

Manuel Wackenheim v France, Communication No 854/1999, U.N. Doc. CCPR/C/75/D/854/1999 (2002)

1) Reference Details

Jurisdiction: UN Human Rights Committee, Seventy-fifth session

Date of Decision: 15 July 2002

Case Status: Concluded by the Human Rights Committee

Link to full case: <http://www1.umn.edu/humanrts/undocs/854-1999.html>

2) Facts

The author, who suffers from dwarfism, began in July 1991 to appear in "dwarf tossing" events organized by a company called *Société Fun-Productions*. Wearing suitable protective gear, he would allow himself to be thrown short distances onto an air bed by clients of the establishment staging the event.

On 27 November 1991, the French Ministry of the Interior issued a circular on the policing of public events, in particular dwarf tossing, which instructed prefects to use their policing powers to instruct mayors to keep a close eye on spectacles staged in their regions. The circular said that dwarf tossing should be banned on the basis of, among other things, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (prohibition of torture, and inhuman or degrading treatment or punishment).

On 30 October 1991 the author applied to the administrative court in Versailles to annul an order dated 25 October 1991 by the mayor of Morsang-sur-Orge banning a dwarf tossing event scheduled to take place in a local discotheque. The court annulled the mayor's order in a ruling on 25 February 1992. On 20 March 1992 the author made another application for annulment of an order by the mayor of Aix-en-Provence banning a dwarf tossing event planned to take place in his commune.

In a ruling on 8 October 1992 the administrative court of Marseille annulled the mayor's decision on the grounds that the activity in question was not of a nature to affront human dignity. Aix-en-Provence, represented by its mayor, appealed against this ruling in an application dated 16 December 1992. By order dated 27 October 1995 the Council of State overturned the ruling on the ground the dwarf tossing was an affront to human dignity. Since that order, *Société Fun-Productions* decided to no longer engage in activities of this kind. In spite of his desire to continue, the author has since been without a job for want of anyone to organize dwarf tossing events.

3) Law

- Article 2(1) of the International Covenant on Civil and Political Rights 1966 (Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status)
- Article 5(2) of the International Covenant on Civil and political Rights 1966 (Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant)

- Article 9(1) of the International Covenant on Civil and Political Rights 1966 (right to liberty and security of persons)
- Article 16 of the International Covenant on Civil and political Rights 1966 (Everyone shall have the right to recognition everywhere as a person before the law)
- Article 17(1) of the International Covenant on Civil and political Rights 1966 (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation)
- Article 26 of the International Covenant on Civil and political Rights 1966 (right to non-discrimination)

4) Legal Arguments

The Author

The author affirmed that banning him from working has had an adverse effect on his life and represented an affront to his dignity. He claims to be the victim of a violation by France of his right to freedom, employment, respect for private life and an adequate standard of living, and right to non-discrimination. He further stated that there is no work for dwarves in France and that his job does not constitute an affront to human dignity since dignity consists in having a job.

The State

In observations dated 13 July 1999, the State party argued, first, that the alleged violations of article 9, paragraph 1, and article 16 should be set aside at once inasmuch as they are unrelated to the facts at issue. The complaint of a violation of Article 9, paragraph 1, it continued, was in substance an identical claim to a violation of Article 5 of the European Convention on Human Rights which the author has already brought before the European Commission of Human Rights, and should be rejected for the same reasons as the Commission puts forward.

On the alleged violation of Article 26 of the Covenant, the State party argued that the scope of application of Article 26 is limited to the rights protected by the Covenant. From that interpretation the State party argued a dwarf's right to be tossed for a living derives from none of the rights protected by the Covenant and the question of non-discrimination therefore does not arise. If for the sake of argument, the State party goes on, the non-discrimination language in Article 26 were to be held valid for all rights enshrined both in the Covenant and in the domestic legal order, the question would arise of whether the contested ban is discriminatory. The State party argued it was self-evidently not discriminatory. As by definition it applies only to individuals suffering from dwarfism since they were the only ones who might be involved in the banned activity.

The State party set out that it could not be upbraided for treating dwarves differently from those who are not since they are two separate categories of individuals and for one of them "tossing", for obvious physical reasons, cannot be of any concern. It further concludes that the difference in treatment was based on an objective difference in status between those suffering from dwarfism and those that are not and that the underlying aim of upholding human dignity was legitimate and consistent with Article 26 of the Covenant.

Author - Counsel's comments on the State party's observations

Counsel for the author argued that the State party was taking refuge behind two identical orders handed down on 27 October 1995 by the Council of State, granting mayors the right to ban dwarf tossing events in their communes on the grounds that "human dignity is a part of public order" even in the absence of particular local circumstances and despite the consent of the individual concerned.

Counsel for the author emphasized that employment is an element of human dignity and that depriving an individual of his employment is tantamount to diminishing his dignity.

5) Decision

Consideration of Admissibility

In regards to the author's complaint of discrimination under Article 26 of the Covenant, the Committee took note of the State party's observation that the Council of State held the scope of application of Article 26 to be limited to the rights protected by the Covenant. The Committee nevertheless wishes to draw attention to its jurisprudence establishing that Article 26 does not simply duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. The application of the principle of non-discrimination contained in Article 26 is therefore not limited to those rights which are provided for in the Covenant. As the State party has not put forward any other arguments against finding the communication admissible, the Committee finds the communication admissible inasmuch as it appears to raise questions pertaining to Article 26 of the Covenant.

Consideration of the Merits

In discerning whether the authorities' ban on dwarf tossing constituted discrimination within the meaning of Article 26 of the Covenant, the Committee recalled its jurisprudence whereby not every differentiation of treatment of persons will necessarily constitute discrimination, which is prohibited under Article 26 of the Covenant. Differentiation constituted discrimination when it was not based on objective and reasonable grounds.

The question, in the present case, was whether the differentiation between the persons covered by the ban ordered by the State party and persons to whom this ban does not apply may be validly justified. The differentiation between the persons covered by the ban, namely dwarves, and those to whom it does not apply, namely persons not suffering from dwarfism, is based on an objective reason (as they are the only persons capable of being thrown) and is not discriminatory in its purpose.

The Committee acknowledged that there were other activities which are not banned but which might possibly be banned on the basis of grounds similar to those which justify the ban on dwarf tossing. However, the Committee opined that, given that the ban on dwarf tossing is based on objective and reasonable criteria and the author has not established that this measure was discriminatory in purpose, the mere fact that there may be other activities liable to be banned is not in itself sufficient to confer a discriminatory character on the ban on dwarf tossing. For these

reasons, the Committee held that the State party had not, in the present case, violated the rights of the author as contained in Article 26 of the Covenant.