



Committee on the Elimination of Discrimination
against Women
Attn. Petitions Team
Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
SWITZERLAND

**Legal Affairs Department
International Law Division**

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Date 19 September 2014
Re Communication No. 36/2012
Elisabeth de Blok et al. v. the Netherlands

Dear Sir/Madam,

Further to the Secretary-General's note of 19 March 2014, I have the honour to respond as follows to the Views adopted on 17 February 2014 by the Committee on the Elimination of Discrimination against Women, concerning the above communication submitted under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

The Committee is of the view that the Netherlands has failed to fulfil its obligations and has thereby violated the rights of the authors under article 11, paragraph 2 (b) of the Convention, by not providing an adequate maternity benefit scheme to cover loss of income for the self-employed authors, in the period between 1 August 2004 and 4 June 2008.

The Government is aware of the importance of the individual right of complaint on the basis of the Convention and of the uniform interpretation of human rights conventions in general. The Government also fully appreciates that petitioners must be able to have confidence that the Government will pay serious attention to the opinions of the various committees established under international conventions and that, barring exceptional cases, it will not sweep such views to one side. The Government, for its part, must be able to rely on a proper consideration of all the arguments put forward in its observations concerning the communication.

Turning to the case at hand, the Government notes, first of all, that the Committee does not discuss one of the Government's major arguments for abolition of the existing state maternity scheme for self-employed women in 2004, namely a lack of support among the target group for this kind of compulsory insurance based on contributions. Self-employed women had the option of taking out adequate private insurance, the premiums being tax deductible. The reason why a state maternity scheme was nevertheless re-introduced in 2008 was not a perceived lack of compliance with Convention obligations, but a wish to reduce health risks to mothers and new-born

children, since it appeared that insurance of self-employed women was no longer guaranteed.

Secondly, in contrast to the Committee, the Government remains of the view that the States Parties to the Convention, when drafting article 11, had in mind a narrow interpretation of the scope of that provision, to include only employees. This is borne out by the use of terms such as 'selection', 'promotion', 'job security', 'remuneration', 'paid leave', 'dismissal', 'pay' and 'seniority', terms that are irrelevant in relation to self-employed persons. The Government notes that the notion of 'all employed women', as referred to by the Committee in paragraph 8.4 of its Views, does not appear in article 11. The intention of article 11, paragraph 2 (b) is to avoid discrimination against women by employers who might otherwise be inclined to abuse the possibility of pregnancy as a justification to give preference to male employees. By definition, this is not an issue in the case of self-employed women.

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Thirdly, the Government wishes to respond to the Committee's observations in paragraphs 8.5 and 8.6 of its Views on the issue of direct applicability of Convention provisions. The Government understands from those observations that the Committee is under the impression that a lack of 'direct applicability' of certain provisions entails a lack of recognition by the State of the obligations set forth in these provisions. This, however, is not the case. Direct applicability is a notion within the domestic legal sphere, based on article 93 of the Constitution. Under this article, a treaty provision is directly applicable in national law – i.e. without the need for national transposing legislation – if by virtue of its contents it is suitable for such applicability. Whether this is the case is ultimately decided by the national judge in any given case and has no effect whatsoever on the binding nature of treaty provisions. All provisions remain fully binding upon the State but they may, insofar as they are not directly applicable, require some form of transposing legislation. Since article 11 obliges States to take 'appropriate measures', this provision, typically, does not by virtue of its contents lend itself to direct application by a judge in an individual case, since 'appropriate measures' presupposes a choice of possible arrangements, to be decided on by the legislator.

Given the above considerations, the Government finds itself unable to provide any monetary compensation to the authors. Similarly, the Government will refrain from providing any financial compensation to women in circumstances comparable to those of the authors. In addition to the above reasons, it should be observed that the purpose of having a maternity scheme in the first place – to allow a resting period for mother and new-born child – cannot be fulfilled in retrospect, more than six years on.

The Government is, however, prepared to compensate the authors for any costs and expenses they may have incurred in the proceedings before the Committee, to a reasonable extent. This award is made *ex gratia* and as recognition of the fact that the authors have availed themselves of their right to bring proceedings against the State under the Optional Protocol to the Convention, as a result of which the Committee found in their favour. I will contact the authors' representative in order to make the necessary arrangements.

Finally, by his letter of today the Minister of Social Affairs and Employment has forwarded the Committee's Views, together with the present letter, to parliament. Furthermore, the Government will include a summary of the Committee's Views and of the present response in its annual report to parliament on international human rights complaints procedures against the Netherlands. This report is made publicly available and widely disseminated to interested parties.

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Yours faithfully,

Roeland Böcker
Agent of the Government of the Netherlands