

HUMAN RIGHTS COMMITTEE

V. O. v. Norway

Communication No. 168/1984

17 July 1985

ADMISSIBILITY

Submitted by: V. O. (name deleted) on 27 March 1984

Alleged victim: The author

State party: Norway

*Declared inadmissible: 17 July 1985 (twenty-fifth session)**

Decision on Admissibility

1. The author of the communication (initial letter dated 27 March 1984 and subsequent letters of 1 July and 27 September 1984 and 17 March 1985) is V. O., a Norwegian national living in Norway. He claims that, with regard to the custody of his daughter by marriage, one-sided and biased decisions in divorce proceedings conducted before Norwegian courts make him a victim of violations of various provisions of the International Covenant on Civil and Political Rights.

2.1. The author describes the facts as follows: In August 1976 his marriage broke up and his wife returned to her home country, Sweden, together with their daughter (born in August 1975). The author initiated divorce proceedings in Norway and, on 26 November 1979, the District Court pronounced the divorce and granted custody of the child to the mother and visiting rights to the father. It is alleged that the mother has denied to the author the right of orderly contacts with his daughter. The author appealed the question of custody to the Court of Appeal which, on 23 April 1982, decided that custody of the child should remain with the mother. The Court of Appeal also granted visiting rights to the father and laid down detailed rules as to when and how visits should take place both in Sweden and in Norway. The Court emphasized in that connection the mother's special responsibility for ensuring the effective enjoyment of visiting rights. As a result of continued non-compliance by the mother, the author applied for leave to appeal to the Supreme Court of Norway and presented in that connection additional evidence concerning the constant refusal of the mother to honour his visiting rights. On 6 October 1982, the Appeals Committee of the Supreme Court decided that leave to appeal should not be granted. The author contends that domestic remedies have

therefore been exhausted.

2.2. The author alleges that as a result of these court decisions a *defacto* separation between himself and his daughter has taken place. He contends that the court decisions were ill-rounded since they were based on the unreasonable assumption that the mother would somehow co-operate while the issue of continuous obstruction of the visiting rights was allegedly never properly considered by the Court of Appeal. The author claims that, by not granting leave to appeal, the Supreme Court has in effect sanctioned a decision of the Court of Appeal which allegedly runs counter to the Supreme Court's own decision in another case. He adds that for all practical purposes it is impossible in Norway to enforce visiting rights if the parent who has custody of the child does not co-operate. He claims that the present state of affairs makes him a victim of violations of articles 3, 14, 17, paragraph 1, 23, paragraphs 1 and 4, and 26 of the International Covenant on Civil and Political Rights.

2.3. On 20 November 1982, the author submitted an application to the European Commission of Human Rights, claiming to be a victim of violations by Norway of various provisions of the European Convention on Human Rights, including article 6 (I), because he' allegedly did not get a fair hearing with regard to the court decisions concerning the custody of his daughter; article 8 (1), because his right to respect for his family life was allegedly violated by the same court decisions; and article 14, because he has allegedly been discriminated against by reasons of sex, considering that the Supreme Court, allegedly in a similar case, had transferred custody of a child to a mother from a recalcitrant father. As far as can be seen, the facts, in so far as they concern the above allegations of violations of the provisions of the European Convention on Human Rights, are the same as those presented by the author to the Human Rights Committee in substantiation of his claim that he is a victim of violations of articles 14, paragraph 1, 17, paragraph 1, and 26 of the International Covenant on Civil and Political Rights.

2.4. The European Commission of Human Rights decided on 15 March 1984 that the application was inadmissible. In a detailed decision (19 pages), it found that the allegations of violations of article 6 (1), both as regards to the right to a fair hearing and the right to determination "within a reasonable time", of article 8 concerning the right to respect for family life and of article 14 prohibiting discrimination on any ground, including the ground of sex, were manifestly ill-rounded on all accounts.

2.5. With regard to his prior application to the European Commission of Human Rights, the author submits in his communication to the Human Rights Committee (a) that the European Commission focused mainly on the question of the alleged tardiness of the court procedures, to the detriment of the main issues complained of and (b)..that the provisions of the European Convention invoked before the European Commission of Human Rights differ in several areas from those of the Covenant invoked in the present communication to the Human Rights Committee. He maintains that the relevant provisions of the Covenant are better suited to protect his rights in the matter complained of than those earlier invoked before the European Commission of Human Rights.

2.6. In the author's subsequent submission of I July '1984 he further explained that his

application to the Human Rights Committee is no "appeal" over the decision by the European Commission, but concerns only the Norwegian court decision. "The European Convention for the Protection of Human Rights and Fundamental Freedoms, article 6, reads that 'everyone is entitled to a fair and public hearing *within a reasonable time* by an independent and impartial tribunal established by law'. It follows from this that the European Convention has a limited mandate with respect to the issue of equality before the law. Furthermore, the European Convention does not cover the areas which come under articles 23 and 26 of the Covenant. Thus, in the case of the applicant, the International Covenant is of considerably more interest than the European Convention. '

2.7. The author further argues that "the *same matter* has not already been properly examined under any other procedures of international investigation or settlement. Certainly, the same matter has not been examined anywhere with regard to the International Covenant, articles 3, 14, 23 and 26."

2.8. On 27 September 1984, the author forwarded to the Committee a copy of the decision of the European Commission of Human Rights dated 15 March 1984, which he claims contains false allegations, unfair assumptions and ill-rounded conclusions.

3. By its decision of 2 November 1984, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication in so far as it may raise issues under article 23, paragraphs 1 and 4, of the Covenant.

4.1. In its submission dated 27 February 1985, the State party restated the facts and examined at length the proceedings before the European Commission of Human Rights. In this connection the State party specifically indicated that when ratifying the Optional Protocol Norway entered a reservation to article 5 (2) "to the effect that the Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement." Thus, whereas article 5, paragraph 2 (a), of the Protocol precludes simultaneous consideration of the "same matter" by the Committee and another international instance, the reservation sets forth the principle of *non bis in idem*.

4.2. The State party argues that its reservation under article 5, paragraph 2 (a), is applicable in the present case, because the European Commission "has clearly examined the application lodged at the European level... all aspects of the case were considered, and the Commission then declared it inadmissible as manifestly ill-rounded within the meaning of article 27 (2). This involves an examination of the substance of the application." Moreover, a comparison of the author's application submitted to the European Commission on 19 November 1982 with his communication to the Human Rights Committee, dated 27 March 1984, shows that "the two letters are almost identical", since they refer to the same facts, no new events being submitted to the Committee, and because the legal arguments in the two proceedings are the same.

4.3. With respect to the provisions invoked by the author before the European Commission and the Human Rights Committee, the State party advances various arguments designed to show that although the European Convention does not contain a provision identical to article 23, paragraphs 1 and 4, of the Covenant, various articles in the European Convention--notably articles 8 and 12, in conjunction with article 14--offer in substance the same protection. It also contends that article 6 of the European Convention is comparable, for the purposes of examining the facts of the present case, to article 14 of the Covenant, notwithstanding the absence in the latter of the requirement that a fair hearing be "within a reasonable time".

4.4. The Committee notes that the Norwegian reservation to article 5, paragraph 2, of the Optional Protocol stipulates that the Committee shall lack competence to consider a communication if "the same matter" has already been examined under other international procedures. This phrase in the view of the Committee refers, with regard to identical parties, to the complaints advanced and facts adduced in support of them. Thus the Committee finds that the matter that is before the Committee now is in fact the same matter that was examined by the European Commission.

4.5. While fully understanding the circumstances which have led the author to submit a communication under the Optional Protocol to the Covenant, the Committee finds that the State party's reservation operates to preclude it from examining the communication.

5. The Human/Rights Committee therefore decides:

The communication is inadmissible.

*/ Pursuant to rule 85 of the Committee's provisional rules of procedure, Mr. Torkel Opsahl did not participate in the consideration of this communication or in the adoption of this decision on admissibility.