

HUMAN RIGHTS COMMITTEE

Lindgren et al. and Lundquist et al. v. Sweden

Communications Nos. 298/1988 and 299/1988

9 November 1990

CCPR/C/40/D/298-299/1988*

DEAL JOINTLY AND VIEWS

Submitted by: G. and L. Lindgren and L. Holm A. and B. Hjord, E. and I. Lundquist, L. Radko and E. Stahl [represented by counsel]

Alleged victims: The authors

State party concerned: Sweden

Date of communication: 25 May 1988

Documentation references: Prior decisions - CCPR/C/WG/33/D/298/1988; CCPR/C/2G/33/D/299/1988; (Working Group rule 91 decisions, dated 8 July 1988); CCPR/C/35/D/298/1988; CCPR/C/35/299/1988 (Decisions on admissibility, dated 30 March 1989)

Date of present decisions: 9 November 1990

On 9 November 1990, the Human Rights Committee decided to join communications Nos. 298/1988 and 299/1988 and adopted its views thereon under article 5, paragraph 4, of the Optional Protocol. The text of the Committee's decisions is annexed to the present document.

A. Decision to deal jointly with two communications

The Human Rights Committee,

Considering that communications Nos. 298/1988 and 299/1988 refer to closely related events affecting the authors,

Considering further that the two communications can appropriately be dealt with together,

1. Decides, pursuant to rule 88, paragraph 2, of its rules of procedure, to deal jointly with these

communications;

2. Further decides that this decision shall be communicated to the State party and the authors of the communications.

B. Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights Fortieth Session

The Human Rights Committee, established under article 28 of the International covenant on civil and Political Rights,

Meeting on 9 November 1990,

Having concluded its consideration of communications Nos. 298/1988 and 299/1988, submitted to the Committee by G. and L. Lindgren and L. Holm and A. and B. Hjord et al, 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 authors of the communications and by the State party,

Adopts the following:

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

1. The authors of the communication (initial letters dated 25 May 1988 and subsequent correspondence) are G. and L. Lindgren and L. Holm (communication No. 298/1988), A. and B. Hjord, E. and I. Lundquist, Z. Radko and E. Stahl (communication No. 299/1988), a. and B. Hjord, E. and I. Lundquist, Z. Radko and E. Stahl (communication No. 299/1988), Swedish citizens residing in the municipalities of Norrköping and Upplands-Bro, Sweden. They claim to be victims of a violation by the Government of Sweden of article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 The authors are the parents of children who attend the private Rudolf Steiner School in Norrköping and the Ellen Key School in Stockholm. For the school year 1987/88 they applied to the municipality of Norrköping for financial aid for the purchase of their children's textbooks and to the municipality of Upplands-Bro for financial aid for their children's school meals and for the purchase of their textbooks. On 20 April 1988 and 10 February 1988, respectively, their applications were rejected. The authors did not appeal and therefore the decisions became final.

2.2 The authors consider that the rejection of financial aid constitutes a violation of article 26 of

the Covenant since the kind of financial aid they applied for, the so called School Social Aid (SSA), is normally granted by Swedish municipalities regardless of whether the children are attending private or public schools. Such aid is allegedly intended to relieve the parents of the additional expenses they face because of the compulsory school attendance of their children. Since, pursuant to the Parents' Code, parents must support their children, who are under an obligation to attend comprehensive school, the Swedish legislature considers financial aid to be a social benefit and complementary to child allowances.

2.3 Children may attend either a public or a recognized private school in order to satisfy the requirement of compulsory school attendance. According to the authors, the award of free or subsidized textbooks and of free school meals is neither exempted from the scope of the equality rule nor from the scope of article 26 of the Covenant.

2.4 The Supreme Administrative Court has considered "SSA" to constitute services provided free of charge. This, the authors claim, is incorrect, since it is financed out of the municipal income tax, borne by all residents of the municipality. They further allege that, for ordinary Swedish families, public grants ensure a basic standard of living. "SSA", therefore, constitutes a supplementary, tax-free income. Parents receiving "SSA" are said to be put in a better economic situation vis-a-vis parents who do not receive such aid. The authors consider this fact to compound the discriminatory effect of the municipality's refusal to grant them "SSA".

2.5 Since 1958, the decision to award financial aid has been delegated by the central Government to the municipal authorities. Pursuant to the Local Government Act, municipal authorities are prohibited from treating residents differently on any other than on objective bases, so as to ensure equality of treatment in the application of the law.

2.6 The authors claim that there is discrimination between their children and the pupils of public schools or private schools receiving financial aid. This difference in treatment is possible because the local authorities are under no legal obligation to grant financial aid to private schools, which renders the system arbitrary.

2.7 The authors claim that they have exhausted domestic remedies for purposes of article 5, paragraph 2 (b) of the Optional Protocol. In the light of a 1970 landmark decision of the Supreme Administrative Court rejecting an appeal filed by parents who complained about the denial of "SSA", the authors contend that an appeal would be futile, especially considering that all similar appeals following the 1970 decision have been rejected.

3. By decisions dated 8 July 1988, the Working Group of the Human Rights Committee transmitted the communications under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of admissibility. In this context, it asked the State party to provide the Committee with the rules and regulations governing the granting and use of financial aid for private schools or their pupils in respect of school meals and teaching aids.

4.1 In its submissions under rule 91, dated 22 November 1988, the State party objected to the admissibility of the communications under article 3 of the Optional Protocol, on grounds of lack of merit. It admitted, however, that domestic remedies had been exhausted within the meaning of

article 5, paragraph 2 (b), of the Optional Protocol, since the legal situation in Sweden is such that any appeal would have been futile.

4.2 The State party submits that the Swedish School system is regulated by the 1985 School Act (Skollagen 1985:1100). Sweden operates a uniform public school system comprising a compulsory basic school for pupils aged 7-16 years. The duty to attend school corresponds to the right to receive education within the framework of the public school system (chap. 3, sect. 1, of the 1985 Act). The duty to attend school shall, in principle, be fulfilled by attending a public school. Exceptions to this rule are Sami schools, approved independent schools (private schools) and national boarding schools (chap. 3, sect. 2, of the 1985 Act). The Act stipulates that the obligation to attend school may be satisfied through attendance at a private school approved for that purpose by the local school board. The Act provides that approval shall be granted if the school in question provides education of a quality that corresponds to that of the compulsory basic school.

4.3 The 1985 Act provides that basic compulsory school shall be free of charge for pupils (chap. 4, sect. 15). In particular, books, writing utensils and other aids shall be provided to the pupils free of charge. The local government of each municipality is charged with the responsibility of providing education that meets the standards set by the State and to finance this public sector school system (chap. 4, sect. 6). In Sweden the municipalities enjoy a wide measure of autonomy with respect to their own elected municipal assembly and finance their own operations through taxation of their residents. Each municipality determines its own tax rate and the revenue constitutes the municipality main source of income. Tax rates vary according to the needs and the financial situation of each municipality. The municipalities receive certain contributions from the State towards the expenses for the maintenance of the public school system. These contributions go primarily to the salaries of the staff. No particular grant is given to cover expenses for the purchase of textbooks or for provision of school meals. These are, as a result, borne by the municipalities.

4.4 The possibility for an approved private school at the compulsory school level to obtain State grants is regulated in decree 1983:97. Pursuant to it, the State may, upon application from the school, grant such aid, in practice when the school has been functioning for approximately three years. The grant is given as a fixed sum per pupil and differs depending on the educational level reached by the pupil. The grant can be subject to certain conditions. In principle, the school must be open to all and have reasonable fees and a pedagogic plan approved by the National Board of Education.

4.5 Decree 1967:270 on Private Schools and decree 1988:681 on State Grants for National Boarding Schools and Certain Private Schools apply to large private schools, which provide education at both the basic and higher levels. The grants are calculated in an exact manner, which resembles the method used for grants for the public sector schools in a municipality. The 1967 decree applies to the Ellen Key School in Stockholm and to the Rudolf Steiner School in Norrköping.

4.6 There are no particular rules concerning grants from municipalities to private schools or their pupils. The municipality must decide on these matters on the basis of the general rules of competence. The decision is subject to appeal in accordance with a special procedure.

4.7 The State adds that in Sweden a so-called general child grant (barnbidrag) is provided for children under 16 years of age. This grant is paid to the custodian of the child and at present amounts to 450 Swedish Kronor per month. For children above 16 years attending school or higher level schools, study aid is granted up to the age of 20 years. The State designates the establishments where pupils are entitled to receive such study aid (1973 Act, chap. 3, sect.1).

4.8 According to the State party, it cannot reasonably follow from article 26 of the Covenant that the State or a municipality should cover expenses incurred by attendance at a private school, voluntarily chosen by the student, instead of the corresponding public school. Failure to grant aid cannot constitute a discriminatory act within the meaning of article 26. Private schools are available, and any difference in the legal and/or financial situation of these schools and their pupils is laid down in a manner compatible with article 26.

4.9 With regard to the equality principle in municipal matters, the State party submits that this principle cannot change the fact that there is no statutory obligation for municipalities to grant private schools or their pupils financial aid. Consequently, a decision not to concede grants cannot be qualified as discriminatory.

4.10 Concerning the allegation of discrimination compared with pupils of other private schools, the State party submits that the decisions involved fall under the competence of the municipalities, which enjoy a large degree of autonomy. The legislation is based on the concept that the local authorities are best placed to take decisions relating to educational matters in their district. The difference in treatment that may result from this independence is, according to the State party, based on objective and reasonable criteria.

5.1 In their comments dated 21 December 1988, the authors note that ‘parents’ are not mentioned at all in the State party’s submissions, although parents are the citizens being treated differently financially in spite of their identical obligation under the Parents’ Code.

5.2 As regards textbooks, the authors contend that the legal duty imposed on parents to have their children attend school implies that expenses should be shared equally by all parents, regardless of the type of school chosen. Free textbooks are intended to relieve parents from their obligations under the Parents’ Code and to eliminate unjust distinctions between families. “SSA” is not intended to subsidize education, but to ease the family budget generally. Consequently, it is in this purely social context that discrimination has occurred.

6.1 Before considering any claims 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 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. The Committee noted that the State party did not contest the admissibility of the communication with respect to article 5, paragraph 2 (b), of the Optional Protocol. The Committee therefore concluded that, on the basis of the information before it, the requirements of article 5, paragraph 2, of the Optional Protocol, concerning prior exhaustion of

domestic remedies, had been met.

6.3 With regard to the State party's submission that the "lack of merit" in the author's argumentation should be considered as sufficient to declare the communication inadmissible pursuant to article 3 of the Optional Protocol, the Committee recalled that article 3 provides that communications shall be declared inadmissible if they: (a) are anonymous, (b) constitute an abuse of the right of submission, or (c) are incompatible with the provisions of the Covenant. It observed that the authors had made a reasonable effort to substantiate their allegations, for purposes of admissibility, and that they had invoked a specific provision of the Covenant. Accordingly, the Committee decided that the issues before it should be examined on the merits.

7. On 30 March 1989 the Human Rights Committee therefore decided that the communications were admissible.

8.1 In its submissions under article 4, paragraph 2, of the Optional Protocol, dated 12 October 1989, the State party indicates that it does not approve the use by counsel of the term "School Social Aid" (SSA) since the term might convey a wrong impression that the financial aid in question is a specific and clearcut form of social assistance. The State party recalls that in Sweden there exists a uniform public sector school system conceived to serve the entire population of the country and that, in principle, the duty to attend school prescribed by law is to be fulfilled within the framework on this public school system. The legislation here at issue is aimed at providing equal education for children all over the country and also reflects the political will to provide all children with an opportunity to attend the public sector education system. Accordingly, fulfilling the duty to attend school in schools other than those envisaged by the public sector must be seen as an exception to the general rule. In this context, the State party points out that there are relatively few private schools that qualify as a valid substitute to the compulsory part of the public sector school system. It is further submitted that the existing public school system has not disregarded the fact that people in Sweden might have different values in so far as education is concerned. In this connection, the State party quotes from a statement made in the context of the 1980 Teaching Plan for the compulsory basic school, "Aims and Directives", where, *inter alia*, it is stressed that "... Schools should be open to the presentation of different values and opinions and stress the importance of personal concern". Moreover, it points out that the same objective is contemplated by the School Act of 1985, which, in Ch. 3, Sec. 2, provides that a school may, at the request of a custodian of a pupil under the duty to attend school, dispense such a pupil from the obligation to attend otherwise compulsory activities in the educational program of that school. These are but a few examples to demonstrate that the public sector school system in Sweden is intended and conceived to serve the needs of the whole population of Sweden and that, therefore, it is not necessary to establish a parallel school system.

8.2 The State party further argues that the compulsory part of the public sector school system remains always open to all children who are subject to the duty to attend school and that parents who have chosen to have their children fulfil this duty in alternative schools retain the right to request that their children be integrated within the public sector school system. This stems from the aim of the legislator that the duty to attend school should in principle be fulfilled within the framework of the public sector school system. Accordingly, it is contended that it cannot be reasonably expected that a municipality should organize both the public sector school system, which is open to all

children, and at the same time contribute towards covering the costs for privately organized schools. The State party acknowledges that certain municipalities may have agreed to contribute to the activities of certain private schools. Such contributions are granted for purposes of covering costs for school-books, school meals and medical care at school and are given either in the form of a grant of money or by granting pupils in a private school the possibility of having meals or visiting health care facilities. The municipal support of private schools, however, varies from one municipality to another or it may also differ from one school to another within the same municipality. This depends on the interest that the school represents in the eyes of the municipal board, but, more importantly, on the great liberty that a municipality enjoys when deciding whether and to what extent it intends to support a private school. In this context, the State party adds that, according to a number of decisions by the Supreme Administrative Court of Sweden, it does not, in principle, fall under the competence of a municipality to grant contributions to matters which are of no particular general interest to the inhabitants of the municipality. The State party therefore reiterates its contention that no violation of the Covenant has occurred in any of the respects alleged by the authors.

9.1 In their comments dated 22 December 1989, the authors observe that the State party's submissions focus on "education" and the "public school system" in order to divert attention from the authors' argument that the assistance at issue does not relate to education, but is intended to relieve parents from their obligations under the Parents' Code Act within a purely social context. They reiterate that the substance of the matter under consideration remains the differentiation between parents with regards to social benefits granted as personal relief of their obligations under the Parents' Code and points out that the State party, by referring to municipal contributions to private schools for purposes of covering their costs or supporting their activities, clearly shows no inclination to admit that such social benefits - free meals and textbooks - are granted to individuals.

9.2 As to the form of the assistance under consideration, authors argue that, contrary to what the State party maintains, it is easily definable. They refer to the Government's annual decree on Intermunicipal compensation that determine the per capita amount relating to free meals and textbooks applicable to pupils attending the public sector schools of Sweden. The Decrees relating to the school years 1987/1988 and 1988/1989 are based on statistical figures concerning costs of meals, textbooks and other items, as compiled by the Swedish Association of Local Authorities. As to the value of this assistance, it is submitted that, independently of its various forms, the financial aid pertaining to pupils attending private schools is easily transformable into fixed amounts of money. In fact, since 1946 most Swedish municipalities (and not "certain" municipalities as the State party contends) administer this form of social assistance to parents on an equal basis.

9.3 In addressing the State party's argument that "according to a number of decisions of the Supreme Administrative Court, it does not in principle fall under the competence of a municipality to grant contributions to matters that are of no particular general interest to the inhabitants of the municipality", the authors point out that the matters referred to are not spelled out by the State party. In this respect, they add that since the beginning of this century it has been considered of general interest that Swedish municipalities provide all children within their boundaries with meals and basic textbooks.

9.4 With regard to the public costs for school meals and textbooks, the authors challenge the State party's statement according to which it cannot be reasonably expected that a municipality should

organize the public sector school system and, at the same time, provide for contributions intended to cover the costs for private schools. This statement, it is submitted, clearly contradicts the declaration made in January 1988 by the Swedish Minister of Education on behalf of the Government:

“In my opinion it is reasonable that a local government pays contributions to private schools for pupils registered as resident in the municipality, contributions that shall in principle amount to the equivalent of economies effected as the municipality does not pay e.g. for school meals and textbooks”. (Proposition 1987/88:100).

9.5 Finally, the authors maintain that the description of the public school sector contained in the State party’s submission is intended to convey the impression that a private school system is unnecessary in Sweden. They therefore object to the State party’s assertion that “ ... the public sector school system is intended to serve the needs of the entire population and does not make it necessary to build up parallel school systems ...”, and submit that this is largely contradicted by the fact that parents of more than 5000 pupils have nevertheless found it necessary, in 1989, to choose private schools. In this context, they add that many more parents would be willing to send their children to such schools, if they could afford them and if the authorities would not withhold the assistance in question.

10.1 The Human Rights Committee has considered the merits of the communications 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.

10.2 The main issue before the Committee is whether the authors of the communication are victims of a violation of article 26 of the Covenant because, as parents of children attending a private school, they have been denied subsidies from the municipality of Norrköping for the textbooks of their children attending the Rudolf Steiner School in Norrköping and from the municipality of Upplands-Bro for the textbooks and school meals of their children attending the Ellen Key School in Stockholm, whereas parents of children who attend public schools and parents whose children attend private schools in other municipalities do enjoy financial assistance for their children’s textbooks and meals. In deciding whether or not the State party has violated article 26 by not granting the authors such benefits, the Committee bases its findings on the following observations.

10.3 The State party’s educational system provides for comprehensive public sector schooling and allows for private education as an alternative to public education. In this connection the Committee observes that the State party and its municipalities make public sector schooling and a variety of ancillary benefits, such as free transport by bus, free textbooks and school meals, available to all children subject to compulsory school education. The State party cannot be deemed to be under an obligation to provide the same benefits to private schools; indeed, the preferential treatment given to public sector schooling is reasonable and based on objective criteria. The parents of Swedish children are free to take advantage of the public sector schooling or to choose private schooling for their children. The decision of the authors of these communications to choose private education was not imposed on them by the State party or by the municipalities concerned, but reflected a free choice recognized and respected by the State party and the municipalities. Such free decision, however, entails certain consequences, notably payment of tuition, transport, textbooks and school

meals. The Committee notes that a State party cannot be deemed to discriminate against parents who freely choose not to avail themselves of benefits which are generally open to all. The State party has not violated article 26 by failing to provide the same benefits to parents of children attending private schools as it provides to parents of children at public schools.

10.4 The authors also allege discrimination by the State party because different private schools receive different benefits from the municipalities. The Committee notes that the authors complain about decisions taken not by the authorities of the Government of Sweden but rather by local authorities. The State party has referred to the decentralized system existing in Sweden, whereby decisions of this nature are taken at the local level. In this connection the Committee recalls its prior jurisprudence that the State party's responsibility is engaged by virtue of decisions of its municipalities and that no State party is relieved of its obligations under the Covenant by delegating some of its functions to autonomous organs or municipalities. ^{1/} The State party has informed the committee that the various municipalities decide upon the appropriateness of private schools in their particular education system. This determine whether a subsidy will be awarded. This is how the Swedish school system is conceived pursuant to the School Act of 1985. When a municipality makes such a decision, it should be based on reasonable and objective criteria and made for a purpose that is legitimate under the Covenant. In the cases under consideration, the Committee cannot conclude, on the basis of the information before it, that the denial of a subsidy for textbooks and school meals of students attending the Ellen Key School in Stockholm and the Rudolf Steiner School in Norrköping was incompatible with article 26 of the Covenant.

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 which have been placed before it do not disclose a violation of any provision of the Covenant.

[Done in English, French, Spanish and Russian, the English text being the original version.]

Note

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Communication No. 273/1988 (B.d.B. et. al. v. The Netherlands) declared inadmissible on 30 March 1989, para. 6.5.