R.P.C.W.M. Brandsma v Netherlands, Communication No. 977/2001, U.N.Doc. CCPR/C/80/D/977/2001 (2004)

1) Reference Details

Jurisdiction: UN Human Rights Committee, Eightieth session
Date of Decision: 1 April 2004
Case Status: Concluded by the Human Rights Committee
Link to full case: http://www1.umn.edu/humanrts/undocs/html/977-2001.html

2) Facts

In 1998, the author worked as a civil servant both for the Ministry of Finance and for the University of Leiden. He was given holiday supplementary payment of Fl. 9,166 in addition to his normal wages during the holidays which totalled Fl. 11,894. These amounts of holiday payments were fully subject to the imposition of income tax, in conformity with the Dutch laws and regulations.

The author, like most employees in the Netherlands received their holiday payments directly from their employer. In some sectors of industry, notably in the building sector, however, employees receive holiday vouchers. These are entitlements that can be cashed in, at the time of vacation, at a foundation that is funded with contributions from the employers. The value of these vouchers was taxed at the same time as the monthly or weekly salary, although the employees receive the actual payment at a later stage. During the period before the tax reform of 1990, a technical complication in the calculation of wage taxes would have led to the holiday vouchers being taxed at a higher rate than normal holiday payments. In order to compensate for this disadvantage, holiday vouchers were taxed at only a percentage of their normal value (75% in 1950, 50% in 1953 and 60% in 1969). It is stated that the system led to criticism from fiscal experts, who claimed that the undervaluation of the vouchers privileged employees receiving holiday payments through vouchers.

3) Law

- Article 26 of the International Covenant on Civil and Political Rights 1966 (right to non-discrimination)

4) Legal Arguments

The Author

The author complained that he is a victim of a violation of Article 26 of the Covenant, as he had to pay taxes over 100% of his holiday payments in 1998 whereas those employees who were being paid their holiday payments through vouchers were taxed at 75% of their payments. The author stated that he had not objected to the tax assessment or exhausted domestic remedies, in the light of the Supreme Court's judgement of 16 June 1999 in a similar case, where the Court decided that the difference in taxation did not constitute unlawful discrimination. According to the author, the application of domestic remedies would thus not have any prospect of success.

The author also argued that as the group of taxpayers who were entitled to the holiday voucher were mainly men, this constituted an indirect distinction on the basis of sex.

The State

The State party referred to a comparable case submitted by the author's counsel on behalf of another client to the European Court of Human Rights, which was declared inadmissible by the Court on 23 October 2000. According to the State party, the claims of discrimination in that case are the same as in the present case. The State party submitted that the author has referred to the Supreme Court's judgement in this case as a justification for the non-exhaustion of domestic remedies. The State party agrees in this context that it was reasonable for the author to expect that domestic remedies would not have given him any relief.

The State party explained that the Supreme Court explicitly examines cases in the light of international conventions, including the Covenant. It refers to a letter to the author's counsel from the registry of the European Court of Human Rights, dated 7 September 2000, in which it explains the obstacles to the admissibility of the case, including the wide margin of appreciation of states in the implementation of social and economic policies, in assessing when and to what extent differences in otherwise similar situations justify a different treatment in law. Subsequently the European Court declared the case inadmissible. The State party reiterates that weighty social, economic and political considerations underlie the different tax regimes applied to holiday pay and holiday vouchers. The State party argued that the difference in treatment arose from the need to prevent the situation where those who received holiday vouchers were taxed more heavily than recipients of holiday pay. The State party concludes that the communication (a) does not involve equal cases and (b) does not involve a manifest disproportionate treatment of unequal cases which could be classified as a violation of Article 26 of the Covenant.

5) Decision

Consideration of Admissibility

The Committee concluded that the claim was inadmissible. In reaching this decision the Committee observed:

"The Committee takes note of the reasons advanced by the State party as to why it decided to raise the valuation of the holiday vouchers in a gradual manner. It considers that the author has not substantiated, for purposes of admissibility, his claim that he, as a recipient of holiday pay, similarly to the vast majority of employees in the State party, was discriminated against compared to the small minority of workers who, because of the nature of their work, receive holiday vouchers, the taxation of which continues to be somewhat lower than that of holiday pay. Therefore, this part of the communication is inadmissible pursuant to article 2 of the Optional Protocol."

Similarly in respect to the author's claim of indirect discrimination the Committee stated:

"Concerning the author's claim about indirect discrimination, the Committee notes that the author is not a woman and thus cannot be considered to be a victim within the meaning of article 1 of the Optional Protocol. Accordingly, this part of the complaint is inadmissible pursuant to article 1 of the Optional Protocol."