



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

Distr.: General  
9 August 2007

Original: English

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

**Thirty-ninth session**

23 July-10 August 2007

**Decision of the Committee on the Elimination of  
Discrimination against Women under the Optional  
Protocol to the Convention on the Elimination of  
All Forms of Discrimination against Women**

**Communication No. 7/2005\*†**

*Submitted by:* Cristina Muñoz-Vargas y Sainz de Vicuña  
*Alleged victim:* The author  
*State party:* Spain  
*Date of communication:* 30 July 2004 (initial submission)  
*Document references:* Transmitted to the State party on  
24 February 2005 (not issued in document form)

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

*Meeting on 9 August 2007*

*Adopts the following:*

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\* The following members of the Committee participated in the examination of the present communication: Ms. Ferdous Ara Begum, Ms. Magalys Arocha Dominguez, Ms. Meriem Belmihoub-Zerdani, Ms. Saisuree Chutikul, Ms. Mary Shanthi Dairiam, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Ms. Françoise Gaspard, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Fumiko Saiga, Ms. Heisoo Shin, Ms. Glenda P. Simms, Ms. Dubravka Šimonović, Ms. Anamah Tan, Ms. Maria Regina Tavares da Silva and Ms. Zou Xiaojiao.

† The text of two individual opinions, one signed by Ms. Magalys Arocha Dominguez, Mr. Cees Flinterman, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Fumiko Saiga, Ms. Glenda P. Simms, Ms. Anamah Tan and Ms. Zou Xiaojiao, and the other one signed by Ms. Mary Shanthi Dairiam are included in the present document.



## Decision on admissibility

1. The author of the communication dated 30 July 2004 is Cristina Muñoz-Vargas y Sainz de Vicuña, a Spanish national who claims to be a victim of a violation by Spain of articles 2 (c) and 2 (f)<sup>1</sup> of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsels, Carlos Texidor Nachón and Jose Luis Mazón Costa.<sup>2</sup> The Convention entered into force for the State party on 4 February 1984 and its Optional Protocol on 6 October 2001. A declaration was made by Spain on ratification that the ratification of the Convention shall not affect the constitutional provisions concerning succession to the Spanish crown.

### The facts as presented by the author

2.1 The author is the first-born daughter of Enrique Muñoz-Vargas y Herreros de Tejada, who held the nobility title of “Count of Bulnes”.

2.2 In accordance with article 5 of the Decree/Law on the order of succession to titles of nobility of 4 June 1948, the first-born inherits the title, but a woman inherits the title only if she does not have any younger brothers. According to the historical rules of succession, men are given primacy over women in the ordinary line of succession to titles of nobility.

2.3 The author’s younger brother, José Muñoz-Vargas y Sainz de Vicuña, succeeded to the title upon the death of their father on 23 May 1978. On 30 December 1978, he requested that the royal decree of succession be issued. The decree was issued on 3 October 1980.

2.4 On 30 December 1988, the author, as first-born, initiated legal action against her younger brother, José Muñoz-Vargas y Sainz de Vicuña, claiming the title of “Countess of Bulnes”, basing her claim on the principle of equality and non-discrimination on the basis of sex proclaimed in article 14 of the Constitution of Spain of 1978<sup>3</sup> and article 2 (c) and (f) of the Convention on the Elimination of All Forms of Discrimination against Women. The author argued that she had the greater right to inherit the title of nobility as the first-born child of the former holder of the title, and that article 5 of the Decree/Law on the order of succession to titles of nobility of 4 June 1948 should have been interpreted in the light of the principle of equality and non-discrimination on the basis of sex as stated in article 14 of the Spanish Constitution. The author referred to a judgement by the Constitutional Court of 2 February 1981 finding that norms that had entered into force prior to the Spanish Constitution had to be interpreted in accordance with the Constitution and that incompatible norms had to be repealed. She further referred to a ruling by the Supreme Court of 27 July 1981 finding that the precedence for males in succession

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<sup>1</sup> The author is inconsistent with regard to her references to articles. She refers to article 2 (c) alone, to article 2 (f) alone at other times and to both articles in the annexes.

<sup>2</sup> The lawyers Carlos Texidor Nachón and Jose Luis Mazón Costa were also the representatives of Mercedes Carrion Barcaiztegui (Spain), who submitted a communication to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, alleging discrimination in succession to the titles of nobility, on 8 March 2001 (communication No. 1019/2001). The Human Rights Committee declared the case inadmissible (30 March 2004).

<sup>3</sup> The Spanish Constitution entered into force on 29 December 1978.

to titles of nobility was discriminatory and therefore unconstitutional. She also referred to a ruling by the Supreme Court of 7 December 1988 finding that the Spanish Constitution was applicable to the succession of titles of nobility.

2.5 The Madrid Court No. 6 of First Instance dismissed the author's claim on 10 December 1991. It considered the historical principle of male precedence in succession to nobility titles to be compatible with the principle of equality and non-discrimination on grounds of sex contained in article 14 of the Spanish Constitution. Furthermore, the title had been given to the author's brother before the entry into force of the 1978 Constitution, and the Constitution was not applicable to the Civil Code that regulated that issue.

2.6 The author filed an appeal with the Eighteenth Section of the Provincial High Court of Madrid, which dismissed the appeal on 27 September 1993, on the same grounds as the Madrid Court No. 6 of First Instance.

2.7 The author appealed to the Supreme Court (*recurso de casacion*). After a date for a hearing had been set, she requested that it be rescheduled as her lawyer could not attend owing to sickness. The Supreme Court did not accede to her request and dismissed her appeal on 13 December 1997. The Supreme Court ruled that, although it had previously found that male precedence in succession to titles of nobility was discriminatory and unconstitutional, judgement 126/1997 of the Constitutional Court, of 3 July 1997, reversed that jurisprudence. That judgement established that male primacy in the order of succession to titles of nobility, provided for in the laws of 4 May 1948 and 11 October 1820, was neither discriminatory nor unconstitutional since article 14 of the Spanish Constitution, which guaranteed equality before the law, was not applicable in view of the historical and symbolic nature of those titles.

2.8 The author appealed to the Constitutional Court (*recurso de amparo*) against the judgement of the Supreme Court on both procedural and substantive grounds. The author claimed that article 14 of the Constitution should have been applied to the succession to the title even if the Constitution had not yet entered into force at the time of the death of her father. The author stressed that the title had been transmitted to her brother through royal decree after 29 December 1978, that is, after the date of the entry into force of the 1978 Constitution. She also claimed that the Supreme Court judgement violated article 6, paragraph 1 and article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 1 of its Protocol as well as articles 1, 2 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women.

2.9 By a decision of 20 May 2002, the Constitutional Court set aside the judgement of the Supreme Court of 13 December 1997 as a violation of the fundamental right to an effective defence and sent it back to the Supreme Court for reconsideration.

2.10 On 17 September 2002, the Supreme Court issued a new judgement denying the author's claims. The judgement reiterated that the Civil Code regulated the succession to titles of nobility. It also noted that, since the date of reference, 23 May 1978 — the date of the father's death — preceded the entry into force of the 1978 Constitution, the issue of the applicability of article 14 of the Constitution did not arise. The Supreme Court also referred to the decision of the Constitutional Court of 3 July 1997 finding that, given the honorary and historic nature of titles, the laws of

1948 and 1820 determining male precedence with regard to the succession to titles of nobility upon death in the same line and degree were not contrary to article 14 of the Spanish Constitution.

2.11 On 17 October 2002, the author lodged a new *amparo* appeal before the Constitutional Court claiming, among other things, that the judgement of the Supreme Court of 17 September 2002 violated article 14 of the Constitution and articles 1, 2 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women.

2.12 On 24 March 2003, the Constitutional Court rejected her *amparo* appeal for lack of constitutional content.

### **The complaint**

3.1 The author claims that the State party discriminated against her on the basis of sex by denying her right, as the first-born child, to succeed her late father to the title of Count of Bulnes. She alleges that male primacy in the order of succession to titles of nobility constitutes a violation of the Convention in general, and specifically of its article 2 (f). She asserts that Spain has an obligation under the Convention to amend or revise the laws of 4 May 1948 and 11 October 1820 which establish male primacy in the order of succession to titles of nobility.

3.2 As to admissibility of the communication, the author claims that she has exhausted all domestic remedies. She contends that, by virtue of judgement 126/1997 of the Constitutional Court of 3 July 1997, which definitely settled the matter of male primacy in succession to titles of nobility, no *amparo* appeal on the question could be successful, thereby rendering such a remedy ineffective.

3.3 The author requests the Committee to find a violation of the Convention, and to direct the State party to provide her with an effective remedy as well as to revise the discriminatory legislation.

### **The State party's observations on admissibility**

4. By submission of 4 August 2005, the State party requests that the communication be rejected as inadmissible. It asserts that the same question has already been examined by the Human Rights Committee in its communications 1008/2001 and 1019/2001.

### **The author's comments on the State party's observations on admissibility**

5.1 By submission of 25 October 2005, the author acknowledges that similar cases have been brought before the Human Rights Committee but claims that the scope of the right to equality under article 26 of the International Covenant on Civil and Political Rights is not the same as the right to equality under the Convention, in particular article 1 and article 2 (f). She contends that the Convention has been designed with the overall aim of eradication, once and for all, of discrimination suffered by women in every field, even in relation to a *nomen honoris*. She further contends that the view of the Human Rights Committee that discrimination suffered by women in the succession to titles of nobility was outside the scope of article 26 of the International Covenant on Civil and Political Rights was not relevant. According to the author, the Convention does not place any limitations on the right

to equality in any field, including the social, economic, civil and political fields. For that reason, she argues that her communication is admissible.

5.2 The author reiterates her request that the Committee direct the State party to repeal legislation, rules and customs that support a greater right of males over females in the succession to titles of nobility. The author contends that the fact that draft legislation on equality between men and women in the order of succession to titles of nobility has been presented to the Parliament was further confirmation that male preference over females was discriminatory.

#### **Additional information provided by the author on admissibility**

6. On 20 July 2006, the author submitted additional information about the legislation on succession to titles of nobility, which had been published in the *Boletín Oficial de las Cortes Generales* on 4 July 2006. The legislation would apply only to those proceedings which remained pending at any level on 27 July 2005, the date on which the draft law had to be presented to the Congress of Deputies. The author argues that the new legislation would not be applicable to her because her case had been definitively settled by the Constitutional Court prior to that date. She claims that the fact that the law would not apply retroactively to the time that the Convention entered into force for Spain was, in itself, a violation of the Convention.

#### **The State party's further submission on admissibility**

7.1 By its submission of 3 August 2006, the State party disputes the admissibility of the communication, arguing that the author failed to exhaust domestic remedies, that the same matter has been examined under another procedure of international investigation or settlement and that the communication is inadmissible *ratione temporis*.

7.2 With respect to the exhaustion of domestic remedies, the State party asserts that a *recurso de amparo* lodged by the applicant was still ongoing before the Constitutional Court. The State party submits that such a remedy would indeed be an effective one. The State party also challenges the author's allegation that decision 126/1997 of the Constitutional Court, of 3 July 1997, made a *recurso de amparo* on her question of succession to titles of nobility an ineffective remedy. It submits that the jurisprudence of the Constitutional Court was not static and that it evolved with the times. The State party therefore considers that the Constitutional Court could revise its jurisprudence in the light of the social reality of the moment or in the light of changes in its composition. The State party notes that the author did not allege that this remedy was unreasonably prolonged.

7.3 The State party further notes that, with the enactment of the new legislation pertaining to succession to titles of nobility, the author would benefit from an additional domestic remedy. The State party maintains that this new law, once it enters into force, will apply to the author's case because her legal proceedings (*recurso de amparo*) are ongoing and the new law will apply retroactively to all legal proceedings that remain pending as at 27 July 2005. It further considers that the entry into force of the new law may also influence the Constitutional Court in the resolution of the author's pending *recurso de amparo*.

7.4 The State party further contends that the communication is inadmissible in accordance with article 4, paragraph 2 (a) of the Optional Protocol, as the same matter has already been examined under another procedure of international investigation or settlement. Specifically, the Human Rights Committee examined

two similar cases (communications 1008/2001 and 1019/2001) in which the applicants claimed that the law governing succession to titles of nobility was discriminatory as male descendants were given preference as heirs to the detriment of women. The State party notes that in both cases the Human Rights Committee found the complaints incompatible *ratione materiae* with the International Covenant on Civil and Political Rights and declared the communications inadmissible for the reason that titles of nobility lay outside the underlying values behind the principles of equality before the law and non-discrimination protected by article 26 of the International Covenant. The State party therefore asserts that titles of nobility constitute neither a human right nor a fundamental freedom according to article 1 of the Convention, in conjunction with article 2 of the Optional Protocol. The State party further alleges that the same matter has also already been examined by the European Court of Human Rights<sup>4</sup> with a similar finding, that the complaint is incompatible *ratione materiae* with the Convention for the Protection of Human Rights and Fundamental Freedoms. It finally argues that the fact that parliament (*Cortes Generales*) is examining a draft law about the matter does not constitute a recognition of a violation of the State party's international obligations under the Convention on the Elimination of All Forms of Discrimination against Women. The doctrine and case law indicate that the right to succeed to a title of nobility is neither a human right nor a fundamental freedom and is outside the scope of application of human rights instruments (the International Covenant on Civil and Political Rights and the Convention on the Elimination of Discrimination against Women). According to the State party, succession to titles of nobility is a "natural right" subject to other types of regulation. Therefore, the drafting of a new law was not within the scope of the State party's international obligations pertaining to the equality of men and women.

7.5 The State party also argues that the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for Spain on 6 October 2001, as well as prior to the entry into force of the Convention itself. It further argues that the possession of a title of nobility is without legal effects. The State party thus submits that the author's communication is inadmissible in accordance with article 4, paragraph 2 (e) of the Optional Protocol.

#### **The author's further comments on the State party's further observations on admissibility**

8.1 The author submits that the State party's belief that her *amparo* appeal remained pending before the Constitutional Court may be based on a misinterpretation of the relevant part of her communication. The Court had indeed rejected her *amparo* appeal on 24 March 2003, for lack of constitutional content. Since then, the author had not lodged any other appeal. Even if such an appeal were pending, the author would claim that it would not constitute an effective remedy. While the Constitutional Court might change its case law, such a change could not affect the author as her case has been definitely litigated, and no appeal was available to revive or revisit the matter for reasons that the case law had changed.

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<sup>4</sup> See *De la Cierva Osorio De Moscoso and others v. Spain*, communications 41127/98, 41503/98, 41717/98 and 45726/99, decision of inadmissibility, 28 October 1999, in which the Court reiterates that article 14 concerns only discrimination affecting the rights and freedoms guaranteed by the Convention and its Protocols. It has found that the applicants' complaints are incompatible with the Convention *ratione materiae*.

Therefore, the author reiterates that she has exhausted all available domestic remedies.

8.2 The author asserts that she will not be able to benefit from any additional procedures under the new legislation on succession to titles of nobility as the law will not be applicable in her case. As it had been recognized by the State party, the new legislation will apply retroactively only to those cases which were still pending as at 27 July 2005. Her case was closed with the rejection of her *amparo* appeal by the Constitutional Court on 24 March 2003.

8.3 The author reiterates that the two communications brought before the Human Rights Committee were based on article 26 of the International Covenant on Civil and Political Rights (right to equality), which was more restrictive than articles 1 and 2 (f) of the Convention. The purpose of the Convention is to eradicate discrimination suffered by women in all spheres of life, without any limitations (article 1). Therefore, the same matter has not been examined under another procedure of international investigation or settlement. For the same reasons, the petition brought before the European Court of Human Rights should also not be considered as the same matter as a communication brought before the Committee on the Elimination of Discrimination against Women.

8.4 The author maintains that the new law was an implicit and explicit recognition that the current acts were discriminatory as its sole purpose was to eradicate the inequality between women and men pertaining to the transmission of titles of nobility and to be in line with the Convention, as explained in its preamble. No measures have, however, been taken by the State party to remedy discrimination already suffered, as in her case.

8.5 The author argues that her communication is not inadmissible *ratione temporis* since her case was still pending when the Optional Protocol entered into force for Spain in 2001. It became *res judicata* on 24 March 2003. Furthermore, she claims that the effects of the discrimination continued to the present time and rejects the State party's allegation that titles of nobility do not entail any type of privilege.

#### **Supplementary observations by the author**

9. In a submission of 8 November 2006, the author states that the law on equality between men and women on succession to titles of nobility has been published in the official bulletin on 31 October 2006 and would enter into force on 20 November 2006. She reiterates that, in the light of its transitional provisions, the new law would not be applicable to her case. The author claims that since the new law does not provide for an effective remedy for cases that had been definitively adjudicated before 27 July 2005, the State party is in violation of the Convention.

#### **Supplementary submissions of the State party**

10. By its submission of 16 November 2006, the State party reiterates that the same matter has already been examined by the Human Rights Committee. It also contends that legal certainty made it necessary to avoid a situation in which all titles of nobility would be open to re-examination, especially since titles of nobility were devoid of legal or material content, as had been stated by the Constitutional Court, the Human Rights Committee and the European Court of Human Rights. By its submission of 22 December 2006, the State party confirms the entry into force of the law on equality between men and women on succession to titles of nobility and

reiterates that the time criteria established for the retroactive application of the law was reasonable and necessary to avoid a state of legal uncertainty.

#### **Issues and proceedings before the Committee concerning admissibility**

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

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

11.3 The Committee notes that the State party claims that the communication is inadmissible in accordance with article 4, paragraph 2 (e) of the Optional Protocol since the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for Spain on 6 October 2001, as well as prior to the entry into force of the Convention for Spain on 4 February 1984. The author challenges that argument because her case was still pending when the Optional Protocol entered into force for Spain and became *res judicata* on 24 March 2003 with the rejection by the Constitutional Court of her *amparo* appeal. The Committee notes the State party's assertion that the possession of a title of nobility is without legal effect. It also notes that the author claims that the effects of the discrimination continued to the present time and that the author rejects the State party's allegation that titles of nobility do not entail any type of privilege.

11.4 The Committee shall declare a communication inadmissible under article 4, paragraph 2 (e) of the Optional Protocol where the facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned unless those facts continued after that date. In other words, the Committee cannot consider the merits of alleged violations that took place before the Optional Protocol entered into force for the State party, unless such alleged violations continue after the entry into force of the Optional Protocol.<sup>5</sup>

11.5 The rationale behind article 4, paragraph 2 (e) is that a treaty is not applicable to situations that occurred or ceased to exist prior to the entry into force of the treaty for the State concerned. The Committee notes that the author's complaint of sex-based discrimination stems from the succession of her younger brother to the title by royal decree of succession issued on 3 October 1980 following the death of their father on 23 May 1978. The Committee notes that this event took place at a time when the Convention had not yet entered into force internationally and well before it was ratified by the State party on 4 February 1984. Neither had the Optional Protocol been adopted. It considers that the relevant fact — and thus determination of the point in time in connection with article 4, paragraph 2 (e) — is when the right to succession to the title of the author's father was vested in the author's brother. That date was on 3 October 1980 when the royal decree of succession was issued. The Committee considers that this event, which was the basis of the author's complaint, occurred and was completed at the time of the issuance of the decree and as such was not of a continuous nature. The Committee further notes her brother succeeded to the title in accordance with legislation that was valid at the time.

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<sup>5</sup> In communication No. 871/1999, the Human Rights Committee stated that "a persistent violation is understood to mean the continuation of violations which the State party committed previously, either through actions or implicitly".



Therefore, the Committee considers that any effect that the discrimination against women that Spanish legislation of the time enshrined may have had on the life of the author would not justify a reversal of the royal decree of succession at the present time. For all these reasons, the Committee can only conclude that the facts that are subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party and were not of a continuous nature. Consequently, the Committee declares the communication inadmissible *ratione temporis*, article 4, paragraph 2 (e) of the Optional Protocol.

11.6 The Committee sees no reason to find the communication inadmissible on any other grounds.

11.7 The Committee therefore decides:

- (a) That the communication is inadmissible *ratione temporis* under article 4, paragraph 2 (e) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

**Individual opinions by Committee members Magalys Arocha Dominguez, Cees Flinterman, Pramila Patten, Silvia Pimentel, Fumiko Saiga, Glenda P. Simms, Anamah Tan, Zou Xiaoqiao (concurring)**

12.1 Although we agree with the conclusion that the communication is inadmissible, we disagree with the majority in relation to the reasons for inadmissibility. In our opinion, the communication should have been declared inadmissible under article 4, paragraph 2 (b) of the Optional Protocol because it is incompatible with the provisions of the Convention.

12.2 In accordance with article 4, paragraph 2 (b) of the Optional Protocol, a communication shall be declared inadmissible where it is incompatible with the provisions of the Convention. We note that the communication relates to a woman who, under the then existing legislation that has since been amended, was unable to succeed to a title of nobility involving a hereditary title, whereas her younger brother was. We recall that the Convention on the Elimination of All Forms of Discrimination against Women protects women's right to be free from all forms of discrimination, commits States parties to ensuring the practical realization of the principle of equality of women and men and sets out the normative standards of such equality and non-discrimination in all fields. To that end, the Convention provides a comprehensive definition of discrimination against women which shall mean "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" (article 1). It is undisputed in the present case that the title of nobility in question is of a purely symbolic and honorific nature, devoid of any legal or material effect. Consequently, we consider that claims of succession to such titles of nobility are not compatible with the provisions of the Convention, which are aimed at protecting women from discrimination which has the effect or purpose of impairing or nullifying the recognition, enjoyment or

exercise by women on a basis of equality of men and women, of human rights and fundamental freedoms in all fields. We therefore conclude that the author's communication is incompatible with the provisions of the Convention pursuant to article 4, paragraph 2 (b) of the Optional Protocol.

*(Signed)* Magalys **Arocha Dominguez**

*(Signed)* Cees **Flinterman**

*(Signed)* Pramila **Patten**

*(Signed)* Silvia **Pimentel**

*(Signed)* Fumiko **Saiga**

*(Signed)* Glenda P. **Simms**

*(Signed)* Anamah **Tan**

*(Signed)* **Zou** Xiaoqiao

### **Individual opinion by Committee member Mary Shanthi Dairiam (dissenting)**

13.1 At its meeting on 9 August 2007, the Committee on the Elimination of All Forms of Discrimination against Women (the Committee) decided to rule communication No. 7/2005 inadmissible under article 4 of the Optional Protocol. Under this communication, the author claims that the State party discriminated against her on the basis of sex by denying her right as the first-born child, to succeed her late father to the title of Count of Bulnes. She alleged that male primacy in the order of succession in titles of nobility constitutes a violation of the Convention in general, and specifically of article 2 (f) of the Convention. The Committee's decision made by a slim majority stated that the complaint is inadmissible *ratione temporis* under article 4, paragraph 2 (e) of the Optional Protocol. There was a concurring opinion that also found the said communication inadmissible but under article 4, paragraph 2 (b), stating that the communication is incompatible with the provisions of the Convention.

13.2 The Committee is of the view that the author's complaint of sex-based discrimination is inadmissible *ratione temporis* because it stems from the succession of the author's younger brother to the title by royal decree of succession issued on 3 October 1980 following the death of their father on 23 May 1978, all of which took place before the entry into force of the Optional Protocol for Spain on 6 October 2001, as well as prior to the entry into force of the Convention for Spain on 4 February 1984. The Committee expresses the view that the event of the succession of her brother to the title of nobility occurred and was completed on 3 October 1980 at the time of the issuance of the decree and was not of a continuous nature.<sup>6</sup> The Committee did not see it as necessary to find any other grounds for inadmissibility so the question of whether the communication was incompatible with the provisions of the Convention is left untouched.

13.3 The concurring opinion refers to article 1 of the Convention, which defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". The view expressed is that titles to nobility are purely symbolic and honorific, devoid of any legal or material effect. Consequently claims of titles to nobility are not compatible with the provisions of the Convention as denial of such claims do not nullify or impair the exercise by women of human rights and fundamental freedoms.

13.4 I am of the view that the communication is admissible. The issue here is one of deciding both on the compatibility of the communication with the provisions of the Convention as well as on the continuing nature of the violation. While it is true that the succession of the author's younger brother to the title by royal decree of succession occurred before the entry into force of the Optional Protocol for Spain, as well as prior to the entry into force of the Convention, it has to be ascertained

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<sup>6</sup> The Committee has relied on the Human Rights Committee's jurisprudence that states that a continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication of the previous violation of the State party, to interpret article 4, paragraph 2 (e) of the Optional Protocol to the Convention.

whether this event has been affirmed subsequently post entry into force of the Convention and its Optional Protocol by an act or implication (refer to footnote 6).

13.5 First of all I acknowledge that the right to titles of nobility is not a fundamental human right and may not be of much material consequence to the author. However, the legislation and practice of States parties must in no way and in no context provide for a differential treatment of women and men in a manner that establishes the superiority of men over women and concomitantly, the inferiority of women as compared to men. This is what the law of 4 May 1948 and 11 October 1820 does. The author in her complaint has submitted that she filed a case in the Madrid Court and an appeal in the Provincial High Court claiming the title of Countess of Bulnes basing her claim on the principle of equality and non-discrimination on the basis of sex proclaimed in article 14 of the Constitution of Spain. These cases were dismissed on 10 December 1991 and 27 September 1993 respectively on the grounds that the historical principle of male precedence in succession to nobility titles was compatible with the principle of equality. In my view, the decision of the courts could be interpreted to mean that such historical principles were above the norm of equality guaranteed in the Constitution. The courts were also of the view that the title had been given to her brother before the entry into force of the 1978 Constitution, and the Constitution was not applicable to the Civil Code that regulated that issue.

13.6 I wish to point out that these decisions by the courts of Spain were made after Spain became a party to the Convention and in spite of a judgement by the Supreme Court of 2 February 1981 that norms that had entered into force prior to the Spanish Constitution had to be interpreted in accordance with the Constitution. The author's appeal to the Supreme Court (*recurso de casacion*) was dismissed on 13 December 1997. This judgement of the Supreme Court established that male primacy in the order of succession to titles of nobility, provided for in the laws of 4 May 1948 and 11 October 1820 was neither discriminatory nor unconstitutional since article 14 of the Spanish Constitution which guaranteed equality before the law, was not applicable in view of the historical and symbolic nature of those titles (paragraph 2.7 of the text of the Committee's decision). The author has further pointed out that there was another Supreme Court judgement on 17 September 2002 denying her claim. This Supreme Court judgement also referred to decision 126/1997 of the Constitutional Court of July 1997 finding that given the honorary and historic nature of titles, the laws of 1948 and 1820 determining male precedence with regard to the succession to titles of nobility upon death in the same line and degree were not contrary to article 14 of the Spanish Constitution (paragraph 2.10 of the text of the Committee's decision). The author lodged an *amparo* appeal with the Constitutional Court which was rejected on 24 March 2004 (paragraph 2.12 of the text of the Committee's decision).

13.7 What needs to be noted in all of this is that when Spanish law, enforced by Spanish courts, provides for exceptions to the constitutional guarantee for equality on the basis of history or the perceived immaterial consequence of a differential treatment, it is a violation, in principle, of women's right to equality. Such exceptions serve to subvert social progress towards the elimination of discrimination against women using the very legal processes meant to bring about this progress, reinforce male superiority and maintain the status quo. This should neither be tolerated nor condoned on the basis of culture and history. Such attempts do not recognize the inalienable right to non-discrimination on the basis of sex which is a

stand-alone right. If this right is not recognized in principle regardless of its material consequences, it serves to maintain an ideology and a norm entrenching the inferiority of women that could lead to the denial of other rights that are much more substantive and material.

13.8 As acknowledged, the title to nobility is certainly not a human right. In fact under different circumstances such social hierarchies should not be supported. The focus of my defence here is not the right of the author to a nobility title but to recognize the element of discrimination against women that takes place in the distribution of social privileges using the law and legal processes. The author maintains that she was right in her view of the discriminatory nature of the law of succession to nobility titles as the State party has now amended this law in 2006 to give equal rights of succession to women and men.

13.9 The Human Rights Committee in its general comment No. 28 on equality of rights between men and women has stated,

“Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes.”

This statement reminds us that the ideology of the subordination of women based on history, culture and religion has manifested itself in material ways creating inequality. The entire intent and spirit of the Convention is the elimination of all forms of discrimination against women and the achievement of equality for women. In pursuing this goal, the Convention recognizes, in article 5 (a), the negative effects of conduct based on culture, custom, tradition and the ascription of stereotypical roles that entrench the inferiority of women. The Convention sees this as an impediment to the pursuit of equality for women that has to be eradicated in the conduct of both public and private agents. The immediate material consequence of such patterns of behaviour does not have to be demonstrated. Because of its mandate, the Committee on the Elimination of Discrimination against Women, more than any other treaty body, must be broad in its interpretation and recognition of the violations of women's right to equality, going beyond the obvious consequences of discriminatory acts and recognizing the dangers of ideology and norms that underpin such acts. A textual reading of article 1 of the Convention as seen in the concurring opinion, stating that claims of titles to nobility are not compatible with the provisions of the Convention as denial of such claims do not nullify or impair the exercise by women of human rights and fundamental freedoms, does not take into account the intent and spirit of the Convention. I therefore conclude that the complaint is compatible with the provisions of the Convention.

13.10 On the question of the continuing nature of the violation, I am of the view that there have been affirmations of the previous violation after the entry into force of the Optional Protocol for Spain on 6 October 2001. Hence the violation is of a continuous nature. The issuance of the royal decree of succession and the conferring of the title of nobility to the author's brother, which was the basis of the author's complaint, took place on 3 October 1980 before the entry into force of the Convention and the Optional Protocol. But in my opinion this violation was not completed then, as the decision of the Committee finds. The author had initiated legal action with regard to the conferring of the nobility title on 30 December 1988 and this had been followed by a series of appeals all of which the author lost. The last of the two appeals at the Supreme Court and the Constitutional Court were

dismissed on 17 September 2002 and 24 March 2003, respectively. These dismissals need to be seen as affirming the previous violation of the State party by an act<sup>7</sup> as they continued to deny the claim of the author to the title of nobility and affirmed male primacy in the order of succession to titles of nobility, provided for in the laws of 4 May 1948 and 11 October 1820. They further affirm that these laws were neither discriminatory nor unconstitutional since article 14 of the Spanish Constitution which guaranteed equality before the law, was not applicable in view of the historical and symbolic nature of those titles. A similar basis for deciding on continuing violation where a previous violation is subsequently affirmed through a court judgement is supported by the jurisprudence of the Human Rights Committee.<sup>8</sup> On this basis my conclusion is that the violation which is the basis of the author's complaint is of a continuing nature.

13.11 I therefore find the complaint admissible both *ratione materiae* and *ratione temporis*.

13.12 The author has requested that the Committee find a violation of the Convention and to direct the State party to provide her with an effective remedy as well as to revise the discriminatory legislation.

13.13 With regard to the author's request, I find that there is a violation of the Convention in general. As for her request for reform of the discriminatory legislation concerned, the State party has already done this. Her request for an effective remedy may not be granted. I acknowledge there was discrimination against the author in the Spanish legislation of the time, but this would not justify a reversal of the royal decree in the present time. Hopefully the author will feel vindicated that she was indeed discriminated against.

(Signed) Mary Shanthi **Dairiam**

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<sup>7</sup> Ibid.

<sup>8</sup> See Nallaratnam Singarasa v. Sri Lanka, case No. 1033/2001, views adopted on 21 July 2004; Alexander Kouidis v. Greece, case No. 1070/2002, views adopted in March 2006.