B. Communication No. 172/1984, S. W. M. Broeks v. the Netherlands (Views adopted on 9 April 1987 at the twenty-ninth session)

Submitted by: S. W. M. Broeks (represented by Marie-Emmie Diepstraten)

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 1 June 1984 (date of initial letter)

Date of decision on admissibility: 25 October 1985

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

Meeting on 9 April 1987;

Having concluded its consideration of communication No. 172/1984 submitted to the Committee by S. W. M. Broeks 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 author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 1 June 1984 and subsequent letters dated 17 December 1984, 5 July 1985 and 20 June 1986) is Mrs. S. W. M. Broeks, a Netherlands citizen born on 14 March 1951 and living in the Netherlands. She is represented by legal counsel.

2.1 Mrs. Broeks, 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.

2.2 Mrs. Broeks 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 of the International Covenant on Civil and Political Rights. Legal counsel submits 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. Broeks.

2.3 Mrs. Broeks claims that, under existing law (Unemployment Benefits Act (WWV), sect. 13, subsect. 1 (1), and Decree No. 61 452/IIIa of 5 April 1976, to give effect to sect. 13, subsect. 1 (1), of the Unemployment Benefits Act) an unacceptable distinction has been made on the grounds of sex and status. She bases 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 excludes her from continued unemployment benefits. This, she claims, makes her a victim of a violation of article 26 of the Covenant on the grounds of sex and status. She claims 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.

2.4 The author states that she has not submitted the matter to other international procedures.

3. By its decision of 26 October 1984, the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 In its submission dated 29 May 1985 the State party underlined, inter alia, that:

(a) "The principle that elements of discrimination in the realization of the right to social security are to be eliminated is embodied in article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights;

(b) "The Government of the Kingdom of the Netherlands has accepted to implement this principle under the terms of the International Covenant on Economic, Social and Cultural Rights. Under these terms, States parties have undertaken to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in that Covenant (art. 2, para. 1);

(c) "The process of gradual realization to the maximum of available resources is well on its way in the Netherlands. Remaining elements of discrimination in the realization of the rights are being and will be gradually eliminated;

(d) "The International Covenant on Economic, Social and Cultural Rights has established its own system for international control of the way in which States parties are fulfilling their obligations. To this end States parties have undertaken to submit to the Economic and Social Council reports on the measures they have adopted and the progress they are making. The Government of the Kingdom of the Netherlands to this end submitted its first report in 1983."

4.2 The State party then posed the question whether the way in which the Netherlands was fulfilling its obligations under article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights could become, by way of article 26 of the International Covenant on Civil and Political Rights, the object of an examination by the Human Rights Committee.

The State party submitted that the question was relevant for the decision whether the communication was admissible.

4.3 The State party stressed that it would greatly benefit from receiving an answer from the Human Rights Committee to the question mentioned in paragraph 4.2 above. "Since such an answer could hardly be given without going into one aspect of the merits of the case - i.e. the question of the scope of article 26 of the International Covenant on Civil and Political Rights - the Government would respectfully request the Committee to join the question of admissibility to an examination of the merits of the case."

4.4 In case the Committee did not grant that request and declared the communication admissible, the State party reserved the right to submit, in the course of the proceedings, observations which might have an effect on the question of admissibility.

4.5 The State party also indicated that a change of legislation had been adopted recently in the Netherlands, eliminating article 13, paragraph 1, of WWV, which was the subject of the author's claim. This is the Act of 29 April 1985, S 230, having a retroactive effect to 23 December 1984.

4.6 The State party confirmed that the author had exhausted domestic remedies.

5.1 In a memorandum dated 5 July 1985, the author commented on the State party's submission under rule 91. The main issues dealt with in the comments are set out in paragraphs 5.2 to 5.10 below.

5.2 Firstly, the author stated that in the preambles to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights an explicit connection was made between an individual's exercise of his civil and political rights and his economic, social and cultural rights. The fact that those different kinds of rights had been incorporated into two different covenants did not detract from their interdependence. It was striking, the author submitted, that in the International Covenant on Civil and Political Rights, apart from in article 26, there were specific references on numerous occasions to the principle of equality or non-discrimination. She listed them as follows:

article 2, paragraph 1:	non-discrimination with reference to the rights recognized in the Covenant;
article 3:	non-discrimination on the grounds of sex with reference to the rights recognized in the Covenant;
article 14:	equality before the courts;
article 23, paragraph 4:	equal rights of spouses;
article 24, paragraph 1:	equal rights of children to protective measures;
article 25: and under (c)	equal right to vote and equal access to government service.

5.3 Further, the author stated that article 26 of the Covenant was explicitly not confined to equal treatment with reference to certain rights, but stipulated a general principle of equality. It was even regarded as of such importance that under article 4, paragraph 1, of the Covenant, in a time of public emergency, the prohibition of discrimination on the grounds of race, colour, sex, religion or social origin must be observed. In other words, even in time of public emergency, the equal treatment of men and women should remain intact. In the procedure to approve the Covenant it had been assumed by the Netherlands legislative authority, as the Netherlands Government wrote in the explanatory memorandum to the Bill of Approval, that "the provision of article 26 is also applicable to areas otherwise not covered by the Covenant". That (undisputed) conclusion was based on the difference in formulation between article 2, paragraph 1, of the Covenant and of article 14 of the European Convention on Human Rights on the one hand and article 26 of the Covenant on the other.

5.4 The author recalled that during the discussion by the Human Rights Committee, at its fourteenth session, of the Netherlands report submitted in compliance with article 40 of the Covenant (CCPR/C/10/Add.3, CCPR/C/SR.321, SR.322, SR.325, SR.326), it had been assumed by the Netherlands Government that article 26 of the Covenant also applied in the field of economic, social and cultural rights. Mr. Olde Kalter had stated, on behalf of the Netherlands Government, that by virtue of national, constitutional law "direct application of article 26 in the area of social, economic and cultural rights depended on the character of the regulations or policy for which that direct application was requested" (see CCPR/C/SR.325, para. 50). In other words, in his opinion, article 26 of the Covenant was applicable to those rights and the only relevant question in terms of internal, constitutional law in the Netherlands (sects. 93 and 94 of the Constitution) was whether in such instances article 26 was self-executing and could be applied by the courts. He had regarded it as self-evident that the Netherlands in its legislation, among other things, was bound by article 26 of the Covenant. "In that connection he [Mr. Olde Kalter] noted that the Government of the Netherlands was currently analysing national legislation concerning discrimination on grounds of sex or race". In the observations of the State party in the present case, the author adds, this last point is confirmed.

5.5 The author further stated that in various national constitutional systems of countries which have acceded to the Covenant, generally formulated principles of equality could be found which were also regarded as being applicable in the field of economic, social and cultural rights. Thus, in the Netherlands Constitution, partly inspired, the author submitted, by article 26 of the Covenant, a generally formulated prohibition of discrimination (sect. 1) was laid down which was irrefutably regarded in the Netherlands as being applicable to economic, social and cultural rights as well. The only reason, she submitted, why the present issue had not been settled at a national level by virtue of section 1 of the Constitution was because the courts were forbidden to test legislation, such as that being dealt with currently, against the Constitution (sect. 120 of the Constitution). The courts, she stated, were allowed to test legislation against self-executing provisions of international conventions.

5.6 The author submitted that judicial practice in the Netherlands had been consistent in applying article 26 of the Covenant also in cases where economic, social and cultural rights had been at stake, for example:

(a) Afdeling Rechtspraak van de Raad van State (Judicial Division of the Council of State), 29-[illegible]-1981 GS81 [illegible]41-442. This case involved discrimination on the grounds of sex with reference to housing. An appeal under article 26 of the Covenant in conjunction with article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights was founded.

(b) Gerechtshof's Gravenhage (Court of Appeal at the Hague), 17 June 1982 NJ 1983, 345 appendix 3. Again with regard to housing, an appeal was made under article 26 of the Covenant and was granted.

(c) Centrale Raad van Beroep (Central Board of Appeal), 1 November 1983, NJCM-Bulletin.

(d) Centrale Raad van Beroep (Central Board of Appeal), 1 November 1983, NJCM-Bulletin 9-1 (1984) appendix 4. In this case, which constitutes the basis for the petition to the Human Rights Committee, the Central Board of Appeal considered "that article 26 is not applicable only to the civil and political rights which are recognized by the Covenant". The appeal under article 26 was subsequently rejected for other reasons.

(e) Board of Appeal, Groningen, 2 May 1985, reg. No. AAW 181-1095 appendix 5. On the basis of article 26 of the Covenant among other things a discriminatory provision in the General Disablement Benefits Act was declared null and void.

5.7 The author further submitted that the question of equal treatment in the field of economic, social and cultural rights was not fundamentally different from the problem of equality with regard to freedom to express one's opinion or the freedom of association, in other words with regard to civil and political rights. The fact was, she argued, that in both cases it was not a question of the level at which social security had been set or the degree to which freedom of opinion was guaranteed, but purely and simply whether equal treatment or the prohibition of discrimination was respected. The level of social security did not come within the scope of the International Covenant on Civil and Political Rights nor was it relevant in a case of unequal treatment. The only relevant question, she submitted, was whether unequal treatment was compatible with article 26 of the Covenant. A contrary interpretation of article 26, the author argued, would turn that article into a completely superfluous provision, for then it would not differ from article 2, paragraph 1, of the Covenant. Consequently, she submitted, such an interpretation would be incompatible with the text of article 26 of the Covenant and with the object and purpose of the Covenant as laid down in article 26 of the preamble.

5.8 The author recalled that in its observations the State party had put forward the question whether the way in which the Netherlands was meeting its commitments under the International Covenant on Economic, Social and Cultural Rights (via article 26 of the International Covenant on Civil and Political Rights), might be judged by the Human Rights Committee. The question, she submitted, was based on a wrong point of departure, and therefore required no answer. The fact was, the author argued, that the only question that the Human Rights Committee was required to answer in that case was whether, ratione materiae, the alleged violation came under article 26 of the International Covenant on Civil and Political Rights. The author submitted that that question must be answered in the affirmative.

5.9 The author further recalled that the State party was of the opinion that the alleged violation could also fall under article 9 of the International Covenant on Economic, Social and Cultural Rights in conjunction with articles 2 and 3 of the same Covenant. Although that question was not relevant in the case in point, the author submitted, it was obvious that certain issues were related to provisions in both Covenants. Although civil and political rights on the one hand and economic and social and cultural rights on the other had been incorporated for technical reasons into two different Covenants, it was a fact, the author submitted, that those rights were highly interdependent. That interdependence, she argued, had not only emerged in the preamble to both Covenants, but was also once again underlined in General Assembly resolution 543 (VI), in which it had been decided to draw up two covenants: "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent". The State party, too, she submitted, had explicitly recognized that interdependence earlier in the Explanatory Memorandum to the Act of Approval, appendix 1, page 8: "the drafters of the two Covenants wanted to underline the parallel nature of the present international conventions by formulating the preambles in almost entirely identical words. The point is that they have expressed in the preambles that, although civil rights and political rights on the one hand and economic, social and cultural rights on the other, have been incorporated into two separate documents, the enjoyment of all these rights is essential". If the State party was intending to imply that the subject-matter covered by the one covenant did not come under the other, that was demonstrably incorrect: even a summary comparison of the opening articles of the two covenants bore witness to the contrary, the author argued.

5.10 In her opinion, the author added, the State party seemed to wish to say that the Human Rights Committee was not competent to take note of the present complaint because the matter could also be brought up as part of the supervisory procedure under the International Covenant on Economic, Social and Cultural Rights (see art. 16-22). That assertion, the author contended, was not valid because the reporting procedure under the International Covenant on Economic, Social and Cultural Rights could not be regarded as "another procedure of international investigation or settlement" in the sense of article 5, paragraph 2 (a) of the Optional Protocol.

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

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. In this connection the Committee observes that the examination of State reports, submitted under article 16 of the International Covenant on Economic, Social and Cultural Rights, does not, within the meaning of article 5, paragraph 2 (a), constitute an examination of the "same matter" as a claim by an individual submitted to the Human Rights Committee under the Optional Protocol.

6.3 The Committee further observes that a claim submitted under the Optional Protocol concerning an alleged breach of a provision of the International Covenant on Civil and Political Rights, cannot be declared inadmissible solely because the facts also relate to a right protected by the International Covenant on Economic, Social and Cultural Rights or any other international instrument. The Committee

need only test whether the allegation relates to a breach of a right protected by the International Covenant on Civil and Political Rights.

6.4 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. The parties to the present communication agree that domestic remedies have been exhausted.

6.5 With regard to the State party's inquiry concerning the scope of article 26 of the International Covenant on Civil and Political Rights, the Committee did not consider it necessary to pronounce on its scope prior to deciding on the admissibility of the communication. However, having regard to the State party's statement (para. 4.4 above) that it reserved the right to submit further observations which might have an effect on the question of the admissibility of the case, the Committee pointed out that it would take into account any further observations received on the matter.

7. On 25 October 1985, the Human Rights Committee therefore decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 22 May 1986, the State party again objected to the admissibility of the communication, reiterating the arguments advanced in its submission of 29 May 1985.

8.2 In discussing the merits of the case, the State party elucidates first the factual background as follows:

> "When Mrs. Broeks applied for WWV benefits in February 1980, section 13, subsection 1 (1), was still applicable. This section laid down that WWV benefits could not be claimed by those married women who were neither breadwinners nor permanently separated from their husbands. The concept of 'breadwinner' as referred to in section 13, subsection 1 (1), of WWV was of particular significance, and was further amplified in statutory instruments based on the Act (the last relevant instrument being the ministerial decree of 5 April 1976, Netherlands Government Gazette 1976, 72). Whether a married woman was deemed to be a breadwinner depended, inter alia, on the absolute amount of the family's total income and on what proportion of it was contributed by the wife. That the conditions for granting benefits laid down in section 13, subsection 1 (1), of WWV applied solely to married women and not to married men is due to the fact that the provision in question corresponded to the then prevailing views in society in general concerning the roles of men and women within marriage and society. Virtually all married men who had jobs could be regarded as their family's breadwinner, so that it was unnecessary to check whether they met this criterion for the granting of benefits upon becoming unemployed. These views have gradually changed in later years. This aspect will be further discussed below (see para. 8.4).
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> "The Netherlands is a member State of the European Economic Community (EEC). On 19 December 1978 the Council of the European Communities issued a directive on the progressive implementation of the principle of

equal treatment for men and women in matters of social security (79/7/EEC), giving member States a period of six years, until 23 December 1984, within which to make any amendments to legislation which might be necessary in order to bring it into line with the directive. Pursuant to this directive the Netherlands Government examined the criterion for the granting of benefits laid down in section 13, subsection 1 (1), of WWV in the light of the principle of equal treatment of men and women and in the light of the changing role patterns of the sexes in the years since about 1960.

"Since it could no longer be assumed as a matter of course in the early 1980s that married men with jobs should always be regarded as 'breadwinners', the Netherlands amended section 13, subsection 1 (1), of WWV to meet its obligations under the EEC directive. The amendment consisted of the deletion of section 13, subsection 1 (1), with the result that it became possible for married women who were not breadwinners to claim WWV benefits, while the duration of the benefits was reduced for people aged under 35.

"In view of changes in the status of women - and particularly married women - in recent decades, the failure to award Mrs. Broeks WWV benefits in 1979 is explicable in historical terms. If she were to apply for such benefits now, the result would be different."

8.3 With regard to the scope of article 26 of the Covenant, the State party argues, inter alia, as follows:

"The Netherlands Government takes the view that article 26 of the Covenant does entail an obligation to avoid discrimination, but that this article can only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights, not necessarily limited to those civil and political rights that are embodied in the Covenant. The Government could, for instance, envisage the admissibility under the Optional Protocol of a complaint concerning discrimination in the field of taxation. But it cannot accept the admissibility of a complaint concerning the enjoyment of economic, social and cultural rights. The latter category of rights is the object of a separate United Nations Covenant. Mrs. Broeks' complaint relates to rights in the sphere of social security, which fall under the the International Covenant on Economic, Social and Cultural Rights. Articles 2, 3 and 9 of that Covenant are of particular relevance here. That Covenant has its own specific system and its own specific organ for international monitoring of how States parties meet their obligations and deliberately does not provide for an individual complaints procedure.

"The Government considers it incompatible with the aims of both the Covenants and the Optional Protocol that an individual complaint with respect to the right of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights, could be dealt with by the Human Rights Committee by way of an individual complaint under the Optional Protocol based on article 26 of the International Covenant on Civil and Political Rights.

"The Netherlands Government reports to the Economic and Social Council on matters concerning the way it is fulfilling its obligations with respect to the right to social security, in accordance with the relevant rules of the International Covenant on Economic, Social and Cultural Rights ...

"Should the Human Rights Committee take the view that article 26 of the International Covenant on Civil and Political Rights ought to be interpreted more broadly, thus that this article is applicable to complaints concerning discrimination in the field of social security, the Government would observe that in that case article 26 must also be interpreted in the light of other comparable United Nations conventions laying down obligations to combat and eliminate discrimination in the field of economic, social and cultural rights. The Government would particularly point to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

"If article 26 of the International Covenant on Civil and Political Rights were deemed applicable to complaints concerning discriminatory elements in national legislation in the field of those conventions, this could surely not be taken to mean that a State party would be required to have eliminated all possible discriminatory elements from its legislation in those fields at the time of ratification of the Covenant. Years of work are required in order to examine the whole complex of national legislation in search of discriminatory elements. The search can never be completed, either, as distinctions in legislation which are justifiable in the light of social views and conditions prevailing when they are first made may become disputable as changes occur in the views held in society. ...

"If the Human Rights Committee should decide that article 26 of the International Covenant on Civil and Political Rights entails obligations with regard to legislation in the economic, social and cultural field, such obligations could, in the Government's view, not comprise more than an obligation of States to subject national legislation to periodic examination after ratification of the Covenant with a view to seeking out discriminatory elements and, if they are found, to progressively taking measures to eliminate them to the maximum of the State's available resources. Such examinations are under way in the Netherlands with regard to various aspects of discrimination, including discrimination between men and women."

8.4 With regard to the principle of equality laid down in article 26 of the Covenant in relation to section 13, subsection 1 (1), of WWV in its unamended form, the State party explains the legislative history of WWV and in particular the social justification of the "breadwinner" concept at the time the law was drafted. The State party contends that, with the "breadwinner" concept, "a proper balance was achieved between the limited availability of public funds (which makes it necessary to put them to limited, well-considered and selective use) on the one hand and the Government's obligation to provide social security on the other. The Government does not accept that the 'breadwinner' concept as such was 'discriminatory' in the sense that equal cases were treated in an unequal way by law." Moreover, it is argued that the provisions of WWV "are based on reasonable social and economic considerations which are not discriminatory in origin. The restriction making the provision in question inapplicable to men was inspired not by any desire to discriminate in favour of men and against women but by the de facto social and economic situation which existed at the time when the Act was passed and which would have made it pointless to declare the provision applicable to men. At the time when Mrs. Brooks applied for unemployment benefits the de facto situation was not essentially different. There was therefore no violation of article 26 of the Covenant. This is not altered by the fact that a new social

trend has been growing in recent years, which has made it undesirable for the provision to remain in force in the present social context."

8.5 With reference to the decision of the Central Board of Appeal of 26 November 1983, which the author criticizes, the State party contends that:

> "The observation of the Central Board of Appeal that the Covenants employ different international control systems is highly relevant. Not only do parties to the Covenants report to different United Nations bodies but, above all, there is a major difference between the Covenants as regards the possibility of complaints by States or individuals, which exists only under the International Covenant on Civil and Political Rights. The contracting parties deliberately chose to make this difference in international monitoring systems, because the nature and substance of social, economic and cultural rights make them unsuitable for judicial review of a complaint lodged by a State party or an individual."

9.1 In her comments, dated 19 June 1986, the author reiterates that "article 26 of the Covenant is explicitly not confined to equal treatment with reference to certain rights, but stipulates a general principle of equality."

9.2 With regard to the State party's argument that it would be incompatible with the aims of both the Covenants and the Optional Protocol if an individual complaint with respect to the rights of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights could be dealt with by the Human Rights Committee, the author contends that this argument is ill-founded, because she is not complaining about the level of social security or other issues relating to article 9 of the International Covenant on Economic, Social and Cultural Rights, but rather she claims to be a victim of unequal treatment prohibited by article 26 of the International Covenant on Civil and Political Rights.

9.3 The author further notes that the State party "seems to admit implicitly that the provisions of the Unemployment Benefits Act were contrary to article 26 at the time when [she] applied for unemployment benefits, by stating that the provisions in question in the meantime have been amended in a way compatible with article 26 of the International Covenant on Civil and Political Rights.

10. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

11. Article 26 of the Covenant on Civil and Political Rights provides:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

12.1 The State party contends that there is considerable overlapping of the provisions of article 26 with the provisions of article 2 of the International

Covenant on Economic, Social and Cultural Rights. The Committee is of the view that the International Covenant on Civil and Political Rights would still apply even if a particular subject-matter is referred to or covered in other international instruments, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two Covenants, it remains necessary for the Committee to apply fully the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.

12.2 The Committee has also examined the contention of the State party that article 26 of the International Covenant on Civil and Political Rights cannot be invoked in respect of a right which is specifically provided for under article 9 of the International Covenant on Economic, Social and Cultural Rights (social security, including social insurance). In so doing, the Committee has perused the relevant travaux préparatoires of the International Covenant on Civil and Political Rights, namely, the summary records of the discussions that took place in the Commission on Human Rights in 1948, 1949, 1950 and 1952 and in the Third Committee of the General Assembly in 1961, which provide a "supplementary means of interpretation" (art. 32 of the Vienna Convention on the Law of Treaties a/). The discussions, at the time of drafting, concerning the question whether the scope of article 26 extended to rights not otherwise guaranteed by the Covenant, were inconclusive and cannot alter the conclusion arrived at by the ordinary means of interpretation referred to in paragraph 12.3 below.

12.3 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 (art. 31 of the Vienna Convention on the Law of Treaties). The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

12.4 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 does 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.

12.5 The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands but whether the legislation providing for social security violates the prohibition against discrimination contained in article 26 of the International Covenant on Civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.

13. The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

14. It therefore remains for the Committee to determine whether the differentiation in Netherlands law at the time in question and as applied to Mrs. Broeks constituted discrimination within the meaning of article 26. The Committee notes that in Netherlands law the provisions of articles 84 and 85 of the Netherlands Civil Code impose equal rights and obligations on both spouses with regard to their joint income. Under section 13, subsection 1 (1), of the Unemployment Benefits Act (WWV), a married woman, in order to receive WWV benefits, had to prove that she was a "breadwinner" - a condition that did not apply to married men. Thus a differentiation which appears on one level to be one of status is in fact one of sex, placing married women at a disadvantage compared with married men. Such a differentiation is not reasonable; and this seems to have been effectively acknowledged even by the State party by the enactment of a change in the law on 29 April 1985, with retroactive effect to 23 December 1984 (see para. 4.5 above).

15. The circumstances in which Mrs. Broeks 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.

16. The Committee notes that the State party had not intended to discriminate against women and further notes with appreciation that the discriminatory provisions in the law applied to Mrs. Broeks 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. Broeks at the time complained of, the Committee is of the view that the State party should offer Mrs. Broeks an appropriate remedy.

Notes

a/ United Nations, Juridical Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.