

**Comments on the
Observations by the Government of the Netherlands
on the admissibility and merits
of Communication no. 3077/2017**

**in the case between
William Stanley Johnson**

vs.

the Netherlands

Introduction

Wrong premises

1. The Observations of the Government of the Netherlands (hereinafter sometimes also referred to as 'Holland') are based on a number of mistaken premises. These mistaken premises are woven into the fabric of the Observations and the Government is probably not even conscious of these errors of reasoning. We mention the following:

A. In point 32 of the Observations the following remark contains two such mistaken premises: *'However, the minimum wage in the Caribbean Netherlands is lower than in the European part of the Netherlands, mainly due to the different strengths of their economies'*.

a. **First wrong premise.** Constitutionally there is no separation between the European and Caribbean part of the Netherlands. A very wrong idea would be created and maintained, if one were to say 'the Texan part of the USA' vs. 'the Washington part of the USA'. There is only one USA. There is also only one 'the Netherlands', containing within it the 'BES-islands'. Since 10 October 2010 the BES-islands form an integral part of the Netherlands. In November 2017 this has resulted in the insertion of art. 132a into the Dutch Constitution (*'Grondwet'*)¹. Constitutionally, therefore, the Netherlands and the BES-islands are ONE. There is only a geographical separation. By constantly referring to the 'Caribbean part of the Netherlands' vs. the 'European part', the wrong premise that they are constitutionally separated, is maintained.

One could argue that this is nothing but semantics, but that is not true. This false separation is at the heart of the problem. It stops even the Government of the Netherlands from realizing that the welfare of the BES-islands is just as much their responsibility as the welfare of the Dutch 'Wadden Islands', which are never referred to as the 'Wadden part of the Netherlands' vs the 'European part'. Which is more, in very fact the Government of the Netherlands has legally assumed full responsibility for the social and economic development of the BES-islands. The BES-islands have no more legal legislative and executive power than any

¹ **Article 132a Constitution of the Netherlands**

1. By law territorial public entities other than provinces and municipalities may be instituted and abolished in the Caribbean part of the Netherlands.

2. Articles 124, 125 and 127 up to and including 132 shall apply accordingly to these [other] public entities.

3. In these public entities elections for an electoral college shall be held to elect the First Chamber. Article 129 applies accordingly.

4. For these islands regulations may be stipulated and other specific measures may be taken with a view to the special circumstances which render these islands fundamentally distinct from the European part of the Netherlands.

small municipality within Holland. They do not have the financial means nor the political power to develop themselves socially and economically. They are completely dependent on Holland in the same way a Dutch municipality is.

- b. **Second wrong premise.** The above-quoted phrase refers to the “*different strengths of their ‘economies’*”. However, there are no separated economies. The Netherlands (which includes the BES-islands) has only one economy. There is no separation between the economy of the European part and the Caribbean part. At least 85% or more of all tax-revenues collected on the islands flows directly into the coffers of the Government of the Netherlands in the Hague. All Income tax, Profit tax, Turnover tax, Inheritance tax, Social premiums flow to the Hague. There are a few minor local taxes, the revenue of which remains on the islands, but this is marginal. In short, all instruments that Governments have to influence the financial, social and economic development of their countries are concentrated in the Netherlands, i.e. in the Government in the Hague. This is not a lament. This is a legal fact, freely chosen by referendum by the population of the islands and freely accepted by the Netherlands.

But this choice comes with a price and a responsibility. The islands have lost nearly all of their autonomy (the price) and the Netherlands have accepted the responsibility for the financial, social and economic development of the islands on the basis of equality within the Netherlands, which principle is laid down in art. 1 of the Dutch Constitution! Holland and the islands have become ONE and their economies have also become ONE. And their Constitution is ONE. The islands do not have their own separate constitution.

This does not mean that the islanders can do nothing to advance their own development. Of course, they can work and do the kinds of things that all citizens can and must do to strengthen their economy. But as a point in fact, the BES-islands’ municipal administrations do NOT have the legislative power to change the Law which is at the center of this case, i.e. the ‘General Old Age Insurance Act for the BES-islands’ (referred to hereinafter as ‘AOV BES’). The Parliament in the Hague has the legislative power to adopt this law (which it did in 2010) and to change it.

In fact ALL legislation in the BES-islands now has the status of Dutch legislation. There is no distinction anymore between European and Caribbean legislation. Although the local Island Councils can make and amend a few local ordinances, this does not give these ordinances a separate Caribbean status. Neither do the ordinances of the Dutch municipality of Amsterdam, for instance, have a separate Amsterdam status. As said, all legislation within the Netherlands is now Dutch legislation, including local municipal or provincial ordinances and including local BES-ordinances. More than 80% of all legislation in force on the islands is made and amended by the Dutch Government in The Hague. The islands have no vote therein.

So wherever the Dutch Government in its Observations suggests or implies that the islands have the power to amend the AOV BES Act (raise or lower the level of the Old Age Pension) such suggestion or implication is false.

- B. In point 8 and elsewhere in the Observations by the Government of the Netherlands (hereinafter: the '**Observations**'), the premise is that differentiation and discrimination are the same thing. They are not. The idea that they are, is the **third wrong premise**.

Whenever there is unjustifiable unequal treatment between two like situations, there is 'discrimination'. *Differentiation*, on the other hand, is not a legal term. In the present case differentiation means that the contents and structure of the Dutch Old Age Pension Act in force in the Netherlands (hereinafter 'AOW') may be different from the Dutch Old Age Pension Act in force in the BES-islands (AOV BES), because the culture and circumstances in the Netherlands and the BES-islands are different. And indeed they are. There is no objection against differentiation in this sense. But the need for differentiation (different laws) does not justify discrimination (different levels of welfare).

It is legitimate, for instance, that heating costs are not included in the calculation of the social minimum for the BES-islands. Obviously, in the tropical BES-islands one does not have to pay for heating costs. Consequently, the level of the AOV BES could be somewhat lower than the AOW in the Netherlands, where heating costs are high. On the other hand, in the BES-islands people incur costs for air-conditioning. Therefore the level of the AOV BES should take that factor into account.

It is clear that such differences justify differentiation of legislation². However, that does not mean that the level of the Old Age Pension in the Netherlands as compared to the level in the BES-islands should be *discriminatory* in the sense that in the Netherlands the AOW Pension is well above the Dutch Social Minimum, whereas in the BES-islands the AOV BES Pension is far below the Social Minimum for the BES-islands.

Differentiation means that the level between the two should be equivalent, i.e. equal to the extent the situation is equal, but different to the extent the situation differs.

² The European Union recognizes the important distinction between differentiation and discrimination for the so-called 'Ultra Peripheral Territories' of the EU in art. 349 of the Treaty on the Functioning of the EU. We quote section 1: "Taking account of the structural social and economic situation of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament".

After all, the personal situation of Old Age Pensioners in Holland and the BES-islands is essentially quite equal. For both in Holland and in the BES-islands Old Age Pensioners have to live, pay rent, buy food, clothes, electricity, water internet, transportation etc³. So where the Government of the Netherlands is pointing to all kinds of differences between the AOW and the AOV BES legislation, this is just a distraction from the fact that the differences between the situation and needs of Old Age Pensioners in the two territories are minimal. And these slight differences do NOT make their situation incomparable. They are quite comparable. And the minimal differences that are there, do not justify discrimination on the personal level.

So differentiation of legislation is a legitimate mechanism to ensure equivalence, whereas discrimination starts where there is less than equivalence. And, at any rate, discrimination cannot be legalized by law. Not even in the Constitution.

Where do the parties agree? And where do they disagree?

The Constitutional Structure of the Kingdom

2. The parties agree that as of 10 October 2010 the BES-islands form an integral part of the Netherlands, i.e. the European country along the North Sea informally known as 'Holland'. We would prefer the translation of Dutch '*openbare lichamen*' as 'public entities' (within the Netherlands), instead of 'public *bodies*', but this is indeed semantics. We would disagree that the BES-islands have become 'public entities' pursuant to art. 134 of the Constitution, as since November 2017 a new article 132a has been inserted into the Dutch Constitution, which refers specifically to the Caribbean 'public entities' rather than to any other 'public entities'. But this distinction is not relevant to the present discussion.

The parties do agree that the status of the BES-islands is broadly similar to Dutch municipalities. The reference in point 8 of the Observations to art. 1, section 2 of the Kingdom Charter is not incorrect, but obsolete, as section 2 has been rescinded as a consequence of the insertion of art. 132a into the Dutch Constitution (in November 2017).

3. The parties further agree that laws written for the BES-islands may differ from those in Holland (*cf.* point 9 of the Observations). But, as explained before, differentiation may not be a cloak for discrimination. Social and economic circumstances do differ between the Netherlands and the BES-islands. However, it is the responsibility of the Government of the Netherlands to make these circumstances equivalent as quickly as possible by using *inter alia* the mechanism of differentiation provided for in art. 132a, section 4 of the Dutch Constitution.

³ The AOV-Pensioners personal situation and their needs certainly do not fall under the '*special circumstances which render these islands fundamentally distinct from the European part of the Netherlands*', as referred to in art. 132a, section 4, of the Dutch Constitution. Their situation and needs are not fundamentally different from the situation and needs of Dutch Old Age Pensioners. So the 'differentiation-clause' itself does not provide any justification for discrimination against Old Age Pensioners of the BES-islands.

The parties agree that one way to achieve equivalence could be to retain the AOV BES Act for the BES-islands (*cf.* point 10 of the Observations). However, the claim by the Netherlands that there was a ‘concrete’ administrative agreement between the Netherlands and the BES-island authorities on the level of the AOV BES Pensions, is absolutely incorrect. It is true that there was an agreement. But it was far from concrete. The agreement was that the level of social and economic rights in the BES-islands would be ‘acceptable’ within the Netherlands.

However, Mr. Johnson holds that he is entitled to an equivalent level, not an ‘acceptable’ level to be unilaterally determined by the Netherlands. He also holds that the administrative ‘agreement’ reached between Dutch and BES politicians is not a law nor an ordinance passed by the Dutch or BES legislature. As a *citizen* Mr. Johnson (and BES-citizens in general) is therefore not bound to this *discriminatory* gentlemen’s agreement. Moreover, it is *immoral*, as it violates human rights (specifically art. 26 ICCPR). So the agreement is null and void.

One cannot legalize discrimination. Not even in the Constitution.

It is also null and void, because the Dutch government applied ‘*undue influence*’ to get the BES politicians to agree. During the negotiations between the Netherlands and BES (leading up to the transition in 2010) the Dutch government was the stronger party. The BES-islands had decided to exit the Netherlands Antilles and stood with their backs against the wall. The larger island of Curaçao was no longer supporting them. So to integrate into Holland they needed the *good-will* of the Dutch government, which took advantage of this situation and unduly pressured the BES politicians to accept the above-referenced ‘agreement’. This stands to reason. Why else would the BES-politicians withhold the benefit of equalization of social and economic rights between the Netherlands and the islands from their own constituents, if it was not because they were pressured into doing so? It is therefore not surprising that in the Observations the Netherlands fails to explain why withholding such equalization would benefit the BES-islands in any way.

In short, the agreement itself is unacceptable! For it is unethical to hold someone to an agreement in which only one party (Holland) can unilaterally comply with a vital provision of that agreement for the other (i.e. to determine what an ‘acceptable’ social and economic level is for the other party). That is like ‘agreeing’ that the buyer may unilaterally determine the purchase price ‘acceptable’ to him. Such a clause is null and void.

4. So, whereas the parties agree that differentiation of legislation in the two parts of the ONE Netherlands is good and wise, the level of social and economic rights should be equal, or to be more precise, equivalent. If it is not, there is a violation of art. 26 ICCPR.

As said, Mr. Johnson agrees that equalization cannot be effected in one stroke. This case would not have been filed, if the Netherlands had accepted the principle that equalization is mandated by art. 26 ICCPR and that the BES-population may therefore look forward to the

gradual equalization of all social and economic rights. But the Netherlands has explicitly rejected this principle (up to now, see below). Not only does the Netherlands claim that the BES-politicians had agreed to an unequal level of social and economic rights, but in the Observations the Netherlands also repeats its outspoken opposition to the principle of equalization, stating various reasons and justifications for maintaining an unequal level of social and economic rights for the BES-islands. These excuses will be discussed below.

Once the principle of *gradual* equalization is accepted, a meaningful discussion could be held on the question as to what exactly the word 'gradual' means in this context. Five years? Ten years? Mr. Johnson cannot enter into this discussion in general. He has to limit himself to the AOV Pension. And for the Pension he holds that 2 years is reasonable and doable, because for equalizing the AOV Pension a mere \$ 0.37 increase of the monthly premium is required⁴.

Financially therefore, equalization of the Old Age Pension is easy. It is a matter of political will. Mr. Johnson is petitioning the Committee to persuade the Netherlands to do what is right in the light of art. 26 ICCPR. It is simply wrong to defend the position that Old Age Pensioners in the BES-islands have fewer needs than in the Netherlands and must therefore make do with a lower Old Age Pension than in Holland.

The situation of all Old Age Pensioners in the ONE Netherlands is alike and comparable

5. In the Observations quite a few pages are dedicated to the effort to try and convince the Committee that the social and economic situation in the Netherlands is different from the social/economic situation in the BES-islands and that the AOW Act in the European part of the Netherlands also is quite different from the AOV BES Act in the Caribbean part. And that therefore the Old Age Pensioners in the BES-islands should receive a lower Pension.

This is wrong reasoning.

It is true that social/economic differences exist. There are cultural and linguistic differences as well. That is why differentiation of legislation is a good thing. But the personal situation of Old Age Pensioners in the BES-islands is essentially the same as the personal situation of Old Age Pensioners in the Netherlands. Their situation is equal and certainly comparable. That is why discrimination is a bad thing. And that's why the level of their Pensions must be equivalent.

6. So let's look at these differences pointed out by the Netherlands.

a) Difference in Old Age Pension Age.

In the Netherlands this is gradually raised from 65 to 67. In the BES-islands it is 65.

⁴ Indeed a mere \$ 0.37 per month for each contributor in the ONE Netherlands, i.e. the extra costs should be divided among all premium contributors in both parts of the Netherlands; see the calculation in Mr. Johnson's Communication.

The Netherlands mistakenly claims that it is 64 in 2018. As of 2016 it is 65⁵. But this factual mistake aside, there is a difference of approx. 2 years. However, there is a difference in life expectancy as well. According to a 2014 survey, the life expectancy in the BES-islands is still lower than in the Netherlands, although the gap is closing⁶ (although the survey admits that there is a margin of error). But supposing that the gap does close, then equivalence would dictate that the Old Age Pension age in the BES-islands would have to be raised accordingly. The Netherlands can do that. The AOV BES Act is a Dutch Act, which the Parliament in The Hague can unilaterally amend.

b) The AOV BES pension is individualized; the AOW is not.

This difference does exist. But the consequences of this are quite different from what the juggling with figures in point 13 of the Observations would suggest.

These are the facts.

The Minimum Wage (2018) in Holland is:	<i>Euro</i>	1.578,- per month ⁷ .
	US\$	1,862.- (exchange rate 1.18 on 24/9/2018)
The Minimum Wage (2018) in Bonaire is:	US\$	825.- p.m. (\$ 4.76 x 173.3) Cf. ex 18 .
The Minimum Wage (2018) in Statius is:	US\$	1,055.- p.m. (\$ 6.09 x 173.3)
The Minimum Wage (2018) in Saba is:	US\$	984.- p.m. (\$ 5.68 x 173.3)

The AOW Pension amounts in Holland are:	<i>Euro</i>	1.220,- (rounded off for <u>single person</u>)
	<i>Euro</i>	1.472,- (rounded off for <u>married couple</u>) ⁸
	US\$	1,440.- (exchange rate 1.18 on 24/9/2018)
	US\$	1,737.- (exchange rate 1.18 on 24/9/2018)

The AOV BES Pension amount for Bonaire is:	US\$	593.- (single person)
	US\$	1,186.- (married couple)

The AOV BES Pension amount for Statius is:	US\$	759.- (single person)
	US\$	1,518.- (married couple)

The AOV BES Pension amount for Saba is:	US\$	707.- (single couple)
	US\$	1,414.- (married couple)

⁵ Cf. art. 5, section 1 AOV BES Act: 'Verzekerd overeenkomstig de bepalingen van deze wet is degene, die de leeftijd van 15 jaar, doch niet die van 65 jaar heeft bereikt' **Translation:** 'Insured in accordance with the provisions of this act is the person who has reached the age of 15 years, but not yet the age of 65 years'.

⁶ Cf: <https://www.cbs.nl/NR/rdonlyres/7B008136-F57E-4F6C-AC98-BE392F1AB17E/0/2014bevolkingstrendslevensverwachtingcaribischnederlanden.pdf>

The survey also states: "Because of the considerable year-to-year variations in mortality and population numbers, life expectancy for the Caribbean Netherlands is subject to a margin of error".

⁷ <https://www.google.com/search?q=Minimum+wage+the+Netherlands+2018&oq=Minimum+wage+the+Netherlands+2018&aqs=chrome..69i57j0l2.20845j0j7&sourceid=chrome&ie=UTF-8>

⁸ These figures correspond with the ones quoted by the Netherlands. One person in a married couple receives Euro 834,-. But a married couple would receive (after various adjustments) a combined Old Age Pension of approx. Euro 1.472.-

Now, when talking about equivalence two other crucial factors have to be taken into account. First of all, the currency is different, Euro vs. US dollar. This is not only a matter of currency and currency fluctuations. The purchasing power of one Euro in the Netherlands is higher than the equivalent amount in US\$ (say \$ 1.20) in the BES-islands. Secondly, the above amounts can only be compared, if expressed in the same currency, which in the Observations is not done. A reasonable formula should be worked out to take currency fluctuations and comparative differences in purchasing power into account.

There is no point in expressing the amounts of the Old Age Pensions as percentages of the Minimum Wage, because the Minimum Wage in the BES-islands is not coupled to the Social Minimum (and is in fact far below it), whereas in the Netherlands it is coupled to the Social Minimum (and considerably above it). So the calculations in point 13 of the Observations are nonsensical and do indeed distort the reality. In the BES-islands the Minimum Wages are in fact far below the Social Minimum.

Social Minimum in the Netherlands for 2018	Euro	997,- (single person) ⁹
	Euro	1.424,- (married couple)
	US\$	1,176.- (at exch. rate 1.18)
	US\$	1,680.- (at exch. rate 1.18)
Social Minimum in Bonaire 2018	US\$	1,349.- (single person) Cf. ex 19
	US\$	1,835.- (married couple)
Social Minimum in St. Eustatius 2018	US\$	1,432.- (single person)
	US\$	1,901.- (married couple)
Social Minimum in Saba 2018	US\$	1,537.- (single person)
	US\$	2,065.- (married couple)

First of all, it should be noted that these Social Minimum figures are very recent (taken from the so-called 'Regioplan' survey, June 2018 cf. **exhibit 19**). The Government of the Netherlands has not yet officially determined the Social Minimum for the BES-islands on the basis of this survey. Nevertheless, at least there are figures now that even the Government of the Netherlands accepts as a point of departure (see below).

It should be noted, however, that in 2014 a survey was done for Bonaire by the Dutch NIBUD institute (cf. exhibit 11 annexed to the Communication), which calculated higher figures, especially if the fact is taken into account that during the past 4 years inflation has been considerable. The Netherlands has rejected these NIBUD-figures.

In other words, it appears that the BES-islands have been short-changed again.

⁹ See: http://www.loketaltena.nl/Loket_Altena/Geld_en_uitkering/Normbedragen_sociaal_minimum_2018

But be that as it may, there are new figures now which the Government does accept. So after 8 years and a lot of debate, social action and bitterness, finally there is something to go on. And as Mr. Johnson does not have the resources to hire yet another commercial survey bureau to produce higher and more correct figures, there is no other option than to accept the Regioplan figures for the time being. Once the principle of equalization has been accepted, hopefully as a result of the present case, there will still be time and opportunity to correct the figures. After all, that is a factual matter.

The present case is about the principle, not the figures.

So if the Regioplan figures are used as a basis to build upon for the time being, Mr. Johnson holds that equalization in his case (him and his wife being a married couple) would entail that their combined Old Age Pensions should be raised from \$ 1,414.- to US\$ 1,737.-.

If this is compared to the Social Minimum for Saba, \$ 1,737.- it is still not equivalent. To do it right (i.e. equivalence), his AOV pension (combined with his wife's) should be raised to above the Social Minimum for Saba, which amounts to US\$ 2,065.

- c) In the BES-islands the Old Age Pension is linked to the Minimum Wage 'as a matter of policy', the Government notes in point 14 of the Observations. In the Netherlands it is also linked to the Minimum Wage. So there appears to be no difference here, but this appearance is deceptive. For in the Netherlands the Minimum Wage is linked to and higher than the Social Minimum, whereas in the BES-islands it is not, as the above figures clearly show.

Equalization entails that the same kind of standard must be used in the Netherlands and in the BES-islands. Therefore, the Minimum Wage in the BES-islands should also be linked to the Social Minimum (as it is in the Netherlands). That is to say, the Minimum Wage in the BES-islands should be higher than the Social Minimum (as it is in the Netherlands). However, the above figures show that the Minimum Wage in the BES-islands is dismally lower than the Social Minimum.

In other words, the Minimum Wage should be equalized as well. Although this does not fall within the scope of this case, it must be pointed out that the Netherlands can do this. The Minimum Wages Act for the BES-islands is a Dutch law, which can only be changed by the Dutch Parliament in The Hague. Policy also is determined by the Dutch Government in The Hague. In other words, **the Netherlands cannot use any difference as an excuse to not follow a policy of gradual equalization**, for it is the Netherlands exclusively who makes and applies all social and economic laws for the BES-islands and sets policy as well.

The same is true for the AOV BES Act. It is a Dutch law, which can only be amended by the Dutch Parliament in The Hague. And it is also the Netherlands who determines policy on social matters such as the AOV BES.

With respect to the Merits

7. Two corrections to point 22 of the Observations.

- 1) Mr. Johnson has petitioned the Committee to order the Netherlands to raise his AOV-pension to a level equivalent to the Dutch AOW-pension.

Mr. Johnson understands that the correct notion here is not 'equal' (as the Netherlands claims in point 22), but 'equivalent'.

- 2) Mr. Johnson has petitioned the Committee to declare that (as long as his AOV-Pension is not equivalent to the Dutch AOW-pension) he is a victim of discrimination on the grounds of *ethnicity* combined with residence (or 'territorial origin' as the Netherlands puts it).

Discrimination on the basis of 'race' has not been claimed by Mr. Johnson. Ethnicity is not the same as race. It is important to make this distinction. *Cf.* points 22 thr. 34 of the Communication.

8. We return to the wrong premise that there are two separate economies in the ONE Netherlands, as the Netherlands claims in point 32 of the Observations. It cannot really be comprehended how this wrong premise has taken root. It is obviously mistaken. It would be absurd to maintain that the economy of Amsterdam is separate from the economy of the rest of the Netherlands. It would be equally absurd to maintain that the economy of the Wadden island of Texel is separate from the economy of the mainland of the Netherlands.

It is equally absurd to maintain that the three Dutch 'municipalities' in the Caribbean Sea have an economy that is separate from the economy of the mainland of the Netherlands. On the contrary. When the decision was made by the BES-islands to integrate constitutionally within the Netherlands, it was known that the islands would become part of a bigger and more prosperous whole. And that consequently the population would be entitled to a better quality of life, including higher pensions, child benefit, disability benefits and other improvements.

And it was clear at the time also that many people in the Netherlands resented this. The relationship between the ethnic Antilleans and the Dutch population has for centuries been one which can best be characterized as a 'love-hate' relationship. But the BES-islanders decided it was time to change this and to open up to the Dutch population. There is no denial that they also considered it time for a better quality of life, but there is no reason why the two cannot go together. If Poland joins the EU, they do it for the same two reasons. Firstly because the Polish population wanted to open up to Europe. But also for financial reasons.

However, the Dutch population resented this. And Dutch politicians considered it political suicide to agree to the gradual equalization of social and economic rights. That is why now, 8 years later, this is still an issue. It is obvious that the adoption of a child entails that the child

is entitled to the benefits the adoptive family can offer it. And the child has no reason to be ashamed to want those benefits. But if the adoptive parents for emotional (or political) reasons are unwilling to grant the child the financial benefits it is entitled to, only the Court can make them do it. That is why the Netherlands needs some prompting now by your Committee. For otherwise equalization will not happen.

9. In point 32 of the Observations the Netherlands returns to the theme that there are all kinds of differences between the Netherlands and the BES-islands, which make the situation on the islands not comparable to the situation in Holland. And it is certainly true that there are many differences. But none of those differences have to stay in place. If Holland wants to change them, they can. Differences in taxation? Since 10 October 2010 tax laws are Dutch laws, which only the Dutch Parliament in The Hague can make and amend. So if the differences hinder you, change them! But if you do not want to change them, don't hold it against the BES-islands. They can't change them. The power to do so has been transferred to The Hague.

And, as said earlier, all these social, economic and cultural differences do not alter the fact that Old Age Pensioners as human beings in the BES-islands have exactly the same needs as Old Age Pensioners in the Netherlands. That is why equalization of social and economic rights is mandated by art. 26 ICCPR as of the moment the integration of the islands into the Netherlands became a fact (10 October 2010).

10. In point 33 of the Observations, the Netherlands continues along the same line. It is pointed out (although probably incorrectly) that the premiums for the AOV BES are lower than the premiums in the Netherlands. Although the Netherlands provides no evidence of this, this is not a valid argument. Because, as said earlier, even if it is true, the Netherlands can increase the premiums. To cover the extra costs for the equalization of the AOV-pension would only cost each individual contributor \$ 0.37 per month, if these costs are equally divided among all contributors in the whole of the Netherlands (*cf.* point 13 of the Communication).

And there is only ONE Netherlands, which includes the BES-islands.

11. In point 34 of the Observations, the Netherlands concludes that the AOV BES Act '*provides for an adequate Old Age Pension, It enables its recipients to provide for themselves*'.

Well, Mr. Johnson begs to differ. And as a matter of fact, the Government of the Netherlands itself also begs to differ. In a recent Cabinet-reaction to the above-mentioned Regioplan survey, the Government has announced a package of concrete measures (*cf.* page 15 **ex 20**):

- Social benefit will be raised to 55% of the Minimum Wage as of 1 January 2019;
- Child benefit will be raised by 50% as of 1 January 2019;
- An allowance on top of the AOV-pension for single persons will be introduced as of 1 January 2020 (if possible);

- The allowance on top of the social benefit for permanently disabled persons will be raised as of 1 January 2020 (if possible);
- The income-cap to be eligible for special social benefits will be temporarily raised to 120% of the Minimum Wage;
- Assistance will be given to improve the quality of and accessibility to child day care;
- Social housing on the islands will be boosted by introducing a system of rent subsidies;
- Subsidy will be provided to guarantee potable water distribution. Also an amendment of the Act concerning Electricity Supply will be prepared;
- The Act and regulations concerning Telecommunication will be amended to improve service and reduce prices;
- Efforts will be made to strengthen businesses in the tourist sector;
- The public entities will be assisted to improve their job placement services.

Now, the Government of the Netherlands is to be commended for having made a start. As to the AOV-pension, it is noted that the Pension for single persons will be raised as of 1 January 2020, although the description is very vague ('if possible'). Nevertheless, the Regioplan survey has apparently triggered a positive Government response, ***in which even the principle of equalization has now finally been acknowledged***, albeit in the vaguest possible terms.

On page 4 of the Dutch Cabinet-response to the Regioplan survey under the heading 'Policy commitment' (Dutch: 'Beleidsinzet') the following commitment is made:

*'The clear conclusions of the survey demand concrete action. The cabinet commits to an **equivalent level of social security benefits**, as is appropriate within the specific context of the Caribbean Netherlands'.*

Now to be fair, the word 'voorzieningenniveau' in the Dutch text could also be translated as 'government facilities'. But then, the AOV-pension is indeed a 'government facility'. So unless the Government of the Netherlands should explicitly deny that the commitment to equalization of 'government social security benefits' has been made, it must be presumed that, after 8 years of debate, the commitment has finally been made. That is to say, the principle of equalization has finally been accepted, which is a good step forward indeed.

Unfortunately, the following two sentences are a beautiful example of 'double-speak', couched in wonderfully vague language in which the commitment is severely watered down. What remains is the bare commitment without much meat on the bone:

'The outcome of the Regioplan survey does not allow a direct one-on-one implementation in the form of a social minimum to which social benefits and the legal minimum wage are linked, but it serves as a spot on the horizon to work towards by taking concrete steps. The spot on the horizon is a reference-point that may be adjusted in the future if certain costs are increasing or decreasing'.

Beautiful, isn't it? The commitment is made, but all hopes are immediately given a cold shower. HOWEVER, the commitment to equalization (i.e. in the sense of equivalence) has now for the first time been made by the Government of the Netherlands in writing.

And on the same page 4 of the Cabinet-response to the Regioplan survey under the heading 'Inkomenskant' (The Income Side') an example of the principle of equivalence is given.

'The Coalition Agreement provides for the reduction of the costs of doing business in the European Netherlands. Equivalence implies that the inhabitants of the Caribbean Netherlands should also benefit from such reductions'.

Mr. Johnson is grateful for this commitment and the measures which have been announced. He has been working and waiting for this for eight years. That does not mean, however, that the present case may now be withdrawn. On the contrary. First of all, the commitment has intentionally been made as vague as possible and does not mention any other time-schedule than *'a spot on the horizon'*. Secondly, in the Observations the Netherlands has NOT indicated in any way that the principle of equivalence has now finally been adopted by the Netherlands Government. Worse than that, in the Observations the reasons for NOT accepting this principle are repeated and persisted in (these will be discussed below).

It is therefore quite clear that the Netherlands needs a clear verdict by the Committee that the only way to avoid discrimination on the basis of art. 26 ICCPR is to adopt the principle of equivalence, not as a spot on the horizon which may or may not ever be reached, but as a clear commitment which should be fully implemented within a reasonable period of time.

The present case provides a good opportunity for the Committee to suggest guidelines on the time-schedule, as Mr. Johnson has argued that for the AOV-pension a 'reasonable period of time' should be *two years*. If the Committee believes that two years is too short, then a clear indication may be given as to what time period would be reasonable.

Mr. Johnson has explained why two years is reasonable. It is reasonable because the estimated extra costs to achieve an equivalent level between the AOV-pension and the AOW-pension would be a mere \$ 0.37 per contributor (if equally divided among all contributors in Holland and the BES-islands). This could easily have been implemented within two years, if the political will had been there. Now in 2018 this political will apparently *is* there, but without any commitment as to the time period. So a decision by the Committee is still very important on both points, i.e. to make it clear a) that without equivalence the policy towards the islands is discriminatory as referred to in art. 26 ICPPR and b) to indicate that 'a spot on the horizon' is not specific enough of a time period. Equalization must be implemented within the shortest possible *reasonable* period of time and by making use of all available resources.

A decision by the Committee is also important, because governments come and go. The present government has made the commitment, a new government may decide to reverse it.

A decision by the Committee is therefore still necessary, despite the fact that the parties finally agree on the principle of equivalence.

12. In point 35 of the Observations the Netherlands repeats its reasons for refusing to equalize social and economic rights between Holland and the BES-islands. These reasons must be seen as an attempt to *justify* its discriminatory policy of refusing to equalize the AOV- and AOW-pensions, of which refusal Mr. Johnson is the victim (as are all AOV-pensioners on the islands)

The fact that Mr. Johnson is being discriminated against has already been established by the Appeals-court in Curaçao. In section 4 of its Judgment of date 15 December 2014 (*cf.* **ex 6** annexed to the Communication) the Appeals-court determined that Mr. Johnson's situation is equal to the situation of any pensioner in the Netherlands. In other words, they are like cases which must be treated alike. In terms of art. 1 of the Dutch Constitution (which is also the BES-constitution) this means that Mr. Johnson is in principle entitled to equal treatment with respect to his pension, i.e. the AOV- and OAW-pensions should in principle be equalized.

The Common Court also confirmed that Mr. Johnson, residing in Saba, is a resident of the Netherlands. The Court further confirmed that Mr. Johnson does NOT in actual fact receive equal treatment. This unequal treatment is therefore discriminatory. All this the Appeals-Court confirmed. HOWEVER, the Appeals-Court rejected Mr. Johnson's petition, because it held that the unequal (discriminatory) treatment is objectively and reasonably justified.

In other words, the reasons given in the Observations for refusing to equalize the AOV- and AOW-pensions only serve to convince the Committee that the discrimination is justified, i.e. the discrimination serves a specific legitimate purpose, is proportional and there are no other less prejudicial measures that can be taken to achieve this legitimate purpose (subsidiarity).

The reasons stated are:

- 1) Prevention of disruption of the economic system in the BES-islands which could have disastrous consequences for both the Netherlands and the islands (see point 36);
- 2) Protection of the competitiveness of the BES-islands in the Caribbean region;
- 3) Protection of the BES business climate;
- 4) Equalization of the AOV- and AOW-pensions would turn the islands into magnets for migrants (which would be 'undesirable' according to the Netherlands in the Observations).

In the Communication most of these reasons have already been refuted (*cf.* points 38 thr. 42 of the Communication). To avoid repetition, the Committee is referred to these paragraphs of the Communication.

Here we would like to pose a few questions which by themselves make clear why these reasons cannot justify the discrimination against Mr. Johnson:

Ad reason 1) Would the equalization of the AOV- and AOW-pensions really 'disrupt' the economic system of the islands with disastrous results even for the whole of the Netherlands? Is it not true that higher pensions would boost, rather than disrupt the economic system of the islands, if pensioners had more money to spend?

Ad reason 2 and 3) Would it be justified to torture the citizens of the BES-islands in an effort to protect the competitiveness and business climate of the BES-islands in the Caribbean region? Is it not the purpose of social and economic rights to protect *inter alia* Old Age Pensioners against want and poverty?

Ad reason 4) Would it be justified to keep one's population poor so as to prevent immigration? If that is so, is Venezuela then doing a good job? How can keeping one's own population poor be a legitimate aim?

Mr. Johnson thinks that these questions suffice to refute the 'justifications' for maintaining the discrimination against him, as put forward by the Netherlands in the Observations.

Bonaire, 27 September 2018

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New exhibits:

Ex 18: Minimum Wages for Bonaire, St. Eustatius and Saba, published by the Government of the Netherlands;

Ex 19: Three pages from the Regioplan Survey, 28 June 2018. The Survey itself can be found on the internet at: https://www.eerstekamer.nl/overig/20180629/eindrapport_sociaal_minimum/f=y.pdf

Ex 20: Dutch Cabinet-response to the Regioplan Survey.