A. P. Johannes Vos v The Netherlands, Communication No. 786/1997

1) Reference Details
Jurisdiction: UN Human Rights Committee, Sixty-sixth session
Date of Decision: 26 July 1999
Case Status: Concluded by the Human Rights Committee
Link to full case: http://www1.umn.edu/humanrts/undocs/session66/view786.htm

2) Facts
On 24 September 1984, the author was awarded a pension under the Algemene Burgerlijke Pensioenswet (ABP, General Law on Civil Service Pensions).

In the Netherlands, civil servants are covered by both the ABP pension scheme and by the general pension scheme. The general pension scheme is fixed by reference to the minimum wage and paid in full after 50 years' insurance. The ABP pension is equal to 70% of the pensioner's last salary and is paid in full after 40 years of service.

Before 1985, a married man was entitled under the general pension scheme to a general pension for a married couple equal to 100% of the minimum wage. Unmarried persons of either sex were entitled to a general pension equal to 70% of the minimum wage. A married woman had no entitlement in her own right. To prevent overlapping of the general pension scheme and the ABP pension, the general pension scheme was incorporated into the ABP pension, that is to say it was regarded as forming part of the ABP pension. In practice, the ABP deducted the amount of the general pension from the civil service pension. The maximum amount of general pension to be incorporated was 80% (2% for each year of service). For married women civil servants, the incorporation was calculated by reference to the amount of the general pension of an unmarried woman, and the deduction was thus a maximum of 80% of 70% of the minimum wage.

On 1 April 1985, married women became entitled in their own right to a pension under the general pension scheme. Married persons then received each a pension equal to 50% of the minimum wage. The ABP scheme was amended accordingly, as of 1 January 1986. Between 1 April 1985 and 1 January 1986 a transitional scheme applied. As of 1 January 1986, pensions under the ABP are calculated in accordance with a "franchise" system, which is applied equally to men and women civil servants. However, for pension entitlements relating to periods of service before 1 January 1986 the old incorporation scheme continued to apply.

3) Law

• UN International Covenant on Civil and Political Rights 1966 (ICCPR), Article 26

4) Legal Arguments

The Author

The author, who was married, claimed that the different basis for calculation of the incorporation of the general pension into the civil service pension for married men and married women was in violation of Article 26 of the Covenant since 1 April 1985 - when married women became entitled to their own general pension. The author submitted that since 1 April 1985 he received 50% of a full general pension scheme for married couples, but that, because his
entitlement to a civil service pension dated from 1984, this pension was still, at present, calculated by incorporating 80% of the full general pension scheme, whereas the pension of married women civil servants is calculated by incorporating 80% of half of the general pension scheme. He thus receives a smaller pension from the ABP than female civil servants (pensioners) who are married.

**State Party**

The State party, referring to the Committee's jurisprudence, stated that the decisive question is whether a specific distinction is to be considered discriminatory. According to the State party, this is the case only when the parties concerned find themselves in a comparable situation and when the distinction is based on unreasonable and subjective criteria. The State party recalled that before 1 April 1985 married men and married women were not in a comparable situation with regard to the incorporation of the general pension in their civil service pension since married women had no entitlement in their own right to the general pension. The ABP scheme applied equally to married men and married women civil servants with regard to entitlement over periods of service after 1 January 1986.

According to the State party, the only period of time during which married men and married women were entitled to the same general pension, but had the incorporation into the civil service pension calculated differently, was between 1 April and 31 December 1985. The State party explained that this period of eight months was a transitional one, since the preparations for the introduction of new legislation had not yet been completed. For this reason and to achieve as fair a solution as possible, it was decided to equate married women civil servants with unmarried civil servants in respect of entitlements built up between 1 April 1985 and 31 December 1985. The State party is of the opinion that, in the particular circumstances, this does not constitute discrimination.

**5) Decision**

**Consideration of the Merits**

The Committee recalled from its jurisprudence that, when a State party enacts legislation, such legislation must comply with Article 26 of the Covenant. Therefore, once the State party equalled the general pensions for married men and women, it would have been open to the State party to change the General Law on Civil Service Pensions (ABP) in order to prevent a difference in pension entitlement between men and women occurring. The State party, however, failed to do so and as a result a married man with pension entitlements before 1 January 1986 has a higher percentage of general pensions deducted from his civil service pension than a married woman in the same position.

The State party has argued that no discrimination has occurred since at the time when the author became entitled to a pension, married women and married men were not in a comparable position with regard to the general pension. The Committee noted, however, that the issue before it concerned the calculation of the pension as of 1 January 1986, and considered that the explanation forwarded by the State party was not justifiable.

The Committee observed that what is at issue was not the progressive implementation of the principle of equality between men and women with regard to pay and social security, but whether the application of the relevant legislation to the author was in compliance with Article 26 of the Covenant. The Committee set out that as the pension paid to the author as a married male former civil servant whose pension accrued before 1985 was lower than the pension paid
to a married female former civil servant whose pension accrued at the same date this amounted to a violation of Article 26 of the Covenant.