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ASSOCIATION OF THE WOMEN
DIVORCED IN THE GDR-

Alternative report

Written submission to the United Nations Committee on the Convention
on the Elimination of All Forms of Discrimination Against Women

(CEDAW)

regarding the combined seventh and eighth periodic review of Germany
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©Pictures: 21 of 800.000 targeted women from the exhibition on this cases

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1. Preliminary Remarks

The Association of the Women Divorced in the GDR" in the following referred to as "the Association" started their fight for their pension rights as a loose number of initiatives on the territory of the East German state of the German Democratic Republic (GDR) before the Unification in 1989. A few women then were alarmed that during the unification negotiations process their pensions might be the target and reduced; that earned and state guaranteed pension requirements would be devaluated or deleted.

Regardless of their many activities, letters to politicians, the national parliament, the Laender, the 2nd Chamber, petitions, protests, media attention; their restlessness in defending their 'equal rights' and their social, economic and cultural rights, the Unification Treaty (8/1990) stripped them off their pension rights requirements while but did not provide them with a temporary measures (*Art 4.1*) as it exists in West Germany for divorced women: the pension rights adjustment (*Versorgungsausgleich*). This does not cover their work careers and lives. It was meant for West-German women who were not in the labor force or only worked for a few hours, low paid. Through a splitting of pension requirement between spouses for the marriage time it should prevent such women from poverty. The East-German women argued, that to be equal they would deserve such a tailored solution, only it shall be defined for them. 2003 a draft solution was tabled in the Federal Women's Affairs Ministry: based on virtual calculation of the equivalents of their erased former requirements with a tax financed payment. It was never implemented. Still, they expect that the German State Party in compliance with the Convention has to implement a solution to end the injustice and discrimination against them. Until today the majority has a pension under the poverty line they find themselves in huge numbers in poverty (2007: 94,7% net pension under 750 €; 2011: 99,7% net under 800 € or: 72, 12 % gross pension under 899 €; *Statistic by the Association*).

Lawmakers and politics had re-modeled their life and work account, devaluated their pensions into what they had never been: women with a marginal live performance, who found themselves in poverty with their record of 40 years in paid occupation and all the family care deleted.

They founded the Association in 1999 with over 3.500 members who are active in 33 city groups. The majority cannot afford to pay membership fees and are none- members. With a questionnaire 13.000 targeted women were registered.

The Association went through all domestic remedies and finally submitted a communication, a request for an Inquiry under the Optional Protocol Article 8 (2) of CEDAW in 2011, registered as **CEDAW/OP/Inquiry/2012/Germany/1**. Although the CEDAW rejected to start an Inquiry in 11/2015 since they found the criteria- a grave violation and a systematic discrimination- is not met, the Association asks the CEDAW to discuss their case with the German Government.

The Association recommends to ask the German Government

- How and when the German Government wants to create what kind of final justice outside of the pension system, but political, to eliminate the targeted women's discrimination and violation of their human rights as enshrined in the CEDAW ?

The Association contributed to the joint Alternative report of the civil society; **the CEDAW Alliance mutually called¹ for:**

- the immediate ending of the pension undervaluation of those affected, which has been proven to be unjust for more than 26 years (since the unification treaty) by all sides and by three decisions of the Bundesrat (upper house of the German parliament), and its replacement with a just solution. The pensions of the women divorced in the GDR finally need to reflect their life's achievements (40 working years and care work).

¹ Joint Alternative report, CEDAW Alliance of German Civil Society Organization, Nov. 2016, page 13



2. Violations of Rights in the order of the Articles of the CEDAW Convention

The rights of women divorced in the GDR (the victims) have been violated since 31.08.1990. More information had been submitted to the CEDAW in 2011 in the communication under the Optional Protocol. This should be still available to the CEDAW experts.

2.1. Violations of the preamble – Discrimination on basis of gender and national origin

The victims are **discriminated against on the basis of gender and national origin**. Women are exclusively affected, and the victims' original national origin before German Reunification was that of the former GDR. The victims' divorces occurred in the GDR and the women in relation to their divorced husbands were discriminated against in the context of the law governing the transfer of pensions in united Germany. The rights of the victims, as affirmed in the preamble of the CEDAW, which states the inadmissibility of discrimination due to gender and national origin, as drawn from the Universal Declaration of Human Rights, Article 2, are violated. Universal human rights are guaranteed for everyone, including those of women divorced in the GDR.

"...without distinction of any kind, such as ..., gender, ..., national or social origin"

The preamble's statement, "all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on gender," contains the principle of equal treatment irrespective of national origin.

Because two different grounds for discrimination are relevant in the case of the victims - **gender** and **national origin**- the matter thus involves multiple discrimination with a doubled and intersectional impact of consequences. Significantly, the preamble mentions the duties of the State party to "to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights" (Preamble Par. 3).

Due to this original violation of the rights of these women, the victims are restricted in exercising a raft of economic, social, cultural, civil and even political rights (participation), in that these rights involve financial expenditures, and these women's pensions do not allow any expenditure beyond a basic subsistence level.

Par. 7 of the preamble points to this interdependency of resultant discrimination.

Paragraph 8 touches on further impediments to the exercise of important rights. These low pensions impede the exercise of important rights because, due to the original discrimination, these women are on the poverty threshold defined by the Organization for Economic Co-Operation and Development. These women's access to medical care is often particularly restricted. Because of the health reform that occurred in the framework of the Agenda-2010 social reforms, additional quarterly payments have to be made for doctor visits, in addition to further additional payments for medicine and necessary treatment. These expenses often remain out of reach for the victims after their basic expenses (rent, energy costs, and food) are paid. These resultant discriminations are cited once again via the relevant articles of the CEDAW Convention.

2.2 Article 1



Discrimination against women divorced in the GDR on the basis of gender has resulted from the above-mentioned legislation of the Unification Contract and the Pension transfer Law (RÜG). As a consequence, the equal rights of women (divorced according to GDR law) and men (divorced according to GDR law) are impaired through the failure to recognize the work of educating and raising a family, as well as domestic work and work in the family business, in calculating pensions for women who have been divorced. Due to the traditional division of labor along gender lines, and the unequal roles of men and women, women are less able than men to display calculable years of gainful employment. Men earn higher pensions, enabled by their former wives to do so because women have taken on the care work of the household. For women divorced in the GDR, no relevant compensation or special measure exists which correlates to the pension rights adjustment of the former West German Federal Republic. Women are subsequently excluded from exercising and claiming a series of fundamental human rights.

Article 1 demands that gender equality (here, for women) must occur in the political, economic, social, cultural, civil or other realms, “irrespective of their marital status.” It must therefore be put on record that **unequal treatment of women divorced in the GDR in relation to their ex-husbands due to the alteration of family status after divorce** in the new legislature of Germany was crucial in the violations of the rights of these women.

2.3 Article 2, Chapeau

The **State party has so far failed to precisely examine, identify or condemn the gender-based discrimination against women divorced in the GDR.** On the contrary, the state has defended the discrimination in all German Bundestag debates, statements or in correspondence with these women, as well as before all judicial authorities. In correspondence with the Association and individual people affected, the State party has indicated repeatedly, through representatives or administrators, that the matter in hand is an injustice which stems from mistakes made during the unification process. However, the State party has not followed “without delay a policy of eliminating discrimination”.

Art. 2 (a): Certainly, gender equality is anchored in Article 3 of the German Federal Constitution, including the expansion of 1994 that defines the responsibility of the State party for actual proactive engagement for the elimination of discrimination in accordance with CEDAW Art. 2 (Chapeau). The State party has not ensured the “actual implementation” of the existing discrimination, neither through “appropriate legislation” or “appropriate legislative and other measures” (CEDAW Art. 2). Discrimination continues to exist via the above-mentioned laws, which have maintained it for twenty years. The State party assessed three measures in the Interministerial Work Group 2001-2003, and rejected them all.

Art. 2 (b): The State party has not introduced any suitable legislative or other measures to prohibit this discrimination. The State party failed to tackle the legislation at the root of the problem and introduce temporary special measures. At most, the State party is able to direct sanctions against itself and its own administrative bodies. The pension institutions are targeting the state laws. Until now, the State party has neither rejected nor ratified them.

Art. 2 (c): Until now, the State party has not guaranteed the legal protection of the rights of women divorced in the GDR, and has not guaranteed their gender equality when compared with men divorced in the GDR. Given the State party has not recognized the unfair treatment



of women in favor of men, the State party sees no necessity for action. More importantly,² as the accuser, the State party has made the case before a court that East German women (compared to women of the former West) do not need protection.

The State party cannot even claim responsibility for bringing the matter of gender equality and discrimination to the attention of the national courts. The State party has also failed to entrust any public institutions, such as academia, independent institutes, the German Institute for Human Rights or experts, with the task of analyzing the situation and finding solutions.

This is astounding, because for other questions of such significance, this is standard procedure. The unresolved debate about this matter takes up a vast amount of working time for the government in the Federal Republic and Federal states, as well as pension institutions and petitioning committees. The media has also covered this topic extensively.

Art. 2 (d): See **(b)** and **(c)**

Art. 2 (f): Until now, the State party has not fulfilled this obligation through legal reforms, new laws (for example, regarding a minimum statutory pension) or the introduction of temporary special measures (for example, if nothing else is found more effective, through a hypothetical tax-financed pension rights adjustment without right of recourse against the ex-husbands).

The State party could remove the existing laws entirely or could remove their effect by introducing a temporary special measures for the group affected. This would be implemented by adding to the law governing the transfer of pensions (*RÜG/ SGB VI* and the following laws) in order to remove the discrimination they have thus far caused. It would not resolve any general Treaties or laws; it would be only provided to eliminate discrimination against the specific group of these victims. And, this can be solved by financing it through the budget (tax) and must not included into the general pension scheme.

2.4 Article 3

In order to foster the advancement of the many high aged female pensioners divorced in the GDR, the above-mentioned discrimination must be removed. Only male pensioners divorced in the GDR have fully exercised and enjoyed their fundamental freedoms and human rights.

2.5 Article 4

4.(1): The temporary special measures which the State party could implement have been thus far refused. They were seen as unnecessary or as impossible to implement, for inexplicable reasons. The Association points to the results of the government in relation to the Interministerial Work Group 2001 – 2003.

The application of Article 4 has generally met with resistance from the State party.

Recommendation

² From “Decision not to hear the complaint BVerfG BvR 789/96 of the complainant H.”; **(Doc. 11)**; c.f. also **(Doc. 09)** and **(Doc. 10)**; also in the case of **Staack 1 BvR b65/07, BVerfG**.



The temporary special measures -as the Interministerial working group drafted in 2003 shall be implemented without delay.

It could be given a fixed time limit: they would go out of force as soon as the last of the women divorced in the GDR passes on. These measures would have to be valid for all women divorced in the GDR until 01.01.1992.

In addition to the priority of implementing these temporary special measures, which would allow for an appropriate pension level according to the pension rights adjustment, one must also consider what is to be done about the intervening twenty-seven years in which no special measure was effective.

2.6 Article 5

Art. 5 (a): Stereotypical gender role division were not fully modified, neither in former West Germany nor in former East Germany. This goes for the division of care work and domestic work within marriage, for the labor market and gainful employment, for individual rights, and for primary pension rights of men and women either married or living together.

For the majority of people in the GDR the model of full-time paid employment was the standard model. The majority of women and men earned a pension of approximately the same level, according to GDR legislation.

But, women often received less, because they worked in fields with lower pay.

A minority group of women mainly had to reduce their work hours in order to carry out more care work. This was because not enough or adequate child care support was available for them. Some children required more intensive care if they were chronically ill or had disabilities. The latter cases also required more help regarding pre-school, education, and eventually work life. Additionally, many women provided care work for adult relatives. Others helped with the family business, and were unpaid. In some cases, the husband wished his wife to stay home and to refrain from working. All in all, these women were confronted with stereotypical role division and expectations in the GDR. However, from the beginning of the GDR, these roles and expectations were challenged by state goals, state sponsorship, and the standard model of living. Those who worked part time- reduced but worked never less than 25,5 hours. The GDR law included a range of measures to compensate for the negative effects on pensions resulting from these demands. Women were able to take up voluntary additional insurance (paid documented 3 GDR mark per month) and would, without exception, attain the minimum statutory pension. Their pension were set to secure their living expenses without austerity in old age and without sliding toward the poverty threshold. This pension was not secondarily financed; rather, it stemmed from years of work and additional credit periods (for years of education and child rearing). This was despite limitations that were, in the end, greater than limitations faced by married and divorced women of West Germany of the same age.

In West Germany, the standard model of living consisted of married women not working, and instead completely taking over care work and perhaps working part time, if at all. As a 'retired' wife, the typical woman in the West received money from her husband. If the husband died, a widow's pension was derived from his income, to which she could add her



own independent pension if she had been partially employed (although this was the minority). This model did not provide for divorce.

When the pension rights adjustment was introduced in 1977, it was intended to prevent poverty for divorced women, and to ensure the continued attractiveness of the marriage model, including women continuing to take on unpaid care work which was disregarded in pension- other than in East Germany..

The reality and perception of a marriage change in both parts of Germany, but the states provisions were different and seemed to be opposing. Care work did not play any role in individual pension rights for married couples in West Germany it so it does not until today. Lawmakers in the unification process shaped the law in accordance with their one mainly Western model: in retirement only the periods women spent child-rearing were given credit. There was no equivalent to the GDR measure of a symbolic three East German marks for periods without income, and no provision for continuous pensions. East German Women's requirements were deleted.

However, the specious allocation of pension rights, as well as the 'failure' of their efforts to obtain a juristic resolution has had an effect far beyond financial losses. These women have been stigmatized and their life situations have been negated in the political sphere. This goes far beyond the financial impact of pension calculations in Euros. Rather, it has led to a social distance caused by categorizing these women as a kind of "housewife." This term is out of date today, and people cannot identify with it, and therefore cannot support their case.

It cannot be ignored that discrimination on the basis of national origin has served certain stereotypes in the political sphere. These women's "failures" and their precarious situations appear to support the idea that the GDR did not have positive laws which be considered "achievements" for women. The women see it as a 'punishment' for coming from another state, for having migrated from the wrong (ideological) state into the unified Germany.

Because their rights have not been established by the State party, and because the State party left out to intervene for them, these women's rights from the former GDR appear illegitimate. Their rights are not examined individually. Instead, they collectively represent the subordination of the GDR. In this sense, discrimination on the basis of national origin leads these women to live at the edge of society. It seems, the multiple discrimination becomes symbolically significant: it reflects, maintains and legitimates formerly hegemonic interests.

It is therefore especially important to understand the background, the effects, and the interrelatedness of the manifold discrimination against them in order to resolve it.

Recommendation



What will the State party do to

- a. reduce and eliminate 1990 newly drawn gender stereotypes on these women and all women who earn their living in a full time career**
- b. to resolve the gender stereotypes on this women who had without their responsibility but of those of the State party fallen in poverty and how the State party wants to compensate them and rise awareness in the public on this mistaken policy of the Unification Treaty?**

2.7 Article 7

Art. 7 (b) and (c): The rights defined here can be impeded due to financial constraints.

2.8 Article 8

Art. 8: The ability to participate in international non-state and non-governmental organizations is, in particular, almost impossible as a result of financial constraints.

2.9 Article 10

Art. 10 (d): This right can be impeded due to financial constraints which prevent taking up studies in old age (travel expenses, books, computer).

Art. 10 (g): This right can be impeded due to financial constraints, as participation in sports often involves travel expenses, sports clothing or membership fees.

2.10 Article 11

Art. 11, Par. 1 (d): The right to equal treatment of work of equal value is mentioned here. Clearly this implies equal calculation of wages with regard to equal quality of work. Implications for the **equal treatment of care work and gainful employment** could be derived from this. This right is then violated because, with regard to pensions, the care work carried out by the ex-wife in periods of marriage is not treated as equal to the ex-husband's period of gainful employment.

Art. 11 Par. 1 (e): This is the primary site of violation. Women divorced in the GDR have the equal right to social security, and the State party has failed to resolve the ongoing violation of this right. Here, "equality" refers to equal access to social security for old age in retirement for both the ex-wife and ex-husband.

2.11 Article 12

Art. 12 Par. 1: The right to access health care is frequently impeded as a consequence of the financial constraints, as well as the quarterly outpatient surcharges and additional payments required for many basic services of medical treatment.



On the long run the victims' right to health might be affected by the impact of the multiple long lasting violations of one's rights, discrimination and stigmatization.

2.12 Article 16

Art. 16 (c): The State party has so far failed to undertake measures that would remove the discrimination (on the basis of family status) against women divorced in the GDR. This connects to the dissolution of marriage (divorce) and has an effect on the calculation of pensions.

Women who carried out work during the marriage period, or worked in the family business, or supported men in pursuit of further qualifications, have not seen their work adequately represented or compensated for in pension calculations, compared to their ex-husbands who were gainfully employed during the marriage period. Women divorced in the GDR have not been able to enjoy the same pensions as men, and they remain unable to do so. Men are placed in a better financial position because they have been more privileged in their pensions. Men have not been obligated to compensate (via pension rights) their ex-wives for income that came into the marriage via his gainful employment and her care work (see **Art. 16 (h)**).

This real, existing discrimination stems from the common legal practice of united Germany, which does not distinguish between the family status of marriage and, here, its particular effects on the inequality of women in the case of women divorced in the GDR from family status itself.

There are two sets of divorce rights for women in one state (discrimination due to gender and national origin); there are also two sets of pension rights, one for married women drawing pensions, and one for divorced women.

2. 13 Article 18

Art. 18 Par. 2: This paragraph does not detail gender equality in submitting reports. Rather, this paragraph formulates the duty of the State party to submit a report in which it will indicate factors and difficulties influencing the extent to which the duties envisaged by the CEDAW are fulfilled. In the course of 27 years the State party had never reported on the case of this women which were in numbers at the beginning about 800.000 and currently 300.000 survived.

Recommendation

The State party shall should from now submit regularly interim reports about the continual difficulties of implementing the rights of these women and on the steps taken from now to eliminate the discrimination and violation of their rights.

What, the State party estimates could be the negative impacts if citizens have not been represented in the defense of their rights through the State; what could be the negative impact of future generations e.g. in their pension rights after such an example is given and was uncorrected for such a long time ?



3. The rights of older women – General Recommendation No. 27³

General Recommendation No. 27 details which duties of the State party in implementing the CEDAW rights for older women and for divorced women, as well as how these rights are to be dealt with, and how they are connected to the rights of Committee on Economic, Cultural and Social Rights (CESCR).

The Federal Government could move toward recommending its own account in the case of the victims, as well as supporting the duties of the CEDAW in relation to the group affected. It could also move towards a potentially fundamental resolution that could affect a broader range of the population.

Recommendation

Para 41-44; 51 Gen rec. 27

The Government may describe their plan to implement the Convention and Gen. Recommendation 27. What measures they do suggest and how shall this provisions lower the burdens of the effect of their pension rights discrimination of 27 years; until when they will implement this new provisions? How they will do it without delay in regard t the high ages of the victims.

How will the State party protect the rights of this women and how will they prevent them from passing away in the remaining unchanged status of inequality?

³ General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27