

Excerpt from A/59/38

Annex VIII

**Decision of the Committee on the Elimination of
Discrimination against Women, declaring a
communication inadmissibl**

as it results in providing a husband with his wife's unremunerated labour. The author claims that the law relating to reallocation of pension entitlements is similarly discriminatory and that vague, unclear and discriminatory provisions govern the question of m

existence of a claim to maintenance tends to be more the rule. The reason for this is the opinion of the legislature that, owing to his or

author filed a constitutional complaint against the law on the legal consequences of divorce in general, according to the Supreme Federal Constitutional Court Act (section 93, para. 3), a complaint directly against a law can only be filed within one year of the law entering into force. ~~Consequently~~ the author's constitutional complaint against the law in general inadmissible for this reason alone.

4.9 The State party also submits that only the issue of equalization of pensions has been settled so far in conjunction with b

Inappropriate behaviour by a husband, on the other hand, is

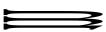
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cannot be lodged by anybody but only by someone who asserts that his or her rights protected by Section 90 of the Federal Constitutional Court Act have been violated by the public authority.

6.6 The State party consequently notes that, exceptionally, a legal provision can only be directly contested with a constitutional complaint if the applicant himself or herself is currently and immediately and not by means of an act of enforcement affected by this provision. In order to determine whether and to what extent an Act and/or a concrete provision affects the individual citizen, the c

6.10 The State party lastly a



party on 15 April 2002. Considering that the author has not made any convincing arguments that would indicate that the facts, insofar as they relate to the equalization of pensions, continued after this date, the Committee considers that, in accordance with article 4, paragraph 2 (e), of the Optional Protocol, it is precluded *ratione temporis* from consider

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

Appendix

Individual opinion of Committee members Krisztina Morvai and Meriem Belmihoub-Zerdani (dissenting)

In our view, the author's communication is partly admissible. While I agree with the majority that the claim concerning the divorce and equalization of pensions decision of 28 July 2000 is inadmissible *ratione temporis* I believe that the separate claim regarding the ongoing proceedings concerning the issues of accrued gains and spousal maintenance in fact do meet all admissibility criteria.

In the majority's view, the separate claims (regarding the alleged violations of the Convention in relation to substantive and procedural aspects of the equalization of accrued gains and of post-divorce maintenance) are inadmissible due to the lack of exhaustion of domestic remedies (Article 4.1).

In accordance with the Optional Protocol as a general rule all available domestic remedies

marriage. The author, as so many women in the world, devoted her whole adult life to unpaid work in the family, while her husband, on whom she was therefore financially dependent, had advanced his career

