Communication No. 501/1992, J. H. W. v. the Netherlands
(decision of 16 July 1993, adopted at the forty-eighth session)

Submitted by: J. H. W. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 5 May 1992

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

Meeting on 16 July 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 5 May 1992, is J. H. W., a Dutch citizen, born on 3 October 1919, presently residing in Wassenaar, the Netherlands. He claims to be a victim of a violation by the Netherlands of article 26 juncto article 2, paragraph 3, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted

2.1 The author states that, under the General Child Benefit Act, contributions are levied on the same basis as wage and income tax. These contributions are used to fund the benefits payable under the Act to assist parents in the maintenance of their children. Contributions have to be paid up to the age of 65, regardless whether one will ever apply for a benefit under the Act or not. However, an exemption was made, by Royal Decree of 27 February 1980, pursuant to article 25, paragraph 2, of the Act, for unmarried childless women over the age of 45. The exemption was based on the expectation that these women would remain childless. No similar exemption was made for unmarried childless men over the age of 45. The exemption for women was subsequently withdrawn in 1989.

2.2 On 30 August 1986, the author received notice of the assessment concerning his contributions under several social security acts, including the Child Benefit Act, covering the period from 1 January 1984 to 3 October 1984. He objected to the assessment, whereupon the tax inspector decided to reduce his assessed contributions. An amount (10,160 guilders in total) remained to be paid, however. The author appealed the tax inspector's decision to the tax chamber of the Court of Appeal (Belastingkamer van het Gerechtshof) at The Hague, invoking, inter alia, article 26 of the Covenant.

By judgement of 1 March 1990, the Court dismissed the appeal. The author subsequently appealed to the Supreme Court (Hoge Raad), which dismissed his appeal on 11 December 1991. The Supreme Court considered that the distinction made in the Act was reasonable, taking into account the physical differences between men and women.

Complaint

3.1 The author claims that he is a victim of discrimination based on sex, since he has been denied an exemption which he would have enjoyed if he had been a woman. He argues that there is no objective, reasonable and proportionate justification for the distinction made in the Child Benefit Act between men and women. He refers in this connection to a statement of the Dutch Government in 1988 to the effect that an exemption for women only was no longer acceptable, following developments in present-day society. The author argues that this was not acceptable in 1984 either. He submits in this context that the Covenant should be interpreted in the light of present-day developments, and that views prevalent at a time when the legislation was introduced cannot be decisive when applying the Covenant to his case. In this connection the author refers to the views of the Committee in communication No. 172/1984 (Broeks v. the Netherlands) and to relevant jurisprudence of the Dutch courts.

3.2 Moreover, the author argues that it is not correct to expect that women aged over 45 will not have children. In this connection, he refers to the regulation in the Child Benefit Act according to which an applicant can receive benefits for foster children. He further submits that, even if the distinction between men and women could be based on objective data, showing that women over 45 are less likely to beget children than men, this would still not justify the distinction. According to the author, the small difference in possibility did not justify such an absolute distinction. In this connection, the author contends that the statistical frequency of a man over the age of 45 to father a child is not more than few per thousand. The author therefore concludes that the necessary proportionality between the distinction and the aim of the exemption is lacking.

State party's observations

4. By submission dated 4 September 1992, the State party concedes that the author has exhausted the domestic remedies available to him. It does not raise any objections to the admissibility of the communication.

Issues and proceedings before the Committee

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the State party does not object to the admissibility of the communication. Nevertheless, it is the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol have been met. In this context, the Committee notes that the State party, in 1989, adopted measures to abolish the exemption at issue in the present communication. The Committee considers, taking into account that social security legislation and its application usually lag behind socio-economic developments in society, and that the purpose of the abrogated exemption was at its time not generally considered discriminatory, that the issue which the author raises in his communication is moot and that he has no claim under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French and Spanish, the English text being the original version.]