

Committee on the Elimination of Discrimination Against
Women
United Nations
Office of the High Commissioner for Human Rights
Ibrahim Salama, Chief Human Rights and Treaties Branch
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Behandelend advocaat J.D.A. Domela Nieuwenhuis
Direct 020 5890456
E-mail domela@boschadvocaten.nl

Betreft Follow-up CEDAW Communication No. 36/2012

Comments to the State Party's further information dated 27 November 2017 Communication No. 36/2012 Elisabeth de Blok et al v. the Netherlands

1. Complainants regret that the government did not provide the Committee with a full translation in English of Annexe 1: the interlocutory judgement of the Central Appeals Court for Public Service and Social Security Matters (CRvB). By limiting itself in the letter to the Committee (dated 27 November 2017) to summarizing para 4.3.8 of the judgement and to translating only part of para 4.4.2. the government withholds vital information to the Committee.
For instance, in para 1.10 the CRvB summarizes the government's letter to CEDAW dated 19 September 2014, while the CRvB explains in 4.2.1 up to 4.2.6 why the government was wrong with respect to its view as expressed in that letter that art. 11 has a narrow interpretation (limited to employees and excluding self-employed women). The government disputed CEDAW's observations on the issue of direct applicability in the 19 September 2014 letter and the CRvB explains in para 4.3.2 and 4.3.5 why the government was wrong.
In fact the CRvB not only holds that repealing the maternity benefit scheme for self-employed women without replacing it or providing compensation is a violation of article 11 of CEDAW. The CRvB also holds that there is no reason for contesting the authority of the Committee as the Employees Insurance Agency (UWV), in close consultation with the ministry of social affairs, did and that ignoring the recommendations of the Committee in Communication No. 36/2012 by the government was wrong.
Complainants suggest the Committee to request a translation in English of the interlocutory judgement of the Central Appeals Court to be informed about the opinion of the highest Dutch court in Public Service and Social Security Matters about the Committee and its views and recommendations.
2. Complainants also regret that the government in its letter dated 27 November 2017 to the Committee does not acknowledge the crucial role of Communication No. 36/2012 in the inter-

locutory judgment of the CRvB. Annexe 2, the translation of the letter to the House of Representatives of 17 October 2017 shows a similar disdain for CEDAW's role: there is neither a reference to the recommendations of Communication No. 36/2012 nor an explanation how the CRvB came to its judgement (para 1 and 6 of that letter).

Para 5 of the Annexe suggests that both the Supreme Court and the CRvB in 2011 endorsed the State's position that art. 11 does not apply to self-employed persons. In reality both courts did not endorse this position. Neither did the State in the previous complaint under the Optional Protocol (Communication No.3/2004 Nguyen vs the Netherlands).

3. Complainants are happy with the outcome of their almost thirteen year long legal journey through national courts and CEDAW: appropriate compensation for many of the self-employed women who have given birth between 1 August 2004 and 4 June 2008. They are also happy to inform the Committee that during another session at the Central Appeals Court (15 March 2018) a settlement was achieved between the three litigants and the Employees Insurance Agency (UWV): before 15 April they will receive the same amount of € 5.600 as the other self-employed women will receive in 2019. They will also receive some reparation for legal costs from UWV – limited to the last few years (2015-2018).

4. However, complainants recall the Committee's General Recommendation in Communication No. 36/2012: It notes, however, that no compensation is possible for self-employed women, such as the authors, who had given birth between 1 August 2004 and 4 June 2008. The State party is accordingly invited to address and redress the situation of such women.
The ministerial order as mentioned in the government's letter as well as in Annexe II, however, refers without explanation to appropriate compensation for self-employed women who gave birth between 7 May 2005 and 4 June 2008.
In all legal procedures that started in 2005 the date of 7 May 2005 was never brought up by the government. Reference was always made to the period from 1 August 2004 onwards.
Several self-employed women who gave birth between 1 August 2004 and 7 May 2005 approached the joint information service of the NGOs and trade unions that provided support to complainants. Some, in the past, had made a formal application for a maternity that was (wrongly) turned down, some did so informally by making enquiries at the Employees Insurance Agency (UWV), others did not apply at all, because they assumed or were told that the maternity benefit scheme for self-employed was abolished since 1 August 2004.
The NGOs and trade unions looked into the matter and found out that the legislation that abolished the WAZ-scheme did offer temporary provisions for those women who were pregnant at the time of abolishment. However, the government did not raise any publicity about those temporary provisions at the time – even NGOs and trade unions were unaware! – resulting in a fall out of around 30% of those with formal entitlements (appr. 1200 women – a modest estimate).
10 tot 30 women who give birth during the first few days or weeks after 4 June 2008 seem to be in a similar situation: formally they could have applied for a maternity benefit, but since they

were unaware of the reintroduction of the scheme they did not apply, or the application was turned down because the branch of the UWV was not yet informed about the reintroduction. The NGOs and trade unions proposed to the Minister of Social Affairs and to parliament to extend the compensation scheme for both groups, so far without success.

In the view of complainants it is ridiculous and unfair that both groups of women have to start legal proceedings once more to receive any compensation.

Therefore complainants suggest the Committee to address the issue with the government.

5. As was mentioned above (under 3) complainants will not receive reparation/compensation for the legal expenses from 2005 onwards. Due to technical juridical reasons the CRvB can only award such for the period starting with the new procedures after the government has announced to disregard CEDAW's recommendations in Communication No. 36/2012 in September 2014. The government did compensate legal expenses of the complaints procedure with CEDAW (2012-2014), but not those of the District Court, the Court of Appeal and the Supreme Court (2005-2011) amounting in total to appr. € 25.000.

In the view of the complainants it is not fair that they and their supporting NGOs and trade unions have to pay for the unwillingness of the government to acknowledge that its views were wrong and violating the rights of self-employed women under article 11, paragraph 2 (b) of the Convention (see above under 1 and 2). So they hope that the Committee can convince the government of due diligence, or as the French say: Noblesse oblige.

Sincerely yours,



J.D.A. Domela Nieuwenhuis