

HUMAN RIGHTS COMMITTEE

Schmitz-de-Jong v. The Netherlands

Communication No 855/1999

16 July 2001

CCPR/C/72/D/855/1999

VIEWS

Submitted by: Ms. M. Schmitz-de-Jong (represented by counsel, Mr. Paul S. P. Vanderheyden)

Alleged victim: The author

State party: The Netherlands

Date of communication: 25 November 1998 (initial submission)

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

Meeting on 16 July 2001,

Having concluded its consideration of communication No. 855/1999 submitted to the Human Rights Committee by Ms. M. Schmitz-de-Jong 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 the following:

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

1. The author of the communication is Ms. M. Schmitz-de-Jong, a Dutch citizen, born on 15 February 1949, and residing in Gulpen, the Netherlands. She claims to be a victim of a violation of article 26, in conjunction with articles 3 and 5, of the International Covenant on Civil and Political Rights. She is represented by counsel.

The facts as submitted

2.1 Every Dutch citizen aged 65 years and older has the right to a pensioners' pass (so-called PAS-65). Partners of pass-holders have a subsidiary right to the pass, on the condition that they be 60 years or older. Pass owners pay reduced fees for public transport, social and cultural activities, library services and museum entries.

2.2 The author is married to Wilhelm Theodor Schmitz, born on 4 May 1924. Mr. Schmitz is in possession of a PAS-65. On 26 February 1993, the author applied for a partner pass. The municipality of Gulpen refused the pass on 16 March 1993, because the author did not fulfil the age requirement. The author applied for a review of the decision, which was rejected on 25 May 1993. The Council of State rejected her appeal on 15 August 1996. With this, all domestic remedies are said to have been exhausted.

The complaint

3. According to the author, the failure to give her a partner pass constitutes discrimination based on age. She refers to the Government's information brochure which explains that the pass is meant to promote the active participation of old age pensioners in society, and that in order to enhance this, the pass is also given to partners of old age pensioners. Since the average age difference between old age pensioners and their partners is between 4 and 5 years, it has been decided that all partners of 60 years or older are also entitled to the pass. The author argues that this age limit is arbitrary, and that the purpose of the partner pass does not justify its limitation to partners of 60 years and older.

The State party's observations

4.1 The State party, by submissions of 16 August 1999 and 29 February 2000, informs the Committee that as of 1 September 1999, the partner pass is abolished, following the finding by the Equal Treatment Commission that the scheme for partners indirectly discriminated between people according to marital status. The State party argues that, accordingly, the basis for the author's application has been removed.

4.2 As regards the author's complaint that she is a victim of discrimination on the grounds of age, the State party explains that the lower age limit for eligibility was expressly set at 60. Lowering this age limit was held to conflict with the aims of the senior citizen's pass, to which the aims of the partner's pass are related. According to the State party persons under the age of 60 are too far away from the target group for which the senior citizen's pass was created. The State party recalls that the author was 44 years of age when she applied for a partner's pass. The State party further invokes financial reasons for limiting the partner's pass to partners of 60 years and older.

Counsel's comments

5. In his comments, counsel points out that the author has been a victim of discrimination for the past seven years, and that the abolition of the partner pass as of 1 September 1999 does not affect this. Moreover, counsel points out that abolishing the partner scheme has no consequences for the

present owners of the partner's pass since they can keep it and continue using it. According to counsel, if the author had been granted her pass when she requested it, she would now be allowed to continue using it. Counsel maintains that in view of the purpose of the partner's pass - social and cultural stimulation of the senior citizen to whom the partner is married - no age limit is permissible.

Issues and proceedings before the Committee

6.1 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.

6.2 The Committee notes that the author has exhausted all available domestic remedies and that the State party has not raised any objections to the admissibility of the claim. The Committee has also verified that the same matter is not being examined by another procedure of international investigation or settlement. Accordingly, the Committee declares the communication admissible and proceeds to the consideration of the merits.

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

7.2 The author has claimed that she is a victim of discrimination on the ground of age, because as a 44-year-old (in 1993) she was not entitled to a senior citizen's partner's pass, which was only provided to partners of 60 years and older. The Committee recalls that a distinction does not constitute discrimination if it is based on objective and reasonable criteria. In the present case, the Committee finds that the age limitation of allowing only partners who have reached the age of 60 years to obtain an entitlement to various rate reductions as a partner to a pensioner above the age of 65 years is an objective criterion of differentiation and that the application of this differentiation in the case of the author was not unreasonable.

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 breach of any article of the Covenant.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

[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.]

