

HUMAN RIGHTS COMMITTEE

N. B. v. Sweden

Communication No. 175/1984

11 July 1985

ADMISSIBILITY

Submitted by: N. B. (name deleted) on 21 March 1984

Alleged victim: The author

State party: Sweden

Declared inadmissible: 11 July 1985 (twenty-fifth session)

Decision on Admissibility

1. The author of the communication (initial letter dated 21 March 1984 and further letters dated 9 July and 20 November 1984 and 15 February 1985) is N. B. an Argentinian national who enjoyed political asylum in Sweden from 1978 to 1984. He has now returned to Argentina. While in Sweden he married an Argentinian woman with whom he already had two children. Divorce proceedings were initiated in December 1981 and custody of the children was awarded to the mother.

2.1. The author lodges his complaint against Swedish authorities, who allegedly conspired to ruin his family life because they did not like his political ideas, claiming that on three occasions his two children were "kidnaped" by the authorities. He gives the following details:

In January 1980, the social welfare service in Malmo, Sweden, without a judicial order, allegedly "obliged" his wife and children to leave their home. They were allegedly kept 25 days in a hotel. The author sees this event as an arbitrary, and illegal interference in his private life.

In 1981, the author and his family traveled to Spain. The author's intention was to request asylum at the UNHCR office in Spain in order not to live any longer in Sweden. On 20 October 1981, his family allegedly "disappeared" while staying at the office of the Red Cross in Barcelona. The author believes that they were kidnaped by an ex-policeman from Argentina (name is given) who took them back to Sweden.

In Malmo, they were put under the supervision of the Swedish welfare service. The author alleges that this second event amounts to violations of articles 17, paragraphs I and 2, 23, paragraphs an and 24, paragraph 1, of the Covenant. He further alleges that in 1982, despite an interim court decision stipulating that he could see his children for two hours every 15 days, the local Swedish welfare service never allowed him to do so.

On 16 September 1983, the tribunal in charge of the divorce proceedings decided to give the children's custody exclusively to their mother. On 21 December 1983, the author took his two children to the Argentinian Embassy in Denmark. There he renounced his status as a political refugee in Sweden and requested to be sent back with his children to Argentina. He alleges that on the same day, his children were kidnaped" by the Swedish police, taken to the Embassy in Denmark and returned to Sweden, where they are living at present.

2.2. On 22 December 1983, the author was arrested by the Danish police and extradited to Sweden. There he allegedly remained incommunicado for 15 days without any judicial order. He was tried at first instance and sentenced to four months' imprisonment for acting in an unlawful and arbitrary manner in relation to his children. Article 14, paragraph 3 (a), (c) and (e), of the Covenant was allegedly disregarded, but no further details are given in that respect. On 8 May 1984, on appeal, the Court of Trelleborg confirmed the judgement of first instance and ordered that the author be expelled from Sweden and excluded from re-entering the country at any time before 1 May 1987. The decision was allegedly taken in violation of the following articles of the Covenant:

Article 2, paragraph 3 (a), (b) and (c), because the author was allegedly denied an effective remedy;

Article 16, because he was allegedly not recognized as a person before the law;

Article 14, paragraph 3 (d), because he was allegedly obliged against his will to choose an *ex officio* lawyer;

Article 14, paragraph 3 (e); no details are given.

The author adds that his *ex officio* lawyer refused to appeal against the expulsion order.

3. By its decision of 16 October 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1. Apart from disputing the author's description of the facts and rejecting the allegations as unfounded, the State party in its rule 91 submission, dated 14 January 1985, objects to the admissibility of the communication on the ground that the author has failed to exhaust domestic remedies with respect to decisions made by the Swedish Courts and other authorities. The State party summarizes the facts as follows:

N.B. and S. C. arrived in Sweden in 1978 from Argentina as political refugees together with their children, N. J. and S. V., who were minors. After a short time, problems arose in the relations between the couple and S. C. wanted them to separate. She "disappeared" together with the children on one occasion in January 1980, staying with the children at a hotel.

Despite the dissension between the parties, S. C. and N. B. married in April 1980. On 14 December 1981, the wife, however, applied to the District Court of Malmö (Malmö tingsrätt) for a divorce. On 2 February 1982, the Court issued a provisional order that the mother should have the custody of the children and that the father was to have the right to see them once a fortnight at the office of the Malmö social welfare service in the presence of social welfare personnel. However, on some occasions, the mother did not allow the children to see their father.

In this situation, the Administrative Court of the Province of Malmö, considering that the wife had no acceptable grounds for her refusal, ordered her in its ruling of 12 October 1982 to bring the children to see their father in accordance with the order issued by the Malmö District Court in its ruling of 2 February 1982.

On 19 October 1982, the Malmö District Court granted the application for the divorce of the spouses. As no appeal was lodged, the Court's ruling gained legal force. Later on, in a ruling issued on 16 September 1983, the Court ordered that the mother be given the custody of the children, as N. B. had consented to her claim in that respect. This ruling, against which no appeal was lodged, also gained legal force.

Following an agreement between the mother and N. B., the father collected the children at Trelleborg on 20 December 1983 in order to have them with him for part of the Christmas holiday. The children were to be returned to their mother on 25 December 1983. However, N. B. took the children with him to Denmark, where he went to the Embassy of Argentina with a view to obtaining visas for his children to travel to Argentina. The Embassy informed the mother about this request, since she had the custody of the children under the Court ruling. The mother reported this to the police authorities in Sweden who, in turn, contacted the Danish police.

On 22 December 1983, N. B. was arrested by the Danish police. On the following day he was remanded in custody by a decision of the District Court of Copenhagen. He was extradited to Sweden on 1 February 1984, and on 2 February 1984, a detention order was issued by the District Court of Trelleborg. On 11 February 1984, N. B. was sentenced to four months' imprisonment for having committed child abduction in a manner considered as grave.

The District Court also decided that the time during which N. B. had been deprived of liberty (as from 22 December 1983: 55 days) was to be deducted from the term of imprisonment. The Prosecutors' petition that N. B. be expelled from Sweden was dismissed by the District Court.

However, the Prosecutor appealed against this judgement to the Court of Appeal of the

Province of Skane and Bickinge. The Court of Appeal confirmed the judgement of the District Court as to the sentence and also granted the Prosecutor's petition for expulsion. N. B. did not appeal against this judgement to the Supreme Court, a course he was entitled to take. Consequently, the judgement of the Court of Appeal gained legal force.

4.2. As regards the author's assertion that the Swedish welfare service had obliged the mother and her children to leave their and N. B.'s home in January 1980, the State party contends that the real situation was that the mother had left the home on her own initiative due to dissension between her and N. B. and had been staying for some time with the children at a hotel. The Swedish authorities had certainly not obliged the mother to act in this way. Moreover, the Swedish authorities had made considerable efforts to persuade the mother to let the children see their father. It was thus not the authorities but the mother who did not allow the children to see their father. In that situation, the Administrative Court of the Province of Malmo ordered the mother to give N. B. access to his children.

With regard to N. B.'s arrest in Denmark on 22 December 1983, it should be noted that he was detained by a Danish Court on 23 December 1983. Thus, there was an appropriate judicial order effective already on the day after the arrest. After N. B.'s extradition to Sweden on 1 February 1984, he was immediately-on 2 February-brought before a Swedish judge (the District Court of Trelleborg). It should be noted that although N. B. had the possibility to appeal against the detention order at all times, he did not do so.

4.3. As regards the expulsion of N. B. from Sweden, the State party recalls in the first place that he did not appeal to the Supreme Court against the judgement of the Court of Appeal, and furthermore, that it is possible in Sweden to appeal through administrative channels against the actual enforcement of an expulsion order. The State party notes in this context that N. B. had stated in writing that he was no longer a political refugee.

5.1. In his further letters of 28 November 1984 and 15 February 1985, the author contends that the reason why the Swedish welfare service allegedly violated his rights "was to destroy me as a political agent and the purpose of prohibiting me from living with or even seeing my own children was to attempt, through constant mental torture, to 'neutralize' my political activities and to prevent me from following my usual, human approach of always trying to solve mankind's problems and of fighting for the right of all persons to live a better life.

5.2. The author also encloses a statement signed by two Swedish social workers, indicating that they assisted the author's ex-wife to settle in Trelleborg, away from him. The social workers describe the reason for the separation in detail: the wife believed that her husband suffered from an acute persecution complex, which had worsened since 1981; she allegedly endured physical abuse from her husband and feared for her safety. The author rejects the social workers' description, which, he claims, depicted him as being mentally ill.

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

7. The Human Rights Committee has carefully reviewed the communication submitted by N. B., including the supporting documentation, and finds that the author has failed to exhaust domestic remedies that were available to him under Swedish law.

8. As the communication fails to fulfil the requirements of article 2 and article 5, paragraph 2 (*b*), of the Optional Protocol, the Human Rights Committee decides:

The communication is inadmissible.