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NEWS REPORT

Country:	The Netherlands
Title:	Administrative Court rules that the State has violated the UN Convention on Women's Rights by not granting a maternity benefit to self-employed women
Date:	3 November 2016
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<u>Context</u>	
Issue at stake:	Judgment by the Administrative Court Mid-Netherlands on compensation for a self-employed woman who did not receive a maternity benefit
Ground of discrimination:	Sex
Source:	National court decision
Field:	Pregnancy and maternity, self-employment
Applicable law:	Article 3:18(2) Employment and Care Act, Article 11 UN Convention on Women's Rights

Content

Decision of the Court: On 23 September 2016, the Administrative Court Mid-Netherlands ruled that the State breached the UN Convention on Women's Rights by abolishing the right to a maternity benefit for self-employed women in 2004 and re-introducing the same right in 2008 without creating an arrangement for the women who gave birth between 2004 and 2008. The court ruled that the social security authorities will have to compensate the women for the lack of a maternity benefit.

The claimant, and five other self-employed women, have been involved in litigation about their right to a maternity benefit since approximately ten years ago, with the support of trade union 'FNV self-employed', the Association for women and law and the Clara Wichmann fund for test cases. A procedure in the Netherlands, up to the Dutch Supreme Court, yielded nothing. In the complaint-procedure before the CEDAW-Committee, the Committee ruled in plain language that the women were entitled to a maternity benefit and that the State had breached the Convention on Women's Rights by not creating an arrangement for them. Even this ruling did not induce the State to set things right. The women then started yet another procedure, in which they asked the social security authorities to grant them the benefit. On 18 July 2016, the Amsterdam Administrative Court dismissed the claim of two of the claimants. The Administrative Court of the Mid-Netherlands has now allowed the claim of one of the other women.

What is important is that the court explicitly states that it follows the "authoritative opinion" by CEDAW as "an international committee in the field of women's rights". The court rejects the point of view taken by the social security authorities (and by government as well) that Article 11(2)(b) does not concern self-employed women. Besides, the court makes it clear that this article can be invoked directly. The claimant is therefore entitled to either a benefit or compensation.

The two women who lost their case will appeal against the ruling with the 'Centrale Raad van Beroep', the Appeal Court in administrative cases. It is expected that the social security authorities will also appeal against the ruling of the Court of the Mid-Netherlands. The long chain of procedures has therefore not yet ended.

Key points of analysis: The judgment is relevant because 1) the authority of CEDAW is explicitly recognized, 2) it is confirmed that Article 11(2)(b) can be invoked directly, and 3) the court ruled that Article 11(2)(b) also relates to self-employed women. Though CEDAW has been clear on the points 2 and 3, the Dutch government continues to stick to the opposite point of view and is so far not willing to follow the opinion of CEDAW, even though the Netherlands has ratified the protocol which made individual complaints possible. It is to be hoped that the Appeal Court in administrative cases will uphold the judgment by the Court of the Mid-Netherlands and not the judgments by the Amsterdam Courts, as this will hopefully finally pave the way for a more extensive explanation of Article 11.

Internet link source:

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2016:5113>

(Court decision), accessed 2 November 2016.