

**S. W. M. Brooks v Netherlands, Communication No. 172/1984: Netherlands. 09/04/87.
CCPR/C/29/D/172/1984**

1) Reference Details

Jurisdiction: UN Human Rights Committee, Twenty-ninth session

Date of Decision: 9 April 1987

Link to full case: <http://www1.umn.edu/humanrts/undocs/session42/172-1984.htm>

2) Facts

Mrs Brooks, who was married at the time when the dispute in question arose (she has since divorced and not remarried), was employed as a nurse from 7 August 1972 to 1 February 1979, when she was dismissed for reasons of disability. She had become ill in 1975, and from that time she benefited from the Netherlands social security system until 1 June 1980 (as regards disability and as regards unemployment), when unemployment payments were terminated in accordance with Netherlands law.

Mrs Brooks contested the decision of the relevant Netherlands authorities to discontinue unemployment payments to her and in the course of exhausting domestic remedies invoked Article 26 of the International Covenant on Civil and Political Rights, claiming 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. Legal counsel submitted that domestic remedies were exhausted on 26 November 1983, when the appropriate administrative authority, the Central Board of Appeal, confirmed a decision of a lower municipal authority not to continue unemployment payments to Mrs Brooks.

3) Laws

National Law

- Section 13 subsection 1(1) of the Unemployment Benefits Act

International Law

- Article 2, paragraph 1 of the International Covenant on Civil and Political Rights (non-discrimination with reference to the rights recognized in the Covenant)
- Article 3 of the International Covenant on Civil and Political Rights (non-discrimination on the grounds of sex with reference to the rights recognized in the Covenant)
- Article 14 of the International Covenant on Civil and Political Rights (equality before the courts)
- Article 23, paragraph 4: Article 24, paragraph 1 of the International Covenant on Civil and Political Rights (equal rights of spouses)
- Article 25(c) of the International Covenant on Civil and Political Rights (equal right to vote and equal access to government service)
- Article 26 of the International Covenant on Civil and Political Rights (right to non-discrimination)

4) Legal Arguments

Mrs Brooks claims that, under existing national law, s. 13 subsection 1(1) of the Unemployment Benefits Act and Decree No. 61 452/IIIa of 5 April 1976 which gives effect to that section made an unacceptable distinction on the grounds of sex and status. She based her claim on the following: if she were a man, married or unmarried, the law in question would not deprive her of unemployment benefits. Because she is a woman, and was married at the time in question, the law excluded her from continued unemployment benefits. This, she claimed, made her a victim of a violation of Article 26 of the Covenant on the grounds of sex and status. She claimed that Article 26 of the International Covenant on Civil and Political Rights was meant to give protection to individuals beyond the specific civil and political rights enumerated in the Covenant

5) Decision

Merits

The committee stated that for the purpose of determining the scope of Article 26, the Committee has taken into account the “ordinary meaning” of each element of the Article in its context and in the light of its object and purpose. The Committee set out that that Article 26 was thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

However, although Article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it did not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with Article 26 of the Covenant.

Applying this the Committee held that the circumstances in which Mrs Brooks found herself at the material time and the application of the then valid Netherlands law made her a victim of a violation, based on sex, of Article 26 of the International Covenant on Civil and Political Rights, because she was denied a social security benefit on an equal footing with men.

The Committee noted that the State had not intended to discriminate against women and further noted with appreciation that the discriminatory provisions in the law applied to Mrs Brooks have, subsequently, been eliminated. Although the State party has thus taken the necessary measures to put an end to the kind of discrimination suffered by Mrs Brooks at the time complained of, the Committee was of the view that the State should offer Mrs Brooks an appropriate remedy.