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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

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 162/2020*,**

Communication submitted by:	S.V. (represented by counsel, H.L.M. Lichteveld)
Alleged victim:	The author
State party:	Kingdom of the Netherlands
Date of communication:	2 November 2020
References:	Transmitted to the State Party on 17 November 2020 (not issued in document form)
Date of adoption of views:	17 February 2025
Subject matter:	Levying of a fee for a woman to revert to her birth surname after divorce, amounting to indirect discrimination on the basis of sex
Procedural issues:	Exhaustion of domestic remedies, *ratione materiae*
Substantive issues:	Discrimination on the ground of sex, marriage rights
Articles of the Convention:	16 (1) (g)
Article of the Optional Protocol:	4 (1) and (2)

* Adopted by the Committee at its ninetieth session (3–21 February 2025).

** 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, Nada Moustafa Fathi Draz, Esther Eghobamien-Mshelia, Yamila González Ferrer, Nahla Haidar, Madina Jarbussynova, Marianne Mikko, Mu Hong, Ana Peláez Narváez, Jelena Pia-Comella, Bandana Rana, Rhoda Reddock, Elgun Safarov, Erika Schläppi, Natasha Stott Despoja, Genoveva Tisheva and Patsilí Toledo Vásquez.

1. The communication is submitted by S.V.,[1] a dual national of the Kingdom of the Netherlands and Türkiye, born in 1962. The author claims to be a victim of a violation by the Kingdom of the Netherlands of her rights under article 16 (1) (g) of the Convention. The Optional Protocol to the Convention came into force for the State Party on 22 September 2002. The author is represented by counsel.

Facts as submitted by the author

2.1 The author was born in Karaman, Türkiye, under the birth name S.U. On 4 August 1978, she married A.V. and took his last name under Turkish law. She and her husband subsequently moved to the Kingdom of the Netherlands, where she became a naturalized citizen in 1992. She divorced her husband in 1995 under Netherlands law. That divorce was then confirmed by Turkish courts in 2012 and, in accordance with Turkish law, she automatically reverted to her birth surname, U. However, under Netherlands law, she kept her former husband's last name, V.

2.2 On 28 October 2014, the author submitted a request to the municipality of Amsterdam to change her last name from V. to U., but her request was denied. She appealed to the Amsterdam District Court, which upheld the municipality's decision, stipulating that a name change can occur only by means of Royal Decree, and that such requests must be filed with the Ministry of Justice and Security. The author filed such a request on 9 October 2015. She learned that the name change request must be accompanied by the payment of a fee of 835 euros. She filed a request to be exempted from that requirement due to her financial situation. Owing to health problems, she had been unable to work for years and was receiving benefits under the unemployment system (her net monthly income amounted to approximately 963 euros). The author submitted a request to the Municipal Council of Amsterdam for a special relief (crisis) benefit in respect of the fee of 835 euros, which was denied because the author did not justify that the expense was a "necessary cost of living" expense.

2.3 The author submits that, as she did not pay the fee, on 10 December 2015, the Ministry of Justice cancelled the request for the surname change. On 21 January 2016, the author filed a notice of objection against the decision rendered by the Minister of Justice and Security to cancel the surname change request due to the non-payment of the fee. On 25 April 2016, the Minister of Justice and Security declared the notice of objection unjustified.

2.4 On 3 June 2016, the author filed a notice of appeal against the decision of the Minister of Justice and Security with the Amsterdam District Court. On 19 July 2017, the three-judge section of the Amsterdam District Court rejected her notice of appeal, finding that the rules governing applications to change or register a name did not differentiate on the basis of sex and that therefore no direct distinction was involved. As to the indirect discrimination claimed by the author, given that the fee is more frequently levied on women than on men, the Court found that the argued difference between men and women results from the Turkish right of name as the author had legally obtained the surname of her husband when she married in Türkiye. According to the Court, the State Party bears no responsibility in that respect and has provided for a means to change the name through the Surname Change Decree.

2.5 On 31 August 2017, the author submitted an appeal against the District Court decision to the Administrative Jurisdiction Division of the Council of State, which rejected the appeal on 7 November 2018, confirming the lower court's assessment that the Netherlands law relating to name changes does not discriminate on the basis of sex. The Council of State considered that the case did not concern the personal right to choose a surname as husband and wife but pertained to the request of a

[1] The author requested anonymity.

national of the Kingdom of the Netherlands to change her surname. It considered that article 3 (1) of the rules governing applications to change or register a name does not differentiate on the basis of sex. However, the Council of State did not determine whether the provision leads to indirect discrimination between men and women.

Complaint

3.1 The author claims that the State Party violated her rights under article 16 of the Convention by imposing a high financial burden on her in order for her to be able to revert to her birth name after divorce. While the fee applies to anyone who wants to change his or her name, the rule disproportionately affects a specific group of women, namely dual nationals of the State Party and another State (for example, Bosnia and Herzegovina, Japan, Philippines, Türkiye)[2] who have married abroad, have taken their husband's last name (voluntarily or otherwise) upon marriage and have maintained it upon naturalization. The author refers to information provided by the Ministry of Justice on 26 July 2019 that the Ministry had received 269 requests for name changes following a divorce during the period from 1 January 2014 to 31 December 2018 – all of those requests had been filed by women. The author also finds it indicative that 82 of those requests had been cancelled, mostly due to non-payment of the fee.

3.2 The author further claims that having two different names – one under Turkish law (as after the divorce she had automatically reverted to her birth name under Turkish law) and another under Netherlands law – can cause significant issues, such as questions about her identity, confusion in public records, property documents and inheritance matters, and problems during travel.

3.3 The author contends that the continued use of her ex-husband's last name also causes "unnecessary emotional consequences". She must provide the correct last name under Netherlands law on many forms and applications. Thus, she uses her former husband's name daily, which causes an "undesirable and painful situation".

3.4 The author therefore claims that she was subjected to an indirect distinction, which amounts to indirect discrimination between men and women.

State Party's observations on admissibility and the merits

4.1 On 30 August 2021, the State Party submitted observations on admissibility and the merits of the communication, describing first the facts and the applicable domestic law.

4.2 With regard to the admissibility of the communication, the State Party observes that the author failed to exhaust all domestic remedies in the proceedings to change her registration in the Personal Records Database. Furthermore, the State Party observes that the author did not pursue an appeal against the District Court's judgment, despite the availability of that option. As a result, the Administrative Jurisdiction Division of the Council of State was unable to rule on the question of whether article 10:24 of the Civil Code of the Kingdom of the Netherlands could serve as a basis for recognizing the author's surname under Turkish law in the Kingdom of the Netherlands, which would constitute grounds for changing her surname in the Personal Records Database.

[2] At the material time of the author's marriage, under Turkish law, women automatically obtained the surname of their husband. In its judgment of 16 November 2004 (final on 16 February 2005) in the case of *Ünal Tekeli v. Turkey* (application No. 29865/96), the European Court of Human Rights found that the Turkish legislation violated article 8 in conjunction with article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

4.3 The State Party notes that, in accordance with article 10:24 of the Civil Code, names that have been recorded on a birth certificate or changed because of a change in personal status in a foreign country in accordance with that country's private international law may be recognized in the Kingdom of the Netherlands. However, this was not a possibility for the author, as her divorce in Türkiye did not result in a modification of her civil status, given that she had already been granted a divorce in the Kingdom of the Netherlands and the divorce in Türkiye had served merely as a confirmation.

4.4 With regard to the merits of the communication, the State Party asserts that, if there were any indirect difference in treatment, because the fee for changing a surname after a divorce primarily affects women, it is objectively justified. The rules governing the fee pursue an aim that is legitimate, as well as being appropriate and necessary. The State Party refers to the interpretation by the European Court of Human Rights of the principle of equality and the right to choose a name.[3] The State Party asserts that a fee must be paid to cover the actual costs of the procedure and that the State Party provides a detailed account of the transparent cost calculation presented in the Decree of 6 July 2011, which amended the rules governing applications to change or register a name.

4.5 In addition, the State Party is of the view that it does not follow from article 16 of the Convention that name change services must be provided free of charge. The State Party maintains that the imposition of a fee and the fee amount are proportionate and justified by the objective of cost neutrality in the provision of government services. Furthermore, the State Party notes that, under article 35 (1) of the Participation Act, the author was entitled to apply for a special relief (crisis) payment to cover the fee. The author made use of that option, however, her request was denied. Nevertheless, this demonstrates that it is possible for people who cannot afford to pay the fee to change their surname under article 1:7 of the Civil Code. The State Party argues that there are no grounds for concluding that the amount of the fee is so prohibitive that it effectively makes it impossible to change one's name.

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

5.1 On 23 February 2022, the author submitted her comments on the State Party's observations on admissibility and the merits, stating that she does not dispute the State Party's description of the facts and the applicable domestic law.

5.2 With regard to the failure to exhaust domestic remedies, the author argues that the fact that she did not appeal the decision of the Amsterdam District Court of 21 April 2016 and the decision of the municipality of Amsterdam not to reassess her application for a special relief (crisis) payment is irrelevant to her complaint before the Committee. The author maintains that her complaint before the Committee concerns the additional obstacle of a high fee being levied on her when wishing to change her surname back to her birth surname after divorce. That fee affects women in particular and hence amounts to indirect discrimination, affecting women's right to choose their own surname on an equal footing with men. The author asserts that she has fully exhausted domestic remedies in that regard, resulting in a final decision from the highest administrative court of the State Party, the Administrative Jurisdiction Division of the Council of State, which rejected her argument that the levying of the fee for changing her surname back to her birth surname after divorce constitutes a violation of the Convention.

[3] European Court of Human Rights, *Stjerna v. Finland*, application No. 18131/91, judgment, 25 November 1994, para. 48.

5.3 The author argues that an appeal would be unlikely to bring effective relief in view of the District Court's judgment and the wording of article 10:24 of the Civil Code. The author's application for judicial review was declared unfounded on the grounds that her surname could be changed only by Royal Decree pursuant to article 1:7 of the Civil Code. She had therefore opted to pursue the proceedings in accordance with article 1:7 of the Civil Code. The author points out that the State Party failed to provide case law to substantiate why the author would be able to rely successfully on article 10:24 of the Civil Code. Moreover, according to the author, the Administrative Jurisdiction Division had ruled on the applicability of article 10:24 of the Civil Code in its decision in the proceedings under article 1:7 of the Civil Code and had been of the opinion that article 10:24 of the Civil Code did not apply in the author's situation.

5.4 With regard to the possibility of contesting the rejection by the municipality of Amsterdam of her application for a special relief (crisis)payment to help to cover the application fee, the author stresses that she did not appeal against the decision of 23 September 2015 because municipalities are free to formulate their own policy on the granting of special assistance, as long as an individual assessment is carried out. The author argues that the municipality has discretionary power in this respect. If the author had appealed the rejection, the administrative judge would have performed only a cursory examination of the municipality's discretion policy and that appeal would have been unlikely to bring effective relief. In its decision, the municipality had stated that the fee was part of the "incidental general necessary costs of living" and that the author must pay it out of her income. The municipality had considered a number of factors that could have led to a different judgment but had deemed that they were not "special circumstances", namely, that the fee was relatively high, that bearing the family name of her former husband was emotionally stressful to her and that such situation was not practical when visiting Türkiye. The possible granting of a special relief (crisis) payment in individual cases does not alter the unlawfulness of the relevant legislation of the State Party and the indirect discrimination against women. Moreover, if their income is above social assistance benefit level, the fee is still high enough to prevent women from requesting to revert to their birth surname after divorce.

5.5 Furthermore, the author argues that the decision not to process her surname change application falls within the scope of article 16 of the Convention. A person's name is an integral aspect of their identity. The levying by the State Party of a high fee for changing her surname has created an obstacle that makes it impossible for the author to exercise her right to choose a surname on an equal basis with a man upon the dissolution of marriage.

5.6 With regard to the choice of name and change of name options, the author considers that, in theory, she had had the opportunity to revert to her birth name at the time of her naturalization. However, the author argues that she was not made aware of that option. Furthermore, the author argues that, even if she had reverted to her birth name upon her naturalization, she would have had different surnames in the Kingdom of the Netherlands and Türkiye.

5.7 The author emphasizes that she was unable to change her surname in accordance with article 1:7 of the Civil Code because of the high fee associated with doing so, which represented an obstacle that made it impossible to exercise her right to choose a surname on an equal basis with a man upon the dissolution of her marriage. The author argues that she had tried to obtain a special relief (crisis) payment offered by the municipality of Amsterdam to cover the fee, but was not successful. The author considers that, by levying a fee, the State Party imposes a disproportionately high financial burden or threshold on women who wish to use their birth name again after their divorce.

5.8 In reference to the option to change her surname in accordance with article 10:24 of the Civil Code, the author maintains that this was not a viable avenue for her because her divorce in Türkiye did not result in a change in her civil status. This assertion is corroborated by the judgment of the Amsterdam District Court of 21 April 2016 and the judgment of the Administrative Jurisdiction Division of the Council of State of 7 November 2018.

5.9 With regard to the merits of the communication, the author deems that the levying of a fee and the amount of that fee are neither proportionate nor justified by the objective of cost neutrality in the delivery of government services. The author argues that the State Party has not provided sufficient evidence to substantiate the rationale behind the assumption that cost neutrality should be considered a legitimate aim. Furthermore, the State Party has not provided a detailed explanation as to why the fee is an appropriate and necessary measure.

5.10 In relation to the principle of cost neutrality for public services, the author argues that it is not reasonable to assert that all public services should be cost-neutral, in particular when women's rights are at stake. The author highlights that women are significantly affected by this measure, if not exclusively so, given that all applications for a change of name upon divorce originate from women.

5.11 Furthermore, the author considers that the fee in question is disproportionate and exceeds the stated objective of cost neutrality. The author explains that, in contrast to other applications for a change of name, no third parties are obliged to be heard, nor are psychological reports or arguments regarding facts and circumstances required to be weighed. The responsibility of the Integrity and Screening Agency is limited to the verification of the completeness and fulfilment of the stipulated conditions. In addition, the author notes that specific categories of requests for name changes, including those from victims of violent and sexual crimes and their relatives, are exempt from paying the fee. It can be concluded, therefore, that the principle of cost neutrality for public services is not applied consistently by the State Party as some exemptions exist.

5.12 The author emphasizes that the fee is disproportionate as it amounts to approximately her monthly net income. Consequently, the author asserts that the financial burden associated with the fee represents a significant barrier for a considerable number of women seeking to revert to their birth name following a divorce, in particular given the constraints imposed by their financial circumstances.

5.13 The author states that the special relief (crisis) payment should cover the cost of a change of surname. The municipality of Amsterdam, however, maintains that the fee in question falls under the category of "incidental general necessary costs of living", which the author is obliged to bear from her income. This categorization demonstrates that special relief (crisis) payments are not an appropriate and effective means of covering the fee in question.

State Party's additional observations on admissibility and the merits

6.1 On 23 November 2022, the State Party submitted additional observations. First, the State Party reiterates that the author has not exhausted domestic remedies with respect to the special relief (crisis) payment. The State Party accepts that the author has exhausted the domestic procedure with regard to her name change up to and including an appeal before the Administrative Jurisdiction Division of the Council of State, which ruled that charging a compulsory fee of 835 euros was not a violation under the Convention and has thus ruled on that part of the communication. However, the author has not exhausted all domestic remedies with regard to contesting the rejection of her application for a special relief (crisis) payment because she could have pursued a procedure involving the Integrity and Screening Agency. A special

relief (crisis) payment could have remedied the author's financial disadvantage arising from the application to change her surname. The State Party disputes the claim that the municipal executive has discretionary powers in this respect and that a review procedure would have been unlikely to bring effective relief. The municipality has a certain margin of appreciation in assessing whether the legal requirements for providing a special relief (crisis) payment have been met (only regarding the applicant's financial means). If those requirements have been met, the municipality is obliged to provide the special relief (crisis) payment.

6.2 Second, the State Party reiterates that the communication does not fall within the scope of article 16 (1) (g) of the Convention because it concerns the application by a national of the Kingdom of the Netherlands to change the surname that she bears in accordance with the Netherlands law on names rather than the personal right as husband and wife to choose a surname. During her naturalization procedure, the author could have opted to change her married name to her birth name. If she had done so, she could, subsequently, if she had so wished, have used her husband's surname, under article 1:9 of the Civil Code. After the divorce, she could have resumed using her birth name. The State Party has thus made provisions to mitigate the consequences of inequality originating in other countries. Many women (and men) who are nationals of the Kingdom of the Netherlands have registered their birth name and use their spouse's name. There is no fee for this, and that option had been open to the author. The State Party notes that, given the passage of time, it was not possible to verify how the author had been informed of that option in the 1990s. At present, the information is provided by the municipalities in brochures and is also available on the website of the Immigration and Naturalization Service.

6.3 Concerning the merits, the State Party maintains that, if there was an indirect difference in treatment, it was objectively justified by the principle of cost neutrality. The State Party reiterates that a fee is required for all applications for a change of surname. No exceptions are made under article 4 of the rules governing applications to change or register a name. Consequently, the author was obliged to pay the fee to change her surname.

6.4 Lastly, the State Party submits that the principle of cost neutrality, as it pertains to public services, is primarily applicable to government services that are provided at an individual's request and for the benefit of that individual, as opposed to services related to the public interest or living costs. The State Party therefore argues that the fee was in order to cover the costs associated with processing an application for a name change.

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

7.1 On 12 January 2024, the author submitted additional comments. With regard to admissibility, the author notes that the State Party acknowledges that she has exhausted all domestic remedies in the domestic courts concerning the fee levied in connection with her request to change her surname in order to revert to her birth name after divorce. The author explains that the name change procedure under Netherlands regulations does not provide for the possibility of reducing or waiving the fee in the event of a name change due to a divorce. The author clarifies that her complaint does not concern the policy in Amsterdam of not providing a special relief (crisis) payment to cover the fee. The author's position remains that municipalities are entitled to exercise a certain degree of discretion in determining whether to grant such a payment. Consequently, the majority of municipalities have also established policy guidelines in accordance with article 35 of the Participation Act. The author refers to established jurisprudence of the Central Appeals Court for Public Service and Social Security Matters, indicating that application fee costs belong to the category of

incidental general necessary costs of living, rather than those arising from special circumstances.[4]

7.2 Regarding the possibility of choosing her birth name during her naturalization process, the author argues that, even if she had been made aware of that option and had elected to register her birth name post-naturalization, in accordance with Netherlands legislation, that name would have been recorded in her Netherlands passport and other official documents. Conversely, her Turkish passport and other Turkish documents would have displayed her married name. The entitlement to use one's husband's surname in the Kingdom of the Netherlands in everyday life, as set forth in article 19 of the Civil Code, does not alter that situation. According to the author, the fact that she retained her husband's surname at the time of acquiring citizenship of the Kingdom of the Netherlands should not be used as an argument to uphold national regulations that create a disproportionately high threshold for women to revert to their birth name after divorce. In her view, this pertains to the choice of a family name (namely a reversion to a birth name) and not a change of family name.

7.3 With regard to the merits, the author notes that the State Party does not dispute that there is indirect discrimination in its treatment of women with dual nationality due to the intersection of gender, migration background and socioeconomic status. In the case of divorced women, the financial consequences of divorce proceedings can be significant, leading to a decline in income and, consequently, an increased financial burden. This illustrates that the fee represents an unduly high barrier for women seeking to revert to their birth name following a divorce.

7.4 The author emphasizes that the indirect discrimination in this case is caused by the State as a result of the imposition of an extraordinarily high fee on women seeking to revert to their birth name after divorce. Moreover, the author states that the State Party recognizes that it is possible to make an exception to the levying of fees for a specific category. This already happens in the case of people applying for a name change when they are victims of a certain category of crimes. The author argues that it is difficult to see why the State Party could not waive the fee in the case of a name change upon divorce (reversion to the birth name) in order to eliminate indirect discrimination.

7.5 Lastly, with regard to a special relief (crisis) payment by the municipality, the author argues that the State Party has not demonstrated with concrete case law examples that such a payment is possible for the purpose of a name change upon divorce. Even if compensation through a special relief (crisis) payment by the municipality were possible in certain cases, only women with a minimum income would be eligible. Women with incomes above the minimum level would still be subject to unequal treatment by the State Party.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

[4] The author provides examples of judgments in which the Court had ruled that the municipality did not have to provide a special relief (crisis) payment to cover application fee costs.

8.3 The Committee recalls its jurisprudence, which establishes that authors must have raised the claims that they wish to bring before the Committee in substance at the domestic level[5] in order to give the domestic authorities and courts an opportunity to take a decision thereon.[6] The Committee observes that the author's main claim, notably that the imposition of a high fee amounts to gender-based discrimination against her, was raised at the domestic level. It notes that it is undisputed that the author exhausted domestic remedies regarding this issue, resulting in a final decision from the highest administrative court of the State Party, the Administrative Jurisdiction Division of the Council of State, which rejected her argument that the levying of the fee for changing her surname back to her birth name after divorce constituted indirect discrimination and a violation of the Convention. The Committee further notes, with regard to the special relief (crisis) payment, the author's argument that such payments are not an appropriate and effective means of covering the cost because the possible granting of such a payment in individual cases does not alter the indirect discrimination against women and because, if their income is above social assistance benefit level, the fee is still high enough to prevent women from requesting to revert to their birth surname after divorce.

8.4 In the present case, the Committee is satisfied that the State Party's courts were able to examine the essence of the author's complaint, namely that the levying of a fee of 835 euros for changing her surname and reverting to her birth name after the divorce amounts to indirect discrimination. The proceedings concerning the author's claim concluded with a negative decision by the State Party's highest administrative jurisdiction. The Committee therefore finds that article 4 (1) of the Optional Protocol to the Convention does not constitute an obstacle to the admissibility of the communication.

8.5 The Committee takes note of the State Party's argument that the claims do not fall within the scope of article 16 (1) (g) of the Convention. However, it also notes the author's affirmation that this matter involves the choice of a family name (namely a reversion to her birth name after divorce) and not a change of family name. The Committee considers that the case falls within the scope of article 16 (1) (g) as it concerns the author's choice of surname. The Committee therefore considers that it is not precluded *ratione materiae* and is competent to examine the communication.

8.6 The Committee considers that the author has sufficiently substantiated her claims under article 16 (1) (g) of the Convention for the purposes of admissibility. Accordingly, having found no impediment to the admissibility of those claims, the Committee proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State Party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The Committee notes the author's contention that she was subjected to indirect discrimination because she could not revert to her birth name after her divorce owing to the high fee that she had to pay in order to do so. The Committee notes that the State Party accepts an indirect difference in treatment yet argues that this indirect difference in treatment is objectively justified by the principle of cost neutrality as the fee must be paid to cover the actual costs of the procedure to change a surname.

[5] *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7, *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.

[6] *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3, and *M.A. v. Switzerland*, para. 6.7, and *S.T.H. v. Switzerland*, para. 7.5.

The Committee takes note of the State Party's assertion that the imposition of a fee and the fee amount are justified by the objective of cost neutrality in the provision of government services and proportionate and necessary in the circumstances.

9.3 The Committee notes, however, that the author contests the above justification of indirect discrimination and argues that the principle of cost neutrality cannot constitute a legitimate aim or objective justification nor can it be regarded as a reason for the high fee levied that disproportionately affects divorced women, resulting in indirect discrimination.

9.4 The Committee recalls that, as defined in article 1 of the Convention, discrimination against women is "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". This definition includes indirect discrimination, which occurs when apparently neutral legal standards or policies which do not intend to discriminate lead to consequences that, affect the enjoyment of rights of women disproportionally. The Committee observes that indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. It also observes that indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.[7] It notes that, in the present case, the author has demonstrated through statistical data, which were not contested by the State Party, that 100 per cent of the applicants to change their family name after divorce in the period 2014–2018 were women, thus demonstrating the gendered differential impact of the legislation in place.

9.5 The Committee further recalls that the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination based on sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States Parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. In the present case, the Committee observes that certain groups of women, notably women holding a nationality in addition to that of the Kingdom of the Netherlands, are particularly affected, due to the intersection of gender, migration background and socioeconomic status.

9.6 The Committee observes that the human rights of women shall be fulfilled by the promotion of de facto or substantive equality through all appropriate means.[8] It also observes that differences in otherwise similar situations justify different treatment in law and practice in order to avoid indirect discrimination. Moreover, the Committee further observes that an exception to the levying of the fee for a name change request is already made for a specific category of people, namely persons who are victims of certain crimes. The Committee notes that the State Party has not explained why an exemption could not be applied to the fee for a name change following divorce (reversion to a birth name) in order to eliminate indirect discrimination against women. In the light of all the above, the Committee concludes

[7] General recommendation No. 28 (2010) on the core obligations of States Parties under article 2 of the Convention, para. 16.

[8] Ibid., para. 20.

that the State Party has failed to justify that the fee imposed on divorced women to change their name is necessary and proportional. It also concludes that the fee imposes a de facto discriminatory burden on women who wish to revert to their birth name after a divorce.

9.7 The Committee therefore concludes that the State Party has denied the author equal treatment with men and exposed her to indirect discrimination by levying a fee that is considerably high in the light of her socioeconomic situation and which represents an obstacle for her to complete the process of reverting to her birth name after divorce, thereby failing to discharge its obligations under article 16 (1) (g) of the Convention.

9.8 In the light of the above conclusions, the Committee makes the following recommendations to the State Party:

(a) With respect to the author, and taking into consideration gender and intersectional discrimination:

(i) Provide adequate financial compensation to the author for the moral harm suffered and the legal costs incurred;

(ii) Allow her to revert to her birth name without the imposition of the fee;

(b) In general:

(i) Take appropriate measures to eliminate barriers to women's access to legal remedies to revert to their birth name following a divorce and/or separation, such as high fees that disproportionately affect women;

(ii) Ensure that the national legal framework on name changes, including on reverting to a birth name in the context of divorce proceedings, adopts an intersectional approach in order to eliminate compounded discrimination against women and adequately address indirect discrimination, for instance, through the introduction of exemptions, such as fee waivers, for divorced and separated women;

(iii) Review all apparently neutral legal standards or policies that disproportionately affect the enjoyment of rights of women.

10. In accordance with article 7 (4) of the Optional Protocol, the State Party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State Party is requested to have the Committee's views and recommendations translated into the official language of the State Party, to publish them and to have them widely disseminated, in order to reach all sectors of society.