

N. Communication No. 297/1988, H. A. E. d. J. v. the Netherlands (Decision of 30 October 1989, adopted at the thirty-seventh session)

Submitted by: H. A. E. d. J. [name deleted]
Alleged victim: The author
State party concerned: The Netherlands
Date of communication: 29 March 1988

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

Meeting on 30 October 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 29 March 1988) is H. A. E. d. J., a Dutch citizen born on 10 April 1957, residing in Utrecht, the Netherlands. He claims to be a victim of a violation by the Government of the Netherlands of article 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 20 August 1984, the author filed an application for a supplementary allowance under the Dutch General Assistance Act of 13 June 1963. At that time, he was performing civilian service as a recognized conscientious objector to military service and received pocket-money and a number of unspecified benefits. This income was allegedly 10 per cent below the minimum subsistence level applicable nationwide to persons aged 27 who maintain their own household. The executive body established under the General Assistance Act and the appeals board refused to grant the author supplementary benefits under the Act, arguing that the regulations applicable to conscientious objectors provided adequate means of subsistence to individuals in the author's situation.

2.2 In the course of the proceedings, the author challenged the different treatment provided for by Dutch laws and regulations which fix different minimum figures for necessary subsistence costs. Many conscientious objectors are said to live in poor conditions, at about 10 per cent below the minimum subsistence level (in 1984), as formulated in the National Assistance Standardization Act of 3 July 1974. Those conscientious objectors aged 23 and above who, while carrying out their civilian service, seek to maintain their own household, are said to be most seriously affected. Thus, the amount of assistance for an individual aged 23 or over, at the time of the author's request for assistance, was Dutch Guilders 1012.85 per month. The sum the author was entitled to as a conscientious objector was Dutch Guilders 901.76 per month.

2.3 The author submits that he should have received supplementary assistance so as to obtain an income equal to the minimum level referred to in the General Assistance Act, read in conjunction with the National Assistance Standardization

Act. With reference to article 26 of the Covenant the author argues that the mere fact that a person performs alternative national service can be no reason for discriminating against him. If the authorities set standard minimum figures, they may not, without well-founded reasons, apply lower minima to certain groups.

3. By its decision of 8 July 1988 the Working Group requested the author, under rule 91 of the rules of procedure, to forward to the Committee a copy of the relevant documents and to clarify whether he claimed that persons performing civilian service enjoy less benefits than those performing military service.

4. On 15 September 1988, author's counsel submitted the desired documents, and argued "that a conscientious objector fulfilling alternative military service who is aged 23 or over and maintains an independent household, is discriminated against in comparison to other civilians who maintain an independent household. In this case, there is no issue of discrimination between conscientious objectors on the one hand and conscripts on the other hand. Usually conscripts do not keep an independent household, although under certain circumstances a conscript aged 23 or over might be in the same position as a conscientious objector."

5. By its decision of 10 November 1988, the Working Group transmitted the communication under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

6.1 In its submission dated 6 February 1988 the State party notes preliminarily, that "[t]he issue of non-discrimination provisions in international law and the Dutch social security system will be discussed in Parliament shortly. In these circumstances, the Government will not address this aspect to the scope of article 26 in the present memorandum, and it reserves the right to turn to this issue, if necessary, in the event that the merits of the complaint in question come under review. In view of the above, there is no impediment to the Dutch Government's responding to the other aspects of the applicant's complaint as it does below with respect to the issue of admissibility."

6.2 The State party further submits that "[t]he legal basis for compulsory military service is provided by article 98 of the Constitution and the National Service Act of 4 February 1922 (published in the Bulletin of Acts, Orders and Decrees, 1922, 24). Military service is compulsory. Article 99 of the Constitution lays down that the conditions subject to which those who have serious conscientious objections may be exempted from military service shall be laid down in the Military Service (Conscientious Objection) Act of 27 September 1962 (Bulletin of Acts, Orders and Decrees 1962, 370).

Broadly speaking, the provisions of the Military Service Act are as follows. Any person who has been found fit for military service, and any member of the armed forces, whether or not on active duty may ask the Minister of Defence to recognise his objections as serious conscientious objections. If, after an investigation has been carried out, those objections are recognised, the person concerned is exempted from military service. The Minister of Social Affairs and Employment is responsible for finding work for conscientious objectors. Alternative service is performed either with government bodies or with suitable organizations, as designated by the Minister of Social Affairs and Employment, which serve the public interest. Conscientious objectors receive the same pay as conscripts, namely

pocket money; certain allowances and fringe benefits are available. As far as possible, the legal position of conscientious objectors is the same as that of conscripts.

As regards the possible payment of general assistance, the Government would make the following observations. The General Assistance Act, in conjunction with which the National Assistance Standardisation Decree sets levels of benefits, is based on the premise that assistance will be granted to those who are unable to support themselves. The purpose of this benefit is to cover the costs of subsistence if normal sources of income fail to meet these minimum costs. The General Assistance Act thus provides a safety net for cases in which all other sources of income have failed. Conscripts and those performing alternative service are deemed to be adequately provided for already, as their position is fully regulated by the National Service Act, the Military Service Act and associated regulations. Under the established case law of the Crown, the statutory arrangements for payments to conscientious objectors are regarded as adequate and they do not require benefit payments. The Royal Decree of 21 January 1988 which was submitted by the applicant is entirely in accordance with this case law. In reply to the Committee's question, it may be observed that neither the General Assistance Act nor the National Standardisation Decree was applicable to the applicant when he was performing his alternative service as a conscientious objector."

6.3 With regard to the Committee's prior jurisprudence, the State party refers to its decisions on admissibility of 5 November 1987 (communication No. 245/1987, *R. T. Z. v. the Netherlands*) and 24 March 1988 (communication No. 267/1987, *M. J. G. v. the Netherlands*) and argues that the applicant's case should likewise be ruled inadmissible ... "The applications in question related to conscripts. In paragraph 3.2 of the decisions cited, the Committee observed that the Covenant does not preclude the institution of compulsory military service by State parties, even though this means that some rights of individuals may be restricted during military service, within the exigences of such service." The State party also takes the view that the institution of a compulsory alternative service for conscientious objectors is equally endorsed by the Covenant and refers to article 8, paragraph 3c (ii).

6.4 It is submitted that in cases where conscientious objections have been recognised, alternative service functions as a substitute for military service. "It appears from the applicant's communication that he considers that, as a conscientious objector, he has suffered discrimination in comparison with members of the public. The Government, in this phase of the procedure, will not deal with the factual question whether the non-applicability of the General Assistance Act does result in differences of income as claimed by the applicant. However, referring to the two above-mentioned decisions of the Committee it can be contended that in the present case a comparison of the position of the author with the position of members of the public vis-à-vis the General Assistance Act is not called for. Furthermore the applicant has not claimed that the rules applicable to him were applied to him differently than to other conscientious objectors. The Government concludes that the author has no claim under article 2 of the Optional Protocol."

7. In letter dated 29 June 1989, counsel comments on the State party's submission under rule 91, underlining that the decisive question is whether the difference of treatment between a recognized conscientious objector, above 23 years of age, fulfilling alternative military service and a civilian of the same age constitutes

discrimination within the meaning of article 26 of the International Covenant on Civil and Political Rights. Counsel asserts that a difference of treatment can only be justified insofar as the exclusion of his client's eligibility for a supplementary payment under the General Assistance Act is necessary in order to maintain the character of the alternative military service. The author contests, however, that such a necessity has been proven by the State party and, furthermore, he states that there is no provision under Dutch law to support the discrimination against his client.

8.1 Before considering any claims contained in a communication, the Committee shall, in accordance with rule 87 of the rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the author claims that he is a victim of discrimination on the ground of "other status" (article 26 of the Covenant in fine), because, as a conscientious objector to military service and during the period that he performed alternative service, he was not treated as a civilian but rather as a conscript and was thus ineligible for supplementary allowances under the General Assistance Act. The Committee observes, as it did with respect to communications Nos. 245/1987 (R. T. Z. v. the Netherlands) and 267/1987 (M. J. G. v. the Netherlands), that the Covenant does not preclude the institution by States parties of compulsory national service, which entails certain modest pecuniary payments. But whether that compulsory national service is performed by way of military service or by permitted alternative service, there is no entitlement to be paid as if one were still in private civilian life. The Committee observes in this connection, as it did with respect to communication No. 218/1986 (Vos v. the Netherlands) that the scope of article 26 does not extend to differences in result of the uniform application of laws in the allocation of social security benefits. In the present case, there is no indication that the General Assistance Act is not applied equally to all citizens performing alternative service. Thus the Committee concludes that the communication is incompatible with the provisions of the Covenant and inadmissible under article 3 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and to the author.