



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
21 November 2022
English
Original: French

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 132/2018^{*,**}

Communication submitted by: B. M. (not represented by counsel)
Alleged victim: The author
State party: Switzerland
Date of communication: 9 August 2018 (initial submission)
References: Transmitted to the State party on 13 September
2018 (not issued in document form)
Date of adoption of decision: 17 October 2022

1.1 The author of the communication is B.M., a Belgian national, born in 1968. She lives in Switzerland. She claims that the State party has violated her rights under articles 2 (b), (c), (d), (e) and (f) and 16 (h) of the Convention. The Optional Protocol entered into force for Switzerland on 29 September 2008. The author is not represented by counsel.

1.2 On 28 December 2018, the Committee decided not to consider the admissibility of the communication separately from the merits.

1.3 On 18 January 2019, the Committee, acting through its working group on new communications, rejected the author's request for interim measures to avert her eviction from the house where she and her two children were residing.

* Adopted by the Committee at its eighty-third session (10–28 October 2022).

** The following members of the Committee participated in the examination of the communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Franceline Toe Bouda.



Facts as submitted by the author

2.1 The author and her spouse¹ were married in Belgium under the separation of property regime. They have two children who live with the author, who has custody of them. In February 2004, the company in which the author worked was relocated. The couple acquired a property in joint ownership in the Canton of Vaud. Between 2004 and 2009, the tax amounts deducted at source from the author's salary were used to pay a total of 132,448 Swiss francs in taxes, which was 92 per cent of the couple's taxes. Her spouse, who was employed by a Belgian company that was not subject to tax in Switzerland, paid only 8 per cent of the taxes over the same period. In 2004, the tax office of the Rolle district recognized the independent gainful activity of the author's spouse.

2.2. The author's spouse took advantage of his self-employed status to deceive the tax authorities by reporting inaccurate income amounts for the period from 2004 to 2009. The author financed the couple's taxes, household expenses and condominium fees to an extent much greater than she was responsible for. In particular, she paid the full mortgage interest on the marital property, of which she and her spouse own one half each.

2.3 The spouse was physically and psychologically abusive to the author and the couple's two children.² On 17 December 2010, the two spouses separated. The author's spouse continued to use his status as a self-employed person recognized by the tax authorities to deceive the judicial authorities regarding the true amount of his income.

2.4 On 2 August 2011, the author applied to the Nyon District Tax Office for the right to file an individual tax return for the 2010 tax year. She informed the cantonal tax administration that her husband had started divorce proceedings in Belgium, which potentially implied that he would be leaving Switzerland.

2.5 On 25 January 2012, the Cantonal Tax Administration initiated tax arrears proceedings for the years 2004 to 2009 against the author and her spouse. In addition, criminal proceedings for tax evasion were initiated against the author's spouse, who is considered the offending taxpayer.

2.6 On 30 April 2012, the author filed an action for payment before the Cantonal Property Chamber, aiming, among other things, to address the impact of a possible finding of joint and several liability. On 18 December 2012, the author filed a divorce action. To date, neither of the two actions initiated by the author has progressed beyond an admissibility hearing. In December 2012, the author's spouse filed a second divorce petition, this time based on Swiss law. On 23 April 2013, the Cantonal Tax Administration issued an initial closing report on the tax evasion investigation for the years 2004 to 2009, in which it issued a tax assessment in the amount of CHF 235,021. On 8 November 2013, the Cantonal Tax Administration issued a second report issuing a tax assessment in the amount of CHF 182,820. In December 2013, her spouse was able to leave Swiss territory without any particular measure being taken against him.

2.7 The author's spouse first reduced and then stopped all support payments for the couple's two minor children. In April 2015, the Office of the Attorney General of Switzerland suspended the criminal proceedings initiated by the author against her spouse for violation of maintenance obligations. On 1 December 2015, a tax arrears

¹ At the time of submission of the communication, divorce proceedings between the author and her spouse were still pending.

² A report from the Youth Protection Department addressed to the District Court of La Côte (Nyon) refers to a "description that amounts to a situation of danger to or abuse of the children".

and final taxation decision was sent to the couple for a total amount of 179,465.50 Swiss francs. On 31 December 2015, the author filed two separate claims, one against the final cantonal and municipal tax ruling and the other against the final federal direct tax ruling.

2.8 On 13 January 2016, the tax authority required the author to provide security in the amount of 130,100 Swiss francs as a guarantee for the additional cantonal and communal taxes owed by her husband, on account of his departure abroad. The author is being sued on the basis of article 14 (1) of the Vaud Cantonal Direct Taxes Act. The Act applies unlimited joint and several liability, despite the separation, for tax debts arising prior to the separation, that is, for the tax period 2004–2009. The author is being sued by the State for joint and several liability on the grounds that it is her responsibility to settle her joint accounts with her husband. On 12 January 2016, the author appealed against that action. The appeal was dismissed by a 19 December 2016 ruling of the Court of Administrative and Public Law. On 31 January 2017, the author appealed against the judgment. That second appeal was rejected on 30 May 2017 by the Federal Court.

2.9 The author has, without success, repeatedly requested the scheduling of a hearing. On 20 August 2017, the Cantonal Tax Administration set an additional tax arrears amount of 179,300 Swiss francs, exclusively on her spouse's earnings. On 31 October 2017, the author filed a reply in which she questioned the constitutionality and compliance with federal law of article 14 (1) of the Vaud Cantonal Direct Taxes Act, which maintains, despite a separation, unlimited joint and several liability between spouses. On 11 December 2017, the Cantonal Tax Administration filed a duplicate. On 23 January 2018, the Cantonal Tax Administration seized the author's share of the property as security for her husband's tax debts on account of his departure abroad. On 13 February 2018, the author objected to that order. On 27 February 2018, her objection was dismissed by the Nyon justice of the peace. On 11 March 2018, the author filed an appeal against the decision of the justice of the peace. On 28 June 2018, the Court of Debt Collection and Bankruptcy of the Cantonal Court of the Canton of Vaud dismissed the author's appeal. On 6 August 2018, she filed an appeal against that dismissal to the Federal Court.

Complaint

3.1 The author claims that the State party has violated her rights under articles 2 (b), (c), (d), (e) and (f) and 16 (h) of the Convention.

3.2 The author challenges the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act, which in practice results in indirect discrimination against her and against women in similar situations. In that respect, the author criticizes the refusal of the Cantonal Tax Administration to give her access to anonymized documents since 2004 in order to establish the sex of the persons who have been sued in the Canton of Vaud and more broadly throughout Switzerland for joint and several liability for the tax debts of their spouses from whom they are separated or divorced. The author submits that in all the judgments pronounced by the Vaud cantonal authority, the spouse who has been sued has systematically been the wife.

3.3 Referring to article 14 (1) of the Vaud Cantonal Direct Taxes Act, the author alleges that the direct taxation assessment procedure of May 2013 openly targets the wife and not the husband. It is expressly stated in that judgement that "the wife living in a common household with her husband can in principle be held jointly responsible for the payment of the entire joint tax debt from all her assets (joint and several liability), regardless of whether she has signed the tax return". The author considers that the tax policies in force in the Canton of Vaud, which result in the systematic pursuit of women to settle their ex-husbands' tax debts, violate article 2 of the

Convention. She adds that in matters of federal direct taxation and in almost all other Swiss cantons (except Vaud and Appenzell Inner-Rhodes), joint and several liability no longer applies to any amounts of tax still due as soon as the spouses are separated, *de jure* or *de facto*.

3.4 The author submits that she has been subjected to unfounded lawsuits seeking the seizure of her share of the joint property so that the entire building in which she lives with her two children can be sold at auction. She also submits that the tax authority abused her rights by taking a first decision to apply a lien on her share of the joint property and by demanding the payment of the 2015 property tax for her husband's share of the joint property, even though that tax was due exclusively from him. A second decision of placing a lien on the author's share of the joint property was issued with a demand for the payment of taxes owed by her spouse for the 2014 tax period even though the couple had been separated since 17 December 2010 and taxed separately since 2010. The author recalls that the court has found that the two lien decisions had no legal basis.

3.5 The author argues that the State party had incorrectly afforded her husband self-employed status. That status had allowed him to deduct amounts from his taxes. By creating the conditions that allowed her husband to lie to her during their life together about the true level of his income, the author argues that the tax authority contributed to the deterioration of her financial situation and allowed her husband to evade his obligation to support the children.

3.6 The author notes that there was not a single woman among the judges of the Administrative Law Court, which dismissed her submissions, without considering them, of a presumption of indirect discrimination against women with regard to the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act.

3.7 The author further submits that, even if she has not made full use of the domestic remedies available to her, it is evident from the judgment handed down on 6 August 2018 by the Court of Administrative and Public Law of the Cantonal Court of the Canton of Vaud and from existing case law that there is no chance that the outcome of the proceedings would actually grant her redress for violation of the Convention.

State party's observations on admissibility

4.1 In a note verbale dated 13 November 2018, the State party requested the Committee to consider the admissibility of the communication separately from the merits.

4.2 The State party challenges the admissibility of the communication on the grounds of failure to exhaust domestic remedies, in accordance with article 4 (1) of the Convention. It recalls that the Committee, following the approach of other treaty bodies,³ has already considered that an application must first be submitted to the domestic authorities, even if current practice indicates that it may not be successful.⁴

4.3 The State party recalls that the two appeals filed by the author with the Federal Court are still pending, namely an appeal filed on 10 September 2018 against the judgment of 6 August 2018 concerning the tax debts owed by herself and her spouse for the years 2004 to 2009 and an appeal filed on 6 August 2018 against the judgment

³ For the Committee against Torture, see Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture: A Commentary*, Oxford Commentaries on International Law (Oxford, Oxford University Press, 2008), art. 22, chap. 109 ff, with various cross-references. For the Human Rights Committee, see *Länsman et al. v. Finland* (CCPR/C/52/D/511/1992), para. 6.2; *Sohn v. Republic of Korea* (CCPR/C/54/D/518/1992), para. 6.1. and *Champagnie et al. v. Jamaica* (CCPR/C/51/D/445/1991), para. 5.1.

⁴ *Dayras et al v. France* (CEDAW/C/44/D/13/2007), paras. 10–11.

rendered by the Debt Collection and Bankruptcy Court of the Cantonal Court on 28 June 2018.

4.4 The State party submits that the author herself acknowledges that she has not exhausted domestic remedies because, under existing case law, there is no chance that she would actually obtain redress. The State party adds that, with regard to the cantonal judgments, there is clearly no indication that an appeal to the Federal Court, a higher court, would have no chance of success. Of the three judgments cited by the author, only one deals with the indirect discrimination alleged by the author in connection with the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act.⁵ However, the facts giving rise to the appeal are not the same as in the present case; the discrimination in question was examined exclusively under domestic law, since in that case the Convention had not been invoked.

4.5 The State party considers that the provisions of article 2 (b), (c), (d), (e) and (f) and article 16 (h) of the Convention invoked by the author constitute norms of a general nature and not individual rights. Accordingly, the State party requests the Committee to declare the communication inadmissible under article 2 of the Optional Protocol.

Author's comments on the State party's observations on admissibility

5.1 In her comments of 13 December 2018, the author submits that all domestic remedies have been exhausted. She states that the Federal Court's judgment of 8 November 2018 dismissed in its entirety the appeal of 6 August 2018 that she had filed with the Cantonal Court. The author points out that even though she expressly invoked the violation of the Convention in her appeal, there was no such reference in the Federal Court's judgment of 8 November 2018, which denies outright that the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act results, in practice, in indirect discrimination against women. The Federal Court also refused to consider the submission of proof, in a clear violation of the basic rules of the right to a fair trial.

5.2 The author contests the State party's argument that the appeal filed with the Federal Court on 6 August 2018 against the judgment of the Debt Collection and Bankruptcy Court of the Cantonal Court of 28 June 2018 is still pending. She claims that the Federal Court's judgment of 31 October 2018 dismissed that appeal in its entirety. Accordingly, all domestic remedies have been exhausted. The author further submits that even if domestic remedies had not been exhausted, the communication would be admissible because, on the one hand, the appeal procedure is unreasonably prolonged; and on the other hand, it is highly unlikely that she would obtain redress.

5.3 With regard to reasonable time limits, the author recalls that in a decision of 26 January 2005,⁶ the Committee considered that a delay of more than three years in relation to the incidents under consideration would be considered unreasonably prolonged within the meaning of article 4 (1) of the Optional Protocol. The author alleges that a time period of more than six years from the initiation of the contested proceedings on 25 January 2012 and three years from the claims filed by the author on 31 December 2015 should be considered unreasonably prolonged within the meaning of article 4 (1) of the Optional Protocol, especially considering that during that period she was the subject of numerous lawsuits and that, in addition, her share of the joint property was seized, causing her irreparable damage. Accordingly, the author considers that the communication should be declared admissible in view of the

⁵ Federal Court Judgment 2C 723/2015 of 18 July 2016.

⁶ *A.T. v. Hungary* (A/60/38 (Part I), annex III, para. 8.4).

appeal time being unreasonably prolonged within the meaning of article 4 (1) of the Optional Protocol.

5.4 The author recalls that it is incumbent on a State party claiming the non-exhaustion of domestic remedies to demonstrate that a remedy was effective and available at the time of the events, both in theory and in practice; that is, a remedy was accessible and it was likely to provide the applicant with a solution for her complaints and had a reasonable prospect of success.⁷ The author submits that for the past 22 years, the Federal Court has denied that joint and several liability in tax matters is discriminatory against women, although the law and the taxation procedure openly target “the wife”. In that regard, in a judgment of 3 May 1996,⁸ the Federal Court ruled that article 5 (4) of the new tax Act applied by the Canton of Appenzell Rhodes-Extérieures (which is identical to article 14 (1) of the Vaud Cantonal Direct Taxes Act applied by the Canton of Vaud) was not discriminatory in terms of gender equality.⁹

5.5 With regard to the State party’s argument that only one of the three judgments referred to by the author addresses indirect discrimination with regard to the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act, and that “the discrimination in question was examined exclusively under domestic law, since in that case the Convention had not been invoked”, the author argues that the fact that indirect discrimination was invoked before the Federal Court exclusively under domestic law¹⁰ and not under the Convention does not authorize the State party to maintain laws, customs and practices that discriminate against women. In the author’s view, contrary to the State party’s assertion, the cantonal judgments clearly demonstrate that an appeal to the Federal Court had no chance of success.

5.6 The author further submits that the State party’s argument suggesting that the provisions of article 2 (b), (c), (d), (e) and (f) and article 16 (h) of the Convention constitute general norms and not individual rights reinforces the concerns expressed by the Committee, which was already concerned in November 2016 at the low level of importance accorded in Switzerland to the Convention and the way it is perceived and implemented there. Contrary to the requirements of the Federal Constitution of the Swiss Confederation,¹¹ the Federal Court did not consider the Convention to contain directly applicable rights and stated that it is for the courts to decide in each case on the direct applicability of the provisions of the Convention. The author recalls that, in accordance with article 27 of the Vienna Convention on the Law of Treaties and as unequivocally held by the Committee, neither traditional, religious or cultural practices, nor incompatible national laws or policies, can justify violations of the provisions of the Convention.¹²

Additional comments from the author

6.1 In her additional comments of 21 December 2018, the author submits that in the proceedings initiated against her for payment of her ex-husband’s tax debts, she invoked the new legislation that entered into force on 1 January 2011, which increased

⁷ See the case law of the European Court of Human Rights in this regard, inter alia, *Çetin et al. v. Turkey*, Nos. 40153/98 and 40160/98, para. 37, which refers to *V. v. the United Kingdom* (Grand Chamber), No. 24888/94, para. 57.

⁸ Federal Court judgment 122 I 139, *Revue de droit administratif et de droit fiscal*, vol. II (1997).

⁹ The author notes that in the version of the text in force until the end of 1986, art. 5 (4), of the former tax Act of the Canton of Appenzell Rhodes-Extérieures introduced a provision on joint and several liability for tax matters expressly referring to the wife.

¹⁰ Federal Court judgment 2C 723/2015.

¹¹ Art. 8 (3) and art. 14.

¹² General recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution.

the maximum deduction for childcare expenses from 1,200 to 7,100 Swiss francs per child per year. However, the State party refused to allow her the benefit of the new law.

6.2 The author considers that the State party, by increasing the deduction for childcare costs from 1,200 to 7,100 Swiss francs and by refusing to allow that deduction in her favour, because she has been gainfully employed full-time since her arrival in Switzerland in 2004, violates women's right to work and their access to full-time work, which are guaranteed by article 11 (1) (a) and (b) of the Convention. The author claims that the State party perpetuates gender stereotypes and discriminatory attitudes about women's roles and responsibilities, in violation of article 5 of the Convention, and prevents them from enjoying equal status in the family and in society at large in violation of article 16 (1) (g) of the Convention. In that regard, the State party continues to restrict women's access to full-time employment because of their traditional role as caregivers, which is contrary to its obligations under article 5 (a) and (b) and article 11 (2) (c) of the Convention. The author believes that the State party is also in violation of article 16 (1) (g), which guarantees the same personal rights for both husband and wife, including the right to choose a profession and an occupation.

6.3 The author submits that refusing to take childcare costs into account on the grounds that the facility in question is a private facility, even though the costs of childcare in a public facility would have been even higher, violates the principle of equality before the law, the principle of contributory capacity, the right to work, the right to free choice of profession or employment corresponding to one's own interests, aptitudes, qualifications and aspirations, as provided for in article 11 (1) (a) and (b), the right to combine family obligations with work responsibilities and the right to participation in public life, as provided for in article 11 (2) (c).

State party's additional observations on admissibility and the merits

7.1 On 29 May 2019, the State party submitted its observations on admissibility and the merits. The State party reiterates that the communication is inadmissible. It submits that, on the one hand, the author has not demonstrated how the allegations made would constitute a violation of the Convention and, on the other hand, she has not exhausted domestic remedies.

7.2 The State party notes that in her additional submission of 21 December 2018, the author raises a new complaint in connection with tax deductions for childcare expenses. As to the author's argument that the permissible deduction is contrary to the Convention insofar as it is less than the actual costs of care, the State party points out that this is the first time that this argument has been raised before the Committee, which must declare it inadmissible. With regard to the author's second complaint regarding the tax arrears, the State party points out that the rule invoked by the author came into force several years after the period in question and did not have retroactive application.¹³ That claim by the author must be declared inadmissible as it was manifestly unfounded. The State party points out that the author should have raised any complaints about the permissible deductions for childcare costs at the stage of the initial taxation procedure. Since she had not done so, the author has not exhausted domestic remedies on that point either.

7.3 The State party further submits that the issue of joint and several liability has not yet been decided in this case. The author was not the target of the tax arrears procedure.¹⁴ It is clear from the internal decisions that the procedure merely

¹³ See the Cantonal Court judgment of 6 August 2018, p. 12.

¹⁴ Ibid., pp. 17 and 19, and the Federal Court judgment of 8 November 2018, recital 5.2.4.

established the amount owed by the spouses for the period in question and did not determine which spouse would be required to pay that amount.¹⁵ The share of each spouse in the tax is established in a separate decision, once the (joint) taxation of the spouses is definitively established. The apportionment does not take place at the taxation stage but later, in the course of the tax collection procedure, which has not yet taken place in the case in question.¹⁶ In the context of that procedure, the author may, among other things, request a partial or total remission of the taxes if she believes that the payment would be too burdensome for her on account of significant losses or other serious reason,¹⁷ or file a claim¹⁸ and then bring the matter before the competent courts.¹⁹ Accordingly, the author has failed to exhaust the available domestic remedies on that point.

7.4 Regarding the merits, the State party points out that the current tax regulations provide for the joint and several liability of spouses after a separation. In that connection, according to article 3 (3) and (4) of the federal Act of 14 December 1990 on the harmonization of direct cantonal and communal taxes,²⁰ the income and assets of spouses living in a common household are added together, regardless of the matrimonial property regime.²¹ Spouses who live in a common household exercise the rights and fulfil the obligations resulting from the law on direct taxes in a joint manner.²² In case of divorce or permanent separation, the spouses are taxed separately for the entire tax year.²³ Spouses living in a common household are jointly and severally liable for the total amount of tax.²⁴ Under Vaud law, according to consistent case law, which has been confirmed on several occasions by the Federal Court, this liability continues after the separation of the spouses for the part relating to their cohabitation.²⁵ If one spouse pays more than his or her share of the tax, he or she has the option of recovering that amount from his or her (ex-)spouse under the general provisions of civil law.

7.5 As regards the non-discriminatory nature of the regulation, the State party submits that the rule in article 14 (1) of the Vaud Cantonal Direct Taxes Act, which applies equally to both spouses, does not constitute direct discrimination. Nor does it constitute indirect discrimination as the author argues in substance. The State party points out that the five cases on which the author relies to show that joint and several liability applies to women span a period of some 20 years and are not sufficient to be representative of a widespread practice. Moreover, a review of the decisions cited shows that, in several of them, the tax authorities had first attempted to obtain the amount owed by the husband before invoking the joint and several liability of the

¹⁵ Cantonal Court judgment of 6 August 2018, p. 3.

¹⁶ See art. 216 of the Vaud Cantonal Direct Taxes Act; the Cantonal Court judgment of 6 August 2018, pp. 17 and 19, with references; and the Federal Court judgment of 8 November 2018, recital 5.2.4. See also the Cantonal Court judgment FI.2014.0130 of 23 June 2015, section D of the statement of facts (annex 30 to the communication); and Cantonal Court judgment FI.2006.0039, recital 1(c) (annex 30 to the communication).

¹⁷ Art. 231 of the Vaud Cantonal Direct Taxes Act.

¹⁸ Ibid., art. 239.

¹⁹ Cantonal Court judgment FI.2014.0130 of 23 June 2015.

²⁰ *Recueil systématique du droit fédéral*, No. 642.14.

²¹ See also art. 9 of the Vaud Cantonal Direct Taxes Act.

²² Ibid., art. 160 (1).

²³ Ibid., art. 80.

²⁴ Ibid., art. 14 (1). See also, for the federal direct tax, art. 13 (1) of the Federal Act on direct federal taxes (*Recueil systématique du droit fédéral*, No. 642.11).

²⁵ See: Cantonal Court judgments FI.2014.0130, annex 30 to the communication, FI.2015.0105, annex 30; FI.2007.0106, annex 30 to the communication; FI.2005.0015, annex 30 to the communication; FI.2006.0039, annex 30 to the communication, FI.1997.0061; Federal Court judgments 122 I 139, annex 30 to the communication, 2C 723/2015, annex 30 to the communication; and 2P 201/2005, annex 30 to the communication.

wife.²⁶ It therefore cannot be inferred from those cases that the joint and several liability of spouses for tax debts relating to the period prior to a separation would be systematically applied to the disadvantage of women.

7.6 The State party points out that the document taken from the tax information published by the Swiss Tax Conference, submitted by the author, shows that in most cases the tax is claimed from the husband first, so that the wife's liability could, in fact, be considered subsidiary. For that reason, in the following paragraph, the document refers only to the wife in descriptions of the various cases in which the principle of joint and several liability is applied. It is clear that the rules in question also apply in the opposite case, that is, when the wife is first called upon to pay the tax debt and the liability of the husband is invoked subsequently. Moreover, by reflecting the fact that, in practice, it is often the husband that the authorities turn to first for the recovery of the tax debt and that the joint and several liability of the wife is applied only in a subsidiary way, the document demonstrates that the joint and several liability of the spouses tends, in general, to treat wives more favourably than husbands.

7.7 The State party further submits that it appears that the solution adopted by federal law, according to which the joint and several liability of the spouses for tax claims relating to the period spent in the common household ceases at the time of separation, is uncertain in nature, since the joint and several liability thus depends on the status of taxation at the time of separation. The solution adopted by the Canton of Vaud, on the other hand, treats all married couples living in a common household equally and avoids favouring couples whose tax is collected after the separation, for example, in the case of an appeal against the tax assessment decision or after a tax arrears procedure. The State party further deduces that the fact that the rule derived from article 14 (1) of the Vaud Cantonal Direct Taxes Act is also applicable to homosexual couples confirms that it does not constitute indirect discrimination against women.

7.8 The State party points out that, during the period of cohabitation, the author and her husband were both gainfully employed and had a comfortable financial situation. When the author was called upon to co-sign the couple's tax return pursuant to article 160 (2) of the Vaud Cantonal Direct Taxes Act, she must have known that her husband was regularly deducting from his income amounts that were nevertheless reimbursed to him by his employer. It was only after the couple separated that she drew the attention of the cantonal tax administration to that fact, so that the tax debt could be taken into account in civil law in the liquidation of the spouses' matrimonial regime. The State party points out that the author's behaviour appears contradictory in that she contests, on the one hand, that joint and several liability applies to the tax arrears and, on the other hand, she wanted the claim in question to be taken into account in civil law, with which she implicitly recognizes that the claim did indeed concern both spouses.

7.9 The State party recalls that on 13 January 2016, the Cantonal Tax Administration requested each spouse to provide security.²⁷ The fact that security was not required from the author's husband when the tax arrears procedure was initiated is explained by the fact that the amount of the claim was not yet known to the cantonal tax administration. However, article 233 of the Vaud Cantonal Direct Taxes Act requires, in such a case, that the amount of tax to be guaranteed be established with sufficient precision.²⁸ One of the reasons for the request for the author to provide security was that she had not declared all of her bank accounts, at least three of which had been

²⁶ The State party cites, among others, Cantonal Court judgments FI.2007.0106 and FI.2006.0039 (annex 30 to the communication).

²⁷ See the Cantonal Court judgment of 19 December 2016, statement of facts, sect. E.

²⁸ See in this regard the Cantonal Court judgment of 19 December 2016, recital 6.

opened in Belgium. The risk of her transferring funds there seemed high. In addition, and despite the amounts discovered, the author had stated that she was facing financial difficulties.²⁹ The author, who has always challenged the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act, does not claim to have attempted to provide the required securities, in particular by using the amounts she had transferred to Belgium. Thus, the Cantonal Tax Administration sent a seizure order to the Nyon District Debt Collection Office. The seizure was validated on 25 January 2018 by the sending of a request for the provision of security.³⁰

7.10 The State party recalls that the claim to which the liability referred to in article 14 (1) of the Vaud Cantonal Direct Taxes Act applies has not yet been apportioned between the spouses and that the author may, if necessary, appeal the decision in due course. The State party also recalls that the author herself initiated that procedure by reporting her husband's actions to the tax authorities. The State party, without minimizing the author's admittedly unpleasant situation, considers that she has not demonstrated that the situation in which she finds herself is in any way related to the fact that she is a woman, that she has been treated unfavourably by the authorities on that account, or that the decisions of the authorities have been influenced by gender stereotypes. Accordingly, no discrimination has occurred in this case within the meaning of article 1 of the Convention.

7.11 Finally, the State party invites the Committee, firstly, to declare the communication inadmissible under article 2 and article 4 (1) and (2) (c) of the Optional Protocol and, in addition, to find that there has been no violation of article 2 (b), (c), (d), (e) or (f) or article 16 (h) of the Convention in this case.

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

8.1 In her comments of 19 July 2019, the author argues that the purpose of the communication is to report tax practices that discriminate against women and that it is by no means limited to the tax arrears procedure initiated on 25 January 2012, as claimed by the State party.

8.2 The author submits that she has exhausted all domestic remedies and recalls that all the appeals that she has filed as far as the Federal Court have been systematically rejected. The author points out that the State party does not demonstrate that yet another appeal would have a reasonable chance of success. She indicates that the capped deduction for childcare expenses has been systematically denied.

8.3 On the State party's argument regarding a taxpayer's ability to request a tax review in his or her favour, the author recalls that, in its judgment of 6 August 2018, the Cantonal Court itself agrees "that it is up to the tax authority to establish the facts that form the basis of the tax arrears claim" while the taxpayer "has the burden of alleging and proving the facts that eliminate or reduce the tax claim."³¹

8.4 The author submits that the State party cannot fault her for not having raised "possible complaints concerning the authorized deductions for childcare costs at the stage of the initial taxation procedure", considering that the new legislation increasing the deduction for childcare costs from 1,200 to 7,100 Swiss francs only entered into force on 1 January 2011, that is, after the initial taxation procedure, which the State party reversed on 25 January 2012 by initiating a tax arrears procedure. The author also

²⁹ See the Cantonal Court judgment of 19 December 2016, recital 4.

³⁰ See the application of 7 May 2018 for withdrawal of the objection.

³¹ See Hugo Casanova and Claude-Emmanuel Dubey, in *Impôt fédéral direct*, 2nd ed., Yves Noël and Florence Aubry Girardin, ed., Commentaire romand (Basel, Helbing Lichtenhahn, 2017) (title 4 – judgment of 6 August 2018, p. 11, communication of 21 December 2018).

challenges the explanation by the State party whereby it justified the non-application of the childcare expenses deduction on account of the principle of non-retroactivity of the law. In that regard, she recalls that in its pleadings of 29 May 2019, the State party asserted that the tax arrears and the final taxation decision was issued by the tax authorities on 1 December 2015, which is long after the entry into force in 2011 of the deduction for actual childcare costs, which was then increased to 7,100 Swiss francs at the cantonal level. Similarly, she was unable to benefit from the deduction capped at 7,100 Swiss francs in the tax decision issued on 29 March 2019 for the 2014 tax period. Consequently, the State party's argument about a "retroactive" application of the above-mentioned standard is not valid in this case. The same answer was given to the applicant in relation to the tax years 2013, 2015, 2016 and 2017.

8.5 The author refutes the conclusions of the local courts that childcare expenses are "income employment expenses". She considers that those expenses generated during working hours constitute "income acquisition expenses" that enabled a single mother raising two children to work full time.

8.6 The author also adds that the extensive interpretation [sic] of the law according to which "this joint and several liability continues after the separation of the spouses for the portion relating to their common life" is contrary to circular No. 14 of 29 July 1994 of the Federal Tax Administration concerning family taxation, according to which "as soon as the spouses are living separately in fact or in law, any joint and several liability no longer applies" in tax matters. Moreover, the provisions of article 10 (1) and article 14 (1) of the Vaud Cantonal Direct Taxes Act indicate that the joint and several liability of spouses for the totality of the tax assumes that the married couple is actually living in a common household. As soon as the married couple does not (or no longer) live together, all joint and several liability ceases to apply.

8.7 The author recalls that several appeals filed to challenge the payment actions taken against her, including the 7 July 2017 judgment and the 6 August 2018 judgment of the Cantonal Court, were unsuccessful. She adds that, in a letter dated 29 April 2019, on page 7, the tax authority expressly states that "the question of the discriminatory nature of article 14 LI has already been examined [sic] both by the Cantonal Court and by the Federal Court in the context of the various appeals filed by the taxpayer throughout the proceedings."³²

8.8 With regard to the joint and several liability of spouses for tax matters, the author reiterates that, contrary to the State party's assertion, she has no possibility of recovering the share of taxes wrongly paid in place of her spouse. She reminds us that only four cantons (including the Canton of Vaud) have decided to maintain the joint and several liability of spouses despite their separation, whereas it does not apply at the federal level and in the 22 other cantons of Switzerland.

8.9 The author submits that, although article 14 (1) of the Vaud Cantonal Direct Taxes Act does not expressly refer to women, in its practical application it leads to de facto discrimination, and therefore to indirect discrimination, to the extent that it is established by the judicial judgments rendered that it is only women, or mostly women, who are sued for joint and several liability for the tax debts owed by their (ex-)husband.³³

³² Federal Court judgments of 30 May 2017, 2C 115/2017 and 8 November 2018, 2C 766/2018; Cantonal Court judgment of 6 August 2018, Fl.2017.0049, recital 4.c and 4.d.

³³ The author discusses *Griggs v. Duke Power Co.*, 401 U.S. 424, 1971, a case involving equal treatment of men and women. She also refers to the case law of the European Court of Human Rights; see *D. H. et al. v. Czech Republic* (Grand Chamber), No. 57325/00, para. 184, 13 November 2007; *Opuz v. Turkey*, No. 33401/02, para. 183, 9 June 2009; and *Zarb Adami v. Malta*, No. 17209/02, para. 80, 20 June 2006.

8.10 The author adds that in this case, the State party did not first attempt to obtain the amounts of taxes owed by her husband before invoking her joint and several liability. She maintains, as demonstrated by the decisions of the Swiss courts on the consequences of article 14 (1) of the Vaud Cantonal Direct Taxes Act, that liability is not subsidiary and expressly targets the wife.

8.11 The author argues that in this case, not only did the State party not address the offending taxpayer in the first place, but it allowed him to leave Swiss territory without providing any guarantee. The State party preferred to invoke the liability of the wife for the tax debts generated by the salary received by her (ex-)husband, whereas the wife herself paid her own tax debts that were deducted at source from her own salary.

8.12 The author claims compensation for the damage suffered, namely, 46,936 Swiss francs as material damage for seven years of proceedings as well as the associated legal costs; 215,721 Swiss francs in legal fees; a lump sum of 6,300 Swiss francs; and full reimbursement of the amount of 132,081 Swiss francs claimed by the State party. The author also requests financial compensation for seven years of legal insecurity and economic vulnerability, the moral damage caused by the exorbitant financial sacrifices she was forced to make in order to defend her rights before the Swiss courts, and compensation for the time taken to prepare her case that she estimates at 290,000 Swiss francs (plus any amount that may be due as taxes). The author is also requesting Swiss citizenship for herself and her two daughters in order to benefit, in the same way as any Swiss national, from the protection of the State party against all forms of violence against women, including assistance in the recovery of unpaid alimony.

Additional comments from the author

9.1 On 30 October 2019, the author denounced the State party's failure to respect the confidentiality of the proceedings before the Committee, in violation of the provisions of article 6 (1) of the Convention. The cantonal tax administration of the Canton of Vaud was aware of her identity and used arguments before the cantonal court that were based on information that it obtained illegally. The author further requests that the Committee penalize the State party for its attitude and assess the additional damage that she has suffered in that regard.

9.2 On 21 January 2022, the author submitted that more than 105 deputies of the Vaud Grand Council asked the government to modify the disputed law (article 14 (1) of the Vaud Cantonal Direct Taxes Act) which they considered deeply unfair and discriminatory towards women. She submits that the prejudicial nature of the Vaud legislation regarding women has been denounced by several public figures and institutions, including the non-governmental organization Humanrights.ch, the Swiss League for Human Rights and the President of the Vaud Liaison Centre of women's associations.

9.3 The author recalls that after ten years of proceedings, the judicial authorities have still not ruled on the merits of her claim for payment filed on 30 April 2012, which was intended to resolve the impact of joint and several liability with her spouse for tax. She submits that, on the one hand, she is being sued by the State for joint and several liability on the grounds that it is her responsibility to settle her joint accounts with her husband and, on the other hand, she has been prevented by the same State, for more than nine years, from settling the effects of that joint and several liability either through the action for payment filed on 30 April 2012 or through the divorce action filed on 18 December 2012.

9.4 The author recalls that by a petition of 14 September 2020, she appealed to the Federal Court against the judgment of 31 July 2020 of the Cantonal Court rejecting

the appeal against the collection decision issued on 31 January 2019 by the Cantonal Tax Administration.

9.5 The author believes that the systematic refusal of the Vaud tax authorities to produce the statistics requested since 2015 on the proportion of women victims of discrimination in the application of the disputed law, the constant refusal of the Federal Court to order the production of those statistics, and the refusal of the Council of State to inform the Grand Council on that subject are irrefutable material evidence that reveals not only that the presumption is likely, but that it is proven that there is indirect discrimination against women caused by the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act. She recalls that despite the vote of 15 June 2021 of the Grand Council, the Federal Tribunal intends to maintain those tax policies that discriminate against women.

9.6 The author notes that on 16 June 2021, the day after the vote of the Grand Council of the Canton of Vaud, the Federal Court rejected her final appeal. The author argues that since the new facts demonstrate that all legal remedies have been definitively exhausted, the State party's claim of non-exhaustion of domestic remedies in its submission of 29 May 2019 should be rejected and the communication should be declared admissible. She submits that the tax liability imposed on her has been unsuccessfully challenged in the guarantee request procedure, in the taxation procedure and in the collection procedure. She specifies that there are six court decisions that are enforceable and definitive in application of article 14 (1) of the Vaud Cantonal Direct Taxes Act, that she is in fact liable for her husband's cantonal and communal tax debts relating to the tax years from 2004 to 2009. She adds that all appeals to the Federal Court have been systematically rejected by the same judge.

State party's additional observations

10.1 On 1 June 2022, the State party reports that the author has not settled her tax debt for the period from 2004 to 2009, but has paid in January 2019 only the sum of the security amount to the Enforcement Office of the District of Nyon. The State party states that with respect to the tax collection decision of 31 January 2019, the author filed a claim with the Cantonal Tax Administration on 8 March 2019, which was rejected on 29 April 2019. On 1 June 2019, the author challenged the decision of the Cantonal Tax Administration in the Cantonal Court. By decision of 9 July 2019, the Administrative Court of the Cantonal Court received a request from the author for recusal of the investigating judge, as the latter had summarily addressed the issue of joint and several liability in the Cantonal Court's judgment of 6 August 2018. A second request from the author for the recusal of the new investigating judge to whom the case was assigned, which was filed following procedural orders issued by the latter, was rejected by the Administrative Court of the Cantonal Court by a judgment of 20 January 2020. By a judgment of 2 June 2020, the Federal Court declared the author's appeal against that decision inadmissible as time-bound.

10.2 The State party indicates that in a judgment on the merits issued on 31 July 2020, the Cantonal Court rejected the author's appeal of the collection decision. The author appealed against that decision to the Federal Court, which rejected her appeal by a judgment of 16 June 2021. As a result of that judgment, on 14 July 2021, the Cantonal Tax Administration ordered the author to pay the tax. The author filed an objection against that payment order on 8 September 2021, and on 9 September 2021, the Cantonal Tax Administration filed a request for dismissal of the objection with the Justice of the Peace of Nyon. The outcome of that procedure remains pending. On 4 January 2022, the Cantonal Tax Administration initiated a seizure for the collection of provisional statutory interest due as of 31 December 2021, in the amount of 21,628.65 Swiss francs. As the author has filed an objection to the seizure order, that

procedure is still pending before both the Nyon District Enforcement Office and the Justice of the Peace of Nyon.³⁴

10.3 The State party further reiterates that the author's allegations do not show that there was a violation of the Convention. The author fails to demonstrate how the joint and several liability of spouses for tax after separation, based on article 14 (1), of the Vaud Cantonal Direct Taxes Act, constitutes discrimination that is contrary to the Convention.

10.4 The State party submits that under the current understanding of matrimonial law, each spouse benefits from the other's income. Indeed, the spouses are mutually obliged to ensure the prosperity of the marital union,³⁵ the maintenance and education of the children and the proper maintenance of the family.³⁶ They agree on how each contributes to the running of the home. In the present case, the author benefited from her husband's earnings during their life together. The State party considers that it is therefore equitable that she should assume, jointly and severally, liability for the payment of the taxes relating to that income, without that implying any discrimination contrary to the Convention.

10.5 With regard to violation of the right of access to a court referred to by the author, the State party points out that this complaint goes beyond the subject matter of the present proceedings, which concern the joint and several liability of the spouses for cantonal and communal taxes for the years from 2004 to 2009.

10.6 With regard to the payment claim filed by the author against her husband in 2012, the State party considers that it appears that the claim initially concerned claims unrelated to the tax arrears procedure and was subsequently complemented by additional claims for payment of the amount claimed by the tax authorities as tax arrears and the final tax ruling for the years 2004 to 2009.

10.7 With regard to violation of the confidentiality of the proceedings raised by the author, the State party recalls that rule 74 of the Committee's rules of procedure does not prevent the author or the State party from making public any submission or information bearing on the proceedings (paragraph 7). In the present case, the State party indicates that since it had not received a request in the context of rule 74 (7) of the Committee's rules of procedure, it is normal that the Cantonal Tax Administration was informed of the identity of the author in the context of the current proceedings. In any case, it goes without saying that, in order to prepare the response to the communication, the government representative forwards it to the local authorities that are the only ones able to provide the necessary information for that purpose. It cannot therefore be criticized that the Cantonal Tax Administration, which is competent in this case in the first instance for tax assessment and collection, was informed of the author's communication and consulted with a view to preparing the Government's observations.

Additional comments from the author

11.1 On 10 June 2022, the author submitted additional comments in which she criticized the inaccuracy of the facts reported by the State party in its observations of 1 June 2022, in particular with regard to her husband's insolvency and allegedly precarious financial situation, which would make it difficult to collect the tax debt.

11.2 The author recalls that the purpose of the communication is, in particular, to establish, in the absence of evidence to the contrary, that the maintenance of unlimited

³⁴ Pursuant to article 278 of the Federal Act of 11 April 1889 on debt collection and bankruptcy.

³⁵ See art. 159 of the Swiss Civil Code of 10 December 1907.

³⁶ Ibid., art. 163 (1).

joint and several tax liability (article 14 (1) of the Vaud Cantonal Direct Taxes Act) is more of a burden for women and leads to discrimination against women that is prohibited by the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

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

12.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

12.3 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. The Committee notes that the author's communication is based on the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act, which allegedly violates her rights under articles 2 (b), (c), (d), (e) and (f) and 16 (h) of the Convention.

12.4 The Committee notes that the author argues, on the one hand, that there would be no chance of success in her action, and that she has exhausted all domestic remedies in connection with this communication. In this regard, it notes the author's claim that the Federal Court's judgment of 8 November 2018 dismissed outright the appeal of 6 August 2018 that she had filed with the Cantonal Court. The Committee also notes that the State party challenges the admissibility of the communication on the grounds of non-exhaustion of the available domestic remedies. It further notes that the State party argues that the decision of 8 November 2018 is not intended to resolve the issue of joint and several liability of the spouses but only sets the amount that is due from the spouses for the period in question. It nevertheless notes that, in the period between the submission of this communication and its consideration, the author filed numerous incidental petitions on which the Federal Court has already ruled. It observes that the Federal Court rejected the author's final appeal on 16 June 2021. It considers that, in view of the amount of time that has passed and the author's various attempts to obtain redress at the national level, it would be unreasonable to expect her to lodge any further appeal.³⁷ Consequently, it is not precluded by article 4 (1) of the Optional Protocol from considering the communication.

12.5 The Committee notes that in assessing the unreasonable nature of the time limits for appeal, it must take into account the circumstances of each case, such as in the event of irreparable harm.³⁸ It also notes that the author's numerous appeals to all levels of domestic courts indicate that domestic remedies were indeed available.

12.6 The Committee refers to its case law, according to which authors of communications must have raised in substance at the national level the complaints that they wish to bring before the Committee³⁹ so as to enable the national authorities or courts to have an opportunity to consider such claims.⁴⁰ It notes that in an additional submission of 21 December 2018, the author raised additional complaints based on the new legislation that entered into force on 1 January 2011, increasing the

³⁷ CCPR/C/134/DR/2841/2016 (Final proceedings), para. 7.5.

³⁸ For irreparable harm, see for example *A.T. v. Hungary*.

³⁹ *Kayhan v. Turkey* (A/61/38, first part, annex I, para. 7.7).

⁴⁰ *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3.

maximum deduction for childcare expenses from 1,200 to 7,100 Swiss francs per child per year, which the State party denied her. It also notes the author's argument that the refusal by the State party contributes to restricting women's access to full-time employment, the guarantee of the same personal rights to both husband and wife, including the choice of profession and occupation, in violation of articles 5 (a) and (b), 11 (2) (c), and 16 (1) (g) of the Convention. It further notes the State party's argument that this is the first time that this issue has been raised before the Committee, which must declare it inadmissible. Accordingly, the Committee is of the view that the additional claims made by the author in her submission of 21 December 2018 are inadmissible under article 4 (1) of the Optional Protocol.

12.7 The Committee notes the author's claim that the application of article 14 (1) of the Vaud Cantonal Direct Taxes Act indirectly discriminates against her and other women in similar situations because it holds her jointly responsible for paying her husband's entire cantonal tax debt, in violation of articles 2 (b), (c), (d), (e) and (f) and 16 (h) of the Convention. It also takes note of the author's argument that, while the law at issue does not specifically refer to women, its application indirectly leads to discrimination against them inasmuch as, in the judicial decisions rendered under that law, women are primarily the ones who are sued for their former husband's tax debts. The Committee notes that, in its observations, the State party contests the author's allegation that the application of the law in question is discriminatory and that the State party argues, *inter alia*, that: (a) the five cases on which the author bases her claim span a period of 20 years and are therefore not sufficient to constitute a widespread practice; and (b) a review of several of the cases cited by the author shows that the tax authorities first attempted to obtain the amount owed from the husband before attempting to collect the debt from the wife on the basis of their joint and several liability.

12.8 The Committee considers that direct discrimination against women constitutes differential treatment explicitly based on sex and on gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral insofar 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.⁴¹ The Committee considers that, in order to substantiate a claim of indirect discrimination, it is necessary to establish that a law, policy, programme or practice has a discriminatory effect on women as a group.⁴² The Committee considers that the author has not substantiated the direct or indirect discriminatory nature of article 14 (1) of the Vaud Cantonal Direct Taxes Act.

12.9 In the light of the foregoing, and in the absence of any further relevant information on file, the Committee concludes that the present communication is inadmissible under article 4 (2)(c) of the Optional Protocol, the author's claim not being sufficiently substantiated. The Committee recalls that this decision concerns only the author's communication and does not constitute an opinion concerning article 14 (1) of the Vaud Cantonal Direct Taxes Act.

13. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol because it has not been sufficiently substantiated;

⁴¹ General recommendation No. 28 (2010) on the core obligations of State parties under article 2 of the Convention, para. 16.

⁴² See *ECHR, Biao v. Denmark* (Grand Chamber), No. 38590/10, 24 May 2016, para. 103; and *ECHR, D. H. et al. v. Czech Republic* (Grand Chamber), No. 57325/00, 13 November 2007, para. 184.

(b) The present decision shall be communicated to the State party and to the author.
