

S. W. M. Broeks v. The Netherlands, Communication No. 172/1984, U.N. Doc. Supp. No. 40 (A/42/40) at 139 (1987)

1) References

Jurisdiction: UN Human Rights Committee
Date of decision: 9 April, 1987
Case Status: Concluded by the Human Rights Committee

2) Facts

The applicant, Mrs. S. W. M. Broeks, a Netherlands citizen who was married at the time that the case arose, starting receiving disability benefits under the Netherlands social security system in 1975 when she became ill. She was also receiving unemployment benefits having been dismissed in 1979 due to a disability. The payments were stopped on 1 June 1980 and the legality of the discontinuation was affirmed by a municipal authority and the Central Board of Appeal.

3) Law

International law

Article 26, International Covenant on Civil and Political Rights (right to non-discrimination)

National Law

Section 13(1) (1), Unemployment Benefits Act (WWV)

Decree No. 61 452/IIIa

4) Legal Arguments

The applicant

The applicant claimed that the relevant Netherlands legal provisions were contrary “to the right to equality before the law and equal protection of the law without discrimination” guaranteed by article 26 of the International Covenant on Civil and Political Rights (ICCPR). She claimed that she had been subject to disadvantageous treatment under the Unemployment Benefits Act on the grounds of her sex and marital status. She submitted that, had she been a man, she would not have been deprived of the unemployment benefits whether or not she had been married, but being a woman she had been deprived because she was married. She claimed that this was a violation of article 26 of the ICCPR which was intended to give protection for rights beyond those listed in the ICCPR.

The State

The State asserted that the right in question was one of elimination of discrimination in realising the right to social security which was provided for under article 9, in conjunction with articles 2 and

3 of the ICCPR. Thus the State questioned whether the progressive fulfillment of such an obligation by the State could properly be heard by the Human Rights Committee.

The applicant's response

The applicant made a connection between an individual's exercise of his civil and political rights and social, economic and cultural rights, stressing the interdependence between the two. The applicant listed several provisions of the ICCPR in which equality or non-discrimination had been mentioned, arguing that the article 26 right enshrined a general right to equality and not just in respect of certain rights covered by ICCPR provisions. The applicant pointed out that the importance of non-discrimination on the grounds of sex (among other grounds) was so important that deviation from it was prohibited under article 4(1), even in times of public emergency.

The applicant gave examples of past instances where the Netherlands had expressed the opinion that article 26 of the ICCPR was applicable to social, economic and cultural rights, and therefore the only question to be asked was whether article 26 was self-executing, i.e. could be applied by domestic courts. The prohibition of discrimination had also been formulated in the Netherlands Constitution as being applicable to social, economic and cultural rights, with this also being reflected in domestic case law in the Netherlands. Thus the applicant asserted that the only issue to be considered was whether, on the facts, a violation of article 26 had in fact occurred.

The State's response

The State explained that the rules on entitlement to benefits for married women were based on historical conceptions of marriage and the roles of men and women in society, with the general assumption that married men with jobs were the family breadwinners. The State also explained that the law had since been changed to reflect changing societal views and that had the applicant sought unemployment benefits in the present day, she could have received them. The State asserted that the "breadwinner" concept which was behind the benefits rules was not intended to discriminate against women, but simply reflected the *de facto* situation at the time relating to the economic roles involving men and women in a family. Further, the rules at the time were intended to balance, on one hand the limited availability of public funds, and on the other, the need to provide social security in society.

The State maintained that article 26 of the ICCPR had relevance only in the sphere of civil and political rights. The State asserted that should the Committee find that article 26 could be applied to national legislation governing social, economic and cultural rights, the greatest obligation this could impose would be to "subject national legislation to periodic examination after ratification of the Covenant with a view to seeking out discriminatory elements and, if they are found, to progressively take measures to eliminate them *to the maximum of the State's available resources.*" The State claimed that this process was already under way in the Netherlands with regard to various aspects of discrimination, including sex discrimination.

The applicant's response

In the applicant's view, the State had implicitly admitted that the provisions of the Unemployment Benefits Act were contrary to article 26 at the time when she applied for unemployment benefits by stating that the provisions had since been amended, making them compatible with article 26 of the ICCPR.

5) Decision

The Committee agreed with the applicant that it was irrelevant that the issue overlapped economic, social and cultural rights and civil and political rights and that it could never the less consider the application, applying article 26 of the ICCPR to its full extent on the facts.

The Committee confirmed that article 26 did not cover only the rights guaranteed by the ICCPR, and that it is based on the general principle of equality derived from article 7 of the Universal Declaration on Human Rights. It derived from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 therefore covers the positive obligations imposed on States in regard to legislating and applying its legislation. The Committee also stated that the ICCPR does not require States to legislate in any particular area, but does impose an obligation, should a State choose to legislate, that the law be compatible with the ICCPR in substance and in application.

In deciding whether the differential treatment of the applicant under Netherlands law constituted discrimination under article 26, the Committee considered that placing married women at a disadvantage compared with married men had not been reasonable and therefore violated article 26. However the Committee noted that this had already been remedied by the State.