

## HUMAN RIGHTS COMMITTEE

### Hoofdman v. Netherlands

Communication No. 602/1994

3 July 1996

CCPR/C/57/D/602/1994\*

### ADMISSIBILITY

*Submitted by:* Cornelis P. Hoofdman [represented by counsel]

*Alleged victim:* The author

*State party:* The Netherlands

*Date of communication:* 26 May 1994 (initial submission)

*Documentation references:* Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 17 July 1995 (not issued in document form)

*Date of present decision:* 3 July 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 author of the communication is Cornelis P. Hoofdman, a citizen of the Netherlands born in 1952. He claims to be a victim of violations by the Netherlands of article 26 of the International Covenant on Civil and Political Rights, as well as of his right to respect for his private and family life, and his right to a fair hearing, as protected by articles 6, paragraph 1, and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>1/</sup> He is represented by counsel.

#### Facts as submitted by author

2.1 The author and his girlfriend, S. O., lived together as an unmarried couple from January 1986 until the death of S. O., on 14 February 1991. On 26 February 1991, the author applied for a pension

or temporary benefits under the General Widows' and Orphans' Act (Algemene Weduwen - en Wezenwet) (AWW). On 26 April 1991, the Social Security Bank (Sociale Verzekeringsbank) (SVB), which is responsible for implementing the AWW, rejected the author's application on the ground that, since he has not been married to S. O., he did not meet AWW requirements. The decision was based on articles 8 and 13 of the Act, under which pension entitlements or temporary benefits are only awarded to the widow or the widower of the (insured) spouse.

2.2 On 12 May 1991, the author appealed to the Board of Appeal (Raad van Beroep), arguing that the distinction drawn by the SVB between married individuals and unmarried cohabitants, for purposes of AWW benefits, amounted to prohibited discrimination within the meaning of article 26 of the Covenant. The President of the Board of Appeal, on 2 December 1991, declared the appeal unfounded, replying on a decision taken earlier on 28 February 1990 by the highest court in social security cases, the Central Board of Appeal (Centrale Raad van Beroep) (CRvB), in a case similar to that of the author.

2.3 In that decision (also concerning the AWW), the CRvB pointed out that, further to the Committee's Views on communication No. 180/1984 (Danning v. the Netherlands) 2/, it had already decided, in cases concerning the Sickness Benefits Act, that differentiation between married and unmarried cohabitants under Netherlands social security legislation did not amount to prohibited discrimination within the meaning of article 26 of the Covenant. Accordingly to the CRvB, the social conditions and views in the field of marriage and cohabitation prevailing at the time in question (1987) had not changed in such a way as to conclude that the restriction laid down in the AWW violated article 26 of the Covenant. In this connection, the CRvB noted that the fact that the legislature, in the light of the recent revision of the social security system, had introduced the principle of equality of treatment of married and unmarried couples who shared a household, did not necessarily mean that the restriction still maintained under the AWW (i.e., that only the widower or widow of the insured spouse was entitled to a pension or temporary benefits) amounted to a prohibited differentiation under article 26 of the Covenant. The CRvB added that, even though discrimination did not arise, the Netherlands Government remained, of course, free to strive for the equal treatment of married and unmarried cohabitants.

2.4 On 24 December 1991, the author filed an appeal against the decision of 2 December 1991 with the full Board of Appeal. He argued that the CRvB's findings in the other case were based on the social conditions and views in the field of marriage and cohabitation prevailing in 1987, and that the CRvB had not excluded that those conditions and views could be subject to changes within a short period of time, as a result of which the denial of AWW benefits to unmarried cohabitants would amount to prohibited discrimination within the meaning of article 26 of the Covenant. The author pointed out that the relevant time in question in his case was 14 February 1991, when his girlfriend died; he contended that at that date changes had occurred in the conditions and views held in society in respect of marriage and cohabitation.

2.5 In this connection, the author referred to the following passages of the Explanatory Memorandum to the proposed new General (Bereaved) Relatives' Act (Algemene Nabestaande Wet) (ANW), which was discussed in the Lower House in 1990-1991:

- "The General Widows' and Orphans' Act is subject to revision. The changes that have occurred

in society since the entering into force [of the Act] in 1959 justify this conclusion”;

- “A third reason for revising the AWW is the wish to secure the equal treatment of married and unmarried cohabitants. Through revision of the AWW, shape should be given to the [...] objective not to differentiate between forms of cohabitation”;

- “[...] If equal treatment of married and unmarried cohabitants cannot be realized in the ANW, it will result in an incongruity within the social security system. If the ANW is to be excluded, unjustifiable situations could arise. From that perspective, also, the Government considers that the equal treatment of married and unmarried cohabitants under the ANW is necessary.”

According to the author, the drafting of the ANW and the view of the Government as laid down in the Explanatory Memorandum to that Act indicated that conditions and views in the field of marriage and cohabitation held in society in 1991 were different from those that prevailed in 1987.

2.6 On 26 May 1992, the Board of Appeal rejected the author’s appeal, referring to a judgement of 16 October 1991 of the Central Board of Appeal; in that case, the CRvB had decided that, in October 1991, the restriction in the AWW under which only the widow or widower was entitled to AWW benefits did not yet amount to prohibited discrimination within the meaning of article 26 of the Covenant. The Board of Appeal concluded that, accordingly, the same could be said for the author’s case, and that the proposals under the ANW did not make any difference.

2.7 On 29 June 1992, the author appealed to the Central Board of Appeal. He argued that, according to the CRvB’s own jurisprudence, the date of decease of the partner with whom the applicant lived together is relevant to the question of whether the difference of treatment under the AWW between married people and unmarried cohabitants constituted prohibited discrimination within the meaning of article 26 of the Covenant; the question of whether the conditions and views held in society in the field of marriage and cohabitation have changed should thus be assessed as of that moment. The author pointed out that the CRvB’s judgment of 16 October 1991 concerned a request for AWW benefits of an applicant whose partner had died on 6 February 1988; he contended that, while in 1998 one could still have doubts as to whether relevant changes had occurred in social conditions and views, one could not question this in 1991, since, at that time, the proposed ANW, with its principle of equal treatment of married and unmarried cohabitants, had been placed before the Lower House; the fact that the ANW had not yet entered into force did not make a difference.

2.8 On 17 June 1993, the Central Board of Appeal confirmed the Board of Appeal’s judgment of 26 May 1992. It referred to its earlier jurisprudence (including a judgment of 24 May 1993) on the matter and pointed out that it had already ruled that it was for the legislature to outline which categories of cohabitants were entitled to pensions or benefits after the death of the partner, and that it did not consider it expedient to interfere with the proposed legislation (i.e., the ANW). With this, it is submitted, all domestic remedies have been exhausted.

## Complaint

3.1 The author claims that his private and family life has not been respected because he was denied AWW benefits simply because he was not married to S. O., whereas, for instance, under fiscal

legislation he assumed certain obligations which exist only for married people. He points out that under several other social security acts, unmarried cohabitants are treated as married cohabitants, and that he and S. O. fulfilled the criteria used in respect of these acts (joint supply of accommodation and joint contribution to the household costs). In this context, he submits that both he and S. O. were unemployed and received unemployment benefits as a “married couple” under the relevant act. However, in order to receive benefits under the AWW, he would have been forced to marry first; according to the author, such an artificial construction constitutes arbitrary interference with his private life.

3.2 The author refers to the grounds he argued before the Board of Appeal and Central Board of Appeal; he reiterates that conditions and views held in society as to marriage and cohabitation have changed, and claims that the unequal treatment under the AWW of married couples and unmarried couples who share a household amounts to prohibited discrimination within the meaning of article 26 of the Covenant.

3.3 The author further argues that he did not receive a fair hearing with regard to the determination of his right to a pension benefit, because the law applied was discriminatory.

3.4 It is submitted that the same matter has not been submitted to the European Commission of Human Rights.

#### State party’s observations and authors comments thereon

4. The State party, by submission of 30 August 1995, raises no objections to the admissibility of the author’s claim under article 26 of the Covenant. With regard to his claims under articles 6 and 8 of the European Convention, however, the State party notes that these claims concern another Convention than the Covenant, and, moreover, that the author has not submitted these claims to the Dutch courts. The State party concludes therefore that this part of the communication is inadmissible.

5. In his comments on the State party’s submission, the author states that his claims under articles 6 and 8 of the European Convention are to be seen in conjunction with his claim under article 26 of the Covenant, and should therefore be considered admissible.

#### Issues and proceedings before the Committee

6.1 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.

6.2 The Committee notes that the author claims that he is a victim of discrimination because, as an unmarried cohabitant, he is not entitled to a widower’s benefit, whereas married cohabitants are. The Committee refers to its constant jurisprudence that article 26 does not of itself require States parties to provide social security benefits. However, when such benefits are regulated by law, then such a law must comply with article 26 of the Covenant.

6.3 In the instant case, the State party has raised no objections to the admissibility of the author's claim under article 26 of the Covenant. The Committee considers that the question whether the difference in treatment of the author, as a consequence of his marital status, was unreasonable or arbitrary should be examined on the merits, in the context of the State party's obligations under article 26 of conjunction with article 23, paragraph 1, of the Covenant. It invites the State party to explain the basis of the differentiation, as well as the different obligations and benefits under the law for married and unmarried couples at the material time.

6.4 The Committee has noted the State party's objections to the admissibility of the author's claims of unfair hearing and interference with private and family life. The Committee observes, however, that articles 6, paragraph 1, and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are similar in contents to articles 14, paragraph 1, and 17 of the Covenant. The Committee recalls that, whereas authors must invoke the substantive rights contained in the Covenant, they are not required, for purposes of the Optional Protocol, necessarily to do so by reference to specific articles of the Covenant.

6.5 The author has claimed that the difference in treatment between married and unmarried couples under the AWW constitutes a violation of his right to respect for his private and family life. The Committee notes that the information before it shows that the State party at no time interfered with the author's decision to cohabit with his girlfriend without marrying her, and that the author was free to marry or not to marry. The fact that a freely made decision regarding one's private life may have certain legal consequences in the field of social security cannot be seen as constituting arbitrary or unlawful interference by the State party under article 17 of the Covenant. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol, as being incompatible with the provisions of the Covenant.

6.6 As regards the author's claim that he has not had a fair hearing with respect to the determination of his right to a pension benefit, the Committee notes that he has not adduced any information to substantiate, for purposes of admissibility, that the hearings concerning the determination of his pension claim were unfair. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible as far as it may raise issues under article 26, in conjunction with article 23, paragraph 1, 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 from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, 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 author of the communication, to his counsel and to the State party.

---

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

1/ Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms is similar to article 14 of the International Covenant on Civil and Political Rights, and article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is similar to article 17 of the International Covenant on Civil and Political Rights.

2/ Views adopted on 9 April 1987, during the Committee's twenty-ninth session.