



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

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**Committee on the Elimination of Discrimination
against Women**

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**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. 13/2007*†

Submitted by: SOS Sexisme

Alleged victims: Michèle Dayras, Nelly Campo-Trumel, Sylvie Delange,
Frédérique Remy-Cremieu, Micheline Zeghouani,
Hélène Muzard-Fekkar and Adèle Daufrene-Levrard

State party: France

Date of communication: 6 July 2006 (initial submission)

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

Meeting on 4 August 2009

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Ms. Ferdous Ara Begum, Ms. Magalys Arocha Dominguez, Ms. Violet Awori, Ms. Barbara Bailey, Ms. Meriem Belmihoub-Zerdani, Mr. Niklas Bruun, Ms. Saisuree Chutikul, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Dubravka Šimonović and Ms. Xiaoqiao Zou. Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Ms. 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 Ms. Dubravka Šimonović, Ms. Saisuree Chutikul, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Violeta Neubauer, Ms. Silvia Pimentel and Ms. Victoria Popescu, is included in the present document.



Decision on admissibility

1. The authors of the communication dated 6 July 2006 are Michèle Dayras, Nelly Campo-Trumel, Sylvie Delange, Frédérique Remy-Cremieu, Micheline Zeghouani, Hélène Muzard-Fekkar and Adèle Daufrene-Levrard, seven French nationals who are represented by SOS Sexisme, an organization based in Issy-les-Moulineaux, France. They claim to be victims of a violation by France of the Convention on the Elimination of All Forms of Discrimination against Women. 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 Ms. Dayras, Chairperson of the organization SOS Sexisme, and Ms. Zeghouani are unmarried and have no children. They were born, respectively, in 1938 and 1941. They allege that they have chosen to remain childless because of their inability to transmit their family names to their children under French law.

2.2 Ms. Campo-Trumel, born in 1938, is the mother of two children, aged 40 and 46. Ms. Delange, born in 1952, is the mother of two children, aged 14 and 23. Ms. Muzard-Fekkar, born in 1922, is the mother of six children between the ages of 48 and 59. Ms. Remy-Cremieu, born in 1941, is the mother of two children, aged 32 and 36. Ms. Daufrene-Levrard, born in 1941, is the mother of two children, aged 33 and 40. Ms. Campo-Trumel, Ms. Delange, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard are all married, and their children bear their fathers' family name. They allege that their children will not benefit from new French legislation that allows married women under certain circumstances to transmit their family names to their children.

2.3 Ms. Dayras, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard furthermore wish to take their mothers' family names as their own. However, in view of the fact that, according to the Garde des Sceaux (Minister of Justice), that wish cannot be considered as a lawful interest, the procedure to apply for a change of name would be unsuccessful.

The complaint

3.1 The authors allege that 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, is discriminatory towards married women because it gives fathers the right to veto the transmission of the family name of their wives to their children. Although this new legislation allows parents to pass on either spouse's family name to their children or a hyphenated name using the family names of both spouses, the authors complain that when the spouses disagree, the father's family name is transmitted to the children. Furthermore, when the spouses do not specify that the family name of the wife should be passed on to the child, the child automatically is given the husband's family name. The authors argue that this situation violates the principle of equality between men and women. They further contend that the fact that a hyphenated name that cannot be passed on from one generation to the next also limits women's equality with men.

3.2 The authors further allege that, because the Act of 4 March 2002, amended by the Act of 18 June 2003, applies only to children born after 1 January 2005 and to children who are younger than 13 as at 1 September 2003, they remain barred from taking their mothers' family names as their own. The authors further contend that article 43 of Law No. 85-1372 of 23 December 1985 concerning equality of spouses, which allows for a *nom d'usage*, is not meant to establish equality between women and men in this area.

3.3 For the above reasons, the authors allege that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, violates the Convention on the Elimination of All Forms of Discrimination against Women, although they do not substantiate their complaint under any articles of the Convention. However, they aver violations of other international agreements ratified by France, namely article 8, in conjunction with article 14, of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms as well as article 5 of Protocol 7 to that Convention on equality between spouses. The authors also refer to recommendations 1271 (1995) and 1362 (1998) of the Parliamentary Assembly of the Council, in which it invites States parties to take measures to eliminate all discrimination between men and women in the legal system governing family names.

3.4 As to the admissibility of the communication, the authors indicate that Ms. Dayras, Ms. Zeghouani, Ms. Remy-Cremieu, Ms. Muzard-Fekkar, Ms. Campo-Trumel and Ms. Delange and six other women lodged an application with the European Court of Human Rights on 12 December 2000, alleging that under French legislation applicable at that time, children born in wedlock were forced to take the family name of their mothers' husbands in breach of article 8, in conjunction with article 14, of the Convention for the Protection of Human Rights and Fundamental Freedoms. On 6 January 2005, the Court declared the application inadmissible for the following reasons: Ms. Dayras and Ms. Zeghouani could not be considered victims in accordance with article 34 of the Convention, as they were neither married nor parents. With regard to Ms. Remy-Cremieu and Ms. Muzard-Fekkar, the Court found that they had not exhausted domestic remedies because they had not used the procedure under article 61-1 of the Civil Code, which allows a person with a lawful interest to apply for a change of name.

3.5 Regarding the exhaustion of domestic remedies, the authors allege that the use of the procedure under article 61-1 of the Civil Code is unreasonably prolonged. They refer to the case *Mustafa v. France* to claim that the average time needed for the completion of such a procedure is at least 10 years.¹ The authors explain that, on average, it takes one year for the Garde des Sceaux to take a decision, one year to appeal to the Administrative Tribunal and one and one-half years for the Administrative Tribunal to deliver a decision. Thereafter, the Administrative Appeals Court allegedly takes three years to reach a decision. The authors claim furthermore that the Conseil d'État, to which a further appeal can be lodged, rejects most appeals unless there have been errors in the application of the law or the assessment of facts. The authors also contend that a claim would subsequently have to be brought to the European Court of Human Rights.

¹ European Court of Human Rights, *Mustafa v. France*, 17 June 2003, No. 63056/00.

3.6 The authors further claim that the procedure governed by article 61-1 of the Civil Code is unlikely to bring effective relief because the Garde des Sceaux has ruled in similar cases that the interest a woman may have in taking her mother's family name did not amount to a lawful interest but rather was based on emotional grounds.

The State party's observations on admissibility

4.1 By its submission of 25 May 2007, the State party challenges the admissibility of the communication on the following grounds: that the communication is incompatible with article 16, paragraph 1 (g), of the Convention in the light of the reservation entered to that article by France; that some of the authors are not victims within the meaning of article 2 of the Optional Protocol; that the communication is inadmissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol in relation to some of the authors; that the same matter has already been examined under another procedure of international investigation or settlement under article 4, paragraph 2 (a), of the Optional Protocol; and that all available domestic remedies under article 4, paragraph 1, of the Optional Protocol have not been exhausted.

4.2 The State party firstly requests that the reservation it entered upon ratification of the Convention to article 16, paragraph 1 (g), be taken into account. The State party is of the view that, although article 17 of the Optional Protocol prohibits reservations to the Optional Protocol, article 2 must be read in the light of the Convention as ratified by the State party; that is, with the reservations and declarations entered by the State party. The State party therefore submits that the communication should be declared inadmissible, being incompatible with the provisions of the Convention.

4.3 The State party considers the communication to be inadmissible on the grounds that some of the authors, namely Ms. Dayras, Ms. Zeghouani and Ms. Daufrene-Levrard, are not victims within the meaning of article 2 of the Optional Protocol.

4.4 The State party considers that the assertions of Ms. Dayras and Ms. Zeghouani that they chose to remain childless because they could not pass on their family name to their children to be speculative and abusive. The State party therefore submits that Ms. Dayras and Ms. Zeghouani are not victims within the meaning of article 2 of the Optional Protocol.

4.5 With regard to Ms. Daufrene-Levrard, the State party submits that she is not a victim within the meaning of article 2 of the Optional Protocol because she did not provide her marital status and did not offer proof that her children had been automatically given their father's family name at birth.

4.6 With regard to Ms. Campo-Trumel, Ms. Delange, Ms. Muzard-Fekkar and Ms. Remy-Cremieu, all of whom are married and have children who bear their fathers' family name, the State party concedes that it is possible for them to consider themselves victims of discrimination because they were unable to transmit their family name to their children.

4.7 The State party submits that Ms. Dayras, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard, who also wish to take their mothers' family name as their own, have failed to substantiate that they suffer any sex-based discrimination

because they were forced to bear their fathers' family name. The State party argues that the mothers of Ms. Dayras, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard might have been considered victims because they were unable to transmit their family names to their daughters, but that, from the perspective of the children, there is no discrimination, as the family name they are given is not dependent on their sex.

4.8 The State party submits that the communication is inadmissible *ratione temporis* with regard to Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Delange. It notes that the Optional Protocol entered into force for France on 22 December 2000. It further notes that, according to the Committee's decision on communication 11/2006 (*Salgado v. United Kingdom*), the discrimination against the authors would have ended when their children reached the age of majority. Once children reach the age of majority, only they may decide to change their family names or to keep them. Therefore, the State party submits that discrimination against the authors ended in 1985 for Ms. Campo-Trumel, in 1977 for Ms. Muzard-Fekkar and in 1993 for Ms. Remy-Cremieu. Regarding Ms. Delange, the State party argues that her allegation is inadmissible *ratione temporis* with regard to her eldest child only.

4.9 The State party also argues that the same matter has already been examined under another procedure of international investigation or settlement. Ms. Delange is one of the claimants who applied to the European Court of Human Rights and whose claim was deemed inadmissible because of the non-exhaustion of domestic remedies. The State party submits that the communication before the Committee on the Elimination of Discrimination against Women is in part the same as the one brought by Ms. Delange to the European Court of Human Rights. The State party submits that the part of the complaint that concerns alleged discrimination under previous legislation governing the transmission of family names, which was applicable at the time that the case was brought before the Court, is inadmissible. As to the part of the complaint concerning alleged discrimination under the legislation of 18 June 2003, the State party requests the Committee to ascertain that Ms. Delange has not introduced a new complaint to the European Court of Human Rights.

4.10 The State party further argues that Ms. Delange did not exhaust domestic remedies to obtain a change of name for her youngest child, who is now 14 years old, under article 61-1 of the French Civil Code, stating that every person with a lawful interest can apply for a change of name to the Garde des Sceaux, and that a refusal by the Garde des Sceaux may be appealed to the Administrative Tribunal, and the latest decision may be appealed against to the Administrative Appeals Court, with the Conseil d'État being the highest instance. The State party submits that the case law of the Conseil d'État shows that a wish to bear one's mother's family name can constitute a lawful interest.² Therefore, the State party contends that Ms. Delange, as the parent of a minor child, may still ask for a change of name for her youngest child, if he/she consents.³ The State party further argues that, should

² The Government refers to the following two decisions by the Conseil d'État: a decision dated 23 May 1986 (application No. 56883) and a decision dated 9 October 1985 (application No. 50267).

³ Article 61-1 of the Civil Code stipulates that children aged 13 and above have to give their consent to a name change.

the Garde des Sceaux and the Administrative Tribunal refuse the name change on the grounds that there is no lawful interest, Ms. Delange could appeal to the Conseil d'État. The State party maintains that the likelihood of obtaining redress through the remedy offered by article 61-1 of the Civil Code is very high.

4.11 The State party rejects the allegation of the authors that the procedure governed by article 61-1 of the Civil Code would be unreasonably prolonged. The State party maintains that the case law referred to by the claimant is irrelevant because the duration of administrative procedures has greatly improved since then. The State party indicates that in 2002, the Conseil d'État upheld the right of a claimant to obtain a judgment by an administrative judge within a reasonable length of time and that this has now become a general principle governing the functioning of administrative jurisdictions.⁴ The State party further indicates that there have been other improvements to ensure the timely functioning of administrative jurisdictions. Article R 112-2 of the Code of Administrative Justice provides that anybody who complains about the excessive length of a procedure before an administrative tribunal or an administrative appeals court can refer the matter to the permanent inspection chief of administrative jurisdictions, who has the power to make recommendations to remedy the situation. The State party therefore submits that the communication is inadmissible because of the non-exhaustion of domestic remedies under article 4, paragraph 1, of the Optional Protocol regarding Ms. Delange's claim that the legislation of 18 June 2003 did not allow her to pass her family name to her youngest child.

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

5.1 By their submission of 12 June 2007, the authors contend that because article 17 of the Optional Protocol does not allow for any reservations, the reservation France entered to article 16, paragraph 1 (g), of the Convention has no effect and should not be taken into consideration by the Committee.

5.2 With regard to the definition of "victim" within the meaning of article 2 of the Optional Protocol, the authors maintain that Ms. Dayras and Ms. Zeghouani did not want to have children because of legislation at the time that did not allow married women to transmit their family name to their children and because of society's rejection of single mothers. The authors maintain that they remain victims even if they can no longer have children because of their age.

5.3 With regard to Ms. Campo-Trumel, Ms. Delange, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard, the authors reiterate that they are victims of a violation of the Convention on the Elimination of All Forms of Discrimination against Women because their children will not benefit from the new legislation and will have to initiate their own procedure to change their family names. The authors do not agree with the State party's contention that discrimination against them came to an end when their children reached the age of majority. They argue that the discrimination continues under the provisions of article 4, paragraph 2 (e), of the Optional Protocol. They submit that discrimination as to the choice and the transmission of family names persists in France. They argue further that the transitory provisions of the new legislation should have been made

⁴ The Government also refers to a decision of the European Court of Human Rights on an effective remedy in administrative jurisdiction in France: see case of *Broca and Texier-Micault v. France*, 21 October 2003.

retroactive. Therefore, the authors argue that they have the right to seek redress before the Committee because the discrimination continues against them and their children. Ms. Daufrene-Levrard confirmed that she was married and that her children had automatically been given their father's family name at birth. The authors further note that the State party recognizes them as victims within the meaning of article 2 of the Optional Protocol.

5.4 As to the wish of Ms. Dayras, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard to bear their mothers' family names, the authors maintain that the procedure to change their family names is unlikely to be successful because the Garde des Sceaux does not consider such wishes as amounting to a lawful interest.

5.5 The authors dispute the State party's view that the communication ought to be declared inadmissible because the European Court of Human Rights has already examined the complaint. They allege that the complaint brought to the European Court did not cover discrimination resulting from the new legislation of 18 June 2003, which entered into force on 1 January 2005. At the time the case was brought to the Court, the rules governing the transmission of family names were of a customary nature, while now the authors base their claims on the French revised legislation, in particular article 311-21 of the Civil Code,⁵ in order to demonstrate that substantive equality between men and women regarding the passing on of family names does not exist.

5.6 With regard to the State party's averment that the authors did not exhaust domestic remedies because they did not use the procedure for change of name established by article 61-1 of the Civil Code, the authors reiterate that the purpose of this procedure has not been specifically established to deal with women who wish to take the family name of their mothers as their own and that this procedure is excessively prolonged. In addition, the authors contend that requests under this procedure are rarely made in order to avoid the extinction of the mother's family name. The authors cast doubt on the State party's assertion that the Conseil d'État could set aside existing legislation in order to directly apply the Convention for the Protection of Human Rights and Fundamental Freedoms and invalidate the decree in which the request for a name change was denied. The authors reiterate that the European Court of Human Rights has found French procedures to change a family name to be excessively long.¹ The authors, therefore, submit that there are no effective remedies that would ensure substantive equality between men and women in transmitting family names.

⁵ Article 311-21 of the Civil Code reads as follows: "Where the parentage of a child has been established with regard to his two parents at the latest on the day of declaration of his birth or afterwards but simultaneously, the parents shall choose the family name which devolves upon him: either the father's name, or the mother's name, or both names coupled in the order they choose within the limit of one family name for each of them. Failing a joint declaration to the officer of civil status mentioning the choice of the name of the child, the latter shall take the name of the parent with regard to whom his parentage has first been established and the father's name where his parentage has been established simultaneously with regard to both. Where a child of whom one parent at least is French is born abroad, parents who have not availed themselves of the power to choose the name in the way provided for in the preceding paragraph may make such a declaration at the time of the registration of the record, at the latest within three years of the birth of the child. A name devolving on a first child has effect as to the other common children. Where the parents or one of them bear a double family name, they may, by a joint written declaration, transmit only one name to their children."

5.7 The authors reiterate their request to declare the communication admissible, and only in the final paragraph of their comments on the State party's observation on admissibility do they ask that the State party be requested to comply with article 2 (f) of the Convention on the Elimination of All Forms of Discrimination against Women and ask the Committee to declare the communication admissible.

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

6.1 By its submission of 26 September 2007, the State party reiterates, as its main argument, that the communication ought to be declared inadmissible in the light of the reservation it entered upon ratification to article 16, paragraph 1 (g), of the Convention. The State party reiterates its averment that Ms. Dayras and Ms. Zeghouani lack the quality of victim within the meaning of article 2 of the Optional Protocol because they are childless; that the communication is inadmissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol in relation to Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard and in relation to Ms. Delange with regard to her eldest child; that the same matter has already been examined under another procedure of international investigation or settlement under article 4, paragraph 2 (a), of the Optional Protocol with regard to the part of Ms. Delange's complaint, which concerns alleged discrimination under previous legislation governing the transmittal of family names; and that all available domestic remedies under article 4, paragraph 1, of the Optional Protocol have not been exhausted for the part of Ms. Delange's complaint concerning her youngest child.

6.2 With regard to the complaint made by Ms. Dayras, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard to the effect that they have been unable to take the family name of their mothers as their own, the State party contends that those authors failed to demonstrate having suffered any sex-based discrimination resulting from receiving the family name of their fathers at birth. The State party further explains that in order to ensure stability in respect of a person's civil status, the same rules apply to all siblings, regardless of their sex. The State party therefore contends that this part of the complaint is *ratione materiae* ill-founded.

6.3 With regard to the part of the complaint alleging that the Act of 4 March 2002, amended by the Act of 18 June 2003, is discriminatory towards married women because it gives fathers the right to veto the transmission of the family name of their wives to their children, the State party reiterates that Ms. Dayras and Ms. Zeghouani cannot be victims of a violation of the Convention because they are childless. The State party therefore concludes that this part of their complaint is ill-founded. With regard to the part of the complaint that concerns Ms. Campo-Trumel, Ms. Delange, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard, who all have children who bear the family name of their fathers, the State party maintains that it is imperative to reconcile the right of those authors not to be victims of discrimination in the transmission of family names and the right of their children to stability in respect of their civil status. The State party further explains that a change of family name has an effect on society and that this is the reason why the consent of children aged 13 and above is required for a name change. The State party again referred to the Committee's decision of 22 January 2007 on communication 11/2006, in which it considered that the alleged violation that the author could not transmit her nationality to her son ended when her child reached the age of majority. The State party asks the Committee to follow a similar line of argument with regard

to Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard, who have adult children. It further refers to the right of the child to be registered immediately after birth and to have a name, as enshrined in article 24, paragraph 2, of the International Covenant on Civil and Political Rights and article 8 of the Convention on the Rights of the Child, under which States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations, as recognized by law, without unlawful interference, and to receive appropriate assistance and protection with a view to re-establishing speedily his or her identity when illegally deprived of some or all of the elements thereof. The State party argues that these rights need to be reconciled with the right of a mother to recognition of the discrimination that she suffered at birth because of her sex and notes that none of the authors have indicated how their children feel about changing their family name. The State party therefore submits that the Committee cannot assess the compatibility of the authors' claims with the rights of their children, which are directly at stake. In the light of the above, the State party contends that any discrimination the authors may have suffered ended when their children reached the age of majority. The State party further notes that Ms. Delange, who has a minor child, does not demonstrate that her child would agree to a change of family name and asks the Committee to dismiss this part of the complaint.

6.4 With regard to the compatibility with the Convention of the Act of 4 March 2002, on family names, amended by the Act of 18 June 2003, the State party reiterates that the communication ought to be declared inadmissible in the light of the reservation it entered upon ratification to article 16, paragraph 1 (g), of the Convention.

6.5 The State party draws attention to the progress it has made through the adoption of the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, which permits the father and the mother to choose jointly their children's family name, that is, the name of the father, the mother or a hyphenated name in the order they choose. The State party points out that only in cases where maternal and paternal filiations are established and the parents disagree on the choice of the child's family name is the father's family name transmitted to the child against the mother's wishes. The State party explains that the rationale for the rule is the best interest of the child. The State party also refers to article 16, paragraph 1 (d), of the Convention on the Elimination of All Forms of Discrimination against Women, which provides that the interests of the children shall be paramount.

6.6 The State party further explains that it decided to keep the previous rule in cases of disagreement between the parents in order to prevent litigation on the transmission of family names and to avoid situations in which a child is placed at the centre of a conflict involving his/her parents. It therefore reiterates that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, constitutes a considerable leap towards equality between men and women in the family as well as a reform of major importance. The State party asks the Committee to take into consideration the decision of 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, Switzerland, must be afforded a wide margin of appreciation in matters relating to the transmission of family names. The State party therefore contends that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, is the result of necessary reconciliation between the interest of the child to have and keep his/her family name, the interest of society in maintaining

stability in terms of a person's civil status and equality between spouses in the transmission of family names.

6.7 For the above reason, the State party requests the Committee to declare the communication inadmissible in relation to all the authors.

The Committee's interim decision

7. At its forty-second session, the Committee considered the communication and concluded that it also appeared to raise issues under articles 2, 5 and 16, paragraph 1, of the Convention. The parties were invited to provide observations in relation to those articles.

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

8. By their submissions of 12 January 2009, the authors state that in their view undisputedly articles 2, 5 and 16 of the Convention have been violated. With regard to article 16, they address only article 16, paragraph 1 (g), and the reservation that France entered upon ratification and reiterate their earlier submission that the reservation has no effect and should not be considered on account of the fact that article 17 of the Optional Protocol does not allow any reservation. With regard to articles 2 and 5, which they address together, they give the historical background and social context of French law governing family name. They explain the customary nature of the rule according to which married women traditionally bear their husbands' family names and the origin of such a rule, which is grounded in married women's submission to their husbands' authority, a consequence of which is the impossibility for them to transmit their family names to their descendants. They argue that the fact that the vast majority of married and divorced women continue to use their husbands' or ex-husbands' family names shows the significant social weight of such a custom. The authors therefore submit that the State party did not take any appropriate measures to modify or abolish existing legislation, regulations, custom and practice that constitute discrimination against women, in violation of article 2 of the Convention. They contend that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, has also failed to realize equality between the parents, as it maintains paternal superiority, which was, prior to the legislative reform, of a customary nature. In this regard, the authors claim that the State party has violated article 5, paragraph (a), of the Convention. The authors further reiterate that, because the Act of 4 March 2002, amended by the Act of 18 June 2003, has no retroactive effect and applies only to children born after 1 January 2005 and to children who are younger than 13 as at 1 September 2003, they remain barred from taking their mothers' family names. They also aver that the procedure for a change of name under article 61 of the Civil Code is unlikely to be effective and that such a procedure is also very lengthy and costly. The authors conclude that France is a very conservative country, in which paternal superiority with regard to the transmission of family name persists.

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

9.1 By its submission of 24 April 2009, the State party provides its comments on the Committee's interim decision and also reiterates all its earlier submissions.

9.2 The State party recalls that the authors, who criticize in *abstracto* the French law on the transmission of family names, did not invoke any specific articles of the

Convention in their communication before the Committee, but instead invoked specific provisions of the Convention on Human Rights and Fundamental Freedoms. The State party explains that in the light of the line of argument used by the authors, it had examined the authors' complaint with regard to article 16, paragraph 1 (g), of the Convention. The State party further recalls that it had challenged the admissibility primarily in the light of the reservation it had entered to this article, and that article 17 of the Optional Protocol invoked by the authors relates only to the prohibition to enter reservations to this instrument, the possibility of entering reservations to the Convention being expressly stipulated in article 28 thereof.

9.3 While understanding the Committee's interim decision, which would enable it to extend the consideration of the communication under provisions on which no reservations were entered, the State party expresses the view that this entails serious legal difficulties. The State party explains that the first difficulty relates to the principle of *lex specialis*, according to which the conformity of a national measure with the Convention needs to be assessed in the light of the most specific provisions in the field covered. The State party refers to a report by the International Law Commission reaffirming that the *lex specialis* principle is a generally accepted technique of interpretation and conflict resolution in international law and is applicable between provisions contained in a single treaty or in two treaties or more.⁶ The State party therefore concludes that since article 16, paragraph 1 (g), relates to the choice of family name, and in particular the right of married women to choose a family name which should be considered to include the right to transmit their family name to their children, that article is the only provision in the Convention in relation to which the national legislation governing the transmission of family names should be assessed. The State party also underlines that failure to apply the principle of *lex specialis* could have detrimental consequences as far as reservations and declarations are concerned. Far from ensuring better protection of rights, such a "requalification", could prompt States in the future to formulate reservations with the widest possible reach to the detriment of precise reservations, like the one entered by the State party to article 16, paragraph 1 (g). According to the State party, such a signal sent to States which are not yet parties to the Convention could be extremely harmful to the Convention and the rights it seeks to protect.

9.4 Should the Committee decide to consider the communication under articles 2, 5 and 16, paragraph 1, the State party submits that it would have an impact only on the admissibility aspect of the communication in relation to the reservation, but in no way would it affect the other inadmissibility grounds it has raised in its earlier submissions. The State party therefore argues that some of the authors still would not be able to claim to be victims of discrimination derived from bearing their fathers' family name, since all children, independently of their sex, are named in an identical manner. Furthermore, the authors who do not have children cannot allege that they have suffered discrimination based on sex regarding the transmission of their family name to their descendants. As a consequence, article 2 of the Convention, which prohibits discrimination between women and men, and article 16, paragraph 1, which deals with discrimination against women in all matters relating to marriage and family relations, cannot be invoked and are not applicable.

⁶ Report of the Study Group of the International Law Commission entitled "Fragmentation of International Law: difficulties arising from the diversification and expansion of international law" (A/CN.4/L.682 and Corr.1).

The State party further argues that article 5 is also irrelevant since the law, which the authors are challenging, does not relate to prejudices and customary practices based on the idea of inferiority or the superiority of either of the sexes.

9.5 With regard to the procedure for a change of name and the exhaustion of domestic remedies, the State party reiterates that article 61-1 of the Civil Code allows a person with a lawful interest to apply for a change of name and that the decision by the Garde des Sceaux can be appealed before the administrative jurisdictions (Administrative Tribunal, Administrative Court of Appeals and Conseil d'État). The State party stresses the point that the authors have neither established nor contended that they had exhausted domestic remedies nor explained at the national level their interest in changing their or their children's family names. The State party expresses the view that in such circumstance the authors cannot allege that domestic remedies are ineffective and refers again to case law in which the administrative jurisdiction had recognized that individuals could have a legitimate interest in taking their mothers' family name. The State party also draws the Committee's attention to a recent decision of the European Court of Human Rights delivered on 17 March 2009, in which it declared a communication inadmissible on the grounds that the author had not, in the context of article 61 of the Civil Code, appealed against the negative decision of the Garde des Sceaux to the administrative jurisdictions.⁷

9.6 The State party therefore reiterates its request to the Committee to declare the communication inadmissible.

Issues and proceedings before the Committee concerning admissibility

10.1 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.

10.2 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.

10.3 The Committee has carefully considered all the arguments of the authors in support of their claim, 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. In the light of all the submissions made by the parties and especially the doctrine of *lex specialis* raised by the State party, the Committee is of the view that the present communication should be examined under article 16, paragraph 1 (g), of the Convention.

10.4 The Committee notes that the State party challenges the admissibility of the communication on the grounds that Ms. Dayras and Ms. Zeghouani are not victims under article 2 of the Optional Protocol.

10.5 The Committee notes that Ms. Dayras and Ms. Zeghouani are neither married nor do they live in husband-and-wife relationships, nor do they have any children to

⁷ European Court of Human Rights, decision on admissibility, *Anne Duda v. France*, 17 March 2009, No. 37387/05; see also *mutatis mutandis*, *Michèle Dayras and others v. France*, 6 January 2005, No. 65390/01.

whom 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”.⁸

10.6 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. 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 its beneficiaries are only married women, women living in de facto union and mothers.

10.7 The Committee therefore shares the view of the State party that since Ms. Dayras and Ms. Zeghouani are not married, do not live in husband-and-wife relationships and do not have children, they cannot claim rights pertaining to the use or the transmission of family names and cannot be victims of a right whose beneficiaries are only married women, women living in de facto union or mothers. Although the Committee shares the view of the authors that the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, is still discriminatory against women, the Committee notes that since Ms. Dayras and Ms. Zeghouani are childless, they have not personally been adversely affected by French legislation currently in force on the transmission of family names to children. The Committee therefore concludes that Ms. Dayras and Ms. Zeghouani are not victims within the meaning of article 2 of the Optional Protocol, and therefore finds the communication inadmissible in relation to those two authors.

10.8 Further, the Committee shares the view of the State party that Ms. Dayras, Ms. Daufrene-Levrard and Ms. Muzard-Fekkar, who also wish to take their mothers’ names, have not attempted to exhaust domestic remedies and have not shown that they suffer any sex-based discrimination when they receive the family name of their fathers at birth, as the family name they are given is not dependent on their sex.

10.9 With regard to Ms. Daufrene-Levrard, Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Delange, whose complaint relates to the prevailing discriminatory provisions in French legislation which they allege prevent them from transmitting their family names to their children, although the Committee shares their concern that their children will not benefit from the new legislation as the Act of 4 March 2002 on family names, amended by the Act of 18 June 2003, applies only to children born after 1 January 2005 and to children who are younger than 13 as at 1 September 2003, the Committee notes that none of the above five authors have given any details concerning the consent or willingness of their adult children to change their family names. The Committee is of the view of that, although Ms. Daufrene-Levrard, Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Delange, all of whom are married and have children who bear their fathers’ family name, might consider themselves victims of discrimination because they were unable to transmit their family names to their

⁸ The Human Rights Committee has clarified that “a person can only be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can in the abstract, by way of an *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant” (see *Aumeeruddy-Cziffra v. Mauritius*, communication No. 35/1978).

children, the discrimination against them ended when their children reached the age of majority. The Committee therefore concludes that as at 1 January 2005, all the children of these five authors, except the youngest child of Ms. Delange, had reached the age of majority and had therefore become the primary-rights holders in relation to acquiring or changing their family names. From then on, it is up to them, and not their mothers, to decide whether or not to change their family names. The Committee came to a similar conclusion in communication 11/2006 (*Salgado v. United Kingdom*) when it decided that the alleged violation that the author could not transmit her nationality to her son ended when the latter reached the age of majority.⁹

10.10 The Committee further notes that the Optional Protocol entered into force for France on 22 December 2000. At that time, the authors' children, except Ms. Delange's youngest child, had already reached the age of majority, and only they could decide to change their family name. Although the authors might have been victims of the violation of their right to equality in the transmission of their family name to their children, that right could be claimed by them only while the children were minors. Accordingly, the Committee considers that the facts, including the period of time during which the authors could have initiated proceedings to change their children's family name, occurred prior to the entry into force of the Optional Protocol. The Committee therefore concludes that the communication with regard to Ms. Daufrene-Levrard, Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Delange with regard to her eldest child is inadmissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol.

10.11 In accordance with article 4, paragraph 1, of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. With regard to Ms. Delange's claim relating to her youngest child, the Committee has carefully considered, on the one hand, the arguments of the State party to the effect that Ms. Delange did not exhaust domestic remedies to obtain a change of name for her youngest child under article 61-1 of the French Civil Code, which stipulates that every person with a lawful interest can apply for a change of name, and on the other hand, the author's argument to the effect that this procedure is unreasonably prolonged and unlikely to bring effective relief. The Committee notes that Ms. Delange has not made any attempt whatsoever to exhaust domestic remedies. She has not initiated any procedure under domestic law to change her youngest child's family name. Nor has she provided information to the Committee as to whether her minor child consents to a change of family name. Under article 61-1 of the Civil Code, children aged 13 and above have to give their consent to a name change. The Committee notes the author's reference to the case of *Mustafa v. France* to claim that the average time needed for the completion of a procedure under article 61-1 of the Civil Code is at least 10 years. The Committee also takes note of the author's contention that the Garde des Sceaux has ruled in similar cases that the interest a woman may have in taking her mother's family name does not amount to a lawful interest but rather is based on emotional grounds. On the other

⁹ See *Constance Ragan Salgado v. United Kingdom of Great Britain and Northern Ireland*, CEDAW/C/37/D/11/2006, decision of 22 January 2007, para. 8.4.

hand, while noting that the case law cited by the State party in support of its contention that a wish to bear one's mother's family name can constitute a lawful interest dates back to 1985 and 1986 and relates to applications made by men to take their mother's family name, the Committee takes into account all the information provided by the State party concerning improvements in the duration of administrative procedures as well as the decision of the Conseil d'État in 2002 upholding the right of a claimant to obtain judgement by an administrative judge within a reasonable length of time and a decision of the European Court of Human Rights in February 2004 on an effective remedy in an administrative jurisdiction in France. The Committee especially takes note of all efforts undertaken to ensure the timely functioning of administrative jurisdictions and especially of article R 112-2 of the Code of Administrative Justice, which provides that anyone who has a reason to complain about the excessive length of a procedure before an administrative tribunal or an administrative appeals court may refer the matter to the Permanent Inspection Chief of administrative jurisdictions, who has the power to remedy the situation. The Committee also notes that the Conseil d'État has put aside in several instances domestic provisions considered to be in conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms and, accordingly, it shares the view of the State party that Ms. Delange, as the parent of a minor child, could still apply for a change of name for her youngest child if the latter gives his/her consent. In the event that the Garde des Sceaux and the Administrative Tribunal reject her application on the grounds that there is no lawful interest, she could still appeal to the Conseil d'État.

10.12 In the light of the above, the Committee is of the view that, although the procedure for a change of name under article 61-1 of the Civil Code can be improved in its application and its interpretation, it cannot be said to be unreasonably prolonged and/or unlikely to bring effective relief in the case of Ms. Delange, who has not made the slightest effort to avail herself of available domestic remedies. The Committee therefore finds the present communication inadmissible in relation to Ms. Delange with regard to her youngest child because of the non-exhaustion of domestic remedies.

10.13 The Committee therefore decides:

(a) That the communication is inadmissible for Ms. Dayras and Ms. Zeghouani because they lack the quality of victim under article 2 of the Optional Protocol;

(b) That the communication is inadmissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol with regard to Ms. Daufrene-Levrard, Ms. Campo-Trumel, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Delange with regard to her eldest child;

(c) That the communication is inadmissible for non-exhaustion of domestic remedies under article 4, paragraph 1, of the Optional Protocol for Ms. Delange in respect of her youngest child;

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

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

11.1 Although we agree with the conclusion that the communication is inadmissible, we disagree with the majority of the Committee in relation to the reasons for inadmissibility. In our opinion, the communication should have been declared inadmissible under article 4, paragraph 1, of the Optional Protocol because all available domestic remedies have not been exhausted.

11.2 We have carefully considered all the arguments of the authors in support of their claim, as well as the grounds raised by the State party in challenging the admissibility of the communication. We have also considered the additional observations of both the authors and the State party submitted in the light of the Committee's interim decision taken at its forty-second session (see paras. 7-9 in the above decision).

11.3 We have further taken note of the argument raised by the State party on the reservation and on the doctrine of *lex specialis*.

11.4 It is our understanding that the domestic legislation in France that the authors are challenging in the present communication is as follows:

(1) The customary law which was effective at the authors' birth provided that a child born in wedlock was given the family name of his/her mother's husband;

(2) The Act of 4 March 2002 on family names, as amended by the Act of 18 June 2003, which entered into force on 1 January 2005 (hereinafter "the amended Act of 2003") enabled parents to pass on either parent's family name to their children, or a hyphenated name using the family names of both parents. However, if the spouses disagree, the father has the veto right so that the father's family name will be transmitted to the children. Furthermore, the amended Act of 2003 does not have retroactive effect; therefore it does not apply for persons born before 1 January 2005;

(3) The Civil Code contains the following provisions:

Article 61: "A person who establishes a lawful interest may apply for a change of his name. The application for a change of name may be made for the purpose of preventing the extinguishment of the name borne by an ancestor or a collateral of the applicant up to the fourth degree."

Article 61-1: "A person concerned may challenge before the Conseil d'État the decree establishing a change of name within two months after its publication in the Official Journal."

11.5 We are of the view, having carefully examined the substance of the arguments of both parties, that the authors' core assertion is that the State party did not take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. We, therefore, construe that the above-mentioned assertion is made pursuant to article 16, paragraph 1, of the Convention. Article 16, paragraph 1, provides that States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, the certain rights provided in subparagraphs (a) to (h) set out

therein. We note that these subparagraphs are not exhaustive but present examples of matters subject to the chapeau of article 16, paragraph 1. Further, given the clarification from the authors on the Committee's interim decision, we note that the authors' assertion includes the argument based on articles 2 and 5 of the Convention, which provide for the general principle of equality between women and men.

11.6 It is our understanding that the authors' claims can be classified in the following three categories in accordance with their personal status:

(1) Ms. Dayras and Ms. Zeghouani, both of whom are unmarried women without any children, wish to take their mothers' names as their family names. We note that there is a difference of understanding between the Committee's majority opinion and us regarding Ms. Zeghouani's intention in the present communication. It is our understanding that Ms. Zeghouani wishes to take her mother's name as her family name, although the Committee's majority interpretation differs from ours;

(2) Ms. Muzard-Fekkar and Ms. Daufrene-Levrard, both of whom are married and have children, wish to transmit their names to their children and to take their mother's names as their family names;

(3) Ms. Campo-Trumel, Ms. Delange and Ms. Remy-Cremieu, all of whom are married and have children, wish to transmit their names to their children (but are not interested in taking their mothers' names as their names).

11.7 We note that the first ground on which the State party is challenging the admissibility of the communication is on its incompatibility with article 16, paragraph 1 (g), of the Convention in the light of the reservation it has entered to that article. However, we are of the view that article 16, paragraph 1 (g), of the Convention is irrelevant in the circumstances of the present communication for those four authors whose claims are aimed to take their mothers' names, as what is at stake is the equality in marriage and family relations provided in article 16, paragraph 1, in conjunction with articles 2 and 5. These four authors do not focus on article 16, paragraph 1 (g), specifically. We agree with the State party that article 16, paragraph 1 (g), which provides "the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation", aims to enable a married woman or a woman living in a husband-wife relationship to choose her family name. On the other hand, this provision does not provide for the right to change one's family name given upon one's birth. Nor is it clear whether such provision covers a woman's right to pass on her family name to her child. Accordingly, we are of the opinion that article 16, paragraph 1 (g), does not apply to the four authors, namely, Ms. Dayras, Ms. Zeghouani, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard.

11.8 As the examination of the compatibility of reservations with the Convention is necessary only in the case that the Committee considers the applicability of the article in relation to which a reservation has been entered, we do not see it necessary to examine the validity or effect of the reservation in this case. In this regard, we do not agree with the approach of the Committee, as it handles the present communication in the light of article 16, paragraph 1 (g), of the Convention while making no assessment of the reservation to the said provision.

11.9 We further note the argument of *lex specialis* submitted by the State party. This is the doctrine that the law governing a specific subject (*lex specialis*) is not

overridden by a law which only governs general matters (*lex generalis*). We are of the view that this doctrine is irrelevant in the present communication because one cannot see such a special and general relation between article 16, paragraph 1, and article 16, paragraph 1 (g), of the Convention. In our view, as explained above, the claim of the authors to take their mothers' names is not within the scope of the latter; therefore, these two provisions are not duplicative but may constitute an independent ground of claim.

11.10 We note that the State party challenges the admissibility of the communication on the grounds that Ms. Dayras and Ms. Zeghouani are not victims under article 2 of the Optional Protocol, which 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".

11.11 We recognize that Ms. Dayras and Ms. Zeghouani are neither married nor do they live in husband-and-wife relationships, nor do they have any children to whom to pass on their family names. However, we note the fact that what Ms. Dayras and Ms. Zeghouani claim is not the right to transmit their names to their children (as it is apparent that they do not have any children), but they complain that they cannot change their family names from the fathers' names to their mothers' names and that bearing the fathers' names against their will constitutes sex-based discrimination.

11.12 We share the view of the authors that the customary law which was in force at the birth of the authors and codified by law No. 2002-304 of 4 March 2002, as amended in 2003, is discriminatory against women, and that the authors have suffered sex-based discrimination by bearing their fathers' names, and that the State party has not taken appropriate measures because the amended law of 2003 does not have retroactive effect to rectify past violations.

11.13 We, in particular, express our disagreement with the State party that the mother's name right needs to be reconciled with the children's right to be registered immediately after their birth to secure the stability in respect of their civil status upon birth. In our opinion, no matter how important it is to guarantee the children's right to be registered, the principle of gender equality must have the same weight and there is no reason why only mothers, not fathers, must reconcile with the right of children.

11.14 Although the authors are childless, they are adversely affected by the French legislation currently in force on family names and on the name change, because they suffer the discrimination by bearing their father's name, which was automatically given to them pursuant to the sexist law in force at the time. The fact that such discrimination equally affected all children irrespective of their sex does not change the fact that the authors acquired a family name under a rule which was discriminatory, as it applied only against women's last names, thus amounting to a form of discrimination against women.

11.15 We paid due consideration to the State party's argument that the authors can submit an application for a name change pursuant to article 61 of the Civil Code; however, we interpret that such provision only allows a person who establishes a lawful interest to change his/her name and that such application may be made for the purpose of preventing the extinguishment of the family name. We are dubious about the objective of such provision, that is, the purpose of provision of the Civil Code quoted above is incompatible with gender equality, because the ground for

permitting a name change is to prevent the extinguishment of the family name, but is not to maintain a mother's family name. In this connection, we reiterate the Committee's concerns and recommendations following the consideration of the State party's report in January 2008, in which it recommended that the State party amend its legislation on family names in order to conform fully to the Convention (see CEDAW/C/FRA/CO/6, para. 35).

11.16 With regard to the test of victim requirement, we are of the view that the victim status depends on whether the authors have been directly and personally affected by the violation alleged. An author may claim to be a victim only if she/he is personally affected by the act or omission of the State parties at issue, and no individual may in the abstract by way of an *actio popularis* challenge a law or practice claimed to be contrary to the Convention (see decision of the Human Rights Committee of 26 July 1994 in the case of *Poomgavanam v. Mauritius*).

11.17 We are of the view that the authors, who claim that bearing their fathers' names is a violation of the rights set forth in the Convention, are directly and personally affected by the alleged violation and that their argument is not an *actio popularis*. Therefore, the authors who wish to take their mothers' family name, namely Ms. Dayras, Ms. Zeghouani, Ms. Muzard-Fekkar and Ms. Daufrene-Levrard, are victims within the meaning of article 2 of the Optional Protocol, regardless of their having children or not.

11.18 We, however, note that the above four authors have not exhausted domestic remedies in accordance with article 4, paragraph 1, of the Optional Protocol. Although we are concerned about the effectiveness of the relief provided by the State party regarding the name change as we stated earlier, we still maintain the view that the authors at least must have attempted filing or appealing in the competent domestic court. We therefore declare the communication of these four authors inadmissible in relation to their allegations regarding taking their mothers' family names.

11.19 We are of the view that the authors who have children and wish to transmit their names to their children, namely, Ms. Campo-Trumel, Ms. Delange, Ms. Muzard-Fekkar, Ms. Remy-Cremieu and Ms. Daufrene-Levrard, are too, in principle, victims within the meaning of article 2 of the Optional Protocol, on the grounds that the French legislation prevents them from transmitting their family names to their children. We share their concerns that their children did not benefit from the amended Act of 2003 because it does not have retroactive effect.

11.20 On the other hand, we agree with the State party's argument regarding the above five authors that the discrimination against them ended when their children reached the age of majority because the primary rights-holders in relation to changing or acquiring the family name are the children thereafter.

11.21 In this regard, we note that the Optional Protocol entered into force for France on 9 June 2000, and at that time all the children of the five authors, except the youngest child of Ms. Delange, had reached the age of majority. Thus the primary rights-holders in relation to changing or acquiring the name are not the authors. The Committee came to a similar conclusion in communication No. 11/2006 (see *Salgado v. United Kingdom*), when it decided that the alleged violation that the author could not transmit her nationality to her son ended when the son reached the age of majority.

11.22 In accordance with article 4, paragraph 1, of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. With regard to these criteria, we note that neither the authors nor their children have attempted to use the procedure under article 61 of the French Civil Code, which stipulates that every person with a lawful interest can apply for a change of name. We take note of the authors' allegation that this procedure is unreasonably prolonged and unlikely to bring effective relief. We could conclude that this is likely to be the case, if we connect the facts presented by the different authors in communication No. 12/2007 with respect to the same State party regarding the name right of women; however, we have not been sufficiently convinced to adopt in this case the same decision as in communication No. 12/2007. Without any attempt by the authors or their children as potential right-holders to apply for such remedies, we cannot determine at this point that the domestic remedies are unreasonably prolonged and/or unlikely to bring effective relief. We therefore find that for the above five authors with children, too, the present communication is inadmissible because of the non-exhaustion of domestic remedies.

(Signed) Yoko **Hayashi**

(Signed) Dubravka **Šimonović**

(Signed) Ruth **Halperin-Kaddari**

(Signed) Silvia **Pimentel**

(Signed) Violeta **Neubauer**

(Signed) Saisuree **Chutikul**

(Signed) Victoria **Popescu**
