

HUMAN RIGHTS COMMITTEE

Pepels v. Netherlands

Communication No. 484/1991

19 March 1993

CCPR/C/47/D/484/1991 */

ADMISSIBILITY

Submitted by: H. J. Pepels [represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 25 November 1991

Documentation references: List - CCPR/C/CL/R.52 Prior decisions - Special Rapporteur's rule 91 decision, transmitted on 23 January 1992 (not issued in document form)

Date of present decision: 19 March 1993

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.

Decision on admissibility

1. The author of the communication (dated 25 November 1991) is H. J. Pepels, a Netherlands citizen, residing in Stein, the Netherlands. He claims to be a victim of a violation by the Netherlands of articles 3, 5 and 26 of the Covenant. He is represented by counsel.

Facts as submitted by the author:

2.1 The author became a widower on 12 July 1978. The Algemene Weduwen- en Wezenwet (AWW) (General Widows' and Orphans' Act) only provides for benefits to widows who fulfil certain requirements. Widowers cannot receive benefits under this law. Faced with this situation, the author did not apply for benefits under the AWW.

2.2 Ten years later, on 7 December 1988, the Centrale Raad van Beroep (CRvB) (Central Board of Appeal), the highest court in social security cases, decided that, despite the provisions of the law, widowers also were entitled to AWW- benefits, since the legal provisions were considered to be in violation of the principle of non-discrimination.

2.3 The author then applied for AWW-benefits. On 14 March 1989, he was informed that an AWW-benefit would be granted to him as of 1 December 1987, pursuant to article 25 (3) AWW, which precludes the retroactive grant of benefits for a period of more than one year. The author appealed the decision to the Raad van Beroep (Board of Appeal), which on 30 March 1990, considered that, pursuant to article 25 (5) AWW, special circumstances should be taken into account and that the author should retroactively be granted AWW benefits. On appeal, the CRvB decided on 31 January 1991 that, although the AWW was inconsistent with article 26 of the Covenant, benefits could be granted to widowers only as of December 1984.

Complaint

3.1 The author claims that the decision not to grant him full benefits retroactively violates articles 3 and 5 juncto article 26 of the Covenant.

3.2 It is submitted that the date of December 1984 is arbitrary, since only chosen for practical reasons. AWW-benefits are not covered by the Third EEC Directive, which prescribes the abolition of all discrimination between men and women as of 23 December 1984. The author further submits that there is no legal ground for a transitional period in the direct applicability of article 26 of the Covenant. He states that the thirteen years between 1966 (when the State party signed the Covenant) and 1979 (when the Covenant entered into force for the State party) should have been sufficient for the Government to adjust its legislation. He submits that a gradual implementation of treaty regulations on non-discrimination is only relevant as far as article 2(2) of the International Covenant on Economic, Cultural and Social Rights is concerned, but that the application of article 26 of the International Covenant on Civil and Political Rights is not similarly restricted.

3.3 In this context, the author refers to the Views of the Human Rights Committee in case No. 172/1984 (Broeks v. the Netherlands). 1/ He also refers to a Government memorandum regarding the entry into force of the Covenant, in which the Government stated unequivocally that there was no reason to deny direct applicability of part III of the Covenant. Furthermore, the author contends that article 26 of the Covenant is reflected in the Netherlands constitution, which prohibits discrimination on the ground of, inter alia, sex.

3.4 The author contends that article 26 of the Covenant is directly applicable in the Netherlands as of 11 March 1979, and that the refusal of AWW benefits to widowers violates this article as of that date.

3.5 The author submits that he has exhausted all available domestic remedies, as his case has been adjudicated upon by the CRvB, the highest Netherlands court in social security cases.

State party's observations

4. By submission, dated 4 September 1992, the State party concedes that the author has exhausted the domestic remedies available to him. It does not raise any objections to the admissibility of the communication.

Issues and proceedings before the Committee

5.1 Before considering any claim 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 required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee is satisfied that the communication is admissible under articles 1, 2, or 3 of the Optional Protocol and notes that the State party concedes that domestic remedies have been exhausted. Accordingly, on the basis of the information before it, the Committee concludes that the communication is admissible and that it may raise issues under article 26 of the Covenant that need to be examined on the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible inasmuch 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 the measures, if any, that may have been taken by it;

(c) That any explanations or statements received by the State party shall be communicated to the author and his counsel, with the request that any comments that they may wish to submit thereon should reach the Committee, care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

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

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

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

1/ Views adopted on 9 April 1987.