

Article 9, paragraph 1, because he was arbitrarily arrested; and

Article 9, paragraph 2, because he was not informed of the reasons for his arrest.

12. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to provide Mr. Martínez Portorreal with effective remedies, including compensation under article 9, paragraph 5, of the Covenant, for the violations that he has suffered, and to take steps to ensure that similar violations do not occur in the future.

E. Communication No. 191/1985, Blom v. Sweden
(Views adopted on 4 April 1988 at the
thirty-second session)

Submitted by: Carl Henrik Blom (represented by legal counsel)

Alleged victim: The author

State party concerned: Sweden

Date of communication: 5 July 1985 (date of initial letter)

Date of decision on admissibility: 9 April 1987

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

Meeting on 4 April 1988,

Having concluded its consideration of communication No. 191/1985, submitted to the Committee by Carl Henrik Blom 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 by the State party concerned,

Adopts the following:

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

1. The author of the communication (initial letter dated 5 July 1985 and further letters dated 24 February 1986 and 19 January 1988) is Carl Henrik Blom, a Swedish citizen, born in 1964. He is represented by legal counsel. He claims to be a victim of violations by the Swedish authorities of article 2, paragraph 3, and article 26 of the International Covenant on Civil and Political Rights in conjunction with article 3 (c) and article 5, paragraph (b), of the UNESCO Convention against Discrimination in Education of 1960. Article 13 of the International Covenant on Economic, Social and Cultural Rights is also invoked.

2.1 During the school year 1981/82, the author attended grade 10 at the Rudolf Steiner School in Göteborg, which is a private school. According to Decree No. 418 on Study Aid, issued by the Swedish Government in 1973, a pupil of an independent private school can only be entitled to public assistance if he attends a programme of courses which is placed under State supervision by virtue of a governmental decision under the Ordinance. The government decision is taken after consultation with the National Board of Education and the local school authorities.

2.2 The author states that the Rudolf Steiner School submitted an application on 15 October 1981 to be placed under State supervision with respect to grade 10 and above (the lower grades were already in that category). After the local school authorities and the National Board gave a favourable opinion, the decision to place grade 10 and above under State supervision was taken on 17 June 1982, effective as of 1 July 1982, that is for the school year 1982/83 onwards, and not from autumn 1981, as the school had requested.

2.3 On 6 June 1984, the author applied for public financial aid in the amount of SKr 2,250, in respect of the school year 1981/82. By a decision of 5 November 1984, his application was rejected by the National Board for Educational Assistance on the grounds that the school had not been under State supervision during the school year in question. The author alleges that this decision was in violation of the provisions of the international treaties invoked by him. He states that an appeal against the decision "was not allowed". Believing, however, that the decision of the National Board for Educational Assistance violated his rights under the 1960 UNESCO Convention, the author submitted, at the beginning of 1985, a claim for compensation to the Chancellor of Justice (Justiekanclern). By a decision of 14 February 1985 the Chancellor of Justice declared that the decision of the National Board for Educational Assistance was in accordance with domestic law in force and could not give rise to State liability. It was also pointed out that the Decree on Study Aid was a government decision, in respect of which an action for compensation could not be permitted under the relevant provisions of the Damages Act. The Chancellor finally mentioned that Mr. Blom would be free to pursue the matter before the courts. The Chancellor pointed out, however, that the courts would be duty bound, *ex officio*, to apply Swedish law, including the relevant provisions of the Damages Act to which he had referred.

2.4 From the decision of the Chancellor of Justice, the author draws the conclusion that it would be of no avail to initiate court proceedings against the State. Consequently, he maintains, there are no further domestic remedies to exhaust. This situation, he claims, constitutes, in itself, a violation of article 2, paragraph 3, of the Covenant.

2.5 The author's allegation, that the decision not to grant him public assistance was in violation of article 26 of the Covenant, is based on the argument that he was subjected to discrimination as a pupil of a private school. Pupils of public schools are said to have received public assistance for the school year 1981/82. This discriminatory treatment allegedly contravenes the basic idea of equality for all in education and it also allegedly interferes with the parents' right to choose independent private schools provided for in article 1. of the International Covenant on Economic and Social Rights and article 5, paragraph 1 (b), of the UNESCO Convention against Discrimination in Education of 1960 to which Sweden is a State party. The author also claims to be a victim of a violation of article 3 (c) of that same Convention.

2.6 The author requests the Committee to condemn the alleged violations of article 2, paragraph 3, and article 26 of the Covenant, to invite the State party to take the necessary steps to give effect to its obligations under article 2, paragraph 3, and to urge the State party to discontinue the alleged discriminatory practices based on the 1973 Study Aid Act. Furthermore, he asks the Committee to urge the Swedish Government to pay him and his class-mates the amount of public assistance due for the school year 1981/82 with accrued interest according to Swedish law as well as his expenses for legal advice.

3. By its decision of 15 October 1985, 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 the admissibility of the communication. The Working Group also requested the State party to explain, in so far as such explanation might be relevant to the question of admissibility, why grade 10 of the Rudolf Steiner School in Göteborg was placed under State supervision only as of 1 July 1982 but not for the preceding school year, as requested.

4.1 In its submission dated 8 January 1986, the State party indicates that the 1962 Act on Schools recognizes the existence of private schools independent of the public sector school system. The private schools are, in principle, financially sufficient, and there is no legal obligation for the State or local government to provide any financial contribution. However, there are no legal impediments excluding various forms of public support, and in practice most of the private schools are in one way or another supported by local government and, in addition, approximately half of them, including the Rudolf Steiner School, receive State contributions.

4.2 The State party indicates further that, in accordance with regulations set forth in the 1973 Act on Study Aid (studiestödslag 1973:349) and the 1973 Decree on Study Aid (studiestödskungörelse 1973:418), pupils attending schools, whether public or private, may be eligible for various forms of public financial support. As far as is relevant for the consideration of the present case, chapter 1, section 1, of the Decree provides that financial support may be granted to pupils attending public schools or schools subject to State supervision. Consequently, for pupils attending a private school to be eligible for public financial support, the school has to be placed under State supervision. Decision on such supervision is taken by the Government upon application submitted by the school. In the present case, the Rudolf Steiner School applied in October 1981 to have the part of its educational programme corresponding to the gymnasium, that is grades 10 to 12, placed under State supervision. Education on this higher level had not previously been offered by the school. After having considered the application, as well as observations on the application submitted by the Municipal School Administration, the Education Committee of the County of Göteborg and Bohus, and the National Board of Education, the Government on 17 June 1982 granted the application as of 1 July 1982.

4.3 On 5 November 1984, the National Board for Educational Assistance informed the author that financial support for his studies could not be granted on the ground that the school was not at that time subject to State supervision with respect to the educational programme of grade 10.

5.1 As to the alleged violations of the International Covenant on Civil and Political Rights, the State party submits the following:

Blom contends that the refusal to grant him public financial support for the school year 1981/82 amounts to a violation of article 26. In the Government's view, however, the notion of discrimination implies a comparison between two or more different groups or categories of individuals and a finding, first, that one group or category is being treated differently from another group or category and, secondly, that this different treatment is based on arbitrary and unjustified grounds, such as those enumerated in article 26. Accordingly, different treatment does not constitute discrimination when the distinction is based on objective and reasonable criteria. There is no obligation under article 26, or under any other provision of the Covenant, to provide public financial support to pupils. Therefore, the State is at liberty to decide whether to give such support and, if financial support is provided, to set the conditions under which it should be granted, provided only that the State's considerations are not based on unjustified grounds, such as those enumerated in article 26."

5.2 The State party further argues that:

"As regards schools, like any other institution or activity in society, it is naturally legitimate for the State, before granting public financial support to the school or its pupils, to consider whether the school meets reasonable standards of quality and whether it fulfils a need of society or the presumptive pupils. It is equally justified if financial support is provided, that the State take the necessary measures in order to assure itself that the facts and circumstances underlying the decision are not subsequently changed. These are - and on this point no other view has been expressed by Blom - the motives for the requirement that a private school be State-supervised in order for its pupils to be eligible for public financial support. The Government submits that this does not constitute discrimination within the meaning of article 26."

5.3 The State party adds:

"In view of the aforesaid, and for the following reasons, the Government further maintains that Blom's communication as regards this point should be declared inadmissible in accordance with the provisions of article 3 of the Optional Protocol. Blom contends, as the sole 'discriminatory basis' for the alleged violation of article 26, that he chose to attend the Rudolf Steiner School because of his, and his parents', 'religion, political or other opinion', and that the different treatment regarding public financial support was a direct result of this choice. In the opinion of the Government, this obviously does not amount to saying that the State's policy of different treatment of public and private schools is based on such grounds as religion or political or other opinion ... What Blom appears to be arguing is that, because he chose the school for religious and political reasons, and because the State, although not for religious or political reasons, treated this private school differently from public schools, he has been treated in a discriminatory way on the ground of his religion and his political opinion. The lack of merits in this line of arguing must in the Government's opinion be considered so obvious as to make the communication inadmissible under article 3 of the Optional Protocol."

5.4 The State party further submits:

"Blom further alleges that article 2, paragraph 3, has been violated since the decision not to grant him public financial support could not be appealed. This provision guarantees an effective remedy only when the rights and freedoms, as recognized in the Covenant, have been violated. In the present case, the only such violation that has been contended is the one under article 26. Therefore, the obvious lack of merit in the arguments put forward by Blom regarding the alleged violation of article 26 is equally relevant here. Consequently, the communication as regards this point as well should be declared inadmissible."

5.5 As regards the question posed in the decision of the Committee's Working Group as to the reasons why the school was placed under State supervision only as of 1 July 1982, the State party explains

"that the application for State supervision was made very late - three and a half months from the outset of the fiscal year 1981/82 and a long time after the education of that school year had begun - and that the decision, which depended on various opinions from other authorities, could not be made until a couple of weeks before the end of the said fiscal year. It seems as if the sole reason for the present case is that those responsible for the Rudolf Steiner School did not act with sufficient promptness in applying for State supervision."

5.6 Finally, the State party mentions that two other applications concerning related issues with respect to pupils of the Rudolf Steiner School of Norrköping have been declared inadmissible by the European Commission of Human Rights in Strasbourg (applications 10476/83 and 10542/83).

6.1 In his comments, dated 24 February 1986, the author stresses that the refusal to grant him financial support "was in fact directed against him as belonging to a distinct group", this group being composed of himself and his class-mates, as compared with pupils attending public schools or private schools already subject to State supervision. He further states that at the time of application in October 1981 the Rudolf Steiner School was already complying with the five administrative requirements imposed on private schools subject to State supervision.

6.2 The author challenges the State party's arguments for considering the communication inadmissible under article 3 of the Optional Protocol by stressing that he was invoking "the grounds enumerated in article 26 of the Covenant referring to the passage 'discrimination on any ground', which includes a reference to 'other status'. Accordingly, for whatever reasons [he] and his class-mates chose to attend the Rudolf Steiner School, they all belong, because of this choice, to the distinct group ... [and] this 'other status' ... is obviously the ground for the different treatment imposed on him resulting from the State's deliberate policy."

6.3 With respect to the State party's statement that two other applications by other authors have been declared inadmissible by the European Commission of Human Rights, the author explains that the applicants there had complained of discrimination based upon the fact that some municipalities in Sweden do not grant free textbooks to pupils attending private schools, as do most other municipalities. According to the author, these decisions have no relevancy whatever to the question of financial support under the Act on Study Aid.

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, 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.

7.2 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee observed that the matter complained of by Carl Henrik Blom was not being examined and had not been examined under another procedure of international investigation or settlement. The Committee noted that consideration by the European Commission of Human Rights of applications submitted by other students at the same school relating to other or similar facts did not, within the meaning of article 5, paragraph 2 (a), of the Optional Protocol, constitute an examination of the same matter. As set forth in the Committee's prior decisions, the concept of the "same matter" within the meaning of article 5, paragraph 2 (a), of the Optional Protocol must be understood as including "the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body". b/ The reservation of the State party in respect of matters already examined under another procedure of international investigation or settlement, therefore, did not apply.

7.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were available remedies in the circumstances of the case which could or should have been pursued. The Committee noted in that connection that the State party did not contest the author's claim that domestic remedies had been exhausted.

7.4 With regard to the State party's submission that the "lack of merit" in the author's arguments should render the communication "inadmissible under article 3 of the Optional Protocol", the Committee noted that article 3 of the Optional Protocol provided that communications should be declared inadmissible if they were (a) anonymous, (b) constituted an abuse of the right of submission or (c) were incompatible with the provisions of the Covenant. The Committee observed that the author had made a reasonable effort to substantiate his allegations and that he had invoked specific provisions of the Covenant. Therefore, the Committee decided that the issues before it, in particular the scope of article 26 of the International Covenant on Civil and Political Rights, should be examined with the merits of the case.

7.5 The Human Rights Committee noted that it could only consider a communication in so far as it concerned an alleged breach of the provisions of the International Covenant on Civil and Political Rights.

7.6 The Committee observed that both the author and the State party had already made extensive submissions with regard to the merits of the case. However, the Committee deemed it appropriate at that juncture to limit itself to the procedural requirement of deciding on the admissibility of the communication. It noted that, if the State party should wish to add to its earlier submission within six months of the transmittal to it of the decision on admissibility, the author of the communication would be given the opportunity to comment thereon. If no further submissions were received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee would proceed to adopt its final views in the light of the written information already submitted by the parties.

8. On 9 April 1987, the Committee therefore decided that the communication was admissible in so far as it related to alleged violations of the International Covenant on Civil and Political Rights and requested the State party, should it not intend to make a further submission in the case under article 4, paragraph 2, of the Optional Protocol, so to inform the Committee, so as to permit an early decision on the merits.

9. The State party, on 23 October 1987, and the author, on 19 January 1988, informed the Committee that they were prepared to let the Committee consider the case on the merits as it then stood.

10.1 The Human Rights Committee has considered the merits of the communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

10.2 The main issue before the Committee is whether the author of the communication is a victim of a violation of article 26 of the Covenant because of the alleged incompatibility of the Swedish regulations on education allowances with that provision. In deciding whether or not the State party violated article 26 by refusing to grant the author, as a pupil of a private school, an education allowance for the school year 1981/82, whereas pupils of public schools were entitled to education allowances for that period, the Committee bases its findings on the following observations.

10.3 The State party's educational system provides for both private and public education. The State party cannot be deemed to act in a discriminatory fashion if it does not provide the same level of subsidy for the two types of establishments, when the private system is not subject to State supervision. As to the author's claim that the failure of the State party to grant an education allowance for the school year 1981/82 constituted discriminatory treatment, because the State party did not apply retroactively its decision of 17 June 1982 to place grades 10 and above under State supervision, the Committee notes that the granting of an allowance depended on actual exercise of State supervision since State supervision could not be exercised prior to 1 July 1982 (see para. 2.2 above), the Committee finds that consequently it could not be expected that the State party would grant an allowance for any prior period and that the question of discrimination does not arise. On the other hand, the question does arise whether the processing of the application of the Rudolf Steiner School to be placed under State supervision was unduly prolonged and whether this violated any of the author's rights under the Covenant. In this connection, the Committee notes that the evaluation of a school's curricula necessarily entails a certain period of time, as a result of a host of factors and imponderables, including the necessity of seeking advice from various governmental agencies. In the instant case the school's application was made in October 1981 and the decision was rendered eight months later, in June 1982. This lapse of time cannot be deemed to be discriminatory, as such. Nor has the author claimed that this lapse of time was attributable to discrimination.

11. 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 as submitted do not sustain the author's claim that he is a victim of a violation of article 26 of the International Covenant on Civil and Political Rights. In the light of the above, the Committee does not have to make a finding in respect of the author's claim of a violation of article 2, paragraph 3, of the Covenant.