

## **HUMAN RIGHTS COMMITTEE**

### **Timmerman v. The Netherlands**

**Communication No. 871/1999**

**29 October 1999**

**CCPR/C/67/D/871/1999**

## **ADMISSIBILITY**

Submitted by : Ms. Joukje E. Timmerman

Alleged victim : The author

State party : The Netherlands

Date of the communication : 22 September 1998

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

Meeting on 29 October 1999

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is Ms. Joukje Elisabeth Timmerman, a Dutch citizen born on 8 April 1951, currently residing in Groningen, the Netherlands. She claims to be a victim of a violation by the Netherlands of the articles 7, 8, 9 paragraphs 1 and 2, 17 and 26 of the Covenant.

#### The facts as submitted by the author

2.1 The author began work on a temporary basis as a surgery assistant at the Academic Hospital of Groningen (Academisch Ziekenhuis Groningen - AZG) on 1 December 1980. On 1 December 1981 she was offered a permanent appointment.<sup>1</sup> At a certain point in time she factually carried out the activities of a first responsible surgery assistant in the Department of Plastic Surgery.

2.2 In 1989, the hospital's Surgery Department was reorganised and an "Operation Centre" was

created. Surgery assistants were supposed to be flexible and able to perform surgery tasks in different Surgery Departments; there was a so-called 'circulation duty'. The author was offered the function of surgery assistant on 1 September 1989, starting in September 1990. She accepted the position on the condition that her salary scale would be raised, a request she had already submitted in January 1988. She had made this request, because she felt that her additional co-ordinating activities at that moment entitled her to the higher salary scale.

2.3 At first, the AZG refused to reconsider the author's salary scale, but after a Court order (Ambtenarengerecht) of 15 February 1991 it raised the author's salary scale from B07 to B08, and awarded a one-time payment of 2,500 guilders. This was made known by the AZG to the author by letter of 10 July 1991.

2.4 The author had fallen ill from the date she was supposed to start her new function (September 1990), and she did not appear at work. Eventually, the AZG was informed by a physician that the author could gradually return to her normal work. When the author returned to work, she was still not satisfied with her salary scale, the function name, the circulation duty and the specific tasks she was requested to perform. Several talks between the author and the responsible persons of the Centre took place, but the author only wanted a reconsideration of her salary scale, function name and circulation duty.

2.5 After a few letters of reminder to the AZG with this request of reconsideration, the author set a time limit of two weeks for a response. When the AZG did not respond within the time set by the author, she submitted her case on 14 January 1992 to the District Court of Groningen (Arrondissementsrechtbank Groningen), relying on the failure of the AZG to respond to her request. This Court ruled on 3 February 1995 that the time period of two weeks (set by the author) was too short, and that the AZG had in fact reacted within reasonable time. The AZG responded that it would maintain its previous position, as worded in the letter of 10 July 1991.

2.6 On 28 April 1993 the author had received a letter of dismissal from the AZG, which she also contested in the above-mentioned case. However, the Court ruled that this dismissal by the AZG was lawful. The author appealed the decision to the Central Board of Appeal (Centrale Raad van Beroep). The Board, the last judicial resort, confirmed the ruling of the District Court.

2.7 The author complained to the European Commission on Human Rights. On 4 July 1997, the Commission rejected her application as inadmissible.

### The complaint

3. The author claims: 1) that there was "unequal remuneration and unequal treatment in respect of work of equal value", which allegedly constitutes a violation of article 26 of the Covenant; 2) that the policy of 'circulation duty' was discriminatory, because it was only applied to her; 3) that the means employed by the AZG to "deteriorate the author's legal status as an employee of the AZG, *i.e.* fraud, forgery, blackmail and threat, constitute a violation of article 17"; 4) a violation of articles 8 and 9, because when she returned to the AZG after her illness, she was required to work in conditions that amounted to forced labour and a deprivation of her liberty; 5) that the policy of the AZG was applied to "get rid of the her", and ultimately constituted a form of torture, a violation of

article 7 of the Covenant.

Issues and proceedings before the Human Rights Committee

4.1 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.

4.2 The Committee has noted the author's claim that she is a victim of a violation of articles 7, 8, 9 and 17 of the Covenant. The Committee considers, however, that the arguments advanced by the author relating to the conduct of the AZG do not substantiate, for the purposes of admissibility, that the alleged actions by the AZG would amount to a violation of the said articles of the Covenant. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

4.3 In relation to the author's claim that she was a victim of discrimination in violation of article 26 of the Covenant, as, *inter alia*, there was unequal pay for equal work and the circulation duty was only applied to her and not to other employees in a similar situation, the Committee notes that the arguments of discrimination were never raised before the domestic courts. The Committee therefore decides that this claim is inadmissible for non-exhaustion of domestic remedies. Accordingly, this claim is inadmissible under article 5(2)(b) of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under articles 2 and 5(2)(b) of the Optional Protocol;
- (b) that this decision shall be communicated to the author and, for information, to the State party.

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\*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

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

Notes:

- 1/ This means that she became a civil servant according to Dutch law.