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HUMAN RIGHTS COMMITTEE
Forty-ninth session

DECISIONS

Communication No. 548/1993

Submitted by: R.E.d.B.
[represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 15 April 1993 (initial submission)

Documentation references: none

Date of present decision: 3 November 1993

[Decision on admissibility]

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DEC548.49 cm

ANNEX **/

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

concerning

Communication No. 548/1993

Submitted by: R.E.d.B. (name deleted)
[represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 15 April 1993 (initial submission)

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

Meeting on 3 November 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is R.E.d.B., a Dutch citizen born on 26 June 1952, currently residing in Leeuwarden, the Netherlands. He claims to be a victim of a violation of article 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author, who is mentally ill, has been confined to a nursing home since 17 August 1971. He came of age on 26 June 1973; until then, his parents had been his legal representatives. On 15 December 1987, a legal guardian was appointed for him. The author states that, between 26 June 1973 and 15 December 1987, he depended on the good will of others for the protection and defence of his rights.

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

2.2 The author visits his parental home during weekends; the visits are said to be of crucial importance for his mental and physical well-being. These visits incur extra travel and boarding expenses. On 2 July 1987, the author, represented by his parents, applied for benefits under the Social Security Act (Algemene Bijstandswet) to obtain compensation for these costs. On 24 November 1987, the municipality of Ferwederadeel granted the author benefits in the amount of Nfl 260,69 per month, to run from the date of application, i.e. 2 July 1987.

2.3 The author requested a review of the decision, on the ground that these benefits should have been granted retroactively, as of 17 August 1971. On 1 March 1988, the Municipality confirmed its earlier decision. The author appealed to the provincial authorities of Friesland, which rejected his appeal on 2 November 1988. On 3 October 1990, the Council of State's Division for Administrative Litigation (Raad van State, Afdeling Geschillen van Bestuur) dismissed the author's further appeal.

2.4 The Council's Administrative Division considered that under the Social Security Act, no benefits can be granted for a period prior to the date of application and that it is the applicant's own responsibility to apply for benefits in a timely manner. Only extraordinary circumstances might justify exceptions to this rule. In the author's case, no such circumstances were found to exist. Since the law makes it possible for others to apply for a benefit on behalf of someone, the Council considered that the author's parents could have applied for the benefit on his behalf earlier.

2.5 The Council further noted that during the first period of his stay in the nursing home, the author was still a minor, legally represented by his parents. It further noted that it appeared from the file that the author's parents did in fact look after his interests, until a legal guardian was appointed. Since the author's interests were being looked after, the Council found that there had been no need for the municipality to have granted a benefit proprio motu. It rejected the author's claim that article 26 of the Covenant had been violated in the case.

The complaint:

3.1 The author claims that, since he had no legal representative from 26 June 1973 to 15 December 1987, he was not capable of filing an application for benefits under the ABW, and that therefore special circumstances existed to grant him benefits with retroactive effect. He claims that the denial of retroactive benefits in his case amounts to a violation of article 26 of the Covenant, since it constitutes a factual discrimination vis-à-vis those who, like him, are mentally handicapped and thus unable to protect their own interests.

3.2 In this context, the author claims that the State should enhance the enjoyment of social rights. This requires, according to the author, that the Dutch authorities should have granted him benefits on their own initiative, as they were aware of his particular situation.

Issues and proceedings before the Committee :

4.1 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.

4.2 The author claims to be a victim of a violation of article 26 of the Covenant, because he has not been granted social security benefits retroactively; he claims that, even though he did not apply for benefits earlier, the State party should have granted him benefits proprio motu. The Committee notes that Dutch legislation does not provide for the granting of retroactive benefits under the Social Security Act, and that the Administrative Division of the Council of State considered that no extraordinary circumstances existed that would have justified an exception, since the author's parents could have applied for benefits on his behalf.

4.3 The Committee notes that the author has not substantiated, for purposes of admissibility, that he was denied a retroactive benefit on any of the grounds covered by article 26 of the Covenant or that the provisions of the Social Security Act were not equally applied to him. Accordingly, the Committee finds that the communication is inadmissible under article 2 of the Optional Protocol.

5. 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 author and to his counsel, and, for information, to the State party.

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