HUMAN RIGHTS COMMITTEE

Sprenger v. Netherlands

Communication No. 395/1990

22 March 1991

CCPR/C/41/D/395/1990 */

ADMISSIBILITY

Submitted by: M. Th. Sprenger (represented by counsel)

Alleged victim: The author

State party: The Netherlands

Date of communication: 8 February 1990

Documentation references: *Prior decisions - Rule 91 decision by Special Rapporteur, transmitted to State party on 21 August 1990 (not issued in document form)*

Date of present decision: 22 March 1991

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

Decision on admissibility

1.   The author of the communication is M. Th. Sprenger, a citizen of the Netherlands residing in Maastricht, Netherlands. She claims to be the victim of a violation by the Netherlands of article 26 of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1   The author received unemployment benefits under the Dutch Unemployment Benefits Act (WWV) until 20 August 1987. At that date, the maximum benefits period came to an end. As a result of the termination of her WWV benefits payments, her compulsory health insurance also expired, pursuant to the Health Insurance Act. The author then applied for benefits pursuant to the State Group Regulations for Unemployed Persons (RWW), under which she was equally subject to

compulsory insurance under the Health Insurance Act.

2.2 The author's application was rejected on the grounds that she cohabited with a man whose income was higher than the RWW benefits then applicable. Her companion, Mr. M. Schmetz, was insured by his employer. Under article 4, paragraph 1, of the Health Insurance Act, the spouse of the insured person may also be insured if he or she is below 65 years of age and shares the household, and if the insured person is considered as her, or his, breadwinner. The author explains that she had cohabited with Mr. Schmetz since October 1982 and that, on 8 August 1983, they formally registered their relationship by notarial contract. The author owns the house that they inhabit, while Mr. Schmetz has provided securities for interest payments as well as instalments on the mortgage loan taken out for the purchase of the house. The author's application fo registration as a co-insured person with her partner was rejected by the regional social security body on 4 August 1987.

2.3 On 3 February 1988, the Board of Appeal (Raad van Beroep) quashed the decision of 4 August 1987, stating that the discrimination between an official marriage and a common law marriage constituted discrimination within the meaning of article 26 of the Covenant. This Judgement was in turn appealed by the regional social security board to the Central Board of Appeal which, on 28 September 1988, ruled that the decision of 4 August 1987 did not contravene article 26 of the Covenant. In its decision, the Central Board of Appeal invoked the decision of the Human Rights Committee in communication No. 180/1984 (L. G. Danning v. the Netherlands), in which it had been held that a difference of treatment between common law marriages and formal marriages could not be deemed to constitute discrimination within the meaning of article 26 of the Covenant.

Complaint

3. The author contends that the fact that common law marriages do not enjoy the same status as official marriages constitutes discrimination within the meaning of article 26. Because of considerable recent changes in several Dutch social security regulations (e.g., the Unemployment Insurance Act, the Supplementary Benefits Act and the National Assistance Act), all of which recognize the equality of status between common law and official marriages, the authorities' refusal to recognize her as a co-insured person with her companion constitutes a violation of article 26 of the Covenant.

State party's observations

4. The State party does not raise any objections to the admissibility of the communication and concedes, in particular, that the author has exhausted the domestic remedies available to her.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the

Optional Protocol, that the case is not being examined under another procedure of international investigation or settlement.

5.3   The Committee has taken due note of the State party's contention that the distinction made between common law marriages and official marriages in the Netherlands social security regulations are compatible with article 26 of the Covenant. The Committee will examine this question in the light of the State party's submission on the merits.

6.   The Human Rights Committee therefore decides:

(a)   That the communication is admissible in so far as it may raise issues under article 26 of the Covenant;

(b)   That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and measures, if any, that may have been taken by it;

(c)   That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, to enable her to comment thereon; any such comments should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal.

(d)   That this decision shall be communicated to the State party, to the author and to her counsel.

[Done in English, French, Russian and Spanish, the English text being the original version]

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*/ All persons handling this document are requested to respect and observe its confidential nature.