Sprenger v. The Netherlands, Communication No. 395/1990, U.N. Doc. CCPR/C/44/D/395/1990 (1992).

HUMAN RIGHTS COMMITTEE
Forty-fourth session

DECISIONS
Communication No. 395/1990

Submitted by:	Ms. M. Th. Sprenger [represented by counsel]
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	8 February 1990 (initial submission)
Documentation references:	Prior decisions- Special Rapporteur's rule 91 decision, transmitted to the State party on 21 August 1990 (not issued in document form) - CCPR/C/41/D/395/1990 (decision on admissibility, dated 22 March 1991)

Date of adoption of Views under article 5,

paragraph 4, of the Optional Protocol: 31 March 1992

On 31 March 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 395/1990. The text of the Views is annexed to the present document.

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 - FORTY-FOURTH SESSION

concerning

Communication No. 395/1990 **

Submitted by:	Ms. M. Th. Sprenger [represented by counsel]
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	8 February 1990
Date of decision on admissibility:	22 March 1991

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

Meeting on 31 March 1992,

Having concluded its consideration of communication No. 395/1990, submitted to the Human Rights Committee by Ms. M. Th. Sprenger 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,

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

The facts as submitted by the author:

1. The author of the communication is Ms. M. Th. Sprenger, a citizen of the Netherlands, residing in Maastricht, the Netherlands. She claims to be a victim of a violation by the Netherlands of article 26 of the International Covenant on Civil and Political Rights.

2.1 The author received unemployment benefits under the Dutch Unemployment Benefits Act until 20 August 1987. At that date, the maximum benefits period came to an end. As a result of the termination of her benefits payment, her public health insurance also expired, pursuant to the Health Insurance Act. The author then applied for benefits pursuant to the State Group Regulations for Unemployed Persons, under which she would be equally entitled to public insurance under the Health Insurance Act.

2.2 The author's application was rejected on the grounds that she cohabited with a man whose income was higher than the benefits then applicable under the State Group Regulations for Unemployed Persons. Her companion was, through his employment, insured under the Health Insurance Act. Under article 4, paragraph 1, of the Health Insurance Act, the spouse of an insured person may also be insured if she is below 65 years of age and shares the household, and if the insured person is considered as her, or his, breadwinner. The author explains that she had lived with her companion since October 1982 and that, on 8 August 1983, they formally registered their relationship by notarial contract, providing for the shared costs of the common household, property and dwelling.

2.3 The author's application for registration as a co-insured person with her partner was rejected by the regional social security body on 4 August 1987, on the ground that the Health Insurance Act did not provide for co-insurance to partners other than spouses. In this context, the author stresses that the very circumstance that she shares a household with her partner prevents her from receiving benefits under the State Group Regulations for Unemployed Persons, by virtue of which she herself would be insured under the Health Insurance Act, in which case the question of co-insurance would never have arisen.

2.4 On 3 February 1988, the Board of Appeal (Raad van Beroep) quashed the decision of 4 August 1987, stating that the discrimination between an official marriage and a common law marriage constituted discrimination within the meaning of article 26 of the Covenant. The judgment was in turn appealed by the regional social security board to the Central Board of Appeal (Centrale Raad van Beroep) which, on 28 September 1988, ruled that the decision of 4 August 1987 did not contravene article 26 of the Covenant. In its decision, the Central Board of Appeal referred to the decision of the Human Rights Committee in communication No. 180/1984, Danning v. the Netherlands 1/ in which it had been held that, in the circumstances of the case, a difference of treatment between married and unmarried couples did not constitute discrimination within the meaning of article 26 of the Covenant.

2.5 The author states that the Health Insurance Act has been amended and that it recognizes the equality of common law and official marriages as of 1 January 1988.

The complaint:

3. The author claims that she is a victim of a violation by the State party of article 26 of the Covenant, because she was denied co-insurance under the Health Insurance Act, which distinguished between married and unmarried couples, whereas other social security legislation already recognized the equality of status between common law and official marriages.

The Committee's admissibility decision:

4.1 At its forty-first session, the Committee considered the admissibility of the communication. It noted that the State party had not raised any objection to the admissibility of the communication and it ascertained that the same matter was not being examined under another procedure of international investigation or settlement.

4.2 On 22 March 1991, the Committee declared the communication admissible in respect of article 26 of the Covenant.

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

5.1 In its submission, dated 15 November 1991, the State party argues that the differentiation between married and unmarried persons in the Health Insurance Act does not constitute discrimination within the meaning of article 26 of the Covenant. In this context, it refers to the Committee's Views in communication No. 180/1984.

5.2 The State party contends that, although the author has entered into certain mutual obligations by notarial contract, considerable differences between her status and that of a married person remain. The State party states that the Civil Code imposes additional obligations upon married persons, which the author and her partner have not taken upon themselves; it mentions inter alia the imposition of a maintenance allowance payable to the former spouse. The State party argues that nothing prevented the author from entering into the legal status of marriage, subsequent to which she would have been entitled to all corresponding benefits.

5.3 The State party submits that it has at no time taken any general decision to abolish the distinction between married persons and cohabitants, and that it has introduced equal treatment only in certain specific situations and on certain conditions. It further submits that each social security law was reviewed separately with regard to the introduction of equal treatment between married persons and cohabitants; this explains why in some laws equal treatment was incorporated sooner than in others.

6.1 In her reply to the State party's submission, the author submits that the differences between married and unmarried couples should be seen in the context of family law; they do not affect the socio-economic circumstances, which are similar to both married and unmarried couples.

6.2 The author further submits that the legal status of married couples and cohabitants, who confirmed certain mutual obligations by notarial contract, was found to be equivalent by the courts before. She refers in this context to a decision of the Central Board of Appeal, on 23 November 1986, concerning emoluments to married military personnel. She further contends that, as of 1 January 1987, equal treatment was accepted in almost all Dutch social security legislation, except for the Health Insurance Act and the General Widows and Orphans Act.

Consideration on the merits:

7.1 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.

7.2 The Committee observes that, although a State is not required under the Covenant to adopt social security legislation, if it does, such legislation must comply with article 26 of the Covenant. Equality before the law implies that any distinctions in the enjoyment of benefits must be based on reasonable and objective criteria. 2/

7.3 In the instant case, the State party submits that there are objective differences between married and unmarried couples, which justify different treatment. In this context the State party refers to the Committee's Views in Danning v. the Netherlands, in which a difference of treatment between married and unmarried couples was found not to constitute discrimination within the meaning of article 26 of the Covenant.

7.4 The Committee recalls that its jurisprudence permits differential treatment only if the grounds therefore are reasonable and objective. Social developments occur within States parties and the Committee has in this context taken note of recent legislation reflecting these developments, including the amendments to the Health Insurance Act. The Committee has also noted the explanation of the State party that there has been no general abolition of the distinction between married persons and cohabitants, and the reasons given for the continuation of this distinction. The Committee finds this differential treatment to be based on reasonable and objective grounds. The Committee recalls its findings in Communication No. 180/1984 and applies them to the present case.

7.5 Finally, the committee observes that the decision of a State's legislature to amend a law does not imply that the law was necessarily incompatible with the Covenant; States parties are free to amend laws that are compatible with the Covenant, and to go beyond Covenant obligations in providing additional rights and benefits not required under the Covenant.

8. 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 disclose a violation of any article of the International Covenant on Civil and Political Rights.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

* Made public at the request of the Human Rights Committee

** An individual opinion by Messrs. N. Ando, K. Herndl and B. Ndiaye is appended to the present document.

1/ L.G. Danning v. the Netherlands, Views adopted on 9 April 1987.

2/ See Broeks v. the Netherlands, communications No. 172/1984, and Zwaan-deVries v. the Netherlands, communication No. 182/1984, Views adopted on 9 April 1987.

Appendix

Individual opinion of Messrs. Nisuke Ando, Kurt Herndl and Birame Ndiaye pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's Views on Communication No. 395/1990, M. Th. Sprenger v. the Netherlands.

We concur in the Committee's finding that the facts before it do not reveal a violation of article 26 of the Covenant. We further believe that this is an appropriate case to expand on the Committee's rationale, as it appears in these Views and in the Committee's Views in Communications Nos. 180/1984, Danning v. the Netherlands and 182/1984, Zwaan-de-Vries v. the Netherlands. 1/

While it is clear that article 26 of the Covenant postulates an autonomous right to non-discrimination, we believe that the implementation of this right may take different forms, depending on the nature of the right to which the principle of non-discrimination is applied.

We note, firstly, that the determination whether prohibited discrimination within the meaning of article 26 has occurred depends on complex considerations, particularly in the field of economic, social and cultural rights. Social security legislation, which is intended to achieve aims of social justice, necessarily must make distinctions. While the aims of social justice vary from country to country, they must be compatible with the Covenant. Moreover, whatever distinctions are made must be based on reasonable and objective criteria. For instance, a system of progressive taxation, under which persons with higher incomes fall into a higher tax bracket and pay a greater percentage of their income for taxes, does not entail a violation of article 26 of the Covenant, since the distinction between higher and lower incomes is objective and the purpose of more equitable distribution of wealth is reasonable and compatible with the aims of the Covenant.

Surely, it is also necessary to take into account the reality that the socio-economic and cultural needs of society are constantly evolving, so that legislation - in particular in the field of social security - may well, and often does, lag behind developments. Accordingly, article 26 of the Covenant should not be interpreted as requiring absolute equality or non-discrimination in that field at all times; instead, it should be seen as a general undertaking on the part of the States parties to the Covenant to regularly review their legislation in order to ensure that ir corresponds to the changing needs of society. In the field of civil and political rights, a State party is required to respect Covenant rights such as the right to a fair trial, to freedom of expression and freedom of religion, immediately from the date of entry into force of the

Covenant, and to do so without discrimination. On the other hand, with regard to rights enshrined in the International Covenant on Economic, Social and Cultural Rights, it is generally understood that States parties may need time for the progressive implementation of these rights and to adapt relevant legislation in stages; moreover, constant efforts are needed to ensure that distinctions that were reasonable and objective at the time of enactment of a social security provision are not rendered unreasonable and discriminatory by the socio-economic evolution of society. Finally, we recognize that legislative review is a complex process entailing consideration of many factors, including limited financial resources, and the potential effects of amendments on other existing legislation.

In the context of the instant case, we have taken due note of the fact that the Government of the Netherlands regularly reviews its social security legislation, and that it has recently amended several acts, including the Health Insurance Act. Such review is commendable and in keeping with the requirement, in article 2, paragraphs 1 and 2, of the Covenant, to ensure the enjoyment of Covenant rights and to adopt such legislative or other measures as may be necessary to give effect to Covenant rights.

1/ Views adopted on 9 April 1987 (29th session).
