HUMAN RIGHTS COMMITTEE

Buckle v. New Zealand

Communication No. 858/1999*

25 October 2000

CCPR/C/70/D/858/1999

VIEWS

Submitted by: Mrs. Margaret Buckle

Alleged victim: The author

State party: New Zealand

Date of communication: 21 September 1998 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 October 2000,

Having concluded its consideration of communication No. 858/1999 submitted to the Human Rights committee by Mrs. Margaret Buckle, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Margaret Buckle, a British/New Zealand citizen. She claims that she is a victim of violations by New Zealand of articles 17, 18, 23 and 24 of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

The facts as presented by the author:

2.1 The author's six children (aged at the time between 8 and 1 year of age) were removed from her care in 1994 allegedly because of her inability to look after them adequately.

2.2 In August 1997 the author appealed, to the Court of Appeal, the decision of the New Zealand Family Court that had deprived her of her guardianship rights. On 25 February 1998, the Court of Appeal confirmed the decision of the Family Court. The author's request for leave to appeal to the Privy Council against the decision of February 1998 was rejected. Notwithstanding this Mrs Buckle travelled to the United Kingdom and secured a hearing in May 1998, before the Judicial Committee of the Privy Council. The application was unsuccessful.

The Complaint

3.1 The author claims that the removal of her guardianship rights over her six children is in violation of articles 17 and 23 of the Covenant, as this allegedly constitutes arbitrary interference in the exercise of her rights as a mother. The author considers that regardless of the conditions under which the children lived with her, it is her right as a mother to have her children with her and that there is no possible cause to remove the children from her care.

3.2 She claims that the authorities have interfered in her life and have taken the children away because she is a new-born Christian and consequently the decision to remove the children constitutes a violation of article 18.

3.3 The author further claims a violation of article 24 of the Covenant in respect of her six children since their removal from her side deprives them of their right to be in the care of their natural mother.

The State party's submission on admissibility and merits

4.1 In its observations both on admissibility and merits, dated 29 October 1999, the State party notes that domestic remedies have been exhausted in respect to this case.

4.2 However it argues that the communication is inadmissible, since the author's allegations have not been substantiated in respect of the claims under articles 17, 18, 23 and 24 of the Covenant. Furthermore with respect to article 24, the State party argues that the author does not represent her children, nor has she explained how their rights may have been breached.

4.3 The State party submits that the author's allegations are vague and imprecise. In respect of articles 17, 18 and 23 it submits that the author fails to identify with sufficient particularity the alleged violations of those articles. The generality of the author's language does not provide sufficient detail to support the claims. No supporting evidence is provided, the complaint is simply based on the assertions of the author. According to the State party the documents provided indicate that the process whereby the children were removed was carried out according to law with full judicial scrutiny. Each of the claims of violation of Covenant rights thus fails for want of sufficient substantiation.

4.4 With respect to the allegations under article 24 the State party submits that the complaint is

inadmissible on the grounds that article 24 confers rights upon subjects other than the author herself, and that the author is not - in intent or effect - making a communication on behalf of those subjects. The author's communication is told from her own perspective and relates claims of violations of her rights. Nor can it be said that the communication is made on behalf of the children. While Rule 90(l)(b) permits communications to be made without express authorization on behalf of an alleged victim when it appears that he is unable to submit the communication himself, that procedure envisages a communication on behalf, in respect of and from the perspective of the children. Here the author concentrates solely on her own rights, rather than making a complaint on behalf of the children's claiming a violation of their rights as envisaged under Rule 90(l)(b). Furthermore, the author has failed to substantiate as required by the Rule why it is impossible for her children to complain themselves.

5.1 On the merits, the State party contends that while the communication contains a number of references to religion, the author fails to outline how her religious rights have been violated, either generally or by the specific events partially described. The mere fact that a person has religious beliefs cannot mean, without more, that a violation of another right also constitutes a violation of the right to religious freedom. The State party accordingly submits that the author has failed to demonstrate how article 18 is relevant, and how it might have been violated.

5.2 The State party holds that article 23 is an institutional guarantee for the 'family' unit as such. While protections against arbitrary and unlawful interference with the family are contained in article 17, article 23 has a different purpose as it requires States to recognize the family group unit as a basic social component, and to accord it the corresponding legal recognition. New Zealand law accords the family unit extensive recognition, and there is a comprehensive set of statutes governing the rights and obligations of families and their members in a range of circumstances, from education, to financial benefits, to child support and the consequences of separation and divorce. The author has failed to demonstrate in any manner how New Zealand law falls short of this general institutional obligation.

5.3 With respect to the alleged violation of article 17 the State party concedes that the removal of children from parental custody could constitute interference; however it submits that in the present case the actions were neither unlawful nor arbitrary, and that the purpose of the intervention was legitimate within the meaning of the Covenant in particular having regard to article24. In this respect, the State party submits in that in the author's case the removal of the children was undertaken strictly in accordance with law. First, efforts were made to assist the family that did not involve Court processes. Social workers held informal meetings with the family to address concerns for the children in line with the philosophy of minimum intervention and with the goal of empowering the family. It was agreed to strengthen the broader family support network, expand on health care and social work contacts with the children and provide for more regular feedback. When these steps proved insufficient in the light of the author's increasing inability to care for her children, a Family Group Conference was convened. The FGC, which included 8 family members, agreed to recommend to the Court that a declaration be made and the majority of the children placed with family members. Unfortunately the author's capacity to care for her children did not improve, and the decision that the children be placed with caregivers has been confirmed by regular statutory reviews and the appeal brought by the author against Court decisions.(1)

5.4 The State party argues that the intervention was not arbitrary but rather that it was carried out with due consideration to whether the specific act of enforcement "had a purpose that seems legitimate on the basis of the Covenant in its entirety, and whether it was predictable in the sense of the rule of law and, in particular, whether it was reasonable (proportional) in relation to the purpose to be achieved".(2)

5.5 The State party notes that, in accordance with the Children, Young Persons and their Families Act of 1989, in general, intervention cannot occur without notice or on a surprise basis. A Family Group Conference discussing the options available occurs before any resort to a Court declaration can be made, as occurred in the present case. The threshold for intervention which provides the jurisdiction for a Court declaration is outlined in section 14 of the Act and includes:

> "A child or young person is in need of care or protection ... if-(a) The child or young person is being, or is likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused, or seriously deprived; or (b) The child's or young person's development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; ...or (f)The parents or guardians or other persons having the care of the child or young person are unwilling or unable to care for the child or young person;"

5.6 The State party puts forward that while these terms as they stand are broad, it is not possible to be more specific or precise, given the varied nature of the situations they are designed to deal with. Under the New Zealand legislation, there is an extensive range of procedural protections available from before the making of a declaration and on the variety of appeal and review mechanisms which follow. These include the right to appear in Court in relation to the care and protection application, regular reviews conducted of the care arrangements and the right to apply for review of orders granted. Further, the CYPF Act ensures that the interference with family life is proportional to the means to be achieved. Judicial intervention only occurs as ultima ratio, if the Court is satisfied that it is not practicable or appropriate to provide care or protection for the child or young person by any other means. When considering whether orders are to be made, the Court is guided by principles that the family unit is to be empowered to make appropriate decisions and that the removal of a child or young person from a parent is a last resort. The welfare and interests of the child or young person shall be the first and paramount consideration.

5.7 The State party maintains that when the Court first made its declaration in October 1992 that the children were in need of care and protection, the Court was giving effect to the outcomes previously agreed by the family and social workers at the family group conference. The oldest two daughters were placed with their maternal grandparents and one daughter with her maternal aunt and uncle. The others were placed with caregivers living close by to the mother. The author retained her guardianship rights which were to be exercised in conjunction with the additional guardians' rights conferred upon the caregivers. This changed in December 1997, when following the High Court judgement of 18 August 1997, the children were placed under the sole guardianship of the Director-General of Social Welfare which in effect suspended the author's guardianship rights. Despite the suspension of guardianship, the author was still granted ongoing access rights to the children conditional upon her undertaking counselling. That she has declined to do. Regular reviews

of the children's situation that have been carried out pursuant to the statute. The author's appeal against the High Court judgement was rejected on 25 February1998. The State party submits that the author has made full use of the mechanisms existing to review her children's situation outlined above. On each occasion, however, she failed to produce or have produced on her behalf any evidence that would show that there was sufficient change in her capability to care for her children that would warrant their return to her custody. Indeed the weight of evidence was to the contrary, namely that a return of custody to the author was not in the best interests of the children and would be traumatic and detrimental to their wellbeing. Eighteen witnesses were heard in the main High Court proceedings in August 1997.

5.8 The State party further contends that the author has had every opportunity to assist specialists and the Court to better assess her ability to be custodial parent of her children, but she has refused to co-operate on any occasion. The State party submits that the intervention has been necessary and reasonable and that the safeguard mechanisms in place have confirmed the proportionality of that process.

6. The author informed the Secretariat that she had nothing to add to the State party's submission. She reiterates that her Covenant rights have been violated.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 With respect to the requirement of exhaustion of domestic remedies the State party concedes that with the dismissal of the author's case by the Judicial Committee of the Privy Council all domestic remedies for the purposes of the Optional Protocol have indeed been exhausted.

7.3 With regard to the claim that the author has suffered a violation of article 18 of the Covenant, in respect to her right to freedom of religion since she alleges that the reason she has been deprived of her children is because she is a new born Christian, the Committee considers that the author has failed to substantiate this a claim for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8. The Committee considers that the author's remaining claims are admissible and proceeds to an examination of the substance of those claims in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

9.1 Concerning the author's claim under article 17 of the Covenant, the Committee notes the information provided by the State party with respect to the extensive procedures followed in the author's case. The Committee also notes that the situation is under regular review and that the author has been given the opportunity to retain access to her children. In the circumstances, the Committee finds that the interference with the author's family has not been unlawful or arbitrary and is thus not in violation of article 17 of the Covenant.

9.2 The author has also claimed a violation of article 23 of the Covenant. The Committee recognizes the weighty nature of the decision to separate mother and children, but notes that the information before it shows that the State party's authorities and the Courts considered carefully all the material presented to them and acted with the best interests of the children in mind and that nothing indicates that they violated their duty under article 23 to protect the family.

9.3 With respect to the alleged violation of article 24 of the Covenant, the Committee is of the opinion that the author's arguments and the information before it do not raise issues that would be separate from the above findings.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

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* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]

Notes

1. The State party has provided copies of various court decisions in this case (a dossier of some 255 pages of supporting documents)

2. Reference is made to the Committee's General Comment No. 16 of 8 April 1988 on article 24 where it was held that: "the introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant, and should be, in any event, reasonable in the particular circumstances."