

HUMAN RIGHTS COMMITTEE

Neefs v. The Netherlands

Communication No. 425/1990

15 July 1994

CCPR/C/51/D/425/1990*

VIEWS

Submitted by: A.M.M. Doesburg Lannooij Neefs

Victim: The author

State party: The Netherlands

Date of communication: 15 August 1990 (initial submission)

Date of decision on admissibility: 26 July 1993

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 15 July 1994,

Having concluded its consideration of communication No. 425/1990 submitted to the Human Rights Committee by Mr. A.M.M. Doesburg Lannooij Neefs under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (dated 15 August 1990) is Mr. A.M.M. Doesburg Lannooij Neefs, a Dutch citizen, born in 1958, and presently residing in Naarden, the Netherlands. He claims to be the victim of a violation of article 26 of the International

Covenant on Civil and Political Rights by the Netherlands.

The facts as submitted by the author:

2.1 In 1983, the author concluded a sublet contract with his mother, with whom he shared a house. On 29 September 1986, being unemployed, he applied for a benefit under the Social Security Act (*Algemene Bijstandswet*), since his allowance under the Unemployment Benefits Act (*Wet Werkloosheidsvoorziening*) would expire on 1 October 1986.

2.2 Under the Social Security Act, a person can receive a benefit if he does not have sufficient means to provide for his cost of living. The amount of the benefit depends on the specific circumstances of the applicant; differentiation is made, **inter alia**, between single persons and persons who share a household with others. Under article 1(4)(a) of Royal Decree of 13 March 1985, implementing the Act, a subtenant or boarder is considered to be a single person, living alone, and thus entitled to a full benefit under the Act. However, the Decree limits the application of this article by declaring that a person who shares a household with a close relative cannot be considered a single subtenant or boarder unless the relative is a brother or a sister and the household is shared on a commercial basis.

2.3 On 28 October 1986, the Naarden municipality decided to grant the author a reduced benefit under the Social Security Act, based on the fact that he was sharing a household with his mother. The author sought review of this decision on 10 November 1986, and after receiving no reply within the established onemonth timelimit, he appealed under article 41 of the Act to the North Holland provincial authorities, arguing, **inter alia**, that the distinction in the Decree between boarders and subtenants who share a house with a nonrelative and those who share a house with a relative amounted to unlawful discrimination. On 24 April 1987, the Provincial Appeal Commission (*Commissie Beroepszaken Administratieve Geschillen*) rejected the author's appeal.

2.4 On 9 August 1990, the Council of State, Division for Administrative Litigation, (*Raad van State, Afdeling Geschillen van Bestuur*) rejected the author's subsequent appeal. It considered that the distinction was based on the presumption that close relatives sharing a household did so on a joint account. The Division was of the opinion that this presumption was not unreasonable and that it provided a sufficient justification for the distinction between subtenants or boarders and close relatives sharing a household.

The complaint:

3. The author contends that the differentiation in standards applied amounts to discrimination within the meaning of article 26 of the Covenant. He argues that the distinction between close relatives and others, while both are sharing a household on a commercial basis and live in the same circumstances, is unreasonable.

The Committee's admissibility decision:

4. During its 48th session, the Committee considered the admissibility of the

communication. The Committee noted that the State party had confirmed that all domestic remedies had been exhausted and that it had raised no other objections to admissibility. On 26 July 1993, the Committee declared the communication admissible inasmuch as it might raise issues under article 26 of the Covenant.

The State party's submission on the merits and the author's comments thereon:

5.1 By submissions of 30 March and 29 April 1994, the State party recalls that the author had been granted, as of 1 October 1986, benefits under the Social Security Act. The level of benefits was based on the fact that the author was a single person, living with his mother. The State party explains that the purpose of the Social Security Act is to guarantee a minimum income to those who have no or insufficient income of their own. Since the main element in granting the benefits is the need of the applicant, the benefits are related to the specific circumstances of each applicant. To standardize its decision making, the State party has established different categories corresponding to different levels of benefits. According to these standards, a married couple without income will receive benefits amounting to a minimum wage income, a single parent will receive 90% thereof, and a single person with no dependants 70%.

5.2 The State party states that the benefits are intended to cover the necessary costs of living, including the costs of accommodation. It therefore argues that it is reasonable to reduce the level of benefits, if the applicant has less expenditures because he or she is sharing a household. As a rule, single persons sharing a household on a non-commercial basis receive 60% of the minimum wage income. Persons sharing a household are presumed to share equally in the costs, regardless of the factual cost-distribution. Close family-members living in one and the same house or apartment are presumed to share a household on a non-commercial basis. Evidence to the contrary is allowed if an applicant is living with a brother or sister, but not if he is living with a parent. In this connection, the State party argues that this distinction is related to the obligations imposed upon family members under civil law. The Dutch Civil Code imposes upon parents and children a mutual obligation to provide support in the costs of living, but does not contain a similar obligation for brothers and sisters. The State party argues that distinctions between persons who have different obligations towards each other are reasonable and do not constitute a violation of article 26 of the Covenant.

6. In his comments, dated 17 May and 7 June 1994, the author argues that his specific situation calls for an exception to the standards applied to single persons living with a parent, since he is sharing a household with his mother on a commercial basis and therefore should be considered as a single person living alone. He contests the State party's statement that the relationship between a mother and a child is necessarily one of dependency. He argues that the legal obligation to mutual support does not only exist for those parents and children who live in the same house, but also for those who live apart from each other. He further states that his mother is not in a position to contribute to his costs of living. He argues that there is no easy solution to his case, because he has not been able to find a paid job and if he moves out of the household with his mother, he would face high housing costs, since cheap accommodations are difficult to find.

Issues and proceedings before the Committee:

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee refers to its prior jurisprudence and reiterates that, although a State is not required under article 26 of the Covenant to adopt social security legislation, if it does, such legislation must comply with article 26 of the Covenant. The right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.¹

7.3 In the instant case, the Committee notes that the author's claim that he is a victim of a violation of article 26, is based on the fact that he is sharing a household with his mother and on that basis receives a lower level of benefit under the Social Security Act than he would have if he had shared it with a non-relative or with a relative in respect of whom the regulations under the Act allow evidence of a commercially shared household.

7.4 The Committee observes that benefits under the Social Security Act are granted to persons with low or no income in order to provide for their costs of living. The author himself has conceded that his costs of living are reduced since he is sharing a household with his mother, be this on a commercial basis or on a basis of mutual support. In the light of the explanations given by the State party, the Committee finds that the different treatment of parents and children and of other relatives respectively, contained in the regulations under the Social Security Act, is not unreasonable nor arbitrary, and its application in the author's case does not amount to a violation of article 26 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a violation by the State party of any of the articles of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

1/ See inter alia the Committee's Views with regard to communication No. 395/1990 (M.T. Sprenger v. The Netherlands , adopted on 31 March 1992, paragraph 7.2) and No. 415/1990 (Dietmar Pauer v. Austria , adopted on 26 March 1992, paragraph 7.3).