



INTERNATIONAL HUMAN RIGHTS
LouvainX online course - prof. Olivier De Schutter

READING MATERIAL
related to: section 6, sub-section 4, unit 5: What is discrimination?

Human Rights Committee, *Guido Jacobs v. Belgium*, communication n°943/2000 (CCPR/C/81/D/943/2000 (2004)), final views of 7 July 2004:

[Under the Belgian Act of 22 December 1998 amending certain provisions of part two of the Judicial Code concerning the High Council of Justice, the nomination and appointment of magistrates and the introduction of an evaluation system, the High Council of Justice is to comprise 44 members of Belgian nationality, divided into one 22-member Dutch-speaking college and one 22-member French-speaking college. Each college comprises 11 justices and 11 non-justices. It is also provided that the group of non-justices in each college shall have no fewer than four members of each sex (Article 259 bis-1, paragraph 3 of the Judicial Code). The author of the communication had applied to be elected as a non-justice to the High Council of Justice, but failed to be elected, following a second call for applications, since the first call had not led to a sufficient number of women applying. Mr Jacobs claims that the introduction of a gender requirement, namely that four non-justice seats in each college be reserved for women and four for men, makes it impossible to carry out the required comparison of the qualifications of candidates for the High Council of Justice, and that, since such a condition means that candidates with better qualifications may be rejected in favour of others whose only merit is that they meet the gender requirement, it constitutes a form of discrimination on grounds of sex, in violation of Articles 25(c) and 26 of the International Covenant on Civil and Political Rights. According to Article 25 ICCPR : ‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions : (...) (c) To have access, on general terms of equality, to public service in his country’. Article 26 contains a general requirement of non-discrimination. The claim based on these provisions is rejected by the Human Rights Committee.]

9.3 The Committee recalls that, under article 25(c) of the Covenant, every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, to have access, on general terms of equality, to public service in his or her country. In order to ensure access on general terms of equality, the criteria and processes for appointment must be

objective and reasonable. State parties may take measures in order to ensure that the law guarantees to women the rights contained in article 25 on equal terms with men. The Committee must therefore determine whether, in the case before it, the introduction of a gender requirement constitutes a violation of article 25 of the Covenant by virtue of its discriminatory nature, or of other provisions of the Covenant concerning discrimination, notably articles 2 and 3 of the Covenant, as invoked by the author, or whether such a requirement is objectively and reasonably justifiable. The question in this case is whether there is any valid justification for the distinction made between candidates on the grounds that they belong to a particular sex.

9.4 In the first place, the Committee notes that the gender requirement was introduced by Parliament under the terms of the Act of 20 July 1990 on the promotion of a balance between men and women on advisory bodies. The aim in this case is to increase the representation of and participation by women in the various advisory bodies in view of the very low numbers of women found there. On this point, the Committee finds the author's assertion that the insufficient number of female applicants in response to the first call proves there is no inequality between men and women to be unpersuasive in the present case; such a situation may, on the contrary, reveal a need to encourage women to apply for public service on bodies such as the High Council of Justice, and the need for taking measures in this regard. In the present case, it appears to the Committee that a body such as the High Council of Justice could legitimately be perceived as requiring the incorporation of perspectives beyond one of juridical expertise only. Indeed, given the responsibilities of the judiciary, the promotion of an awareness of gender-relevant issues relating to the application of law, could well be understood as requiring that perspective to be included in a body involved in judicial appointments. Accordingly, the Committee cannot conclude that the requirement is not objective and reasonably justifiable.

9.5 Secondly, the Committee notes that the gender clause requires there to be at least four applicants of each sex among the 11 non-justices appointed, which is to say just over one third of the candidates selected. In the Committee's view, such a requirement does not in this case amount to a disproportionate restriction of candidates' right of access, on general terms of equality, to public office. Furthermore, and contrary to the author's contention, the gender requirement does not make qualifications irrelevant, since it is specified that all non-justice applicants must have at least 10 years' experience. With regard to the author's argument that the gender requirement could give rise to discrimination between the three categories within the group of non-justices as a result, for example, of only men being appointed in one category, the Committee considers that in that event there would be three possibilities: either the female applicants were better qualified than the male, in which case they could justifiably be appointed; or the female and male applicants were equally well qualified, in which case the priority given to women would not be discriminatory in view of the aims of the law on the promotion of equality between men and women, as yet still lacking; or the female candidates were less well qualified than the male, in which case the Senate would be obliged to issue a second call for candidates in order to reconcile the two aims of the law, namely, qualifications and gender balance, neither of which may

preclude the other. On that basis, there would appear to be no legal impediment to reopening applications. Lastly, the Committee finds that a reasonable proportionality is maintained between the purpose of the gender requirement, namely to promote equality between men and women in consultative bodies; the means applied and its modalities, as described above; and one of the principal aims of the law, which is to establish a High Council made up of qualified individuals. Consequently, the Committee finds that paragraph 3 of article 295 bis-1 of the Act of 22 December 1998 meets the requirements of objective and reasonable justification.