

THE FACTS

Whereas the facts presented by the Applicant may be summarised as follows:

The Applicant is a Dutch citizen, born in 1912 and residing at R..

From his statements and from documents submitted by him it appears that, in 1938, the Applicant was married in Germany to Maria Z. who is also the mother of his three children, born in 1942, 1946 and 1948. On .. December, 1953, the District Court (Arrondissementsrechtbank) at Breda decided that the parties should be separated a mensa et toro. It appears that, in July 1954, the Applicant's wife left the Applicant and took up residence in Utrecht. The children were taken charge of by the public authorities, by letter of .. August, 1954, from the Public Prosecutor's Office (Parket van de Officier van Justitie) the Applicant was informed that his children were placed in the provisional custody of the Guardianship Court (Voogdijraad).

On .. February, 1955, the District Court at Breda decided that neither the Applicant nor his wife should continue to have custody of their children. The Court further specified that the Roman Catholic Association for Child Welfare of the Bishopric of Breda (Rooms Katholieke Vereniging voor kindbescherming van het bisdom Breda) at Breda should have custody (voogdij) of the children. The Applicant made an appeal (hoger beroep) to the Court of Appeal (Gerechtshof) at 's-Hertogenbosch which was dismissed on .. April, 1955. Both courts came to the conclusion that the Applicant had grossly neglected his children, that he had beaten his wife in their presence, and that he was generally not capable of taking proper care of his family.

It appears that, in May 1955, the Applicant addressed himself to the Guardianship Court at Breda complaining about the fact that his children were placed in the custody of a Roman Catholic Association for Child Welfare. By letter of .. May, 1955, from the Registrar of the said Court he was informed that, insofar as the children had been baptised Roman Catholics and had been brought up as such, they should continue to be educated in the Roman Catholic faith.

In August, 1957, the Applicant made an application to the District Court at Breda requesting the Court to restore to him the custody of his children. At a hearing, held on .. October, 1957 before the said District Court, the Applicant stated inter alia, that the children were not properly provided for at the Catholic home to which they had been sent. He further alleged that he was not a member of any Church and that he had been excommunicated because he had applied for a separation from his wife without the consent of the Bishop. His application was rejected by the said Court on .. October, 1957, on the ground that a decision restoring to the Applicant such custody would not be in the interest of the children. It appears that the Applicant made an appeal against this decision to the Court of Appeal at 's-Hertogenbosch which was dismissed on .. January, 1958.

The marriage between the Applicant and Maria Z. was separated by the District Court at Breda on .. May, 1960.

In July 1960, the Applicant made an application to the District Court at Breda requesting that the Court should appoint him as guardian of his children. This was rejected by the said Court on .. November, 1960, again on the ground that it was not in the interest of the children to appoint the Applicant as their guardian. The Applicant made an appeal against this decision to the Court of Appeal at 's-Hertogenbosch which was dismissed .. April, 1961. The Court had regard to two reports, dealing with the personality of the Applicant from which it emerged that he was not really interested in his children. The Court continued that in fact, it was not altogether certain whether the Applicant

really wanted to live with them but that he had developed a litigation complex in this respect. Moreover, he was not in a position properly to provide for them. The Court further referred to the complex personality of two of the children concerned and concluded that it would not be in the interest of the children if the Applicant were to be their guardian.

It appears that the Applicant then addressed himself to the Legal Information Office (Bureau van Consultatie) at 's-Gravenhage enquiring as to the possibilities of a further appeal (cassatieberoep) to the Supreme Court (Hoge Raad). By letter of .. May, 1961 from the above office he was informed that no further appeal would lie in his case, the Supreme Court having no competence to review points of fact.

It appears that in April 1962 the Applicant applied to the District Court at Breda that the guardianship of his children should be withdrawn from the Roman Catholic Association for Child Welfare. The application was dismissed by the said Court on .. September, 1962. The Applicant's appeal to the Court of Appeal was rejected on .. January, 1963. Both courts found that the Applicant's accusations against the above Association to the effect that his children had not been given proper care, were not supported by the evidence, or were inadmissible under the law.

In October, 1964, the Applicant made a further application to the District Court at Breda requesting to be appointed as guardian of two of his children, the eldest child having, in the meanwhile, reached the age of majority. The Application was dismissed by the said Court on .. May, 1965 on the ground that the Applicant had been deprived of the custody of his children because he had grossly neglected them; that, being an invalid, he was still without sufficient means to provide for his children; that he had consistently refused to co-operate with the Association for Child Welfare and had declared in Court that he would continue doing so because, although having originally been a member of the Roman Catholic Church, he was for several years now no longer interested in any Church. The Court, furthermore, referred to the personality of the Applicant and stated that, if the Applicant's application was allowed, this might result in a break of continuity of the children's education which was undesirable.

The Applicant's appeal against this decision to the Court of Appeal at 's-Hertogenbosch was rejected on .. July, 1965. The Court of Appeal confirmed the lower court's reasoning and concluded that it was not possible to entrust the children to the Applicant's care.

It appears that the Applicant then asked his lawyers to advise him as to his chances if he should make a further appeal to the Supreme Court. By letter of .. August, 1965, from his lawyers he was dissuaded to make such appeal as it seemed to be based on points of fact only which the Supreme Court had no competence to review.

The file contains a letter from the Supreme Court, dated .. October, 1965, informing the Applicant that no action could be taken in the matter explained to the Court in the Applicant's letter of .. September, 1965. The subject matter of this letter is not clear, however.

The file contains also an undated letter from the Registrar (Greffier) of the Court of Appeal at 's-Hertogenbosch informing the Applicant that criminal charges would not be preferred against a certain Child Welfare Organisation. No further particulars are given in this respect.

The Applicant now complains that the Convention was violated by his being deprived of the custody of his children and by the Court's refusal to appoint him as their guardian. He alleges that the court decisions in this respect were not supported by the law or by the facts, and were solely due to his anti-Church attitude.

He further complains that the Convention was violated in the Court proceedings concerned in that his witnesses were not heard. It appears that, in particular, the Applicant had requested that his children should be examined as to the question of guardianship which both the District Court and the Court of Appeal by their decisions of .. September, 1962 and .. January, 1963 had refused. He also contends that the Association for Child Welfare had submitted to the Courts secret reports which they refused to communicate to him.

He finally complains that he was refused free legal aid and that the prosecution authorities failed to investigate certain charges laid by him. Without referring to any specific Articles he alleges generally a violation of the Convention. He requests a decision to the effect that the custody of his children should be restored to him.

THE LAW

Whereas certain of the facts alleged relate to a period prior to 31st August, 1954, the date of the entry into force of the Convention with respect to the Netherlands; and whereas, in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party; whereas it follows that the examination of the Application, insofar as it relates to these alleged facts, is outside the competence of the Convention *ratione temporis*;

Whereas, with regard to the Applicant's complaint that custody of his children was taken away from him and that the Convention was violated by the court proceedings concerned, the Commission observes that, even assuming the Applicant to have exhausted the domestic remedies available to him, Article 26 (Art. 26) of the Convention further provides that the Commission may only deal with a matter "within a period of six months from the date on which the final decision was taken"; and whereas the decision of the Court of Appeal at 's-Hertogenbosch, which was the final decision regarding the subject of this complaint, was given on .. January, 1958; whereas the present Application was not submitted to the Commission until .. October, 1965, that is more than six months after the date of this decision; whereas, furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period; whereas it follows that this part of the Application has been lodged out of time (Articles 26 and 27, paragraph (3) (Art. 26, 27-3), of the Convention);

Whereas the Applicant further complains that the Dutch authorities have refused to appoint him as guardian of his children; whereas, again assuming that the Application has exhausted the domestic remedies available to him, the Commission had regard to Article 8 (Art. 8) of the Convention which guarantees generally the right to respect for private and family life; whereas, however, paragraph (2) of Article 8 (Art. 8-2) provides that "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health and morals";

Whereas the Commission has stated in an number of previous decisions (for instance, Nos. 1329/62, Yearbook V, p. 201, and 2792/66, Collection of Decisions, Vol. 21, p. 67) that the terms of paragraph (2) (Art. 8-2) left a considerable measure of discretion to the domestic courts in taking into account factors in the case which might appear to them to be critical for the protection of the health and morals of a child;

Whereas, the Commission concluded that nevertheless it has ultimately the duty to judge whether the refusal of guardianship was justifiable under the provisions of paragraph (2) (Art. 8-2);

Whereas, in the present case, the Commission observes that, on several occasions, the Dutch Courts have examined the question whether or not the Applicant should be the guardian of his children; whereas the Dutch Courts concluded, on the basis of the evidence before them, that it was not in the interest of the children that the Applicant should be their guardian particularly in view of the evidence before them of the Applicant's negligence of his children; whereas it is therefore beyond doubt that the said Courts took into account the necessity of protecting the health and the morals of the children concerned and there is no evidence to show that such decision was not proper and reasonable;

Whereas the Commission accordingly finds that, in the circumstances of the present case, the decisions taken by the Dutch Courts against the Applicant with respect to the guardianship of his children were necessary for the protection of their health and morals within the meaning of Article 8, paragraph (2) (Art. 8-2), of the Convention;

Whereas it follows that this part of the Application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention.

Whereas the Applicant also complains that, contrary to his express wishes, his children were placed by the Dutch authorities in the care of a Roman Catholic Organisation for Child Welfare and, consequently, were brought up in the Roman Catholic faith; whereas the Commission in this respect had regard to Article 2 of the Protocol (P1-2), which provides that "in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions";

Whereas it is true that, under this provision, the religious and philosophical opinions of parents, including their agnostic opinions, are protected;

Whereas, first, an examination of the present case as it has been submitted, does not disclose any indication as regards the religious and philosophical convictions of the mother of the children; whereas, moreover, it emerges from the letter of the Registrar of the Guardianship Court at Breda, dated .. May, 1955, that the Applicant's children had been baptised Roman Catholics and had been brought up as such;

Whereas, furthermore, the Applicant himself stated before the Dutch Courts that, although having originally been a member of the Roman Catholic Church, he had no longer interest in any Church; whereas it appears that his anti-Church opinion had developed only after his excommunication resulting from his application for a separation from his wife without the consent of the Bishop; whereas the Commission finds that in the circumstances of the present case, the Applicant's objections against the placing of his children in the care of the Roman Catholic Association for Child Welfare at Breda were not expressed until a comparatively late stage in their education; whereas the authorities had not wished to interrupt the continuity of his children's education;

Whereas, finally, the Commission had regard to the age of the children, born in 1942, 1946 and 1948.

Whereas the Commission concludes that, even assuming that Article 2 of the Protocol (P1-2) is at all applicable in a case where the parents no longer have custody of their children, an examination of the case does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention or the Protocol; whereas it follows that this part of the Application is also manifestly

ill-founded within the meaning of Article 27, paragraph (2)
(Art. 27-2), of the Convention.

Now therefore the Commission declares this application INADMISSIBLE.