

Carl Henrik Blom v. Sweden, Communication No. 191/1985, U.N. Doc. CCPR/C/OP/2 at 216 (1990)

1) Reference Details

Jurisdiction: UN Human Rights Committee, Thirty-second session

Date of Decision: 4 April 1988

Case Status: Concluded by the Human Rights Committee

Link to full case: <http://www1.umn.edu/humanrts/undocs/newscans/191-1985.html>

2) Facts

During the school year 1981/82, the author attended grade 10 at the Rudolf Steiner School in Goteborg, 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.

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. This meant that the supervision was in force from the school year 1982/83 onwards, and not from autumn 1981, as the school had requested.

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 1981/82.

3) Law

National Law

- Decree No. 418 on Study Aid (1973)
- Act on Study Aid (1973)

International Law

- UN International Covenant on Civil and Political Rights 1966 (ICCPR), Article 2(3) and Article 26
- UNESCO Convention against Discrimination in Education of 1960, Article 3(c) and Article 5(b)
- UN International Covenant on Economic, Social and Cultural Rights 1966, Article 13

4) Legal Arguments

The Author

The author argued that the decision not to grant him public assistance was in violation of Article 26 of the ICCPR. The author contended that he was subjected to discrimination as a pupil of a private

school, as pupils of public schools are said to have received public assistance for the school year 1981/82. This discriminatory treatment allegedly contravened the basic idea of equality for all in education and it also allegedly interfered with the parents' right to choose independent private schools provided for in Article 13 of the International Covenant on Economic, Social and Cultural 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 requested that the Committee condemned the alleged violations of Article 26 of the ICCPR, invited the State party to take the necessary steps to give effect to its obligations under Article 2, paragraph 3 urged the State party to discontinue the alleged discriminatory practices based on the 1973 Study Aid Act.

The State

The State party submitted that, in relation to a violation of Article 26, 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. Accordingly, different treatment does not constitute discrimination when the distinction is based on objective and reasonable criteria. The State party argued that there was 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.

The State party further argued that a school, like any other institution or activity in society, needed to be assessed for reasonable standards of quality and whether it fulfils a need of society or the presumptive pupils. The State party argued that it was 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 have not subsequently changed. The State party argued this rationale for the supervision of private schools and deciding the eligibility of pupils for public financial support. The Government submitted that this does not constitute discrimination within the meaning of Article 26.

5) Decision

On concluding that the communication was admissible, the Committee observed that the main issue before it was whether the author was a victim of a violation of the Covenant due to the alleged incompatibility of the Swedish regulations on education allowances with Article 26.

The Committee observed that the State party's educational system provides for both private and public education, and held that 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 establishment, when the private system is not subject to State supervision.

As to whether 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 due to the non-retroactive effect of the State party's decision of 17 June 1982, the Committee found that the State party could not be expected to grant an allowance for any prior period and that the question of discrimination does not arise.

Finally, the Committee noted, in regard to whether the processing of the schools application was unduly prolonged, 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. The Committee concluded that this lapse of time could not be deemed to be discriminatory, as such.