Drbal v. The Czech Republic, Communication No. 498/1992, U.N. Doc. CCPR/C/51/D/498/1992 (1994).

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HUMAN RIGHTS COMMITTEE

Fifty-first session

DECISIONS

Communication No. 498/1992

Submitted by: Zdenek Drbal

Alleged victim: The author

State party: The Czech Republic

Date of communication: 30 August 1991 (initial submission)

Documentation references:

Prior decisions:

- Committee's decision under rule 91, transmitted to the State party on 2 December 1993 (not issued in document form)

Date of present decision: 22 July 1994

[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional Protocol

to the International Covenant on Civil and Political Rights

- Fifty-first session -

concerning

Communication No. 498/1992 ***/**

Submitted by: Zdenek Drbal

Alleged victim: The author

State party: The Czech Republic

Date of communication: 30 August 1991 (initial submission)

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

Meeting on 22 July 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 30 August 1991) is Zdenek Drbal, a Czech citizen, currently residing in Brno, Czech Republic. He submits the communication on his own behalf and of that of his daughter Jitka. He claims that they are victims of a violation by the Czech Republic of their human rights. [The Optional Protocol entered into force for the Czech and Slovak Federal Republic on 12 June 1991. On 31 December 1992, the Czech and Slovak Federal Republic ceased to exist. On 22 February 1993, the Czech Republic notified its succession to the Covenant and the Optional Protocol thereto with retroactive effect as of 1 January 1993.]

The facts as submitted by the author:

2.1 The author shared a household with his daughter, who was born on 6 March 1983, and with her mother until 1985. He and the child then left the common household, because of the aggressive behaviour allegedly displayed by the mother, and started living with the author's parents. The mother subsequently was hospitalized in a psychiatric institution; the child received treatment as an out-door patient, according to the author to overcome the effects of the maltreatment she had been subjected to by her mother.

2.2 The author, on 23 May 1985, asked the Brno-venkov District Court to grant him custody of the child. The doctor who had been treating the child gave evidence on the father's behalf; another expert gave evidence on behalf of the mother. On 8 September 1986 the Brno-venkov District Court decided to give custody to the mother. The father continued to live with the child, and appealed to the Brno Regional Court, which on 11 March 1987 confirmed the judgment. On 16 March 1987 the author addressed a complaint to the General Prosecutor's Office; the Office

informed him on 17 December 1987 that it would not submit his case to the Supreme Court, as it considered the judgment and the procedures to be consistent with the law. The author thus claims to have exhausted domestic remedies, as only the General Prosecutor can bring a case before the Supreme Court.

2.3 The author continued to keep the child with him, because, according to him, the mother is still mentally ill and aggressive, and does not show any interest in the child. He claims that she does not contribute financially to the child's maintenance, never comes to visit and that she is incapable of taking care of the child.

2.4 On 13 July 1988, the police came to the author's apartment, where he was living with his child and his parents. They were accompanied by a judge of the Brno-venkov District Court, the mother of the child, and her legal adviser. However, their attempt to take the child away by force failed. The author subsequently submitted a complaint to the Federal Assembly's Office, which referred his complaint to the General Prosecutor's Office on 20 October 1988. On 8 December 1988 the Office informed him that the attempted execution of the Court's decision had been lawful.

2.5 The author submits that he further addressed letters to the President of the Supreme Court and to the Office of the President of Czechoslovakia, all to no avail.

2.6 He further submits that, on 11 October 1988, the Brno-venkov District Council initiated legal action against him, for preventing the execution of the Court's order. No prosecution followed, however, because of a general amnesty, declared on 28 October 1988.

2.7 On 16 May 1988 the author requested the Brno-venkov District Court to officially change the child's place of residence. As the District Court considered itself biased, his request was heard by the Brno Town Court, which rejected it on 24 June 1991. Subsequently, the author addressed letters to the General Prosecutor and to the President of the Supreme Court, to no avail.

2.8 The author stresses that, although the child is living with him, he has no legal custody rights and the Court's judgment, giving custody to the mother, can still be executed. He submits that he lives in constant fear that the child will be taken away from him.

The complaint:

3.1 Although the author does not invoke any specific article of the Covenant, it appears that he claims that he and his daughter are victims of a violation by the Czech Republic of articles 14, paragraph 1, 23, paragraph 1, and 24, paragraph 1.

3.2 The author contends that his ex-wife's father indicated, in 1985, that he had friends in the Brno Court and that he would make sure that the custody proceedings would turn against the author. He claims that the chairman of the Brno-venkov District Court was biased against him and that the testimony of one of the experts, stating that the mother was capable of taking care of the child, was false. He alleges that there was a conspiracy against him to take the child from him. The chairman of the Brno Regional Court allegedly told the author beforehand that he

would rule against him, and did not give him an opportunity to present his point of view during the proceedings. The author states that this judge was dismissed from the Court in 1990. He further claims that a lay judge in the Town Court in Brno, on 24 June 1991, threatened him and told him that he was a child kidnapper.

3.3 The author claims that the failure of the Courts to grant him custody of the child, notwithstanding recent expert opinions that the mother is considered incapable to care for the child, constitutes a violation of human rights. He alleges that the Czech authorities are of the opinion that a child should stay with the mother under all circumstances and that they do not protect the interests of the child.

The State party's observations and the author's comments thereon:

4. By submission of 10 February 1994, the State party provides information about the domestic remedies available in the Czech Republic and confirms that the author has exhausted the remedies which were available at the time of the submission of his communication to the Committee. It adds that since then, citizens have been given a right to appeal also to the Constitutional Court, but that it is not clear whether the author has done so.

5. In his comments on the State party's submission, the author submits that he presented a complaint to the Constitutional Court on 28 January 1992, but that the Court declared his complaint inadmissible on 22 April 1992. He therefore claims that no further domestic remedies are open to him. The author further states that his daughter is still living with him and that she is in good health.

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 The Committee notes that the State party has raised no objections to the admissibility of the communication and has confirmed that the author has exhausted domestic remedies. Nevertheless, it is the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol have been met.

6.3 The Committee further notes that the author claims that the courts were biased against him and wrongfully decided to give custody of his daughter to the mother, and not to him, and not to change his daughter's official place of residence. These claims relate primarily to the evaluation of facts and evidence by the courts. The Committee recalls that it is generally for the courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case, unless it is apparent that the courts' decisions are manifestly arbitrary or amount to a denial of justice. In the instant case, which relates to the complex issue of child custody, the information before the Committee does not show that the decisions taken by the Czech courts or the conduct of the Czech authorities have been arbitrary or amounted to a denial of justice. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol.

7. The Committee therefore decides:

(a) that the communication is inadmissible under article 3 of the Optional Protocol;

(b) that this decision shall be communicated to the State party and to the author of the communication.

[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 Mr. Bertil Wennergren pursuant to rule 92, paragraph 3,

of the Committee's rules of procedure concerning communication No. 498/1992

(Zdenek Drbal v. the Czech Republic)

The author's communication is against the Czech courts' decisions awarding custody of his daughter Jitka, born on 6 March 1983, to her mother Jana Drbalova. The author's complaints are directed primarily against the decisions by the Brno-venkov District Court (P 120/85), the Regional Court in Brno (No. 12 CO 626/86) and the Town Court of Brno (decision 24 June 1991) and the way in which the courts conducted the proceedings. In my opinion, the communication concerns just as much the interests of his daughter.

The author has informed the Committee that Jitka was not well treated by her mother, and that in 1985, a local doctor, Dr. Anna Vrbikova, alarmed the Section for Child Care of the district authorities. While Jitka's mother was later admitted to a psychiatric hospital for care, the author moved to his parents with Jitka and lived there. He asked the Brno-venkov District Court to give him custody of Jitka. Jitka had, after her mother's assumed negligence vis-à-vis her, to be taken into regular care as an outdoor patient at the psychiatric section of the university hospital of Brno, under the supervision of head physician Dr. Vratislav Vrazal. At the court proceedings Dr. Vrazal gave evidence. According to the author he stated that Jitka was content with her life with the author and that, from a medical point of view, he did not recommend that the child be taken away from her father. Another expert opinion was given by Dr. Vera Capponi, who stated that Jitka's mother was well able to take care of Jitka and that she was better capable of doing it than the author. In its decision on 8 September 1986, the Court decided to give the custody of Jitka to her mother. The Regional Court of Brno confirmed that judgment in its decision of 11 March 1987. The author, however, refused to hand Jitka over to her mother. On 13 July 1988, an attempt was made to enforce the Courts' decisions and have Jitka handed over to her mother, with assistance of the police. A member of the Child Care Section of the Brno-venkov district authorities was present as well as the president of the court and Jitka's mother and her legal adviser. Jitka, then 5 years old, refused to leave her father's home and the attempt was stopped

without result. Two months earlier, the author had made a request to the District Court for a change of custody. Two experts in psychiatry and psychology, Dr. Marta Holanova and Dr. Marta Skulova submitted a report dated 17 July 1989, in which they recognized, according to the author, that he was capable of bringing up his daughter on his own and that in the event of a forcible removal from her father, she would suffer health hazards. The Court forwarded his request for a rehearing to the Town Court of Brno, which rejected his claims on 24 June 1991. Jitka was then 8 years old and is now 11 years old; she still lives with the author and his parents.

It is not apparent from the material that was submitted to the Committee that the courts' decisions were manifestly arbitrary or amounted to a denial of justice. Neither the records from the court proceedings, nor their decisions and the reasons given for them have, however, been available to the Committee. They would in all likelihood not reveal any flagrant mis-justice. Instead, what is of real concern to me is that the situation, after the court decisions and the failed enforcement, has developed into a factual anomaly which might jeopardize a healthy, sound and safe development of the child. The author alleges that, as long as the mother has legal custody, his daughter continues to be exposed to possible health damages. She cannot move freely, especially at school, as she constantly runs the risk of an enforced withdrawal to an unknown environment. She does not know her mother. By virtue of all this, she suffers mentally. This anomalous situation is alarming and it is caused, whether inadvertently or not, by the courts' failure to handle the matter, as is now obvious, in an appropriate way. The shortcomings work, in my opinion, to the detriment of the best interests of the child. The communication, in my opinion, therefore raises issues under article 24, paragraph 1, of the Covenant, which entitles every child to such measures of protection as are required on the part of its family, society and the State. I consider the communication admissible in that respect.

Bertil Wennergren

[Done 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.]

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footnotes

*****/ Made public by decision of the Human Rights Committee.

*****/ The text of an individual opinion, signed by one Committee member, is appended to the present document.