



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2974/2017*, **

<i>Communication submitted by:</i>	B.P. and P.B. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	The Netherlands
<i>Date of communication:</i>	15 October 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 April 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Postal address registration; social benefits; health insurance
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; manifestly ill-founded
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty of person; privacy; unlawful attacks on honour or reputation; discrimination; effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 9, 17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The authors of the communication are B.P. and P.B., born in 1966 and 1970, respectively, both nationals of Hungary. They claim that the Netherlands has violated their rights under articles 2 (3), 6, 7, 9, 17 and 26 of the Covenant. The Optional Protocol entered into force for the Netherlands on 11 March 1979. The authors are not represented by counsel.

1.2 On 12 April 2017, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



1.3 On 26 December 2018, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits.

The facts as submitted by the authors

2.1 Mr. B. has been reliant on a high daily dose of medication for nearly 20 years and suffers from psychiatric and physical diseases. He and Ms. P. have resided in the Netherlands since 2001. They are not partners, but live together. Ms. P. takes care of an injury that Mr. B. sustained during an attack in Amsterdam in 2014. A medical certificate dated 8 February 2016 states that Mr. B.'s recovery had been hampered by his financial and housing situation and that he therefore runs a risk of irreparable harm. Mr. B.'s application for damages for his injury was rejected by the Violent Offences Compensation Fund on 16 March 2016 because it contained Mr. B.'s testimony only. On 29 August 2016, Mr. B. was refused treatment, which, according to the authors, would result in the loss of his leg, if not his life.

2.2 On 20 January 2015, the municipality of Amsterdam rejected Ms. P.'s application for social benefits as she had not legally resided in the Netherlands for at least five years. In 2015, the authors moved to Haarlem. On 27 July 2015, the municipality of Haarlem accorded each of the authors monthly social benefits of €549, an amount reduced on the ground that they were living with four other adults. On 13 November 2015, the municipality of Haarlem rejected Mr. B.'s request for review. On 16 February 2016, the District Court of North Holland found the appeal against the municipality's decision inadmissible because it had not been submitted within the statutory time limit. On 29 June 2016, the District Court of North Holland declared Mr. B.'s request for review unfounded. The Court found that Mr. B.'s inability to appeal in a timely fashion was not a result of his health and financial situation.

2.3 On 12 August and 12 October 2015 respectively, Mr. B. and Ms. P. applied for social benefits and for a postal address. On 11 September 2015, they also applied for rental subsidies. On 28 September 2015, the municipality of Haarlem rejected their application for rental subsidies because they were obliged to leave their residence by 1 October 2015.

2.4 On 27 October 2015, the municipality cancelled the authors' social benefits because the authors had not cooperated with the welfare authorities to determine whether they could claim residence and benefits in Haarlem. Ms. P. claims that she had texted the authorities to inform them of their whereabouts each night. The authors were subsequently registered as non-residents in the Basic Civil Registry. Their request for that to be corrected remained unanswered.

2.5 On 5 November 2015, Ms. P. applied to the Mayor of Haarlem for a postal address and for the cancellation of their benefits to be revoked. The authors applied to the municipality for a postal address on multiple occasions, each time in vain.

2.6 On 10 March 2016, the municipality of Haarlem informed the authors that it had deregistered them in the Basic Civil Registry, in accordance with the relevant legislation. The legislation provides for such action to be taken when a resident cannot be reached, when no notification of an address change has been received and, following thorough investigations, no information has been obtained regarding a resident's stay in the Netherlands.

2.7 On 11 May 2016, the authors' health insurer informed them that there were doubts about whether they were still insured under the Long-Term Care Act and advised them that they must verify their data with the authorities if they were working or residing in the Netherlands. The insurer planned to terminate their health insurance on 5 July 2016.

2.8 On 25 June 2016, the authors wrote to the King's Commissioner for North Holland seeking relief, including registration in the Basic Civil Registry. They claimed that they were unable to go to a shelter because of Mr. B.'s need for treatment in hygienic surroundings. The Commissioner forwarded the letter to the municipality of Amsterdam as the issue did not fall within the Commissioner's competence.

2.9 On 12 October 2016, the authors' application for a postal address was refused. On an unspecified date, an officer of the National Office for Identity Data informed the authors that they correctly appeared as non-residents in the Basic Civil Registry, given their lack of a residential or postal address. In February 2017, Ms. P. filed a request with the Ombudsman of Amsterdam for Mr. B. to be provided with a temporary postal address and for his health insurance and social benefits to be reactivated. On 6 April 2017, the municipality of Amsterdam rejected the application for social benefits for Mr. B. He appealed that rejection. On 14 June 2017, the municipality rejected another application from Mr. B., following his non-appearance at a meeting. In July 2017, Mr. B. changed domicile, but the municipal authorities remained unwilling to assist him.

2.10 The municipality of Amsterdam granted Ms. P. social benefits on the ground of her homelessness from 9 March 2017 onwards. It informed her that it would report this to the Immigration and Naturalization Service, given the possible consequences for the qualification of the legality of her stay in the Netherlands. On 26 April 2017, the Immigration and Naturalization Service sent Ms. P. a letter informing her that it was investigating the legality of her stay. In response, Ms. P. applied to the Service and requested the municipality to withdraw its notification. The Service sent her a decision on 20 July 2017 concluding that she had never had legal residence because she had been deregistered twice from the Basic Civil Registry for more than six months during stays abroad and had therefore forfeited any rights as a citizen of the European Union. The Immigration and Naturalization Service declared her request for review inadmissible on 29 January 2018 because she had filed it outside the legal time limit.

The complaint

3.1 The authors claim that the State party has violated article 6 of the Covenant as their health insurance policies were cancelled and Mr. B. was refused treatment, despite the seriousness of his medical condition. Moreover, the decision to grant them a reduced amount of social benefits was incorrect, as the authors are not partners and the authorities mistakenly concluded that they were sharing living costs. The municipal representatives refused to acknowledge Mr. B.'s special circumstances. That decision and the refusal to grant their applications for a postal address have endangered the authors' lives.

3.2 In the authors' opinion, the State party has breached article 7 of the Covenant as, even if they were granted social benefits again, they would spend the rest of their lives on a weekly budget of €50, under continuous State control. They would be forced to choose between their health, their life or their independence. Furthermore, the requirements for the reactivation of their health insurance, including budget control, are unacceptable. The response to Mr. B.'s social benefits applications was delayed to such an extent that it was clear that the municipality of Amsterdam intended to render him homeless.

3.3 The authors claim that the State party violated article 9 of the Covenant by rejecting the authors' application for rental subsidies, thus excluding them from adequate housing. They are capable of living responsibly, but only with a basic income.

3.4 The facts described above, in addition to the courts' decisions on the authors' social benefits applications, amount to a violation of article 2 (3) of the Covenant. Moreover, in its decision of 29 June 2016, the District Court of North Holland failed to acknowledge that the decision of 13 November 2015 did not reach the authors until 17 November 2015. In its decision, the District Court also failed to point out that refusing someone a postal address is contrary to the Basic Civil Registry Act. The District Court should have taken into consideration the facts that the authors have no income and that Mr. B. has a chronic illness. The District Court rendered its decision 29 days after the deadline for doing so, but still reaffirmed that the authors' appeals were inadmissible on the ground that they were submitted late.

3.5 The authors consider that the State party has violated article 17 of the Covenant by rejecting their applications for a postal address and by damaging their honour and reputation. This has impeded their ability to correspond.

3.6 The authors claim to be victims of discriminatory treatment by the State party, in breach of article 26 of the Covenant. The authorities planned to withdraw their legal

residence status. The authors' deregistration from the Basic Civil Registry means that they were unable to obtain legal representation. Without providing further details, they claim that Dutch nationals are excused for everything, whereas non-nationals are subjected to surveillance and different rules, and they can be denied anything. The State party has created an unbalanced relationship between itself and non-nationals who are not part of the workforce. The decisions reached by the District Court of North Holland are visibly biased.

3.7 The decision of 20 July 2017 of the Immigration and Naturalization Service put Ms. P. in an unacceptable situation, because only people who have lived in the Netherlands for less than five years can be reported to that Service. The authors suspect that the letters she received from that Service were falsified because they were sent by different people, were not signed and are unlawful. The Immigration and Naturalization Service misinterpreted her "non-resident" registration in the Basic Civil Registry to mean that she resided outside of the Netherlands. The Service made its decision despite the determination by the Ministry of the Interior that the authors had been living in the Netherlands continuously.

3.8 The authors demand that the State party register their address, pay the entirety of their debts and provide them with at least €5,000 immediately, reactivate and guarantee their health insurance for the rest of their lives, grant them social benefits in the amount of that designated for persons living alone plus rental subsidies with assurances of lifelong payments, permit them to freely choose their residence, accord damages for the attack suffered by Mr. B. and withdraw its fraud investigations against them.

State party's observations on admissibility

4.1 By note verbale of 3 July 2017, the State party challenges the admissibility of the communication. The State party notes that the communication is almost incomprehensible and thus insufficiently substantiated.

4.2 The State party submits that it understands the essence of the communication to be that the authors claim that the municipality of Haarlem has denied them a postal address. As a fixed or postal address is a prerequisite for receiving benefits under section 40 of the Participation Act, this resulted in the denial of their social benefits. They also risked losing their health insurance.

4.3 The decision of 27 October 2015 to cancel the authors' benefits followed an investigation into their residential situation, which established that they did not have a fixed address in Haarlem and had failed to comply with the conditions for being granted a postal address. The District Court of North Holland declared the authors' appeal inadmissible.

4.4 The State party argues that this course of events results from the authors' failure to comply with the eligibility conditions for a postal address and their general unwillingness to cooperate with the authorities. The authors cannot be considered victims of any violation of the Covenant. The communication is therefore inadmissible as it is insufficiently substantiated.

4.5 Additionally, the authors have not availed themselves of all available domestic remedies, given that they failed to lodge their appeals in a timely manner.

4.6 However, the aforementioned facts have been surpassed by more recent events. The authors currently reside in Amsterdam and Ms. P. has been provided with a postal address and social benefits. Mr. B. has been given an opportunity to have the same made available to him, which would also make him eligible for health insurance. However, to date he has proven reluctant to meet with the local authorities to that end. The authors can therefore no longer be considered victims of any violations of the Covenant, if they ever could have been. Additionally, given that Mr. B. refuses to meet with the authorities, he cannot be considered to have availed himself of even a single domestic remedy.

Authors' comments on the State party's observations on admissibility

5.1 In their comments on the State party's observations dated 10 September 2018 and in their submissions dated 17, 21 and 23 October, 22 November and 14 December 2016, 25 March, 7 and 9 August, 8 November and 14, 15, 17 and 19 December 2017, 17, 19, 24 and 26 January, 26 February, 10 April, 11 September and 23 November 2018, 13 March, 11, 12 and 16 April, 31 May, 12 and 20 June, 13 July and 5 September 2019, the authors reaffirm

that they are victims of violations of articles 6, 7, 9, 17 and 26 of the Covenant. They cannot obtain redress domestically and their communication is based on documented facts, whereas the State party's observations are mostly based on assumptions and incomplete or faulty reports.

5.2 The authors submit that they never committed fraud. Their rental contracts show that they should have received the amount of social benefits for persons living alone rather than that for cohabitants. They made it clear to the authorities that they were unable to pay their rent with the reduced amount of social benefits. The authors have resided in the Netherlands for long enough to be treated as Dutch nationals.

5.3 On 28 September 2017, the municipality of Amsterdam informed Ms. P. that the decision of the Immigration and Naturalization Service meant that the payment of her benefits would be stopped, starting the next day. On 23 January 2018, the municipality rejected Ms. P.'s request for review. The District Court of Amsterdam rejected her appeal on 31 July 2018. Ms. P. then appealed to the Central Appeals Council. She had separately requested the review of the decision of the municipality of Amsterdam not to accord her social benefits. On 2 October 2017, the municipality informed her that it had received a notification giving rise to doubts as to whether her official residence address was still correct. It requested an updated address and stated that it would be deregistering her should the investigation confirm that she had left the official address. Ms. P. was deregistered from the Basic Civil Registry as of 6 November 2017. She submitted another application for social benefits on 4 September 2018, which was rejected on 6 September 2018 on the ground that she did not legally reside in the Netherlands. Her subsequent application of 11 December 2018 was rejected on 14 December 2018 based on a lack of new relevant facts. Her request for review was rejected on 17 April 2019.

5.4 Since 2017, the authors have been living in a caravan in Amsterdam as part of a group of some 40 individuals known as the city nomads. Social benefits were accorded to Mr. B. starting from 14 August 2017, his health insurance was reactivated and he had several operations. On 20 September 2018, the authors reported that they had been reregistered in the Basic Civil Registry.

5.5 Mr. B. was denied any opportunity for municipal shelter because his municipal file said that he was fully self-reliant. However, false data were later entered to reach the conclusion that he was not self-reliant. Since he resided in a caravan and had been complying with the rules and regulations, he should be considered self-reliant. On 7 October 2017, Mr. B. was facing urgent hospitalization. He was in danger of losing both of his legs because he had not been able to afford medical treatment. On 14 March 2019, the municipality of Amsterdam decided that Mr. B. was eligible for a place in a government shelter. Mr. B. requested a review of that decision because he had applied for a "recovery studio", as received by other members of the city nomads, and because he had psychological and physical problems. The municipality rejected his request on 9 May 2019 because he required more support than could be provided in the recovery studios. The municipality wished to force him into "some unacceptable city care arrangement", the opposite of the "normal independent social housing" of which he was in need. The authorities relocated the city nomads, including the authors, in October 2019. The new location constitutes a danger to the authors' safety and there is a "total disregard" for fire safety rules. Water and electricity connections had been refused. The provision of such services to Dutch nationals only is a violation of European Union law, given that the authors are also nationals of a European Union member State. An appointment for social housing for Mr. B. was scheduled for December 2019.

5.6 On 18 October 2018, the Brijder clinic, where Mr. B. was receiving treatment, confirmed in writing that it had had to stop his treatment because he was no longer living in Haarlem, even though it is not a requirement to undergo treatment in one's place of residence. Mr. B. contests the assertion that he agreed that the Municipal Health Service could take over his treatment and claims that his file has been tampered with. Mr. B. requested that the Brijder clinic reassume responsibility for his treatment, because the Municipal Health Service was ignoring his diagnoses, as intended, according to the authors, by the municipality of Amsterdam. The Municipal Health Service clinic was standing in the way of Mr. B.'s social housing application and was discriminating against him on the basis

of his nationality. The authors submit that the sharing of false information by the Brijder clinic with the Municipal Health Service amounts to a further violation of article 17 of the Covenant and that the interference with Mr. B.'s treatment is in violation of articles 6 and 9 of the Covenant.

5.7 As for Ms. P., the authors claim that the notification by the municipality of Amsterdam of her benefits was incomplete and incorrect. When she was granted social benefits in 2014 and 2015, it had no effect on her residence status, because the authorities had ascertained that she had resided in the Netherlands for longer than five years. The authorities continued to refuse to acknowledge the legality of Ms. P.'s stay in the Netherlands. She could therefore not reactivate her health insurance or social benefits. On 22 January 2019, she requested that the municipality of Amsterdam reregister her in the Basic Civil Registry and provide her with social benefits. In October 2019, Ms. P. reported that her case remained pending before the Central Appeals Council, showing that procedures before the Dutch courts are subject to unreasonable delays.

State party's additional observations

6. By note verbale of 6 December 2018, the State party informed the Committee that the authors' comments did not give the State party any reason to change its position.

Additional comments from the authors

7. On 20 January 2020, the authors submitted additional comments, arguing that they had relocated to the new location of the Amsterdam city nomads at the Westpoortweg and that their addresses had been registered accordingly. However, the municipality of Amsterdam refused to provide running water and disregarded fire safety regulations, given that the caravans were too close to each other. The authors had therefore been staying at Mr. B.'s family home in Budapest since December 2019 in order to enable him to continue receiving treatment for his legs. However, Mr. B. still planned to attend a housing appointment with the municipality in January 2020. Ms. P.'s case before the Central Appeals Council remained pending. She remained without income and health insurance.

State party's further observations

8. On 21 February 2020, the State party reiterated that the communication should be declared inadmissible. It expressed concern, as the authors' submissions were difficult to follow, and regretted that the authors had not availed themselves of legal aid, for which the Dutch legal aid system provided. The authors were part of the so-called city nomads, a group of people wishing to reside in Amsterdam on their own terms.¹ The municipality pursued a tolerant policy towards the group, allowing them to live in a designated location and providing special care and assistance to vulnerable members. The authors had left the group for some time and rejoined it at the Westhavenweg in Amsterdam between 2017 and 2019. They currently had permission to stay at the Westpoortweg in Amsterdam until the end of 2021. Each member was issued with an individual temporary exemption order. In the authors' case, the exemption orders had not yet been issued owing to their absence. The municipality's liaison officer was aware of Mr. B.'s medical condition, including the burns for which he received weekly treatment. He was also being treated by the Municipal Health Service. For the previous two years, the liaison officer had tried together with the Municipal Health Service and a care institution to arrange temporary housing for Mr. B. to enable his wounds to heal in hygienic surroundings, but each time the authors had turned down the offer.

¹ The State party refers to the municipal policy with respect to the city nomads, according to which drinking water and sanitation are available at the Westpoortweg location and that running water and electricity for limited use would be provided free of charge as of March 2020.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes the State party's objection that the communication is inadmissible because the authors have not exhausted domestic remedies by failing to lodge a timely appeal before the District Court of North Holland and, in the case of Mr. B., by refusing to meet with the authorities. The Committee also notes that the authors claim that Ms. P.'s appeal before the Central Appeals Council is unreasonably prolonged, that their deregistration from the Basic Civil Registry prevented them from getting legal representation and that they cannot obtain redress from domestic procedures. The Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no chance of being successful, authors of communications must exercise due diligence in the pursuit of available remedies, and mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.²

9.4 With respect to registration in the Basic Civil Registry, the Committee observes that, even though the authors filed a complaint with the Ombudsman of Amsterdam, it does not appear that they engaged any judicial remedies. Regarding the authors' social benefits applications, the Committee observes that the District Court of North Holland found that they had lodged their appeal outside of the legal time limit. The Committee observes that the authors contest the tardiness of their appeals, which they claim to have filed in a timely fashion because they received the decision of 13 November 2015 only on 17 November 2015. The Committee notes, however, that the decision in question indicates that an appeal must be filed within six weeks after the date of its publication. The authors have not explained why they were not able to do so. The Committee notes, moreover, that it does not appear from the information on file that the authors have obtained a final decision on the merits of their claim, nor that they have explained why they were not in a position to do so.

9.5 Accordingly, the Committee considers that the authors have failed to adequately explain their positions that their judicial proceedings have been unreasonably prolonged, or that the domestic remedies available in the Netherlands are unavailable to them or would be otherwise ineffective. The Committee therefore concludes that in the present case, the authors have failed to exhaust all available domestic remedies and thus the communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the authors.

² For example, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3.