HUMAN RIGHTS COMMITTEE

H.d.P v. The Netherlands

Communication No. 217/1986

8 April 1987

ADMISSIBILITY

Submitted by: H. v. d. P. (name deleted) on 16 December 1986

Alleged victim: The author

State party: The Netherlands

Declared inadmissible: 8 April 1987 (twenty-ninth session)

Decision on Admissibility

1. The author of the communication dated 9 June 1986 is H. v. d. P., a national of the Netherlands born in 1945, at present residing in the Federal Republic of Germany. He claims to be a victim of violations by the Netherlands of articles 2, 14, 25 *(c)* and 26 of the International Covenant on Civil and Political Rights.

2.1. The author, who was an industrial engineer in the Netherlands, is now employed as a substantive patent examiner at the European Patent Office (EPO) in Munich,, Germany. He states that in January, 1980 he applied for a post as examiner in EPO. He was offered the post at the Al, step 2 level and he accepted it. Only after he had been several months with the organization, and had had the opportunity to compare his credentials and experience with that of his peers, did he realize that he had apparently been appointed at a discriminatorily low level and he felt that the preponderance of citizens of the Federal Republic of Germany in the higher grades was the result of the discriminatory practices of the organization. He thus lodged an appeal on the basis of denial of equal treatment, both within the Co-ordinated Organizations (North Atlantic Treaty Organization, Council of Europe, European Space Agency, etc.) and within EPO itself, claiming that he should have been appointed at the A2 level in 1980. His appeal was rejected on 19 January 1982 by the President of EPO as ill-founded. He then appealed to the Internal Appeals Committee, which on 6 December 1982 submitted its report rejecting the author's appeal and concluding that "no breach of the Service Regulations or of any rule of general law affecting international civil servants has been established". In reaching its decision, the Internal Appeals Committee relied heavily on the judicial precedents of the Administrative Tribunal of the International Labour

Organisation. On 16 February 1983, the author proceeded to appeal to the Administrative Tribunal of ILO, which dismissed his complaint (Judgement No. 568 of 20 December 1983), concluding that

The circumstances. in which the organization was created . . . show that it was necessary for the organization to recruit a large staff to fill all grades from the highest to the lowest and so, when fixing the initial grade, to take into account experience gained, first, in patent offices and, second. in industry generally. In reckoning this experience the organization distinguishes between the first and second categories. The complainant contends that this is an unreal distinction and consequently one which offends against the principle of equality of treatment. In the opinion of the Tribunal. the distinction is not unreal and the complainant has not shown any breach of principle. He is employed as a search examiner and in that work it is reasonable to believe that experience in the handling of patent applications is more immediately useful than general experience as an industrial engineer.

2.2. The author applied to the European Commission of Human Rights [1] on 13 June 1984, which on 15 May 1986 declared his application inadmissible *rations materiae* on the grounds that litigation concerning the modalities of employment as a civil servant, on either the national or international level, fell outside the scope of the European Convention on Human Rights.

2.3. The author then turned to the Human Rights Committee, which he considers competent to consider the case, since five States parties (France, Italy, Luxembourg, the Netherlands and Sweden) to the European Patent Convention are also parties to the Optional Protocol to the International Covenant on Civil and Political Rights. He argues that "pursuant to article 25 (c), every citizen shall have access, on general terms of equality, to public service in his country. EPO, though a public body common to the Contracting States, constitutes a body exercising Dutch public authority". The appeal to the President of EPO and the opinion given by the Internal Appeals Committee, the author argues, do not constitute an effective remedy within the meaning of article 2 of the Covenant against . violations of article 25 *(c) of* the Covenant. Moreover, "the Internal Appeals Committee is a travesty of competence, independence and impartiality as required by article 14 of the Covenant. IAC declines to adjudicate on the basis of public international law invoked by the applicant, i.e. law which the Contracting States undertook solemnly to observe".

3.1. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3.2. The Human Rights Committee observes in this connection that it can only receive and consider communications in respect of claims that come under the jurisdiction of a State party to the Covenant. The author's grievances, however, concern the recruitment policies of an international organization, which cannot, in any way, be construed as coming within the jurisdiction of the Netherlands or of any other State party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Accordingly, the author has no claim under the Optional Protocol.

4. The Human Rights Committee therefore decides:

The communication is inadmissible.

1/ When ratifying the Optional Protocol the Netherlands did not make a reservation aimed at precluding examination by the Human Rights Committee of a case previously considered under another procedure of international investigation or settlement.