

HUMAN RIGHTS COMMITTEE

Van Grinsven v. The Netherlands

Communication No. 1142/2002

27 March 2003

CCPR/C/77/D/1142/2002

ADMISSIBILITY

Submitted by: Mr. A.J. v. G. (name deleted)

Alleged victims: The author and his two children

State party: The Netherlands

Date of communication: 21 November 2002 (initial submission)

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

Meeting on 27 March 2003

Adopts the following:

Decision on admissibility 1/

1. The author of the communication, dated 21 November 2002, is A. J. v. G., of dual Dutch and American citizenship, born in 1961, who submits a complaint on behalf of himself and his two children. He claims violations by the Netherlands of the International Covenant on Civil and Political Rights, articles 7 and 8, article 14, paragraphs 1, 2, 3 a-d and g and paragraph 5, articles 15 and 17, article 23, paragraph 1, article 24, paragraph 1, and article 26. He is not represented by counsel.

The facts as submitted:

2.1 According to the author, in June 1998 the author s wife attempted to kill their two children.

Subsequently, the children remained in the sole custody of the author, and his wife was made to follow psychiatric treatment. The author filed for divorce in December 1998. 22 In July 1999, the court (Rechtbank) in s-Hertogenbosch awarded joint custody to the parents, but decided that the children should live with their mother. However, when the mother came to pick up the children from the author s house in August, the author killed her. The author claims that he killed his wife in order to protect his children from their mother. On 12 September 2001, on appeal the Court (Gerechtshof s-Hertogenbosch) convicted the author of the murder of his wife. He was sentenced to 6 years imprisonment.

2.3 On 13 March 2000, the first instance court (Rechtbank s-Hertogenbosch) decided to withdraw child custody from the father and the author s application for visits and telephone contact with his children was denied. On 12 July 2000, the Court of Appeal (Gerechtshof s-Hertogenbosch) ordered further examination of the children s situation and needs. Subsequently, in its decision of 2 January 2002, the Court of Appeal confirmed the lower court s decision that it is in the interest of the children not to visit or to have telephone contact with their father. On 12 February 2002, the author s lawyer provided him with detailed advice on why an appeal in cassation would have no chance of success. He explained that since the author s complaint was based only on the court s evaluation of facts and evidence, it could not be appealed further.

2.4 On 4 September 2002, the European Court of Human Rights declared the author s communication inadmissible on the basis that it did not disclose an appearance of violation of articles of the Convention.

Complaint:

3.1 The author claims that he and his children have been subjected to mental torture and cruel, inhuman and degrading treatment, by withdrawing his custody rights, refusing him to meet and talk to his children, and censoring his mail from 15 August 1999 to 15 January 2002, in violation of article 7 of the Covenant.

3.2 The author claims that he and his children are being held in servitude of the state, in violation of article 8 of the Covenant.

3.3 He further claims that they have not been treated equally before the courts and that the custody proceedings were not fair, involving a single judge only at the Family Court hearing of 13 March 2000, in violation of article 14, paragraph 1, of the Covenant.

3.4 He claims that he killed his wife only to protect his children and should therefore not have been convicted, the conviction being in violation of article 14, paragraph 2 of the Covenant.

3.5 He claims that in the custody case, he was not being informed of the charges against him, that he was not given adequate time or facilities for the preparation of arguments as the charge against him was changed abruptly, that the custody case was delayed unduly from the time the author first requested a hearing on 29 September 1999 until the decision on 2 January 2002, that his arguments in court were neglected, that he was compelled to renounce his parental rights, and finally that he was not entitled to a review by a higher

court or tribunal, in violation of article 14, paragraphs 3 a-d and g, and paragraph 5.

3.6 He claims that the courts imposed a heavier penalty on him than prescribed by law in the child custody case, in spite of his good behaviour, and that he was denied the right to benefit from lighter penalties prescribed by law, in violation of article 15 of the Covenant.

3.7 The author claims that he has not been protected from unlawful interference with his privacy or family, or from unlawful attacks on his honour, reputation or dignity, in violation of article 17 of the Covenant.

3.8 He further alleges that he and his children have not been protected as a family, in violation of article 23, paragraph 1, and article 24, paragraph 1, of the Covenant.

3.9 The author finally claims that he has been discriminated against, on the basis of sex, and of his detention, with regard to his custody rights. Since the Supreme Court decided, in an earlier case decided on 2 December 1958, that parental detention was no basis of loss of the guardianship of children, the author should not have lost his custody rights by account of his detention.

Issues and proceedings before the Committee:

4. By decision of 4 December 2002, the Committee, acting through its Special Rapporteur on New Communications, decided to separate the Committee's consideration of the admissibility and the merits of the case.

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

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a) of the Optional Protocol.

5.3 The Committee notes that the author has not provided any substantiation for his contention that he and his children have not been treated equally before the courts and that the custody proceedings were unfair and hence in violation of article 14. Consequently, the Committee finds these claims to be inadmissible under article 2 of the Optional Protocol.

5.4 With regard to the author's claim related to article 14, paragraph 2, of the Covenant, the Committee notes that the author has failed to substantiate, for purposes of admissibility, his claim that he was not presumed innocent until proven guilty. Accordingly, this part of his claim is inadmissible under article 2 of the Optional Protocol.

5.5 With regard to the author's claims under articles 17, 23, 24, and 26, the Committee considers that the author has not substantiated, for purposes of admissibility, why the loss of parental rights, under the

circumstances, would amount to violations of these Covenant provisions. These claims are thus also inadmissible under article 2 of the Optional Protocol.

5.6 With regard to the author's claim that he and his children were subjected to mental torture and cruel, inhuman and degrading treatment, the Committee notes that, in the circumstances of the case, the withdrawal of custody rights from the author, the refusal to let him meet and talk to his children, and the censoring of mail to his children, do not fall under the scope of article 7 of the Covenant. Furthermore, the Committee considers that the claim that the author and his children are being held in servitude of the state, in view of the factual circumstances of the case, does not fall within the scope of application of article 8 of the Covenant. Hence, these claims are incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.

5.7 In respect of the author's claim that the courts imposed a heavier penalty on him than prescribed by law and that he was denied the right to benefit from lighter penalties prescribed by law, in violation of article 15, the Committee notes that this Covenant provision relates to criminal offences, whereas the author's claim relates to the child custody case. The material before the Committee does not support any argument or claim that those proceedings related to a *criminal charge* or a *criminal offence* within the meaning of article 15 of the Covenant. This claim and any part of the author's claims that potentially relate to the presumed applicability of article 14, paragraph 3, of the Covenant to the custody proceedings are outside the scope of the Covenant provisions invoked by the author, and inadmissible, *ratione materiae*, pursuant to article 3 of the Optional Protocol.

6. The Committee therefore decides:

- a) that the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- b) that this decision shall be communicated to the author, and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly]

1/ The following members participated in the examination of the present communication:

Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Gili Ahanhanzo, Mr. Walter Kulin, Mr. Ahmed Tawfil Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.