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HUMAN RIGHTS COMMITTEE
Fifty-third session

VIEWS

Communication No. 500/1992

Submitted by:	Joszef Debreczeny [represented by counsel]
Victim:	The author
State party:	The Netherlands
Date of communication:	13 December 1991 (initial submission)
Documentation references:	Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 15 July 1992 (not issued in document form) - CCPR/C/49/D/500/1992 (Decision on admissibility, dated 14 October 1993)
Date of adoption of views:	3 April 1995

On 3 April 1995, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 500/1992. The text of the Views is annexed to the present document.

[ANNEX]

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* Made public by decision of the Human Rights Committee.

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ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - fifty-third session

concerning

Communication No. 500/1992

Submitted by: Joszef Debreczeny [represented by counsel]

Victim: The author

State party: The Netherlands

Date of communication: 13 December 1991 (initial submission)

Date of decision on admissibility: 14 October 1993

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

Meeting on 3 April 1995,

Having concluded its consideration of communication No. 500/1992 submitted to the Human Rights Committee by Joszef Debreczeny 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, his counsel and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Joszef Debreczeny, a citizen of the Netherlands, residing at Damwoude (municipality of Dantumadeel), the Netherlands. He claims to be the victim of a violation by the Netherlands of articles 25 and 26, juncto article 2, paragraph 1, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author states that, in general municipal elections, he was elected to the local council of Dantumadeel on 23 March 1990. The council, however, by

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decision of 10 April 1990, refused to accept his credentials; it considered that the author's employment as a national police sergeant, stationed at Dantumadeel, was incompatible with membership in the municipal council; in this connection, reference was made to article 25, paragraph f, of the Gemeentewet (Municipalities Act), which provides that membership in the municipal council is incompatible with, inter alia, employment as a civil servant in subordination to local authorities.

2.2 The author appealed the decision to the Raad van State (Council of State), which, on 26 April 1990, rejected his appeal. It considered that the author, as a national police officer, stationed at Dantumadeel, worked under the direct authority of the mayor of the municipality, for purposes of maintenance of public order and performance of auxiliary tasks; according to the Raad, this subordinate position was incompatible with membership in the local council, which is chaired by the mayor.

2.3 As the Raad van State is the highest administrative court in the Netherlands, the author submits that he has exhausted domestic remedies. He further states that the matter has not been submitted to any other procedure of international investigation or settlement.

Complaint

3.1 The author submits that the refusal to accept his membership in the local council of Dantumadeel violates his rights under article 25 (a) and (b) of the Covenant. He contends that every citizen, when duly elected, should have the right to be a member of the local council of the municipality where he resides, and that the relevant regulations, as applied to him, constitute an unreasonable restriction on this right within the meaning of article 25 of the Covenant.

3.2 According to the author, his subordination to the mayor of Dantumadeel is merely of a formal character; the mayor seldom gives direct orders to police sergeants. In support of his argument he submits that appointments of national policemen are made by the Minister of Justice, and that the mayor has authority over national police officers only with respect to the maintenance of public order; for the exercise of this authority the mayor is not accountable to the municipal council, but to the Minister of Internal Affairs.

3.3 The author further alleges that article 26 of the Covenant has been violated in his case. He contends that membership in the local council is not denied to local firemen and teaching staff, although they also work in a subordinate position to the mayor of the municipality. He also submits that other municipal councils have not challenged the credentials of local police officers, who are duly elected to the council. In this connection, he mentions examples of the municipalities of Sneek and Wapenveld.

State party's observations on admissibility and the author's comments thereon

4.1 By submission of 27 October 1992, the State party provides information about the factual and legal background of the case. It submits that the right to vote and to stand in elections is enshrined in article 4 of the Constitution of the Netherlands, according to which every national of the Netherlands "shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies, subject to the limitations and exceptions prescribed by Act of Parliament".

4.2 In agreement with the Constitution, section 25 of the Municipalities Act sets forth the positions which may not be held simultaneously with membership in a municipal council. Three groups of positions are held to be incompatible with membership: (a) positions of authority over or supervision of the municipal council; (b) positions which are subject to the supervision of a municipal administrative authority; (c) positions which by their nature cannot be combined with membership in the council. The State party explains that the rationale for these exclusions is to guarantee the integrity of municipal institutions and hence to safeguard the democratic decision-making process, by preventing a conflict of interests.

4.3 Pursuant to section 25, paragraph 1 (f), of the Act, membership in the municipal council is incompatible with a position as a public servant appointed by or on behalf of the municipal authority or subordinate to it. Exceptions to incompatibility are made for those civil servants working for the public registrar's office, those working as teaching staff at public schools and those who give their services as volunteers.

4.4 Officers in the national police force are appointed by the Minister of Justice, but are, pursuant to section 35 of the Police Act, subject to the authority of the mayor when engaged in maintaining public order. The State party argues that, since a subordinate relationship exists and consequently a conflict of interests may arise, it is reasonable not to permit police officers to become members of the municipal council in the municipality in which they serve.

4.5 As regards the admissibility of the communication, the State party concedes that domestic remedies have been exhausted. However, it contends that the incompatibility of membership in the municipal council with the author's position in the national police force, as regulated in the Municipalities Act, is a reasonable restriction to the author's right to be elected and based on objective grounds. The State party submits that the author has no claim under article 2 of the Optional Protocol and that his communication should therefore be declared inadmissible.

5.1 In his comments on the State party's submission, the author argues that no conflict of interests exists between his position as a national police officer and membership in the municipal council. He submits that the council, not the mayor, is the highest authority of the municipality and that, with regard to the maintenance of public order, the mayor is accountable to the Minister of Justice, not to the council.

5.2 The author refers to his original communication and claims that inequality of treatment exists between officers in the national police force and other public officers who are subordinate to municipal authorities. In this context, he mentions that teachers in public schools were, until 1982, also barred from membership in municipal councils but are now eligible for membership, following an amendment to the law. The author therefore argues that no reasonable ground exists to hold his position as a national police officer incompatible with membership in the municipal council.

Committee's decision on admissibility

6. At its forty-ninth session, the Committee considered the admissibility of the communication. It noted the State party's argument that the restrictions placed upon the author's eligibility for membership in the municipal council of Dantumadeel were reasonable within the meaning of article 25. The Committee considered that the question whether the restrictions were reasonable should be considered on the merits in the light of articles 25 and 26 of the Covenant. Consequently, on 14 October 1993, the Committee declared the communication admissible.

State party's observations on the merits and the author's comments thereon

7.1 By submission of 17 August 1994, the State party reiterates that the Constitution of the Netherlands guarantees the right to vote and to stand in elections, and that section 25 of the Municipalities Act, which was in force at the time of Mr. Debreczeny's election, lays down the positions deemed incompatible with membership in a municipal council. Pursuant to this section, officials subordinate to the municipal authority are precluded from membership in the municipal council. The State party recalls that the rationale for the exclusion of certain categories of persons from membership in the municipal council is to guarantee the integrity of municipal institutions and hence to safeguard the democratic decision-making process, by preventing a conflict of interests.

7.2 The State party explains that the term "municipal authority" used in section 25 of the Act encompasses the municipal council, the municipal executive and the mayor. It points out that if holders of positions subordinate to municipal administrative bodies other than the council were to become members of the council, this would also undermine the integrity of municipal administration, since the council, as the highest administrative authority, can call such bodies to account.

7.3 The State party explains that officers of the national police force, like Mr. Debreczeny, are appointed by the Minister of Justice, but that they were, according to section 35 of the Police Act in force at the time of Mr. Debreczeny's election, subordinate to part of the municipal authority, namely the mayor, with respect to the maintenance of public order and emergency duties. The mayor has the power to issue instructions to police officers for these purposes and to issue all the necessary orders and regulations; he is

accountable to the council for all measures taken. Consequently, police officers as members of the municipal council would on the one hand have to obey the mayor and on the other call him to account. According to the State party, this situation would give rise to an unacceptable conflict of interests, and the democratic decision-making process would lose its integrity. The State party maintains, therefore, that the restrictions excluding police officers from membership in the council of the municipality where the officers are posted are reasonable and do not constitute a violation of article 25 of the Covenant.

7.4 With regard to the author's statements that these restrictions do not apply to members of the fire brigade and to teachers, the State party points out that section 25 of the Municipalities Act makes two exceptions to the general rule that public servants appointed by or subordinate to the municipal institutions may not be council members. These exceptions apply to those who work for the emergency services on a voluntary basis or by virtue of a statutory obligation, and to teaching staff. The State party explains that the fire brigade in the Netherlands is manned by both professionals and volunteers. Under the law, only volunteer members of the fire brigade may serve on the municipal council; professional firemen are similarly excluded from taking seats in the council of the municipality in which they serve. The State party admits that formally volunteer firemen are appointed by and subordinate to the municipal authority. In the opinion of the State party, however, the mere fact of formal subordination to the municipal council does not in itself provide sufficient reason for denying a citizen the right to be elected to the council; in addition, there must exist a real risk of a conflict arising between individuals' interests as civil servants and their interests as council members, threatening to undermine the integrity of the relationship between municipal institutions. In the light of the fact that volunteers are more independent than professionals (who depend on the post for their livelihood) vis-à-vis the services they work for, the State party argues that the risk of a conflict of interests for volunteers is negligible and that it would therefore not be reasonable to restrict their constitutional right to be elected in a general representative body.

7.5 The State party further explains that private schools and public schools coexist on the basis of equality in the Netherlands, and that teachers in a public school are appointed by the municipal authority. Formally, a hierarchical relationship can therefore be said to exist. The State party points out, however, that education policy in the Netherlands is pre-eminently the concern of the State and that quality requirements and funding criteria are laid down by law. Supervision of public schools is carried out at the national level by the central education inspectorate, and not by the municipal authority. A conflict of interest between obeying the municipal authority and calling it to account, as exists for police officers, is therefore not likely to arise. The State party considers therefore that a restriction on the eligibility of teachers to a municipal council would be unreasonable.

7.6 The State party further addresses the cases in which, according to the author, local policemen were not prevented from becoming members in their

respective municipal councils. The State party begins by emphasizing that the Netherlands is a decentralized unitary State, and that municipal authorities have the power to regulate and administer their own affairs. In the context of elections, municipalities themselves are responsible in the first instance to ensure that councils are lawfully and properly composed. This means that, if a candidate has been elected, the council itself decides whether he may be admitted as a member or whether there are legal obstacles that prevent him from taking his seat. Appeal against the council's decision can be lodged with an administrative court; interested parties may moreover apply to an administrative court if they are of the opinion that a certain council member was wrongfully admitted.

7.7 In the case of Sneek, mentioned by the author, the State party indicates that the police officer who was appointed to the municipal council was employed by the National Police Waterways Branch and based at Leeuwarden. The State party states that as such he was neither subordinate to nor appointed by the municipality of Sneek and that his position is therefore not incompatible with membership in the council.

7.8 In the case of Heerde, mentioned by the author, the State party admits that, between 1982 and 1990, an officer of the National Police Force, employed in the Heerde unit of the force, served as a member of the municipal council. The State party submits that this membership was unlawful; however, since no interested party contested the policeman's election to the municipal council before a court, he was able to maintain his position. The State party argues that "the mere fact that a police officer in Heerde sat unlawfully on the council of the municipality in which he was employed does not mean that Mr. Debreczeny may also sit unlawfully on the council of the municipality in which he is employed". It adds that the principle of equality cannot be invoked to reproduce a mistake made in the application of the law.

7.9 In conclusion, the State party submits that there are no reasons to find that articles 25 or 26 of the Covenant were violated in the author's case. It argues that the provisions, laid down in section 25 of the Municipalities Act, governing the compatibility of positions with membership in a municipal council are completely reasonable, and that the protection of democratic decision-making procedures requires that individuals holding certain positions be barred from membership in municipal councils if such membership would entail an unacceptable risk of a conflict of interests. To prevent this general rule from leading to an unreasonable curtailment of the right to stand for election exceptions have been created for volunteer firemen and teaching staff, and the incompatibility of council membership for police officers has been limited to the council of the municipality in which the person in question is employed.

8.1 In his comments on the State party's submission, counsel to the author submits that the State party's interpretation of section 25 of the Municipalities Act, that the incompatibility is limited to those police officers who are elected to the council of the municipality in which they are employed, is too narrow. He submits that the law applies to all municipalities in which

the person concerned can be theoretically requested to serve. In this context, counsel points out that the membership of the police officer in the municipal council of Sneek is therefore also against the law, since, although he is posted at Leeuwarden, his working region includes Sneek.

8.2 As regards the exception made for volunteer firemen, counsel points out that volunteers do receive an emolument for services rendered and that they are appointed by the municipal authority, whereas national police officers are appointed by the Minister of Justice. As regards teaching personnel, which is appointed by the municipal authority, counsel argues that there exists a more than theoretic risk of a conflict of interests, especially in the case of a headmaster functioning as a council member. In reply to the State party's argument that the statute for teaching staff is determined on the national level, counsel points out that this is also the case for national police officers.

8.3 Counsel argues that it is not reasonable to allow teaching staff to become members of the municipal council while maintaining the incompatibility for police officers. In this context, it is argued that 99 per cent of the national police officers do not receive direct orders from the mayor, but from their immediate superior, with whom the mayor communicates.

8.4 Counsel further refers to the parliamentary debate in 1981 which led to the exception of teaching staff from the incompatibility rules, during which the general character of the remaining incompatibilities was deemed to be arbitrary or insufficiently motivated. In this context, counsel states that parliament defended the exception for teaching staff *inter alia* by referring to section 52 of the Municipalities Act, which states that a councillor should refrain from voting on matters in which he is personally involved. It was argued that this clause offered sufficient guarantees for proper decision-making in municipal councils. Moreover, it was argued that it is up to the electorate, the political parties and the persons concerned to ensure that the democratic rules are observed.

8.5 Counsel contends that the same arguments apply to the position of national police officers who wish to take up their seat in the municipal council. He submits that the probability that in a few cases complications may arise does not justify the categorical prohibition which was applied to Mr. Debreczeny. He concludes therefore that the limitation of Mr. Debreczeny's right to be elected was unreasonable. In this connection, he refers to a statement made by the Government during the parliamentary discussion on the restructuring of the police force, in which it was stated that members of a regional functional police unit shall be prohibited from becoming members of the municipal council only when it is plausible that the unit in a municipality can be deployed to a significant extent for public order purposes.

Issues and proceedings before the Committee

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 The issue before the Committee is whether the application of the restrictions provided for in section 25 of the Municipalities Act, as a consequence of which the author was prevented from taking his seat in the municipal council of Dantumadeel to which he was elected, violated the author's right under article 25 (b) of the Covenant. The Committee notes that the right provided for by article 25 is not an absolute right and that restrictions of this right are allowed as long as they are not discriminatory or unreasonable.

9.3 The Committee notes that the restrictions on the right to be elected to a municipal council are regulated by law and that they are based on objective criteria, namely the electee's professional appointment by or subordination to the municipal authority. Noting the reasons invoked by the State party for these restrictions, in particular, to guarantee the democratic decision-making process by avoiding conflicts of interest, the Committee considers that the said restrictions are reasonable and compatible with the purpose of the law. In this context, the Committee observes that legal norms dealing with bias, for example section 52 of the Municipalities Act to which the author refers, are not apt to cover the problem of balancing interests on a general basis. The Committee observes that the author was at the time of his election to the council of Dantumadeel serving as a police officer in the national police force, based at Dantumadeel and as such for matters of public order subordinated to the mayor of Dantumadeel, who was himself accountable to the council for measures taken in that regard. In these circumstances, the Committee considers that a conflict of interests could indeed arise and that the application of the restrictions to the author does not constitute a violation of article 25 of the Covenant.

9.4 The author has also claimed that the application of the restrictions to him is in violation of article 26 of the Covenant, because (a) the restrictions do not apply to volunteer firemen and to teaching staff and (b) in two cases, police officers were allowed to become members of the council of the municipality in which they served. The Committee notes that the exception for volunteer firemen and teaching staff is provided for by law and based on objective criteria, namely, for volunteer firemen, the absence of income dependency, and, for teaching staff, the lack of direct supervision by the municipal authority. With regard to the two specific cases mentioned by the author, the Committee considers that, even if the police officers concerned were in the same position as the author and were unlawfully allowed to take up their seats in the council, the failure to enforce an applicable legal provision in isolated cases does not lead to the conclusion that its application in other cases is discriminatory. a/ In this connection, the Committee notes that the author has not claimed any specific ground for discrimination and that the State party has explained the reasons for the different treatment stating that, in one case, the facts were materially different and that, in the other, the membership was unlawful but the court never had an opportunity to review it because the case was not brought before it by any of the interested parties. The Committee concludes therefore that the facts of Mr. Debreczeny's case do not reveal a violation of article 26 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any of the provisions of the Covenant.

[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

a/ See also the Committee's decision declaring inadmissible communication No. 273/1988 (B.d.B. v. the Netherlands), adopted on 30 March 1989, in which the Committee stated that it is "not competent to examine errors allegedly committed in the application of laws concerning persons other than the authors of a communication" (para. 6.6).
