



Human Rights Committee
Att. Petitions and Inquiry Section
Office of the High Commissioner for Human Rights
Palais des Nations
Geneva

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By email only

Date 23 September 2019
Re CCPR Communication No. 3236/2018
S.E. Hansen v. the Netherlands

Dear Sir/Madam,

Further to the note of the Secretariat (Office of the High Commissioner for Human Rights) of 22 July 2019 concerning the above communication, I have the honour to inform the Committee that the author's comments of 19 July 2019 do not give the Government any reason to alter the position it expressed in its observations of 5 April 2019.

The Government nevertheless wishes to make a number of additional observations, it being understood that the Government does not agree with the points in the author's comments it does not address.

In his comments, the author submits that the Kingdom of the Netherlands is a federation which means that article 12 of the Covenant would have to be interpreted and applied in accordance with article 50 of the Covenant.

The Government rejects the above view. In its observations of 5 April 2019, the Government already gave an outline of the constitutional structure of the Kingdom as a *sui generis* legal order that does not justify it to be labeled a federation. Moreover, the Government will demonstrate that the author's statement is also contradicted by the Kingdom's practice at the international plane, in particular with regard to the territorial scope of treaties.

It is consistent practice of the Kingdom to indicate at the time of expressing its consent to be bound by a treaty – any treaty – for which parts of the Kingdom the treaty will be binding, thereby establishing the intention regarding the territorial scope of the treaty for the Kingdom. It has been generally accepted that the Kingdom may confine the territorial scope of treaties to any of the constituent parts of the Kingdom, i.e. to Aruba, Curaçao, St Maarten and the Netherlands (the European and Caribbean parts of the Netherlands). This practice includes treaties, which – like the Covenant – contain specific provisions on the territorial scope in respect of federal states.

In this respect it can be mentioned that, recently, the Committee in its concluding observations on the fifth periodic report of the Kingdom of 26 July 2019 welcomed the Kingdom's ratification of:

- (a) The Convention on the Rights of Persons with Disabilities in 2016, for the European part of the Netherlands;
- (b) The International Convention for the Protection of all Persons from Enforced Disappearance in 2011, for the Netherlands (i.e. the European and the Caribbean part -Bonaire, St Eustatius and Saba- of the Netherlands); and in 2017 for Aruba;
- (c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010, for the European part of the Netherlands.

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It also happens that the Kingdom ratifies a treaty for the Kingdom as a whole, i.e. for all constituent parts of the Kingdom, at the same time, as was the case with the Covenant and the Optional Protocol thereto. Also in such cases the Kingdom will always specify the different constituent parts of the Kingdom for which the treaty will be binding. Thus, in its instrument of ratification of the Covenant and the Optional Protocol thereto, deposited on 11 December 1978, it explicitly stated that it had ratified both treaties for the Kingdom in Europe and the, then, Netherlands Antilles.

The above, generally accepted, state practice at international level is a manifestation of the constitutional order within the Kingdom, by which each constituent part may decide autonomously whether or not it wishes to be bound by a treaty. Since only the Kingdom of the Netherlands is a subject of international law, it is for the Kingdom to formalise that choice at the international plane. The same is true with regard to reservations that may be entered into. It is always specified for which constituent part or parts of the Kingdom the reservations are made.

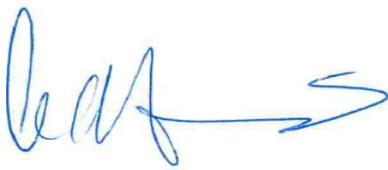
In the Government's opinion the above described practice refutes the author's assertion that the Kingdom is a federation and that, therefore, article 12 should be interpreted and applied in accordance with article 50 of the Covenant. As regards article 29 of the Vienna Convention on the Law of Treaties, quoted by the author, it is clear that the state practice by the Kingdom is covered by the exception explicitly mentioned therein (*'Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory'* – emphasis added).

With regard to the author's comments concerning the permissibility of the reservation to article 12, the Government wishes to reiterate that the core obligation of article 12 – which is to guarantee the right to liberty of movement and freedom to choose one's residence, the right to leave any country, including one's own, and the right not to be arbitrarily deprived of entry to one's own country – is not affected by the reservation. Anyone lawfully residing in any part of the Kingdom is provided the protection under article 12. The reservation applies without distinction to any Dutch national present in any part of the Kingdom of the Netherlands. It cannot, therefore, be said that the reservation violates any peremptory norm under international law.

The Government would reiterate its position that the present communication should be declared inadmissible pursuant to articles 1 and 2 of the Optional Protocol. If the Committee does not endorse this view, the Government is of the opinion that there has been no violation of the Covenant and that the communication as a whole is unfounded.

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Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kanta Adhin', followed by a long horizontal line that ends in a small arrowhead pointing to the right.

Kanta Adhin
Deputy Agent of the Government of the Kingdom of the Netherlands