



**International Covenant
on Civil and Political
Rights**

Distr.
RESTRICTED*

CCPR/C/63/D/651/1995
27 July 1998

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-third session
13 - 31 July 1998

VIEWS

Communication N° 651/1995

<u>Submitted by:</u>	J. Snijders, A. A. Willemsen and Ch. C. M. Van der Wouw (represented by Kalbfleisch, Van der Blom & Fritz)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	The Netherlands
<u>Date of communication:</u>	26 August 1994 (initial submission)
<u>Date of adoption of Views</u>	27 July 1998

On 27 July 1998, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 651/1995. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
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GE.98- 17461

ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4,
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
- Sixty-third session -

concerning

Communication N° 651/1995

<u>Submitted by:</u>	J. Snijders, A. A. Willemen and Ch. C. M. Van der Wouw (represented by Kalbfleisch, Van der Blom & Fritz)
<u>Victim:</u>	The authors
<u>State party:</u>	The Netherlands
<u>Date of communication:</u>	26 August 1994 (initial submission)
<u>Date of decision on admissibility:</u>	14 March 1996

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

Meeting on 27 July 1998,

Having concluded its consideration of communication No.651/1995
submitted to the Human Rights Committee by J. Snijders, A. A. Willemen and
Ch. C. M. Van der Wouw, 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 authors of the communication, their counsel and the State party,

Adopts the following:

* The following members of the Committee participated in the examination
of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati,
Mr. Th. Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei,
Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah,
Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Maxwell
Yalden and Mr. Abdallah Zakhia.

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

1. The authors of the communication are J. Snijders, A. A. Willemsen and Ch. C. M. van der Wouw, Dutch citizens at present living in a nursing home. They claim to be victims of a violation by the Netherlands of article 26 of the International Covenant on Civil and Political Rights. They are represented by Kalbfleisch, Van der Blom & Fritz, a law firm in Haarlem, the Netherlands.

Facts as submitted by the authors:

2.1 In the Netherlands, the Algemene Wet Bijzondere Ziektekosten (AWBZ) provides a compulsory, nation-wide insurance for the costs of long-term medical care. The AWBZ is being funded out of contributions which are being levied by the State's tax department. Further, a contribution can be imposed on persons benefitting from the AWBZ, on the basis of article 6(2) of the law.

2.2 The own contributions are being implemented according to the "Own Contribution Scheme" laid down in a government decree of 1 May 1987, as amended on 21 December 1988. Income-related contributions are being levied from single persons (that is, persons who are not married or do not cohabit with a partner) and from married persons or persons who cohabit when both partners benefit from the AWBZ. The maximum income-related contribution is Fl. 1,350 for a single person or for a married or cohabiting couple. The non-income-related contribution amounts to Fl. 180 a month, and is being levied only from those patients who do not pay an income-related contribution.

2.3 On 1 July 1989, the authors, who are single, were levied for an own contribution of Fl. 978, Fl. 1,210 and Fl. 745, respectively, for their stay in a nursing home in Zandvoort. They appealed to the Board of Appeal (Raad van Beroep) in Haarlem, arguing that the distinction between married persons and persons who cohabit on the one hand and single persons on the other hand constituted discrimination in violation of article 26 of the Covenant. By decision of 14 January 1991, the Board of Appeal allowed their appeal, finding that the distinction between married or cohabiting persons and single persons, while not discriminatory per se, was not justified in the specific circumstances and amounted to a discrimination of single persons. The Board noted that the distinction had been made on the basis of budgetary, administrative and social grounds. The social considerations were aimed at the continuation of the communal household, in case one partner is admitted into care and another is left behind. The Board found, however, that this consideration did not justify the exemption of married or cohabiting persons from all income-related contributions, and that the specific circumstances of couples could be taken into account when determining the income-related contribution.

2.4 The Ziekenfonds Spaarneland, the regional executive body for the levy of income-related contributions, appealed the Board's decision to the Central Board of Appeal (Centrale Raad van Beroep), which, by judgement of 1 October 1992, quashed the decision by the Board of Appeal and rejected the authors' claim. It considered that the distinction was justified on the basis that costs saved by a married or cohabiting person, when a household is continued, are minimal, whereas costs saved by a single person, whose household is discontinued, are substantial. It concluded that the AWBZ's own contribution scheme was based on

reasonable and objective criteria and therefore did not constitute a discrimination within the meaning of article 26 of the Covenant.

2.5 The authors state that no further appeal is possible against the decision of the Central Board of Appeal.

The complaint:

3.1 The authors claim that they are victims of discrimination because they have to pay an income-related contribution towards the costs of hospitalization, whereas married persons or persons who cohabit and of whom the partner is not also hospitalized only pay a minimal non-income-related contribution. They argue that the distinction is not based on reasonable and objective criteria. They claim that the heart of the matter, justifying a contribution, is whether the person concerned still continues his own household, rather than whether he is married, cohabits or is single. However, under the law and regulations currently in force in the Netherlands, an income-related contribution is imposed on single persons after six months, whether they have discontinued their household or not. It is submitted that the choice either to continue or to discontinue their own household has been taken away from them, due to the precarious financial situation they find themselves in. The authors claim that this may have a demoralizing effect on the patient and reinforce the illness, and claim moreover that it entails the break-off of many social contacts since it precludes them from using their own household temporarily, for instance during weekends. Furthermore, after recovery, they cannot go back to their own household and would have to start all over again. They state that even for a married or cohabiting couple, of which both partners are in a nursing home, who pay the income-related contribution, it is generally possible to keep their own household, because the maximum contribution to be paid by the couple is the same as the maximum contribution to be paid by a single person, thereby leaving the couple financial room to continue their household if they so wish. The authors state that a solution could be found by raising the non-income-related contribution for everybody, and making the income-related contribution dependent upon the factual circumstances of each person, regardless of their marital status.

3.2 The authors further argue that, since the AWBZ is a national obligatory insurance, to which all Dutch nationals contribute, the requirement to pay an own contribution if one is entitled to insurance benefits, is in violation of the principle of equality of all insured.

Issues and proceedings before the Committee:

4.1 At its 56th session, the Human Rights Committee considered the admissibility of the communication

4.2 The Committee noted that the State party, by submission of 22 November 1995, had informed the Committee that the authors exhausted the national remedies and that it did not contest the admissibility of the communication.

4.3 The Committee considered that no obstacles to admissibility existed and that the issues raised by the communication should be considered on its merits.

5. The Human Rights Committee therefore decided that the communication was admissible.

State party's observations on the merits and the authors' comments thereon

6.1 By submission of 6 November 1996, the State party recalls the factual basis of the communication as well as the authors' claims. It recalls that individual contributions for residential care are payable if the care provided by an institution is combined with 24-hour residence. The relevant rules provide:

- during the first six months of residence everyone over 18 years of age is required to pay a non-income-related contribution of NLG 210. Where married or cohabiting partners are both required to pay this non-income-related contribution, each pays half of the said sum;
- after the first six months, everyone over 18 years of age, and depending on the marital status and the personal circumstances, is required to pay a contribution. For single persons under the age of 65 the contribution is up to NLG 1,350, and for those over the age of 65 it is up to NLG 2,200. Married or cohabiting persons under 65 years of age, if both partners are residing in an institution, pay an income related contribution of up to NLG 1,350 (per couple). If only one of the partners reside in the institution, he or she continues to pay the non-income related contribution of NLG 210. If the married or cohabiting persons are over the age of 65, the respective amounts are NLG 2,200 and NLG 210.

6.2 The State party explains that to calculate the income-related contribution, the total income is first calculated, after which deductions are made for specific expenses. The payable contribution is calculated on the resulting amount. If it is considered likely that the insured person's residence will be temporary, and that he may be returning to the community, deductions are allowed for the retention of an independent household.

6.3 The State party explains that the AWBZ is a national insurance scheme covering serious medical risks, such as unusually high or long-term medical expenses. It argues that it is necessary to complement the insurance with a system of personal contributions, since otherwise the scheme would not be affordable. According to the State party, the contributions system is based on the notion that whenever a person is taken into residential care, some money is saved in household expenses. The State party submits that each individual's ability to pay as well as domestic circumstances are taken into account, but that the determining factor is whether the period of residence should be regarded as temporary or permanent and whether the person concerned may be reasonably expected to return to the community.

6.4 According to the State party, a single person who likely will remain in residential care must be deemed incapable of maintaining a household of his own and is therefore saving the expenses of such a household. The same is said to apply to couples of which both partners are residing permanently in residential care. On the other hand, the State party claims, a married or cohabiting couple of which only one partner is in residential care, is saving very little in household expenses - only the food and care, which is reflected in the NLG 210 contribution. When both partners of a couple are in residential care, each is liable for part of the contribution (half in case of a non-income related contribution, proportional to income in case of an income-related contribution).

Their contribution is calculated taking the total income of the couple into account.

6.5 The State party explains that the present system reflects the Directive adopted by the Council of European Communities on 19 December 1978, concerning the progressive implementation of the equal treatment for men and women in matters of social security. Before the present system came into effect, with respect to married couples, only the husband was required to pay a personal contribution. When the system was adjusted, resulting in the present one, the Government applied the principle that the adjustment should have no financial consequences, either for the AWBZ or for those insured, and in particular for married couples, in order to avoid that they would suddenly have to pay double the contribution than before, while their income remained the same.

6.6 As regards the authors' claim that the contribution scheme is in violation of the principle of equal treatment of all insured, the State party observes that the scheme does not result in unequal treatment of equal cases. According to the State party, there is an essential difference between those who still have, or are expected to have, a household and those who do not.

6.7 The State party concludes that the distinction made in the personal contribution scheme under the AWBZ is based on the fact whether or not the person concerned has, or is assumed to have, an independent household. If the household is continued, only a limited amount of money is saved, whereas if the household is relinquished, all the costs of accommodation, care and food, is in principle saved, justifying a higher personal contribution. The State party argues therefore that the distinction made is not based on any personal feature of the person concerned, but on reasonable and objective grounds. According to the State party, it does not constitute a violation of article 26 of the Covenant.

7.1 In his comments on the State party's submission, counsel notes that all residents of the Netherlands are compulsory insured against special medical costs under the AWBZ. The contributions to the scheme are collected by the tax authorities and are intended to cover also the costs of admission to a nursing home or clinic. According to counsel, in practical terms the obligation to contribute is the same for single persons and married/unmarried couples. Since a distinction is made, however, between single persons and couples once they claim reimbursement under the AWBZ insurance, in the sense that different deductible amounts apply, the authors argue that the distinction is discriminatory under article 26 of the Covenant.

7.2 Counsel refers to the different maximum amounts paid, and in particular to the amount for persons over the age of 65, and concludes that it seems that these amounts reflect not only the saving on subsistence, but also a contribution towards the costs of care, treatment and rehabilitation. From an insurance perspective, according to counsel, this amounts to inequality and constitutes discrimination based on status without reasonable and objective justification.

7.3 Counsel submits that although in individual cases, on the basis of a prognosis made by the attending therapist or physician, a single person may be considered likely to go home eventually, and thus be eligible to a reduction in

the payable amount, the situation of inequality remains because this is fully dependent on the prognosis made, whereas medical prognoses are irrelevant for married couples. Counsel reiterates that single persons who are required to pay an income-related contribution after six months are in practice denied the choice of continuing to keep an independent household.

7.4 In this context, counsel refers to the difference in payment between a single person who makes an income-related contribution and the case where both partners of a couple are admitted and jointly required to pay the maximum amount of only one of them.

7.5 Counsel concludes that the rules governing the personal contributions under AWBZ insurance, with single persons being charged with an income-related contribution and married persons whose partner is not admitted with a contribution not-related to income, and with only one income-related contribution if they are both admitted, must be deemed to violate article 26 of the Covenant.

Issues and proceedings before the Committee

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

8.2 The question before the Committee is whether the principle of equality as laid down in article 26 has been violated (a) because the authors are required to make personal contributions under the AWBZ because they are in residential care, whereas insured persons who are not in residential care are not required to make personal contributions; and because the calculation of the personal contributions puts the authors at a disadvantage, since (b) they are required to pay income-related contributions whereas married or cohabiting persons whose partner is not in care, only pay a fixed non-income related contribution, regardless of their income, and (c) couples where both partners are in care, pay the same maximum amount as a single person.

8.3 The Committee is of the opinion that the requirement that individuals, when benefiting from the AWBZ insurance scheme, pay a personal contribution towards the costs of residential care, is as such not in violation of the principle of equality before the law. With regard to the issue under (a), the State party has explained that those using the system have to contribute to the scheme lest this become not affordable. The Committee considers that the explanation given by the State party justifies the distinction between those who are required to pay personal contributions and those who are not required to do so, and the distinction thus does not constitute a violation of article 26 of the Covenant.

8.4 Personal contributions under the AWBZ should however be calculated objectively and without arbitrariness. In relation to the issue under (b), the Committee has taken note of the State party's explanation that the distinction in the contribution is based upon the factual difference that married or cohabitating persons leave behind a partner who continues to live in what was their common household and therefore does not save the same amount of money as does a single person in residential care. For this reason they are requested to pay a fixed contribution. The Committee considers that this distinction, based on a presumption that has its basis in the factual circumstances of life of

persons benefiting from the scheme, is objective and reasonable. Therefore it does not constitute a violation of article 26 of the Covenant. This conclusion is not affected by the argument of the authors that the State party might have at its disposal alternative methods of levying sufficient funding for the AWBZ scheme.

8.5 With regard to the issue under (c), the Committee notes that the State party has explained that in calculating the amount of money each person must pay as an income-related contribution, it takes into account each individual's ability to pay as well as domestic circumstances. In case of a couple where both spouses are in care, their total income forms the basis of the calculation of their contribution. This, however, does not affect the ceiling of the own contribution which is the same (NLG 1,350) for single persons and couples alike. None of the authors was levied for an own contribution that would amount to this ceiling. Consequently, the authors have failed to show that they are victims of a violation of article 26 of the Covenant.

9. 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 disclose a violation of article 26 of the International Covenant on Civil and Political Rights.