



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Seventy-second session
9-27 July 2001

DECISION

Communication No. 832/1998

Submitted by: F (name withheld)

Alleged victim: The author's son, C (name withheld)

State party: Australia

Date of communication: 22 July 1998 (initial submission)

Prior decisions: Special Rapporteur's rule 91 decision, transmitted to the State party on 17 September 1998 (not issued in document form)

Date of present decision: 25 July 2001

[ANNEX]

* Made public by decision of the Human Rights Committee

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Seventy-second session

concerning

Communication No. 832/1998*

Submitted by: (F) (name withheld)
Alleged victim: The author's son, C (name withheld)
State party: Australia
Date of communication: 22 July 1998 (initial submission)

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

Meeting on 25 July 2001,

Adopts the following:

Decision on admissibility

1. The author of the communication is F (name withheld), presenting a communication dated 22 July 1998 on behalf of her son, C (name withheld), born 10 July 1979. She claims that her son is a victim of violations by Australia of article 26 of the International Covenant on Civil and Political Rights.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden

The text of an individual opinion signed by one committee member is appended to this document.

The facts as presented

2.1 From 24 February to 2 March 1993 and again from 12 to 18 March 1993, the author's son was suspended with a recommendation for exclusion from Year 8 at Miami State High School. The conduct giving rise to the suspensions included gross insolence, deliberate and persistent disobedience and deliberate provocative behaviour which adversely affected staff and students.

2.2 From 21 April 1993 to 15 December 1993, the author's son attended Barrett Adolescent Centre, a short-term residential facility for adolescents aged 13 to 17 who suffer from emotional, behavioural and psychiatric disorders. During this period, he was medically diagnosed as having Oppositional Defiance Disorder, which has multiple aetiologies. The diagnosis considered that the condition of the author's son had directly affected his behaviour in the past and was likely to affect his behaviour in the future. It also indicated that the behaviour of the author's son was within his control and could be improved with appropriate behaviour management strategies.

2.3 In early 1994, it was proposed that the author's son should be enrolled at Merrimac State High School, a school close to home and with a special needs unit on site. The school's administration, in conjunction with the State's education department, proposed however that in the light of past experience the author's son, the author and the principal would sign a behaviour management contract mutually negotiated prior to enrolment. Such a contract typically sets out the roles and responsibilities to be accepted by each party to facilitate the child's return to school within a framework of working towards acceptable behaviour. After a variety of draft contracts were developed, the author terminated the discussions. She requested that her son be able to return to school and that he should not be expected to control his behaviour.

2.4 On 11 April 1994, a complaint was lodged with the Human Rights and Equal Opportunity Commission ("the Commission") alleging discrimination against the author's son on the grounds of disability. After a conciliation conference on 6 November 1996 where the author expressed concern that her son had not completed his education, he was offered re-entry at Year 11 with an education programme tailored to his needs. She declined the offer on the basis that her son was too hurt by his experiences at school to return.

2.5 On 20 May 1997, the Disability Discrimination Commissioner of the Commission concluded that there was no evidence that the requirement that the author's son sign a pre-enrolment agreement constituted unlawful discrimination. She found no direct discrimination in that he had been required to sign an agreement because of his behaviour and previous suspensions, like other students with behavioural concerns, and not because of a disability. Nor was indirect discrimination found, for the author's son was considered on the evidence to be able to meet goals set, and choose to accept authority and control his behaviour. The behavioural goals set were tailored to him and progressive, and school staff were to be specifically trained to deal with the difficulties of the author's son. In the circumstances, the contract was found to be reasonable and not discriminatory. On 4 August 1997, the President of the Commission confirmed the decision and dismissed the complaint.

The complaint

3.1 The author makes a series of allegations, centred around a claim of discrimination on the grounds of disability in violation of article 26 of the Covenant. She alleges initially that the Commission in addressing her claim of discrimination failed to consider and apply the Declaration on the Rights of the Child, the Declaration on the Rights of Disabled Persons and the Australian Constitution. The Commission is also said to have failed to obtain relevant evidence and relied exclusively on information and materials of the education authorities.

3.2 The author alleges discrimination against her son on the grounds of disability in that he was required to comply with a condition for entry (the pre-enrolment contract) which was not required of students without a disability. Moreover, the terms of the proposed contract were said to be unreasonable. In particular, a requirement seeking her son to work towards addressing his behaviour was inappropriate as the nature of her son's disability is said to be an organic brain disorder for which there is no treatment. Finally, the author contends that the requirement for such a contract substantively breaches domestic law, the Declaration on the Rights of the Child and the Declaration on the Rights of Disabled Persons.

The State party's observations regarding the admissibility and merits of the communication and the author's response

4.1 As to admissibility, the State party argues that the author lacks standing to present the communication. The State party points out that the author's son was 18 years old at the time the communication was submitted, and that in the absence of exceptional circumstances, the author's son ought either to have presented the communication himself or expressly authorized his mother to submit the communication as his representative. In the absence of any such authorization or exceptional circumstances, the communication accordingly is said to be inadmissible ratione personae.

4.2 The State party also argues that available domestic remedies have not been exhausted. It argues that the author could have sought judicial review in the Federal Court of the Commission's decision. If the decision was unjustified on the evidence or an improper exercise of power, the Court could set aside the decision, refer it for re-consideration or declare the rights of the parties. Accordingly, the communication is said to be inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4.3 The State party argues that those allegations referring to the Commission's decision are beyond the competence of the Committee and inadmissible under article 3 of the Optional Protocol. It argues that no evidence has been supplied that the law in the present case was interpreted or applied arbitrarily or amounted to a denial of justice. Moreover, according to the Committee's constant jurisprudence, the interpretation of domestic legislation is essentially a matter for the State party's courts and authorities.

4.4 The State party also contends that the author has failed to substantiate a claim, and adduces in this respect its arguments on the merits. As to the procedure followed by the Commission, the State party notes that the Commission examined all the information placed before it by both parties, and was not under an obligation to seek further information. The State party notes that the declarations referred to by the author are not directly binding upon it, and in any event are not strictly relevant to an interpretation of the meaning of article 26.

4.5 On the substance of the claims of discrimination, the State party argues that children who manifest behavioural problems, whether disabled or not, are required to sign behaviour management contracts. These contracts, which contain achievable elements for all parties, are a not uncommon tool for dealing with a range of behavioural problems. They are part both of the education authorities' formal policy framework and strategy for behaviour management as well as of school principals' direct legislative responsibility for the good order and discipline of a school and to maximize all students' learning opportunities. The contracts are useful for supporting "at risk" students by ensuring a common understanding of expectations and responsibilities in achieving the behavioural changes that are required to maintain the student at school. The State party, referring to a variety of positive psychiatric studies, points out that such contracts are effective as a collaboratively-developed document establishing a higher commitment from all parties to fulfil stated goals. Accordingly, no distinction has been applied to the author's son which constitutes discrimination.

4.6 In any event, the State party argues that any distinction was based upon objective and reasonable criteria, operating in pursuit of a legitimate aim under the Covenant, that is achieving optimum educational conditions for the author's son and others. The State party argues that the terms of the proposed contract, both taken separately and as a whole, were fair, realistic and achievable. They were based upon the objective criteria of the behavioural problems of the author's son and reflected expected behaviour and responsibilities of the author's son, his parent, the school and the education authority.

4.7 Specifically, the State party contends that, based upon expert evaluation and as found by the Commission, the author's son was capable of controlling his behaviour. The contract recognized an ongoing process would be required, and provided no more than that he "work to control his behaviour". The elements of the contract relating to the author asked her to accept responsibility for her son while not in classes, to accept the school's procedures and support it in its behaviour management programme. This sought to engage the author in a constructive relationship with the school and is consistent with the responsibilities expected of all parents.

4.8 In sum, the State party argues that a mutually-developed contract was expected of the author's son, on account of his behavioural problems rather than of any disability, as a step towards improving his own and others' educational environment. The proposed contract contained terms that were fair and achievable, and were based upon expert individual evaluation of the author's son and positive psychiatric assessment of this behaviour management tool in general. Accordingly, the State party argues that the author's claims of a breach of the provisions of the Covenant are unsubstantiated, and alternatively that there has not been any breach of the provisions of the Covenant.

5.1 The author rejects the State party's submissions, responding with detailed factual submissions as to the conduct originally giving rise to the suspensions, and to the medical condition of the author's son. She repeats her contention that his condition is incurable and that he is disabled. As to the State party's arguments on standing, she asserts that her son cannot submit his own claim. She contends, without supplying any documentation, that her son had appointed her to lodge the communication.

Issues and proceedings before the Committee

6.1 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.

6.2 As to the State party's contention that the communication has been insufficiently substantiated for purposes of admissibility, the Committee notes that the communication centres upon the factual and evidential evaluation of the condition of the author's son and of his capacity to control and improve his behaviour. The Human Rights and Equal Opportunity Commission assessed these and other circumstances in coming to the conclusion that the author's son had been treated, as others in like situation, on the basis of his previous and expected future behaviour, that the contract was reasonable in the circumstances and that he had not suffered discrimination. In the light of the findings of the Commission, the Committee finds that the author has failed to demonstrate that the required contract was not based upon reasonable and objective grounds, and accordingly considers that the author has failed to substantiate her claims for the purposes of admissibility. Accordingly, the communication is inadmissible under article 2 of the Optional Protocol.

6.3 The Committee notes the State party's argument that the author lacks standing to bring the communication, but also considers that there may be doubts in the circumstances as to whether the son was in a position to supply formal authorization. However, in the light of the Committee's findings above, it is unnecessary to address that or any other remaining argument on admissibility that has been advanced.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and 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.]

Appendix

Individual opinion by Committee member Mr. Abdelfattah Amor

I do not agree with the argument on the inadmissibility of this communication as accepted by the Committee. The communication should have been declared inadmissible on other grounds which are a precondition for its consideration, namely, that the mother (Ms. F) does not have the authority to represent her son (C).

1. C was already of age when the communication was submitted to the Committee in 1998;
2. Ms. F has not been given power of proxy by her adult son for this purpose;
3. Although C appears to have behavioural problems, no document from a competent authority establishes that he has a handicap or a statutory disability;
4. In any case, the mother's assertion that her son is handicapped is not sufficient for him to be duly represented by her before the Committee.

(signed) Mr. Abdelfattah Amor

[Done in English, French and Spanish, the French 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.]
