UNITED NATIONS **CCPR**

International Covenant on Civil and Political Rights

Distr.
RESTRICTED*

CCPR/C/50/D/475/1991
4 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE
Fiftieth session

DECISIONS

Communication No. 475/1991

Submitted by:

S. B. [represented by counsel]

Alleged victim:

The author

State party:

New Zealand

Date of communication:

3 September 1991

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 15 September 1992 (not issued in document form)

Date of present decision:

31 March 1994

[ANNEX]

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ANNEX**

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - fiftieth session

concerning

Communication No. 475/1991

Submitted by: S. B.

Alleged victim: The author

State party: New Zealand

Date of communication: 3 September 1991

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

Meeting on 31 March 1994,

Adopts the following:

1. The author of the communication is S. B., a British citizen, currently residing in Paraparauma Beach, New Zealand. He claims to be a victim of a violation of article 26 of the Covenant by New Zealand and the United Kingdom. He is represented by counsel. The Optional Protocol entered into force for New Zealand on 26 August 1989. Since the United Kingdom is not a party to the Optional Protocol, the communication is not receivable, pursuant to article 1 of the Optional Protocol, in so far as it relates to that country.

The facts as submitted by the author :

2.1 The author was born in 1911, and participated in a contributory United Kingdom social security scheme from the age of 16. In 1971 he moved to Jersey, where he had found employment. As of 1976, while still residing in Jersey, he received the full, inflation adjusted, United Kingdom pension, as well as 18 per cent of the full Jersey retirement pension.

2.2 In September 1987 the author moved to New Zealand to live with his children. The author was notified by the United Kingdom Department of Health and Social Security that, while residing in New Zealand, he would be entitled to continue to receive the full United Kingdom pension, as it stood at that moment, but not further adjustments for United Kingdom inflation.

** Made public by decision of the Human Rights Committee.

2.3 As of 29 September 1987, the author, upon his request, was granted a New Zealand national pension ("superannuation"). Pursuant to a United Kingdom/New Zealand Convention on Social Security, for the period of 29 September 1987 to 19 January 1988, the New Zealand national pension was assessed at a reduced rate, which took into account the United Kingdom Retirement Pension the author was receiving. Later, the United Kingdom Retirement Pension was withheld, on the ground that by then the author was receiving a full New Zealand pension.

2.4 On 23 March 1988, the author was informed that the retirement pension he received from Jersey was to be deducted from his national pension, under section 70 (1) of the New Zealand Social Security Act. This section requires a New Zealand benefit to be reduced by an amount equal to any overseas pension which "forms part of a programme providing benefits, pensions or periodical allowances for any of the contingencies for which benefits, pensions or allowances may be paid under this part of the Act ...", if the overseas programme is administered by or on behalf of the Government of the country concerned. As an overpayment had taken place for the period between 29 September 1987 to 15 March 1988, the author was requested to repay the sum of $603.09.

2.5 On 14 April 1988, the author's daughter applied for a review of the decision on behalf of her father. It was submitted that the Jersey pension was not comparable to the British or New Zealand pension, as it was employment-related; furthermore, that Jersey was technically not part of the United Kingdom and had no reciprocal arrangement with New Zealand. The application for review was dismissed by the Porirnu District Review Committee on 30 November 1988. The Review Committee considered that the decision to deduct S. B.'s Jersey pension from his New Zealand pension entitlement was correct, having regard to Section 70 (1) of the Social Security Act.

2.6 The author's case was then referred to the Social Security Appeal Authority. The Authority considered that S. B. had been unable to provide any reasons why the Jersey pension should be exempt from the provisions of

section 70 (1) of the Act and dismissed the appeal. However, the Authority decided to write off the debt of $603.09, considering that it would be inequitable in view of the author's age, the strength of his conviction about the injustice of the situation and the way that it appeared to have affected his health, to require repayment of the debt.

2.7 Following the dismissal of the appeal, the author tried to seek a solution through other channels. On 13 July 1988, he wrote a letter to the Ombudsman, who replied, on 1 August 1988, that he was precluded from conducting an investigation, as other review procedures were still available. He also approached a New Zealand television programme, "Fair Go", which forwarded his complaint to the Minister of Social Welfare. By letters of 28 September, 19 October and 27 November 1989, the author submitted his complaint to the New Zealand Human Rights Commission, which replied that the matter was outside its jurisdiction. He further addressed letters to a Member of Parliament, to the Minister of Social Welfare and to the Prime Minister of New Zealand, all to no avail.

The complaint :

3.1 The author complains that his "human rights of lawful and rightful possession" and his right to equality have been violated. He alleges that he has been discriminated against because he is an elderly immigrant. He claims to be a victim of a violation of article 26 of the Covenant.

3.2 More specifically, the author claims that section 70 (1) of the 1964 New Zealand Social Security Act discriminates against foreign immigrants, as a New Zealand citizen who has worked all his life in New Zealand, may receive two pensions, i.e. the New Zealand social welfare pension plus any private pension.

The State party's submission and the author's comments thereon :

4.1 By submission of 13 November 1992, the State party argues that the communication is inadmissible. It adds that part of the communication appears to be directed against the United Kingdom.

4.2 The State party argues that the author has not exhausted all available domestic remedies, since he failed to appeal the decision of the Social Security Appeal Authority to the High Court.

4.3 The State party also argues that the communication is inadmissible because the author has failed to substantiate that he is a victim of a violation of any of the rights set forth in the Covenant so as to justify a claim under article 2 of the Optional Protocol. In this context, the State party contends that the author has failed to show in what manner section 70 (1) would operate in a discriminatory way. The State party emphasizes that the section draws no distinction between recipients of benefits on the basis of any status whatsoever and that the section is applicable to all persons entitled to receive benefits under the Social Security Act. Beneficiaries, whether New Zealanders or foreigners and whether elderly or otherwise, who receive benefits of the kind characterized in the section from abroad, will be liable to a reduction of benefit. The State party therefore argues that section 70 (1) is not prima facie discriminatory and refers to the Committee's decision with regard to communication No. 212/1986. 1/

4.4 The State party moreover argues that section 70 (1) does not have a discriminatory effect in practice. In this connection, the State party explains that the purpose of section 70 (1) is to ensure the equal treatment of persons who are in receipt of a New Zealand social security benefit and to prevent that persons also receiving a similar benefit from another Government are placed in an advantageous position.

4.5 The State party further argues that the communication is incompatible with the provisions of the Covenant. The State party contends that the author has not shown that he is a victim of a violation of a right that is protected by the Covenant. In this context, the State party submits that the author has not shown that he has been discriminated against on any of the grounds enumerated in article 26 of the Covenant. The State party argues that the fact that the author receives pension benefits from abroad does not give him any "status" within the meaning of article 26. In this context, the State party refers to

the Committee's decision with regard to communication No. 273/1988, 2/ declaring the communication inadmissible *inter alia* because the authors had failed to demonstrate that the treatment complained of constituted discrimination on any ground, including "other status", covered by article 26.

4.6 Finally, the State party submits that it is open to the author at any time to relinquish his entitlement to a benefit under the New Zealand Social Security Act and to rely on his British and Jersey pensions.

5.1 In his comments on the State party's submission, counsel argues that an appeal to the High Court is not an effective remedy, since it would be bound to fail.

5.2 Counsel also argues that section 70 (1) is discriminatory, since it only operates where a benefit is administered by or on behalf of a Government, and does not apply in relation to a private scheme. It is argued that, if the author had contributed to a private pension fund rather than one administered by the Jersey government, he would not have been adversely affected by Section 70. It is therefore contended that the author was discriminated against merely because he contributed to a State run Pension Fund, rather than a private one.

5.3 The author further points out that one difficulty is that the New Zealand Government bases itself on the payment received from abroad and only infrequently checks the exchange rate. According to the author, this works to his disadvantage when the value of the New Zealand currency deteriorates against the overseas currency. He submits that the State party should check the exchange rate on the date of every payment of the New Zealand pension and argues that, as long as it does not, the operation of section 70 (1) is iniquitous and arbitrary.

5.4 The author further claims that, because of the operation of section 70 (1), persons having contributed to overseas pension funds or individuals who happen to have contributed to a State funded scheme rather than a private scheme overseas are not treated equally. He claims that this discrimination is based on national origin, since it depends on the way a pension scheme operates in a given country whether the benefits so accumulated will be deducted from the New Zealand pension.

Issues and proceedings before the Committee:

6.1 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.

6.2 The Committee notes that section 70 (1) of the New Zealand Social Security Act applies to all persons receiving benefits pursuant to the Act, that the Act does not distinguish between New Zealand citizens and foreigners and that a deduction takes place in all cases where a beneficiary also receives a similar benefit of the kind characterized in the section from abroad. The Committee finds that the author has failed to substantiate, for purposes of admissibility, that he is a victim of discrimination, and that the author does not, therefore, have a claim under article 2 of the Optional Protocol. The Committee considers

that the fact that the State party does not deduct any overseas pension rights, which an individual has privately provided for, equally discloses no claim under article 2 of the Optional Protocol.

7. 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.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

1/ P. P. C. v. the Netherlands, declared inadmissible on 24 March 1988.

2/ B. d. B. v. the Netherlands, declared inadmissible on 30 March 1989.
