

HUMAN RIGHTS COMMITTEE

Snijders et al. v. Netherlands

Communication No. 651/1995

14 March 1996

CCPR/C/56/D/651/1995*

ADMISSIBILITY

Submitted by: J. Snijders, A. A. Willemen and Ch. C. M. van der Wouw [represented by counsel]

Alleged victim: The authors

State party: The Netherlands

Date of communication: 26 August 1994 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 19 September 1995 (not issued in document form)

Date of present decision: 14 March 1996

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 authors of the communication are J. Snijders, A. A. Willemen and Ch. C. M. van der Wouw, Dutch citizens at present living in a nursing home. They claim to be victims of a violation by the Netherlands of article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

Facts as submitted by the authors

2.1 In the Netherlands, the Algemene Wet Bijzondere Ziektekosten (AWBZ) provides a compulsory, nation-wide insurance for the costs of long-term medical care. The AWBZ is being funded out of contributions which are being levied by the State's tax department. Further, a contribution can be imposed on persons benefiting from the AWBZ, on the basis of article 6 (2) of

the law. This “own contribution” becomes compulsory after six months and is divided in an income-related and a non-income-related part.

2.2 The own contributions are being implemented according to the “Own Contribution Scheme” laid down in a government decree of 1 May 1987, as amended on 21 December 1988. Income-related contributions are being levied from single persons (that is, persons who are not married or do not cohabit with a partner) and from married persons or persons who cohabit when both partners benefit from the AWBZ. The maximum income-related contribution is Fl. 1,350 for a single person or for a married or cohabiting couple. The non-income-related contribution amounts to Fl. 180 a month, and is being levied only from those patients who do not pay an income-related contribution.

2.3 On 1 July 1989, the authors, who are single, were levied for an own contribution of Fl. 978, Fl. 1,210 and Fl. 745, respectively, for their stay in a nursing home in Zandvoort. They appealed to the Board of Appeal (Raad van Beroep) in Haarlem, arguing that the distinction between married persons and persons who cohabit on the one hand and single persons on the other hand constituted discrimination in violation of article 26 of the Covenant. By decision of 14 January 1991, the Board of Appeal allowed their appeal, finding that the discrimination between married or cohabiting persons and single persons, while not discriminatory *per se*, was not justified in the specific circumstances and amounted to a discrimination of single persons. The Board noted that the distinction had been made on the basis of budgetary, administrative and social grounds. The social considerations were aimed at the continuation of the communal household, in case one partner is admitted into care and another is left behind. The Board found, however, that this consideration did not justify the exemption of married or cohabiting persons from all income-related contributions, and that the specific circumstances of couples could be taken into account when determining the income-related contribution.

2.4 The Ziekenfonds Spaarneland, the regional executive body for the levy of income-related contributions, appealed the Board’s decision to the Central Board of Appeal (Centrale Raad van Beroep), which, by judgement of 1 October 1992, quashed the decision by the Board of Appeal and rejected the authors’ original appeal. It considered that the distinction was justified on the basis that costs saved by a married or cohabiting person, when a household is continued, are minimal, whereas costs saved by a single person, whose household is discontinued, are substantial. It concluded that the AWBZ’s own contribution scheme was based on reasonable and objective criteria and therefore did not constitute a discrimination within the meaning of article 26 of the Covenant.

2.5 The authors state that no further appeal is possible against the decision of the Central Board of Appeal.

The complaint

3.1 The authors claim that they are victims of discrimination because they have to pay an income-related contribution towards the costs of hospitalization, whereas married persons or persons who cohabit and of whom the partner is not also hospitalized only pay a minimal non-income-related contribution. They argue that the distinction is not based on reasonable and objective criteria. They claim that the heart of the matter, justifying a contribution, is whether the person concerned still continues his own household, rather than whether he is married, cohabits or is single. However,

under the law and regulations currently in force in the Netherlands, an income-related contribution is imposed on single persons after six months, whether they have discontinued their household or not. It is submitted that the choice either to continue or to discontinue their own household has been taken away from them, due to the precarious financial situation they find themselves in. The authors claim that this may have a demoralizing effect on the patient and reinforce the illness, and claim moreover that it entails the break-off of many social contacts since it precludes them from using their own household temporarily, for instance during weekends. Furthermore, after recovery, they cannot go back to their own household and would have to start all over again. They state that even for a married or cohabiting couple, of which both partners are in a nursing home, who pay the income-related contribution, it is generally possible to keep their own household, because the maximum contribution to be paid by the couple is the same as the maximum contribution to be paid by a single person, thereby leaving the couple financial room to continue their household if they so wish. The authors state that a solution could be found by raising the non-income-related contribution for everybody, and making the income-related contribution dependent upon the factual circumstances of each person, regardless of their marital status.

3.2 The authors further argue that, since the AWBZ is a national obligatory insurance, to which all Dutch nationals contribute, the requirement to pay an own contribution if one is entitled to insurance benefits, is in violation of the principle of equality of all insured.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in the 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.

4.2 The State party, by submission of 22 November 1995, has informed the Committee that the authors have exhausted the national remedies and that it does not contest the admissibility of the communication.

4.3 The Committee notes that no obstacles to admissibility exist and considers that the issues raised by the communication should be considered on its merits.

5. The Human Rights Committee therefore decides:

(a) that the communication is admissible;

(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 from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors' counsel, with the request that any comments which he may wish to make 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 the transmittal;

(d) that this decision shall be communicated to the State party and to the authors' counsel.

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