



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 article 4 (2) of the Optional Protocol, concerning communication No. 219/2024^{*,**}

<i>Communication submitted by:</i>	M.A.G.C.M. (represented by counsel, Diego Fernández Fernández)
<i>Alleged victim:</i>	M.A.G.C.M.
<i>State Party:</i>	Spain
<i>Date of communication:</i>	3 November 2022
<i>References:</i>	Transmitted to the State Party on 27 February 2026 (not issued in document form)
<i>Subject matter:</i>	Discrimination in the determination of compensation after divorce, in connection with time dedicated to the household
<i>Procedural issue:</i>	<i>Res judicata</i>
<i>Substantive issues:</i>	Same matter – another procedure of international investigation or settlement, discrimination on the basis of sex, equality before courts and tribunals, marriage rights, women's rights
<i>Articles of the Convention:</i>	15 and 16
<i>Article of the Optional Protocol:</i>	4.2 (a), (c) and (d)

* 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 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, Daphna Hacker, Nahla Haidar El Addal, 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.



1.1 The author of the communication is M.A.G.C.M., a Spanish national born on 16 February 1973. She claims that the State Party has violated her rights under articles 15 and 16 of the Convention. The author is represented by counsel. The Optional Protocol entered into force for Spain on 6 October 2001.

1.2 Pursuant to rule 66 of its internal rules of procedure, the Committee decided to ask the State Party for observations relating only to the admissibility of the communication.

Facts as submitted by the author

2.1 The author entered into a relationship with R.P.C.S. and left her job in London to live with him in Spain in 2004. They married in 2006. From 2004 to 2016, the author devoted herself exclusively to caring for the family and household, consisting of the couple and six children: three from the husband's previous marriage and three born from their marriage.

2.2 On 26 April 2016, the author filed for divorce before the Court of First Instance No. 25 of Madrid, requesting compensation for domestic work performed during the marriage (based on article 1438 of the Spanish Civil Code)¹ and child support for her minor children.

2.3 On 13 February 2017, the Court awarded child support for each of the couple's shared children and alimony in favour of the author for a period of five years. The Court did not award compensation for the domestic work performed during the marriage.

Exhaustion of domestic remedies

2.4 The author filed an appeal against the ruling before the Provincial Court of Madrid, asking that her request for compensation for domestic work be reconsidered. On 24 May 2018, the Court awarded her the requested compensation in the amount of €6 million.

2.5 On 11 November 2018, the author filed an appeal in cassation before the Supreme Court, questioning the criterion adopted by the Provincial Court to assess the proportionality of the amounts awarded as child support, alimony and compensation for domestic work. An appeal in cassation was also filed by R.P.C.S., who claimed that the amount awarded as compensation for domestic work was "exorbitant".

2.6 On 19 June 2019, the Supreme Court declared the admissibility of the appeal filed by R.P.C.S. and the admissibility of the author's appeal only with respect to the amount awarded as compensation for domestic work, declaring the appeal inadmissible with respect to the amounts set for child support and alimony. On 11 December 2019, the Supreme Court rejected the author's appeal and granted that of R.P.C.S., reducing the compensation for domestic work to €840,000.

2.7 On 27 February 2020, the author filed an exceptional motion for nullity of proceedings against the Supreme Court's ruling, alleging that her right to effective protection had been violated. The motion was rejected on 6 July 2020.

¹ Spanish Civil Code, article 1438: "The spouses shall contribute to the household expenses. In the absence of an agreement, they shall do so in proportion to their respective economic resources. Housework shall be computed as a contribution to household expenses and shall entitle the spouse to obtain compensation, to be set by the judge in the absence of an agreement, upon termination of the separation of property marriage system."

2.8 On 18 September 2020, the author filed a petition for *amparo* before the Constitutional Court, alleging that the rejection of her appeal against the Supreme Court's ruling constituted a violation of her fundamental rights. On 29 June 2021, the Constitutional Court declared the petition inadmissible.

Procedure before the European Court of Human Rights

2.9 On 14 December 2021, the author filed a complaint with the European Court of Human Rights invoking article 14 (prohibition of discrimination), in conjunction with articles 6.1 (right to a fair trial) and 8 (right to respect for private and family life) of the European Convention on Human Rights. On 17 March 2022, the case was examined by a single judge of the Court and declared inadmissible because "the facts set out in the complaint do not disclose any appearance of a violation of the rights and freedoms recognized in the Convention or its Protocols. Accordingly, the complaint is manifestly ill-founded within the meaning of article 35 (3) (a)".

2.10 The author contends that her case before the Committee remains admissible under article 4 (2) (a) of the Optional Protocol, as the European Court did not examine the merits of the case. The author also states that the claims brought before the European Court and before the Committee are different, as they are based on different rights. Specifically, she believes that the substantive rights invoked before the European Court concerned article 14, in conjunction with articles 6.1 and 8, in the context of the prohibition of discrimination on the basis of gender. In her complaint to that Court, she did not, therefore, invoke the right to equality between women and men before the law, nor the right to equality between women and men in matters relating to marriage and family relations, during marriage and at its dissolution. The author maintains that the Convention on the Elimination of All Forms of Discrimination against Women offers broader protection of her rights than the European Convention on Human Rights.

Complaint

3.1 According to the author, the State Party violated her right to equality and non-discrimination between men and women in matters relating to marriage and family relations, enshrined in article 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

3.2 The author contends that the interpretation and application of the law by the national courts constituted a form of gender discrimination, as the judicial rulings in no way reflected the sacrifice that she had made by giving up her professional career to devote herself to caring for the family and engaging in domestic work. In her opinion, this conclusion can be drawn from the phrasing used in the rulings, which reflects a lack of regard for the housework she performed during the marriage.

3.3 The author argues that the amount of financial compensation for domestic work awarded by the national courts was not proportional to the specific circumstances of the case, in particular the size and standard of living of the family. She emphasizes that the family unit was composed of two adults and six children, and that the family assets included three residences, private aeroplanes, boats, helicopters and more than 10 vehicles.

3.4 The author adds that the national courts assessed the economic value only of work outside the home and attributed little or no value to the domestic work she performed. She claims that this constitutes a violation of the State's obligation to ensure formal and substantive equality between men and women in terms of property rights upon dissolution of marriage, as well as to recognize the value of indirect

contributions to the household, including non-financial contributions and lost economic opportunities.

3.5 In relation to article 15 of the Convention, the author claims that the State Party violated her right to equality between men and women before the law, and her right to equal treatment, by partially rejecting her appeal in cassation. She argues that the Supreme Court, influenced by stereotypes and gender discrimination, prevented her from obtaining a review of the child support and alimony amounts granted. She points out that the Court admitted both her application and that of R.P.C.S. only with respect to the compensation for domestic work, but rejected her application with respect to the child support and alimony amounts based on the “third instance” doctrine, despite the fact that she had questioned those amounts at every stage.

State Party’s observations on admissibility

4.1 In its observations of 10 July 2024, the State contends that the present communication is inadmissible under article 4 (2) (a), (c) and (d) of the Optional Protocol, as the same issue has been submitted to several international bodies. It notes that the author had already filed an application with the European Court of Human Rights with respect to the same facts, alleging gender discrimination in the context of her divorce. The European Court declared the claim inadmissible after an examination of the merits, and concluded that the complaints were manifestly ill-founded.

4.2 The State Party also notes that the author’s allegations with respect to articles 15 and 16 of the Convention constitute an abuse of the right to submit a communication and are insufficiently substantiated, as they focus almost exclusively on obtaining higher financial compensation amounts (alimony and compensation for family expenses) far in excess of what is customary. The State Party emphasizes that the Committee should not take the place of national courts in weighing up evidence, except on the grounds of manifest arbitrariness or denial of justice, which are not apparent in this case.

4.3 Finally, it underscores that the domestic court rulings were reasoned and balanced, awarding the author significant alimony and compensation amounts (€75,000 per month for five years and €840,000 for family expenses), far more than in similar proceedings. The State Party therefore considers this not a case of denial of rights or discrimination, but rather one involving a disproportionate economic claim.

Author’s comments on the State Party’s observations on admissibility

5.1 In her comments of 19 December 2024, the author rejects the State Party’s claim that the communication is inadmissible on the grounds that the same matter has been examined under another international procedure. She points out that, while she did file an application before the European Court of Human Rights, the rights invoked in that instance were not identical to those she is now invoking before the Committee. She notes that the Convention on the Elimination of All Forms of Discrimination against Women provides broader protection than the European Convention on Human Rights, in particular with respect to equality in marriage, its dissolution and family relations, areas that were not examined by the European Court.

5.2 The author adds that the European Court’s ruling of inadmissibility did not constitute a sufficient examination of the merits, but was instead a succinct decision dismissing the claim for lack of appearance of a violation, without a substantive assessment of the allegations of discrimination. According to the author, the Committee’s jurisprudence allows for the same facts to be resubmitted when different or broader rights are invoked, as in this case.

5.3 Finally, the author rejects the allegation of abuse of the right to submit a communication and lack of substantiation. She contends that the domestic judicial rulings, in particular the one handed down by the Supreme Court, reflect a discriminatory bias in the interpretation of article 1438 of the Spanish Civil Code, both in terms of the reduction of compensation for work in the home and the language used. According to the author, such rulings violate the rights enshrined in articles 15 and 16 of the Convention, which guarantee the equality of women in all matters relating to marriage and family relations.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes the author's allegations under articles 15 and 16 of the Convention, in relation to gender discrimination in the field of marriage and family relations and the equality of men and women before the law and their right to equal treatment.

6.3 The Committee recalls that, under article 4 (2) (a) of the Optional Protocol, a communication is declared inadmissible if it concerns a matter that has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. In the present case, the Committee notes that the author filed a complaint concerning the same facts before the European Court of Human Rights, which declared it inadmissible through a single judge decision of 17 March 2022. The Committee must therefore start by determining whether this is the "same matter", within the meaning of article 4 (2) (a) of the Optional Protocol.

6.4 The Committee recalls its jurisprudence, according to which the "same matter" must be understood as relating to the same author, the same facts and the same substantive rights.² While the author contends that the communication before the Committee does not concern the same matter, as it invokes different principles and rights – specifically, the right to equality between women and men before the law and in family relations – the Committee notes that, in essence, the allegations before both bodies relate to alleged gender discrimination by the courts that issued rulings on the dissolution of the author's marriage. Consequently, the rights invoked are substantively the same, even if they are formulated with a different legal basis.³

6.5 The Committee takes note of the author's argument that the Convention on the Elimination of All Forms of Discrimination against Women offers broader protection than the European Convention on Human Rights. However, the Committee is of the view that the author has not demonstrated that, in her particular case, the provisions of the former provide additional or different protections in respect of the rights invoked before the European Court. Moreover, to accept such reasoning would render the *res judicata* clause set forth in article 4 (2) (a) of the Optional Protocol ineffective, since it would allow the treaty bodies to hear cases that are substantially identical to those already examined by the European Court, on the mere grounds that a specialized treaty has been invoked.⁴

² *X and Y v. Georgia* (CEDAW/C/61/D/24/2009), para. 6.6.

³ See *S.S. v. The United Kingdom of Great Britain and Northern Ireland* (CRPD/C/27/D/85/2021), para. 6.5; *C.S.D. v. Argentina* (CRC/C/95/D/123/2020) para. 6.4; and *X and Y v. Switzerland* (CAT/C/77/D/963/2019), para. 6.5.

⁴ *Mangouras v. Spain* (CCPR/C/129/D/R.3305/2019), para. 6.3; *M.T. v. Sweden* (CAT/C/55/D/642/2014), para. 8.5; and *M.F. v. Switzerland* (CRC/C/94/D/125/2020), para. 6.3.

6.6 The Committee is therefore of the view that the issue raised by the author before the European Court is the same matter for the purposes of article 4 (2) (a) of the Optional Protocol. It must proceed to determine whether the European Court “examined” the issue within the meaning of that article. The Committee recalls that, according to its jurisprudence and that of other treaty bodies, a case is considered to have been examined when the European Court of Human Rights declares it inadmissible not exclusively on procedural grounds, but for reasons involving an assessment, however limited, of the merits of the case. The Committee takes note of the letter from the Registrar of the European Court, dated 24 March 2022, indicating that the merits of the case had been considered. The Committee is therefore of the view that the European Court went beyond an examination of purely procedural admissibility criteria when it declared the author’s application inadmissible because it did “not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols”.⁵

6.7 Accordingly, the Committee deems the present communication inadmissible under article 4 (2) (a) of the Optional Protocol for having been previously examined under another procedure of international investigation or settlement.

7. The Committee decides:

- (a) That the communication is inadmissible under article 4 (2) (a) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State Party and the author of the communication.

⁵ *Mangouras v. Spain* (CCPR/C/129/D/R.3305/2019), para. 6.4; and *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), para. 8.5.