its consideration of the communication under provisions on which no reservations were entered, considers that such consideration would entail serious legal difficulties. The State party invokes the doctrine of *lex specialis*, which applies in the interpretation of both domestic and international laws and which states that a law governing a specific subject matter (*lex specialis*) cannot be overridden by a law which governs general matters (*lex generalis*). The State party refers to a report by the International Law Commission (A/CN.4/L.682) according to which such principle is a generally accepted technique of interpretation and conflict resolution in international law and is applicable between provisions within a single treaty or in two or more treaties. The State party concludes therefore that article 16, paragraph 1 (g), is the only provision in the Convention in relation to which the national legislation governing the passing on of family names should be assessed. It also underlines that non compliance with such a principle would have detrimental consequences as far as reservations and declarations are concerned. Far from ensuring a better protection of rights, such a "requalification" as envisaged by the Committee could prompt States, in the future, to formulate reservations with the largest possible extent to the detriment of precise reservations, like the one entered by the State party to article 16, paragraph 1 (g). The State party contends that such a signal sent to States which are not yet party to the Convention may be extremely harmful to the Convention and the rights it seeks to protect.

10.3 The State party further contends that should the Committee decide to examine the communication under articles 16 (1), 5 and 2, instead of article 16, paragraph 1 (g), although the consideration of those articles may impact directly on the admissibility of the communication insofar as it relates to its reservation to article 16, paragraph 1 (g), this will make no difference to the fact that the authors still lack the quality of victim under article 2 of the Optional Protocol, an argument already raised by the State party in its earlier submissions. The State party further argues that articles 2 and 16, paragraph (1), cannot be successfully invoked by the authors, who have not argued that they have been the object of any sex-based discrimination in the framework of either the transmission of family names or in the change-of-name proceedings. The State party further contends that the legislation challenged by the authors does not come within the framework of article 5, which refers to traditions and customs.

10.4 The State party reiterates that the authors, who lack the quality of victims, actually invite the Committee to assess whether the national law *in abstracto* is in contravention of the Optional Protocol and notes that such assessment has already been carried out through the reporting procedure under the Convention.

10.5 The State party reiterates that it is the principle of stability of the civil status, and not the patriarchal ground of the primacy of men over women, which has limited the retroactive effect of the 4 March 2002 legislation. It further reiterates that the stability of one's family name is an essential guarantee for it not to become a contentious matter in case of familial disputes, towards both the ascendants and descendants. It challenges the veracity of the authors' last submissions, according to which there is an absolute prohibition to change one's name, and reiterates that, according to article 61 of the Civil Code, anybody who has a lawful interest can ask for a name change.

10.6 With regard to the exhaustion of domestic remedies, the State party reiterates that the authors have not exhausted domestic remedies. G. D. has an appeal pending before the Paris Administrative Tribunal and S. F. an appeal pending before the Paris Administrative Court of Appeal. It also argues that the authors had not claimed violations of articles 2, 5 and 16 of the Convention at the national level. It further argues that domestic remedies are effective, as demonstrated by the case law it refers to and in which the administrative and jurisdictional jurisdictions have recognized that a person might have a lawful interest according to article 61 of the Civil Code to take the mother's family name, including in the case of family desertion by the father. The State party submits that the authors did not provide evidence, contrary to the claimants in the national case law referred to, proving that they indeed had been abandoned or subjected to mistreatment. Lastly, the State party states that each of the internal appeals made by the authors has been adjudicated within a reasonable time and that the overall length of the proceedings at the national level can be explained by the systematic repetitions of the same proceedings initiated by the authors. The State party draws the Committee's attention towards a recent decision by the European Court of Human Rights which declared a communication inadmissible on the ground that the author had not, in the context of article 61 of the Civil Code, appealed against the negative decision by the "Garde des Sceaux" (Minister of Justice) to the administrative jurisdictions.[2]

10.7 The State party therefore requests the Committee to declare the communication inadmissible or, alternatively, should the communication be deemed admissible, to declare it ill-founded.

Issues and proceedings before the Committee concerning admissibility

11.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol.

11.2 In accordance with rule 66 of its rules of procedure, the Committee may decide to consider the question of admissibility and the merits of a communication separately.

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[2] European Court of Human Rights, decision on admissibility of 17 March 2009, No. 37387/05, *Anne Duda v. France*; see also mutatis mutandis, *Dayras v. France*, No. 65390/01, 6 January 2005.

11.3 The Committee has carefully considered the arguments of the authors in support of their claim that they are victims of a violation of article 16, paragraph 1 (g), of the Convention, as well as the grounds raised by the State party in challenging the admissibility of the communication. The Committee has also considered the additional observations of both the authors and the State party submitted in the light of its interim decision taken at its forty-second session.

11.4 The Committee has considered the potential application of articles 2, 5 and 16, paragraph 1, of the Convention to the present communication. However, in the light of all the submissions of the authors and the State party as well as the manner in which the case was litigated at the national level, the Committee is of the view that the present communication should be examined primarily under article 16, paragraph 1 (g), of the Convention.

11.5 With regard to Law No. 2002-304 of 4 March 2002 as amended in 2003, which entered into force on 1 January 2005, and whose purpose was to establish equality between men and women in the transmission of family names to children, the Committee shares the view expressed by the authors that this law is still discriminatory against women, because it gives the father a veto right by allowing him to oppose the transmission of the mother's family name. The Committee also notes the negative impact of the fact that no person born before 1 January 2005 can take the family name of their mother as their official name unless they initiate proceedings for a change of name under article 61-1 of the Civil Code. In this connection, the Committee reiterates its concerns and recommendations, following consideration of the State party's report in January 2008, in which it recommended to the State party the amendment of its legislation on family names in order to conform fully to the Convention.

11.6 The Committee has paid due consideration to all the arguments of the State party in support of its contention that the authors have not exhausted domestic remedies, namely that G. D. has an appeal pending before the Paris Administrative Tribunal and S. F. an appeal before the Paris Administrative Court of Appeal, that they had not claimed violations related to articles 2, 5 and 16 of the Convention at the national level and that the second author (S. F.) did not substantiate her allegation of violence.

11.7 The Committee expresses some concern about the effectiveness of the relief provided by the procedure for change of name under article 61-1 of the Civil Code and more particularly the interpretation of "lawful interest" and the requirement that the use of the surname must be "constant and uninterrupted and last for more than 90 years and for three generations or more". The Committee notes with concern that all the applications of both authors, who were abandoned by their fathers at an early age and have been raised exclusively by their mothers and have used their mothers' family name, were rejected on the ground that their reasons for the change of name were of an "emotional nature" and therefore did not constitute a lawful interest within the meaning of article 61-1 of the Civil Code. The Committee is not satisfied with the argument of the State party that each of the internal appeals made by the authors has been adjudicated within a reasonable time and that the overall length of the proceedings at the national level can be explained by the systematic repetitions of the same proceedings initiated by the authors. On the contrary, the Committee is of the view that repetition of the same proceedings should have resulted in their speedy disposal.

11.8 The Committee therefore concludes that in the circumstances, although domestic remedies have not been exhausted with the appeal of G. D. pending before the Paris Administrative Tribunal and that of S. F. before the Paris Administrative Court of Appeal, the application of the remedy provided by article 61-1 of the Civil Code is both unreasonably prolonged and unlikely to bring effective relief.

11.9 The Committee takes note of the broad scope of article 16 of the Convention, which addresses the equal rights of married women or women living in de facto union with men in all matters relating to marriage and family relations. Under article 16, paragraph 1 (g), States parties shall ensure "the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation". The Committee notes that both authors are seeking to change their family names from their father's to their mother's and neither of them is purporting to transmit her family name to her children. It is also undisputed that neither of them is married, or lives in a husband-and-wife relationship or has any children to pass on their family names. Article 2 of the Optional Protocol provides that communications may be submitted by individuals under the jurisdiction of a State party "claiming to be victims of a violation of any of the rights set forth in the Convention by that State party".

11.10 The Committee is of the view that article 16, paragraph 1 (g), aims to enable a married woman or a woman living in a husband-and-wife relationship to keep her maiden name, which is part of her identity, and to transmit it to her children, and as such is of the view that its beneficiaries are only married women, women living in de facto union and mothers. The Committee therefore shares the view of the State party that since the authors are not married, do not live in husband-and-wife relationships and do not have children, they cannot be victims of a right whose beneficiaries are only married women, women living in de facto union or mothers. The Committee therefore concludes that under this provision, the authors as children cannot claim rights pertaining to the use or the transmission of family names and do not have any personal rights under article 16, paragraph 1 (g). For that reason, the Committee does not consider it necessary to address the issue of the reservation to article 16, paragraph 1 (g), entered by France.

11.11 The Committee also gave due consideration to the contention of the authors that despite the fact that article 16, paragraph 1 (g), grants a personal right to the husband and the wife, this personal right should be interpreted as also belonging to the children, who receive a family name from their parents. It, however, finds no merit in it, although it acknowledges that children may be indirectly affected by a violation of the rights of either parent. The Committee nevertheless acknowledges that the mothers of the authors would have successfully claimed to be "victims" because they were unable to transmit their family name to their children.

11.12 The Committee is also satisfied that the authors have failed to show that they suffered any sex-based discrimination by bearing their father's family name. Even if they have indeed had to bear their father's family name in their civil status documents based on discriminatory and sexist customary rules in force at the time of their birth, from the perspective of their status as children, there is no discrimination as the family name they are given is not dependent on their sex.

11.13 The Committee therefore concludes that the authors lack the quality of victims within the meaning of article 2 of the Optional Protocol and, therefore, finds the communication inadmissible.

11.14 The Committee wishes to place on record that it empathizes with both authors, who have indeed suffered as a result of their failure to take their mother's name despite the fact that their psychological, familial, social and administrative identity has been only with their mothers, from a very young age. The Committee also sympathizes with the authors for all the efforts they have deployed from their early adulthood to change their family name, and especially the multiple, lengthy and costly legal procedures they have had to initiate under article 61-1 of the Civil Code.

11.15 The Committee therefore decides:

(a) That the communication is inadmissible because the authors of the communication lack the quality of victim under article 2 of the Optional Protocol;

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

Individual opinion by Committee members Dubravka Šimonović, Yoko Hayashi, Ruth Halperin-Kaddari, Silvia Pimentel, Violeta Neubauer and Saisuree Chutikul (dissenting)

12.1 At its meeting on 4 August 2009, the Committee on the Elimination of Discrimination against Women decided that communication No. 12/2007 was inadmissible because the authors of the communication lack the quality of victim under article 2 of the Optional Protocol.

12.2 We disagree with the Committee's view that this communication is inadmissible and hold the view that it is admissible and that the authors are victims of discrimination by the State party under articles 2, 5 and 16 (1) of the Convention.

12.3 The authors claim to be victims of discriminatory legislation governing family names that discriminates against women by prohibiting the transmission of or change of family name to the mother's family name only. Pursuant to a customary rule in force upon both authors' births, they were automatically given the family name of their respective fathers, who were at that time married to their mothers. Owing to the divorce of their parents and troubled family relations both authors lived with and used their mothers' family names. They both claim continuation of such discrimination since the new legislation of the State party on family names of 2002 is not retroactively applicable to them. Both authors have in the past 10 years unsuccessfully requested the change of their family names from that of their fathers to that of their mothers, attempting to use the only procedure available to them under article 61-1 of the Civil Code, but their requests were denied owing to the lack of lawful interest and inadequate length of time during which the surnames had been used (use of the surname needed to last for more than 90 years and for three generations or more). The authors claim to be victims of violations of their rights under articles 2, 5 and 16 (1), including 16 (1) (g), of the Convention in view of the fact that the State party did not take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. The Committee decided to examine the admissibility of the communication primarily under article 16, paragraph 1 (g) of the Convention and found it inadmissible on the basis that the authors failed to show that they suffered any sex-based discrimination by bearing their fathers' family names. It further stated that even if they indeed had to bear their fathers' family names in their civil status

documents on the basis of discriminatory and sexist customary rules in force at the time of their birth, from the perspective of their status as children, there is no discrimination as the family names they were given were not dependent on their sex. Thus the Committee concluded that the authors lack the quality of victims within the meaning of article 2 of the Optional Protocol.

12.4 With respect to the admissibility of this case, we disagree with the Committee's view that the authors lack the quality of victim within the meaning of article 2 of the Optional Protocol and with its decision that this communication should be examined under article 16, paragraph 1 (g) of the Convention. We hold the view that following the Committee's interim decision to consider the case under articles 2, 5 and 16 (1) of the Convention and responses from the State party and the authors, including the fact that the authors confirmed violation of articles 2, 5 and 16 (1) of the Convention in addition to violation of article 16 (1) (g), this communication should be examined under articles 2, 5 and 16 (1) of the Convention.

12.5 We disagree with the Committee's finding that the authors lack the quality of victims within the meaning of article 2 of the Optional Protocol based on the argument that from the perspective of their status as children, there is no discrimination as the family names they were given were not dependent on their sex. We are of the view that the test of victim status is whether the authors have been directly and personally affected by the violations alleged. It is undisputed that the authors have suffered sex-based discrimination by bearing their fathers' family names in their civil status documents, and that that discrimination was based on discriminatory and sexist customary rules on transmission of family names which were in force at the time of their births. It is also undisputed that the new legislation of the State party on family names of 2002 is not retroactively applicable to them, and that both authors have in the past 10 years unsuccessfully requested a change of name from their fathers' family names to their mothers' family names, attempting to use the only procedure available to them under article 61-1 of the Civil Code, and that their requests were denied. We hold the view that this apparently gender-neutral norm is producing gender-based discrimination since it does not take into account as lawful interest the request to change a family name acquired through discriminatory legislation. Such legislation and the impossibility for the authors to take their mothers' family names as their legal names have had, and continue to have adverse discriminatory consequences for them.

12.6 We hold the view that the legislation governing family names discriminates against women by prohibiting the transmission of or change of family name to the mother's family name only and that the lack of choice with respect to a mother's family name, as the family name to be transmitted to her children or changed, constitutes sex-based discrimination against women as defined in article 1 of the Convention and prohibited under articles 2, 5 and 16 (1). Article 1 of the Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Under article 2 of the Convention, States parties assume an obligation to ensure practical realization of equality between women and men, while article 16 (1) specifically provides for such equality in marriage and family relations. Under article 5 of the Convention, States

parties are under an obligation to eliminate customary practices based on the idea of the inferiority or the superiority of either of the sexes. All of those articles require equal treatment of women's and men's family names and their transmission to their children.

12.7 We are of the view that the authors, who claim that they have acquired their family names by the application of a discriminatory customary law on family names and who, as adults, have been denied the right to a name change as a result of a discriminatory interpretation of the lawful interest under article 61-1 of the Civil Code, do qualify as victims under article 2 of the Optional Protocol. The fact that such discrimination equally affected all children irrespective of their sex does not change the undisputed fact that the authors acquired a family name under a rule which is discriminatory, as it applies only against women's last names, thus amounting to a form of discrimination against women falling under articles 2, 5 and 16 of the Convention. We are of the view that as long as the act that violated the Convention's provisions constituted sex-based discrimination against women, the sex of their children is of no relevance. Consequently, the same is applicable to adult victims of such continuous gender-based discrimination since what is at stake is discriminatory law and practice with respect to family names applicable to the authors that discriminate against women and their last names. The fact that a man could also be a victim of such gender-based discrimination does not affect the victim status of the authors. We are of the view that the authors have sufficiently substantiated their claim that they suffered sex-based discrimination by bearing their fathers' family names and are directly and personally affected by the violations alleged under articles 2, 5 and 16 of the Convention and do qualify as victims under article 2 of the Optional Protocol.

12.8 We find somewhat inconsistent the Committee's view to examine the communication under article 16, paragraph 1 (g) of the Convention. If we were to look specifically into article 16, paragraph 1 (g), as the Committee decided to do, we would examine the arguments put forward by the authors with respect to the Committee's position on the impermissibility of reservation to article 16 of the Convention.

12.9 With respect to the inadmissibility claim of the State party based on its reservation entered to article 16, paragraph 1 (g), we have decided to examine the present communication in light of articles 2, 5 and 16 (1) and not to focus on article 16, paragraph 1 (g). We hold the view that subparagraph 16 (1) (g) does not explicitly and exclusively cover the situation of the authors, as what is at stake is the right of the authors to change their family names from that of their fathers to that of their mothers. The chapeau of article 16 (1) provides that "State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particulate ensure, on a basis of equality of men and women ...", followed by subparagraphs (a) to (h). Subparagraph 1 (g) provides that the States parties shall ensure "[t]he same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation". Subparagraphs (a) to (h) of article 16, paragraph 1, are not exhaustive but are an exemplification. They are examples of different situations in which the State party should provide the same rights to men and women. We are of the view that article 16, subparagraph 1 (g), primarily aims to enable a married woman or a woman living in a husband-and-wife relationship to keep her maiden name, which is part of her identity. However, there is nothing in that subparagraph relating to the

discriminatory practice that lies at the cause of the situation at hand, namely the ability of married women (i.e. the authors' mothers in our case) to transmit their maiden names to their children (i.e. the authors in our case).

12.10 We disagree with the State party's interpretation that article 16, subparagraph (1) (g), is *lex specialis* or the only provision in the Convention in relation to which the national legislation governing the passing on of family names should be assessed. This subparagraph does not specifically address the family name of children, while subparagraph 16 (1) (d) relates to the same rights and responsibilities of parents in all matters relating to their children. Furthermore, the underlying principle of equality between women and men as contained in article 2 as well as its more specific provision of equality between women and men in family relations as contained in the article 16 (1) chapeau are key principles that govern transmission of family names to children. We hold the view that the facts giving rise to the communication relate to an act of discrimination against women in matters relating to "family relations", and that the article 16, paragraph 1 chapeau covers discrimination against all women, married and unmarried, in all matters relating to marriage and family relationship, whereas family name is an important part of family relations. We consider that the situation of the authors is not explicitly or exclusively covered by article 16, paragraph 1 (g), as *lex specialis* and that the chapeau of article 16, paragraph 1, as well as its other subparagraphs and articles 2 and 5, are fully applicable to their situation.

12.11 We have also paid due consideration to all of the State party's arguments in support of its contention that the authors had not claimed discrimination and violations related to articles 2, 5 and 16 of the Convention at the national level. We hold the view that the authors have in substance invoked the content of articles 2, 5 and 16, claiming discrimination against women with respect to transmission and change of family name. They have availed themselves of all available procedures to protect themselves against sex-based discrimination. As reflected in paragraph 2.3 of the Committee's decision, G. D. invoked in her application for a name change the general principle of gender equality as well as the fact that she has been using the name G. D. since the age of seven. Furthermore, G. D.'s appeal was dismissed by the Paris Administrative Tribunal in 2002 on the ground that there had been no violation of article 8 (right to the respect for private life) and article 14 (prohibition of discrimination) of the European Convention on Human Rights and Fundamental Freedoms, whereas article 14 includes sex as a discrimination ground, thereby prohibiting sex-based discrimination.

12.12 We support the finding of the Committee with respect to the admissibility of this complaint with respect to the exhaustion of domestic remedies. We support the finding that the application of the remedy provided by article 61-1 of the Civil Code is both unreasonably prolonged and unlikely to bring effective relief. Based on the facts of this case we also find this communication admissible *ratione temporis* without a need for a detailed elaboration of this admissibility ground.

12.13 With respect to the merits of this case, we hold the view that the authors were indirect victims of discriminatory legislation based on the patriarchal view of fathers as heads of family imposed by the State party during their childhood. They were affected by this legislation together with their respective mothers. As adults, the authors, who, owing to the divorce of their parents and their family connection with their mothers' family and their mothers' family name as part of their identity,

are requesting the change of their discriminatorily acquired family names, are victims of sex-based discrimination under the procedure for a change of name in article 61-1 of the Civil Code since their requests to change their discriminatorily acquired family names were not interpreted as lawful interest under that procedure. We hold the view that the customary rule in force when the authors received their family names was discriminatory against women (mothers) in relation to the transmission of their family names to their children. We also note the information provided by the State party on progress achieved in the establishment of equality between men and women in the transmission of family names to children with the adoption of Law No. 2002-304 of 4 March 2002 as amended in 2003, which entered into force on 1 January 2005. We further note that this information implies recognition by the State party that its previous customary rule on transmission of family names was not based on equality between women and men, and that it was discriminatory against women and their identities as reflected in their last names.

12.14 With respect to the current law, we share the view expressed by the authors that it is still discriminatory against women because it gives the father a veto right by allowing him to oppose the transmission of the mother's family name. However, we hold the view that this is not of direct relevance for the claim of the authors of this communication. What is relevant for the authors is the fact that no person born before 1 January 2005 can take the family name of his or her mother as their official name. We disagree with the State party's argument that the principle of stability of civil status, and not the patriarchal ground of primacy of men over women, limited the retroactive effect of the 2002 legislation. We are of the view that the State party does not submit any reason why the rights of women, including a mother's right to pass on her family name and/or a child's right to receive the parents' name on a gender-equal basis, must be treated differently for the stability of civil status of one's family name.

12.15 We hold the view that the stability of civil status of one's family name could be equally achieved with the same recognition and same treatment of women's and men's last names, as contained in the new law on family names that partially eliminated discrimination regarding the transmission of the mother's family name. Since the new law is not retroactively applicable to the authors, they are still affected by the previous law coupled with current discriminatory application of the Civil Code procedure on the change of one's family name. This procedure, which is the only one available to the authors, is not taking into account past gender-based discriminatory rules on family names applied to the authors and the way in which they were affected by it in their concrete lives. Such concrete facts of life in this case include divorce of the parents, violence of the father in the family (towards the mother in both instances and, in one of the cases, alleged violence towards the author of the communication too), abandonment by the father and close connection only with their mothers. The mothers' family names are an important part of the authors' identities that should be respected by the State party on the basis of support for the principle of equality between women and men in general, and equality between women and men in family relations in particular. It is a clear obligation of all States parties to the Convention to uphold the principle of equality between women and men in their legislation and to ensure practical realization of this principle (article 2) and to abolish and change stereotypes on roles of women and men (article 5). This means that very weighty reasons would have to be put forward before a difference of treatment on the sole ground of sex could be regarded as

compatible with the Convention (see European Court of Human Rights, *Burghartz v. Switzerland*, application No. 16213/90, judgment of 24 February 1994, para. 27).

12.16 Both authors availed themselves of article 43 of Law No. 85-1372 of 1985 concerning the equality of spouses, which allows any person to add as "nom d' usage" to his/her family name the other parent's name which had not been transmitted. The authors were able to hyphenate their family names with the family names of their mothers. However, their "nom d'usage" is used only on their identity cards, but not on their French nationality certificates or their birth certificates. This seems to be a source of confusion and legal uncertainty for persons using this option. Furthermore, the legislation does not allow for the transmission of the "nom d'usage" to children. Therefore, the "nom d'usage" is limited and mostly applicable for addition of the mothers' family names, since the fathers' family names were transmitted as a customary rule to all persons born before the adoption of the new law on family, which is not applicable to the authors. It is evident that even this possibility, which aimed to support equality of spouses, has provided limited recognition of mothers' family names, but still in an unequal manner. As such, it has not secured equal treatment of parents' family names and the right of each person to make a choice based on legislation that equally protects women and men with respect to transmission or acquisition of their family names.

12.17 We hold the view that the authors have shown that they have suffered sex discrimination against women by bearing their fathers' family names in their civil status documents based on discriminatory and sexist customary rules in force at the time of their birth, and not being able to change it to their mother's family name. The authors have also suffered mental harm as a result of the discriminatory rules and practices imposed by the State party against taking their mother's name despite the fact that their psychological, familial, social and administrative identity has been formed through a connection to their mothers, from a very young age. The authors have suffered economic and mental harm through all the efforts they have deployed from their early adulthood to change their family name, especially the multiple, lengthy and costly legal procedures they have had to initiate under article 61-1 of the Civil Code. We further acknowledge the fact that the impossibility for the authors to use their mothers' family names as their official legal names has had and continues to have adverse consequences for them and has impaired their fundamental rights to non-discrimination and equality between women and men with respect to the choice of the mothers' family names.

Recommendation to the State party with respect to the authors

12.18 In their proceedings before the Committee, the authors have used their mothers' family names and not their fathers' (official) family names and were recognized by the Committee under their mothers' family names. We, in this dissenting opinion, hold the view that the authors should have the same recognition of their mothers' last names by the State party and should be allowed to change their family names at the national level.

12.19 The State party should, in line with its obligations under articles 2, 5 and 16 (1) and more specifically under article 2 (f) of the Convention, take all appropriate measures, including legislative measures, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

12.20 The State party should change its interpretation of what constitutes lawful interest under the Civil Code procedure in order to recognize the requests of the authors as falling under the lawful interest for a name change or adopt an amendment that would explicitly provide for a name change for those who had not benefited from the law reform in 2003 and who wish to take their mothers' names.

General recommendation

12.21 We reiterate the findings of the Committee after the examination of the periodic report (CEDAW/C/FRA/CO/6, para. 35) and recommendation to the State party that it amend its new legislation on family names in order to conform fully to the Convention.

(*Signed*) Dubravka **Šimonović**

(*Signed*) Yoko **Hayashi**

(*Signed*) Ruth **Halperin-Kaddari**

(*Signed*) Silvia **Pimentel**

(*Signed*) Violeta **Neubauer**

(*Signed*) Saisuree **Chutikul**