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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under the Optional Protocol, concerning Communication No. 176/2021*,**

Communication submitted by:	Y.I.R. (not represented by counsel)
Alleged victim:	The author
State Party:	Switzerland
Date of communication:	23 February 2021
References:	Transmitted to the State Party on 8 December 2021 (not issued in document form)
Date of adoption of decision:	17 February 2026
Subject matter:	Gender-based stereotypes perpetuated by the judiciary regarding the unequal sharing of responsibilities in marriage and the division of pension assets following divorce
Procedural issues:	Exhaustion of domestic remedies; insufficient substantiation
Substantive issues:	Gender stereotypes; discrimination
Articles of the Convention:	2, 5 and 16
Article of the Optional Protocol:	4 (1) and (2)

* Adopted by the Committee at its ninety-second session (2 – 20 February 2026).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barriteau, Rangita De Silva De Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Yamila González Ferrer, Dafna Hacker Dror, Dafna Hacker Dror, Nahla Haidar, Madina Jarbussynova, Marianne Mikko, Hong Mu, Ana Pelaez Narvaez, Jelena Pia Comella, Rhoda Reddock, Elgun Safarov, Erika Schläppi, Natasha Stott Despoja, Genoveva Tisheva and Patsili Toledo Vásquez.

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1. The communication is submitted by Y.I.R., a Swiss national born in 1955. The author claims that Switzerland violated her rights under articles 2, 5 and 16 of the Convention by issuing a gender-biased decision establishing unequal responsibilities in marriage and the stereotyped allocation of household duties to women. The Optional Protocol entered into force for the State Party on 29 December 2008. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author married L.L., a national of Israel, in 2004. Since her husband had no work at the time of the marriage, it was agreed that he would run the household, at least until he found a job. However, he did not make any effort to seek a job or to take care of the common household. The author not only had to provide for the family financially with the income from her full-time job, but she also did most of the housework (for example, shopping, cooking, cleaning, laundry, gardening and administrative tasks). The author increasingly suffered from stress, which led to burnout, and she was repeatedly unable to work. In February 2014, shortly after reaching his retirement age and obtaining Swiss citizenship, her husband moved out of the home. Due to her health problems, the author was forced to take early retirement by the age of 60, resulting in a significant loss of income and old-age provisions.

2.2 On 11 March 2015, the couple filed a divorce petition at the Oberland Regional Court. In the divorce proceedings, the division of the pension assets, which the author had acquired during the marriage, remained a point of contention. The author filed an action against the division, justifying that the splitting would be an abuse of a legal right by the husband who had not contributed during the marriage.

2.3 By its decision of 1 December 2016, the author's request was rejected by the Oberland Regional Court, and she was ordered to pay her ex-husband compensation of 261,274 Swiss francs (SwF). Regarding the distribution of conjugal responsibilities, the Court's decision established that the husband had made little contribution to the marital union and that the author alone had provided the parties with a living and taken care of the property. However, the Court did not recognize an abuse of a legal right by the husband.

2.4 On 1 January 2017, an amendment to the Swiss Civil Code came into force. Among other provisions, article 124*b* concerning exceptions to the division of occupational pensions was introduced. According to the article: "The court may award the entitled spouse less than half of the termination benefits or rule that they should not be divided if good cause exists". The author refers to decision ATF 133 III 497,[1] which was handed down in a similar divorce case, in which the Federal Supreme Court stated: "For example the case where the potentially entitled spouse has grossly violated his duty to contribute to the maintenance of the family. It would be unsatisfactory if in this case the spouse could nonetheless demand that the termination benefit be split in half".

2.5 On 16 March 2017, the author appealed to the High Court of the Canton of Bern against the decision of the Oberland Regional Court and requested the Court to reject the division of the termination benefit. The case was judged under the new divorce legislation.[2] In its decision issued on 4 July 2018, the High Court argued that the

[1] This was a similar divorce case, where the husband scarcely contributed to the maintenance of the family, while the wife worked full time and took care of the household. The two children were cared for by the parents of the wife. The Federal Supreme Court ruled that there was no abuse of a legal right by the husband, and the woman was ordered to pay to the man a proportion of her pension assets.

[2] Swiss Civil Code, title four: Divorce and separation.

present case was not comparable to that in decision ATF 133 III 497 because, in the reference case, unlike the case at stake, there had been children that the husband did not care for, which had led to an unacceptable double and triple burden on the working spouse, while in the present case there were no children. The Court therefore ordered the author under the new law to pay the husband compensation in the amount of SwF 218,166 plus interest.

2.6 On 25 August 2018, the author appealed against this judgment to the Federal Supreme Court. She recalled the actual spirit and purpose of the division of pension assets and argued that it was intended to indemnify the spouse who ran the household, as she or he could not build up an occupational pension through that unpaid work. Moreover, the author maintained that her case was indeed comparable to that in decision ATF 133 III 497 with regard to the essential points. In both cases, the wives carried a similar double burden of employment and household responsibilities, as the children in the reference case were cared for by the wife's parents, and in both cases, the husbands neglected their marital responsibilities completely.

2.7 On 11 November 2019, the Federal Supreme Court issued its decision. The arguments of the author on the application of article 124*b* of the Swiss Civil Code were not considered. The Court referred to its decision ATF 145 III 56[3] and reasoned: "Despite the unequal allocation of marital responsibilities, one cannot speak of a similarly shocking situation as in ATF 145 III 56, where the wife concerned also had to take responsibility for the children and in addition both she and the children were exposed to mental and physical violence by the husband". Thus, the judgment of the High Court of the Canton of Bern was confirmed, and the author was ordered to pay compensation in the amount of SwF 218,166 plus interest to her ex-husband.

2.8 The enforcement of the decision was delayed due to the state of emergency caused by coronavirus disease (COVID-19). On 28 May 2020, the High Court of the Canton of Bern ordered the author's pension fund to pay her ex-husband the established compensation amount. As a result, the author's monthly pension was reduced from SwF 4,219 to SwF 3,263, retroactively, from 1 April 2017.

2.9 The author indicates that she has exhausted all the available domestic remedies through lawsuits against her ex-husband, wherein the applicable Swiss laws were invoked. Since the main subject of the decisions was the division of pension assets in the divorce after unequal fulfilment of marital responsibilities, the issue brought to the attention of the Committee was raised before the Federal Supreme Court as the last instance in Switzerland.

Complaint

3.1 The author claims that the State Party violated her rights under articles 2, 5 and 16 of the Convention.

3.2 With regard to the violation of article 16, the author claims that, due to the persistence of gender-based stereotypes, the distribution of marital responsibilities is still subject to gender segregation. In particular, domestic and family work is attributed to women by default. The author pointed out to the Oberland Regional

[3] On 6 November 2018, the Federal Supreme Court rendered a key decision (ATF 145 III 56) on the application of article 124*b* of the Swiss Civil Code. The case involved a situation in which the husband contributed little to the maintenance of his wife and two children, while most of the workload was on the wife. In addition, he subjected them to mental and physical violence and otherwise engaged in problematic behaviour. The Federal Supreme Court refused to divide the wife's occupational pension in that case. However, it stipulated that "good cause" according to article 124*b* of the Swiss Civil Code may be recognized only in "particularly shocking situations".

Court that it was hardly possible to run a household on one's own together with working a full-time job. The judge ridiculed her statement, finding that she exaggerated the housework burden and putting the blame on her for not being able to juggle work-related and domestic duties. The role of the husband was not questioned, and it was not even considered whether he could or should have participated in the housework. Instead of counteracting the gender-based stereotype, the Court itself had applied, reinforced and perpetuated it.

3.3 The author argues that the High Court of the Canton of Bern essentially downplayed the division of responsibilities in marriage as a private matter in which the State does not interfere. This is contrary to the sense of the Convention, under which the State Party has an obligation to eliminate discrimination occurring in the private sphere. Furthermore, article 16 (1) (c) provides for equal responsibilities during marriage and at its dissolution. A situation of unequal responsibilities is therefore legally relevant, and the State Party must rule thereon when the matter is brought before a court.

3.4 The author also maintains that the Federal Supreme Court downplayed the distribution of responsibilities in marriage as legally irrelevant. It held that "despite the unequal allocation of marital responsibilities, one cannot speak of a similarly shocking situation as in ATF 145 III 56, where the concerned wife also had to take responsibility for the children and in addition both she and the children were exposed to mental and physical violence by the husband". In that regard, the author claims that, by taking measures only in "particularly shocking situations", the Federal Supreme Court set a very high tolerance threshold for discrimination against women in marriage. In view of the Convention, this attitude is not justifiable. The Convention is aimed at the elimination of all forms of discrimination against women, not just the particularly shocking ones. Moreover, the author adds that, in the past, the Committee has expressed its concern about inadequate reference to the Convention in judicial proceedings, as well as the limited awareness of the Convention and the general recommendations of the Committee as important tools of interpretation within the judiciary and the legal profession in Switzerland.[4] Thus, the author claims that the State Party is violating its obligations under article 16 of the Convention.

3.5 With regard to article 2, the author claims that the State Party does not provide any protection against de facto discrimination against women and therefore fails to fulfil its obligations in this regard. She submits that the law is implicitly oriented towards the traditional stereotyped roles, whereby the man is the main breadwinner, and the woman takes care of the household. For this model, it provides a fair solution by granting the wife an old-age provision for her unpaid work. However, for women with a full-time job, this is usually not the case as they often carry a double burden of employment and household responsibilities owing to pre-existing inequalities.

3.6 The author submits that this double burden is a source of stress that reduces the quality of life and can lead to health problems, as happened to her. The double burden brought substantial disadvantages to the author, who was under constant time pressure, which led to burnout.

3.7 The courts treated the author in exactly the same way as they would have treated a husband with a wife who takes on the role of homemaker. The husband would have had to share his pension assets, but he would have benefited from his wife's unpaid work at home. Since he probably would not have suffered from burnout, he could have continued to work after the divorce and built up assets again. The courts did not consider the inequality due to the unequal workloads, which is a problem that predominantly affects women. Thus, because they did not take into account pre-

[4] CEDAW/C/CHE/CO/4-5, para. 10.

existing inequalities, the judgments are de facto discriminatory. She recalls the statement by the High Court of the Canton of Bern that: "The mere fact that the full-time working spouse – for whatever reason – also takes on a substantial part of the household duties is not sufficient" (to apply the exception set out in article 124*b* of the Swiss Civil Code). The author argues that because the new law allows for de facto discrimination against women who bear a double burden, the State Party is not fulfilling its obligations and there is a need for further action.

3.8 Lastly, with regard to article 5 of the Convention, the author claims that the courts were guided by the stereotype that housework is a woman's domain. Moreover, the author indicates that, at the first hearing at the Oberland Regional Court, the judge wore a tie that depicted a large tongue on it. He remarked: "For once it is catching a woman, this is now equal rights". Furthermore, the judge criticized the author's statements as being "relatively unemotional". It is a classic stereotype that women are dominated by emotions. The husband, on the other hand, was not expected to be emotional; he was described as "calm and patient … without getting upset", suggesting serenity and innocence. The author highlights that the judge's description of the husband was a projection of his stereotyped idea of the superiority of men.

3.9 In addition, the author had stated that the husband had uttered threats against her; the threats were not very specific, for example, he had said that she would regret it, but he also made gestures of throat-cutting. The judge asked the husband just one single question on the matter and his answer was deemed sufficient for the judge – a man's word counted. Finally, without making much effort to shed light on the matter, the judge ruled that there was not sufficient evidence to prove any serious threats. The judge assumed that the author was just an overanxious woman unable to assess a situation rationally. The matter was then downplayed as merely a "tense atmosphere" and depicted as completely ordinary and acceptable during a marital break-up.

3.10 The author claims that the unfavourable and gender-biased image that the first instance judge drew of her was adopted by the courts of appeal despite attempts at rectification. This negative image certainly had an influence on the judges of the higher instances and was reflected in the judgments that they issued. Thus, the author argues that the State Party failed to fulfil its obligations to prevent gender bias in court procedures, which constitutes a violation of article 5 of the Convention.

State Party's observations on admissibility and the merits

4.1 On 7 July 2022, the State Party submitted its observations. It indicated that some clarifications as to the facts were needed, stating that the author's marriage to L.L. followed a four-year long-distance relationship and that she was aware of his serious illness (prostate cancer) at the time of marriage. Moreover, according to her treating physician, her psychological issues and burnout were attributed to a conflict with her employer, and domestic circumstances or L.L.'s behaviour were not found by national authorities to be proven causes or contributing factors.

4.2 On admissibility, the State Party submits that the author did not argue at any stage of the domestic proceedings, either expressly or in substance, that the division of occupational pension entitlements or the procedure related thereto was discriminatory within the meaning of the Convention. According to the State Party, she implicitly acknowledges this herself by stating, in her communication, that although the gender aspect was evident in the domestic proceedings, none of the courts addressed it.

4.3 The State Party notes in this context that, under the Federal Supreme Court Act of 17 June 2005 (LTF, RS 173.110), appeals must be reasoned. Submissions must indicate the conclusions, grounds and evidence (article 42 (1) of the Act). Regarding

the grounds, they must briefly explain how the contested decision violates the law (article 42 (2) of the Act). Furthermore, there is a qualified reasoning requirement for violations of fundamental rights, including those under the Convention. The Federal Supreme Court examines such violations only if the grievance has been invoked and substantiated by the appellant (article 106 (2) of the Act). This means that the appellant must clearly and specifically explain, based on the reasoning of the contested judgment, how constitutional rights have been violated (ATF 136 I 65, para. 1.3.1). Contrary to what the author suggests, the Federal Supreme Court was therefore not able to examine ex officio the question of possible discrimination within the meaning of the Convention. In the light of the foregoing, the State Party invites the Committee to declare the communication inadmissible under article 4 (1) of the Optional Protocol.

4.4 The State Party further elaborates on the compatibility of internal decisions with the guarantees of the Convention and with the Committee's general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution. The State Party notes that Swiss law requires that occupational pension entitlements accumulated during marriage and until divorce proceedings begin be divided between spouses (art. 122 of the Swiss Civil Code). However, under article 124*b* (2) of the Swiss Civil Code, a judge may award less than half – or none – for valid reasons. These include inequity arising from the liquidation of matrimonial property or the spouses' post-divorce financial situation, as well as differing pension needs, such as significant age gaps. While the principle of equal division remains central, the law allows flexibility to avoid unfair outcomes. These provisions came into force on 1 January 2017.

4.5 The Federal Supreme Court emphasized that pension division is not purely private but involves public interests due to its link with old-age, survivor's and disability insurance. The revised law broadened judicial discretion compared with the previous regime, enabling partial or total exclusion of equal division even against the parties' wishes. Examples of inequity include cases where one spouse has a modest income and basic pension rights while the other is financially secure even without second-pillar benefits. Other valid reasons may include failure to meet maintenance obligations, although the principle of equal division must not be undermined.

4.6 Case law under the former law (ATF 133 III 497) clarified that abuse of rights could justify refusing division only in extreme cases, such as sham marriages or situations in which spouses never cohabited. Violations of marital duties alone do not suffice. Overall, the framework seeks to balance fairness and flexibility while preserving the core principle of sharing pension entitlements acquired during marriage.

4.7 In a landmark ruling (ATF 145 III 56) of 6 November 2018, the Federal Supreme Court clarified that judges may refuse an equal division of occupational pension assets in divorce only under exceptional circumstances, beyond those explicitly listed in article 124*b* (2) of the Civil Code. The general principle is that marital conduct should not influence pension division; however, the law allows judges to consider serious breaches of a spouse's duty to support the family, but only in a restrictive manner to preserve the core principle of equal sharing. In the case at hand, the husband had persistently failed to fulfil his family obligations, neglected childcare and household duties, incurred debts his wife had had to repay, exercised controlling and abusive behaviour, and had gambled away part of her salary, leaving the family without basic necessities. Given these extreme circumstances, the Court upheld the Cantonal Court's decision to deny him any share of the occupational pension assets, even though this left his own pension provision inadequate.

4.8 As to the circumstances of the present case, the State Party submits that it differs from the traditional situation where the husband is the primary earner, and the wife reduces her professional activity to manage household duties. In this situation, the author maintained full-time employment throughout the marriage, while L.L. did not contribute financially because his business venture never generated any income. According to the author's statements, she initially did not wish to marry L.L. Over time, she came to believe that marriage might offer certain advantages, such as L.L. taking care of the household while she continued her full-time employment, as managing the household alongside such a workload would have been too much for her. The idea of having L.L. as a stay-at-home husband and the prospect of companionship were also a factor. At the time, L.L. reportedly told her that, due to his prostate cancer, he had only two to three years to live, so compassion may also have been a motive behind her decision to marry him.

4.9 Domestic responsibilities were unevenly distributed. The author handled most tasks, including shopping, cooking and maintaining the home and garden, while L.L.'s contributions were limited and inconsistent. He vacuumed weekly and attempted laundry, but his mistakes led to damaged clothing. He did not perform other cleaning tasks as requested. Financially, the author managed L.L.'s expenses, occasionally giving him money or paying for items directly, since he refused a regular allowance. L.L. acknowledged his lack of financial contribution but claimed that he supported the household through cleaning and meal preparation, even though those efforts were minimal.

4.10 The financial disparity between the spouses was significant. The author had a strong economic position, earning a high salary during her career and later receiving substantial amounts in pensions. She also owned securities worth approximately 1 million Swiss francs and a mortgage-free property. In contrast, L.L. lived on a modest pension and supplementary benefits intended to cover basic needs, with no personal assets. His income consisted of a small old-age and survivor's insurance pension, an Israeli provident fund payment and federal supplementary benefits.

4.11 Overall, the case illustrates a reversal of traditional roles, with the author as the sole breadwinner and L.L. contributing minimally both financially and domestically. The author's expectations of a balanced arrangement were not met, and the relationship was marked by significant economic and practical inequalities.

4.12 The State Party indicates that the principle of sharing occupational pension entitlements was introduced in 2000 to address inequalities arising from traditional marital roles, whereby women were often disadvantaged after divorce. Before the reform, occupational pensions were tied only to employment, meaning that spouses who focused on household duties had limited or no pension rights. The reform ensured that pension entitlements accrued during marriage would be divided equally between spouses, regardless of role distribution. A subsequent revision in 2017 clarified certain aspects, allowing judges limited discretion to exclude equal sharing in exceptional cases, but it reaffirmed the principle and purpose of the law.

4.13 The present case concerns whether an exception should apply. The law prioritizes equal sharing of pension entitlements over a distribution based on actual contributions, except in particularly shocking situations. This approach reflects the diversity of marital arrangements and the idea that marriage creates an economic community. It aims to prevent either spouse from suffering pension disadvantages due to role choices during marriage and aligns with international equality principles.

4.14 The State Party authorities concluded that this case was not exceptional. The author knowingly married L.L., aware of his serious illness and language barrier, which limited his ability to contribute financially. She admitted to finding the idea of

him as a stay-at-home husband appealing and was aware that pension-sharing applied in divorce. L.L. did not earn income during the marriage, although he later started a business without a salary. Allegations that he married for Swiss nationality or pension benefits were dismissed after detailed review, noting his refusal of financial support and initial agreement to waive pension-sharing. His divorce request after naturalization was deemed insufficient to prove bad faith, as his subsequent actions contradicted this claim.

4.15 Other factors reinforced this conclusion. Household duties were vaguely defined, and differences in cleanliness standards did not amount to a serious breach of marital obligations. Financially, L.L. lacked assets or adequate pension, while the author remained in a strong position and did not claim hardship after sharing. Overall, the authorities found no discriminatory treatment or exceptional circumstances warranting deviation from the equal-sharing principle, and the State Party therefore considers the author's claims to be unfounded.

4.16 The State Party emphasizes that, under the Committee's established practice, it does not replace national authorities in evaluating facts or applying domestic law unless such assessments are clearly arbitrary, biased, based on gender stereotypes or amount to a denial of justice. This principle ensures that States retain primary responsibility for fact-finding and legal interpretation in individual cases.

4.17 The State Party rejects the author's arguments that the State failed to guarantee an equitable distribution of paid work and household duties within marriage, as required by the Convention and that, by ignoring the division of tasks between herself and L.L., domestic authorities endorsed an unequal arrangement, making their decisions discriminatory. The State Party notes that the relevant Civil Code provisions apply equally to both spouses, regardless of gender, and that the outcome would have been the same if the roles had been reversed. Therefore, no violation of the Convention occurred.

4.18 The State Party also counters the author's allegation of indirect discrimination and assertion that the pension-sharing principle reflects traditional gender roles and disadvantages women who work full time while managing household duties. The State Party maintains that the author provided no evidence of discriminatory impact. A single unfavourable decision does not prove systemic bias, and the regulation was introduced specifically to correct inequalities affecting women after divorce. The design of the law is objectively justified and reasonable, making the claim unfounded. In conclusion, the State Party considers the author's allegations to be manifestly ill-founded and requests that they be declared inadmissible under article 4 (2) of the Optional Protocol.

4.19 The State Party rejects the author's claim that domestic courts were influenced by stereotypes, particularly the notion that household duties fall within the woman's domain, and therefore treated the parties unequally. It notes the thorough and balanced handling of evidence and the fact that the author did not raise this claim before higher courts. It argues that the author was given opportunities to substantiate her allegations of threats but failed to provide details, and that the courts' reasoning was neutral and based on evidentiary standards.

4.20 The State Party further points out that the author's criticisms rely on isolated passages taken out of context and that the courts carefully weighed all relevant factors, including her credibility, the vagueness of her statements, and witness testimony. The proceedings were extensive, involving multiple hearings and detailed judgments confirmed by appellate courts. The State Party concludes that the author's portrayal of bias is unfounded and that the domestic process was meticulous and impartial. In the light of the comprehensive and balanced examination by the national

courts, the State Party considers the author's claims to be manifestly ill-founded and requests that they be declared inadmissible under article 4 (2) of the Optional Protocol.

4.21 The State Party requests that the Committee declare the communication inadmissible under article 4 (1) or, alternatively, under article 4 (2) of the Optional Protocol, and, failing that, that it find no violation of the Convention.

Author's comments on the State Party's observations on admissibility and the merits

5.1 On 15 March 2023, the author argues that certain additional facts introduced by the State Party – such as the long-distance nature of the relationship before marriage, her ex-husband's prostate cancer and her notification to the migration authorities – are irrelevant to the discrimination claim in the present case. She clarifies that her mental health issues were the result of a heavy double burden during marriage, not unrelated causes. Regarding the notification to the migration authorities, she explains that she acted out of civic duty and highlights that her ex-husband had benefited from facilitated naturalization through marriage, then requested divorce immediately after obtaining citizenship and reaching retirement age, suggesting opportunistic behaviour.

5.2 On admissibility, the author stresses that she exhausted domestic remedies and that, under article 4 (1) of the Optional Protocol, she was not required to explicitly invoke the Convention in national proceedings. She reiterates the Committee's own findings regarding the limited awareness of the Convention in Switzerland, arguing that requiring such reference would therefore be unreasonable until awareness improves.

5.3 The author disputes the credibility of her ex-husband's statements about his domestic work, noting they were inconsistent and unconvincing. The Regional Court rightly concluded that he did very little, and all subsequent judgments were based on that finding. The issue before the Committee, she stresses, is the discriminatory nature of these judgments, not the factual assessment itself.

5.4 She challenges the courts for focusing only on whether she would maintain a minimum subsistence level after divorce, arguing that the relevant question under the Convention is whether her financial situation compares unfavourably to that of a similarly situated man. She refers to estimates provided in her original communication to illustrate this disparity.

5.5 The author rejects the State Party's claim that the practice of the Federal Supreme Court is aligned with general recommendation No. 29. She explains that, according to the recommendation, economic advantages and disadvantages and the value of non-financial contributions, such as household care and lost career opportunities, must be shared equally. In her case, these contributions were ignored, and she was even required to compensate her ex-husband for benefits that she herself had provided. This, she argues, contradicts both the recommendation and article 16 (1) (c) of the Convention.

5.6 She further asserts that the Committee's role is not to verify whether Swiss law was applied correctly but to determine whether those laws and practices resulted in discrimination. Therefore, the Government's detailed explanations about the proper application of domestic law are irrelevant to the procedure related to the Convention.

5.7 The author reiterates that her ex-husband could have contributed to housework, as his cancer had been treated successfully. She expected him to assume the role of homemaker, not merely "stay at home", as the State Party's translation suggests. She dismisses the argument that she should have known the law on pension division,

emphasizing that the obligation to prevent discrimination lies with the State, not the victim.

5.8 She clarifies that her statement about her ex-husband's motives was misquoted. She never claimed that he married her to access occupational pension assets but referred to his intention to secure an old-age and survivor's insurance pension through marriage. The courts wrongly construed this as a contradiction, undermining her credibility unjustly.

5.9 The author notes that her allegation of a marriage of convenience was part of domestic proceedings but is not relevant to the present communication. Lastly, she highlights gender stereotypes reflected in judicial reasoning. The courts excused her husband's failure to perform household duties, blaming her for having "high standards" and not defining tasks clearly, while ignoring article 163 of the Civil Code, which imposes equal marital duties, including household maintenance. Her appeals invoking this provision were dismissed as irrelevant, effectively circumventing the issue and perpetuating gender bias.

5.10 The author explains that during the marriage she bore a heavy double burden, leading to repeated burnouts. Initially, she did not disclose her personal struggles to her doctor out of fear of professional repercussions and shame. Later, her doctor testified that her problems were a mix of private and work-related issues. Despite this, the courts concluded that workplace stress alone caused her burnout, disregarding the combined strain of employment and household duties. The author argues that this reflects a lack of appreciation for domestic work, as experts generally recognize that juggling multiple roles increases stress.

5.11 She reiterates that requiring a "particularly shocking situation" to address discrimination is incompatible with the Convention. The State Party's argument that her case does not meet this threshold does not refute the existence of discrimination. The author also challenges the claim that gender-neutral laws prevent bias, noting that such reasoning ignores indirect discrimination. While the law appears neutral, its application disproportionately disadvantages women who assume most household responsibilities. The State Party failed to address this systemic issue, focusing only on the absence of direct discrimination. In this regard, the author cites the Committee's position in *Ciobanu v. Republic of Moldova*,[5] which clarifies that when a neutral provision disproportionately affects women, the burden shifts to the State to demonstrate that this does not constitute indirect discrimination.

5.12 The author refers to the *Handbook on European Non-Discrimination Law: 2018 Edition*, in which three elements of indirect discrimination are identified: (a) a neutral rule or practice; (b) a significantly more negative impact on a protected group; and (c) comparison with others in similar situations. In its practice under article 124 *b* of the Swiss Civil Code, the Federal Supreme Court disregards non-financial contributions except in extreme cases, which has affected women in a more negative way because they perform a greater proportion of unpaid care work. She asserts that she provided sufficient evidence of this impact and that a fair judgment was possible within Swiss law without undermining benefits for women in traditional roles. She also refers to the reasoning set out in *S.F.M. v. Spain*,[6] in which the Committee confirmed that authors are not required to exhaust all remedies but must give the State an opportunity to address discrimination.

5.13 She concludes that her allegations of unequal marital responsibilities and de facto discrimination against women with a double burden are well substantiated for admissibility under article 4 (2) of the Optional Protocol. The author further notes

[5] *Ciobanu v. Republic of Moldova* (CEDAW/C/74/D/104/2016), para. 7.13.
[6] *S.F.M. v. Spain* (CEDAW/C/75/D/138/2018), para. 6.3.

that, in Switzerland, there is no legal basis for taking action against gender bias in court procedures. Within the legal framework, however, incorrect presentation of the facts and unsustainable evaluation of the evidence were criticized by the author in the appeal proceedings. Finally, she rejects the State Party's reproach regarding the provision of insufficient details on threats from her ex-husband. She explains that his gestures and statements were alarming and linked to concealing his false declaration during naturalization. The court failed to probe these threats adequately, sparing him difficult questions while blaming her for omissions, resulting in an unbalanced presentation of evidence.

5.14 The author notes that L.L.'s threats occurred in late 2013 and early 2014, yet the court questioned her about them nearly 20 months later. She criticizes the expectation that she should recall the exact wording of the threats as being unrealistic and highlights the absurdity of the remark that she recounted events "relatively unemotionally". The judge's reasoning appears contradictory – accepting that she was genuinely afraid while dismissing her concerns as unfounded – and reflects gender stereotypes portraying women as irrational or hysterical. These considerations suggest that the judge's conclusions were influenced by bias rather than objective analysis.

5.15 The author disputes the State Party's reliance on an earlier case that the couple had brought before the European Court of Human Rights concerning an issue relating to name law. In that case, she had supported her husband due to his lack of language skills. The State Party and the judge construed this as evidence of a harmonious marriage, contradicting her claims. In reality, it demonstrated her support for her husband, not vice versa, and was aligned with her narrative of unequal responsibilities. Similarly, her surprise at the divorce request was natural given that L.L. had benefited from the marriage. The State Party's attempt to portray her as untrustworthy is unfounded; the evidence cited merely shows the judge's efforts to construct contradictions. By contrast, L.L.'s false declaration to the migration office and other inconsistencies, as documented in her appeals, were overlooked, revealing unequal scrutiny and credibility assessments.

5.16 The author contests the claim that she distorted her account of domestic proceedings, emphasizing that her statements were substantiated by official documents. The State Party's assertion that the procedures were "careful and serious" does not address their compatibility with the Convention. She argues that the courts failed to exercise due diligence to prevent gender bias, as required under the Convention, and that the starkly different treatment of her and her ex-husband confirmed systemic prejudice. Consequently, she maintains that her allegations of unequal and gender-biased court procedures are well substantiated for admissibility under article 4 (2) of the Optional Protocol.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In that connection, the Committee notes the State Party's argument that the author did not allege at any stage of the domestic proceedings, either expressly or in substance, that the division of occupational pension entitlements or the procedure related thereto was

discriminatory within the meaning of the Convention. It also notes the author's contention that she has exhausted all available domestic remedies and that she is not required to explicitly invoke the Convention in national proceedings. The Committee recalls its jurisprudence, according to which authors of communications must have raised in substance at the domestic level the claim that they wish to bring before the Committee so as to enable domestic authorities and/or courts to have an opportunity to deal with such a claim.[7] In this regard, while the express citation of the Convention is not required for the purpose of exhaustion, the issue of discrimination based on sex or gender must be explicitly part of the claims brought before domestic authorities. The Committee notes that the author has raised various arguments in her application and appeals before the national courts, contesting the full division of her occupational pension rights with L.L., on the ground of allegedly deceitful marriage for the purposes of simplified naturalization that amounted to an abuse of right. The Committee, however, observes that the author has not raised her claim of gender-based discrimination in the application of domestic law by national courts, either expressly or in substance, during any of the domestic proceedings, including before the Federal Supreme Court. Accordingly, in the present case, the Committee is precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (1) of the Optional Protocol;

(b) That the present decision shall be communicated to the State Party and to the author.

[7] See, among others, *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7; *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011), para. 8.3; *M.A. v. Switzerland* (CEDAW/C/80/D/145/2019), para. 6.7; and *S.T.H. v. Switzerland* (CEDAW/C/87/D/165/2021), para. 7.5.