AS TO THE ADMISSIBILITY OF

Application No. 17004/90
by R.H.
against Norway

The European Commission of Human Rights sitting in private on 19 May 1992, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 September 1986 by R.H. against Norway and registered on 9 August 1990 under file No. 17004/90;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Norwegian citizen, born in 1962. He resides at Bærum, Norway. Before the Commission he is represented by Mr. Gustav Høgtun, a lawyer practising in Oslo.

A. The particular facts of the case as submitted by the applicant

In 1986 the applicant lived together with a young Norwegian woman. They were not married. In June 1986 she became pregnant, the applicant being the father. In early August they went to Israel and planted three trees as a symbol of their wish to have the child. The mother, however, changed her mind and together with the applicant she consulted a clinic in order to obtain information about a possible abortion, the applicant however being opposed to such a step.

As the mother was determined to go through with the abortion and as the foetus was now more than 12 weeks old she was called to appear before a board of two doctors on 1 September 1986 and state her reasons. It does not appear that any medical reasons were submitted in support of an abortion but rather social indications seem to have been the reasons for the request. The request was granted on the same day and the abortion was carried out on 5 September 1986, when the foetus

was 14 weeks and 1 day old. The actual abortion followed a routine procedure according to which the mother received medicine whereby "birth" was provoked. The foetus would in such circumstances "suffocate" and appear in the same manner as during normal birth. The applicant was not entitled to participate in the above proceedings and was not consulted or heard before the abortion was carried out. Subsequently the applicant requested the hospital to hand over to him the remains of the foetus in order to inter them in accordance with his Jewish faith. However, his request remained unanswered.

Prior to these events, on 31 August 1986, the applicant had applied for an injunction (begjæring om midlertidig forføyning) in order to prevent the mother from terminating the pregnancy. The application was rejected by the City Court on 6 September, by the High Court on 17 September and by the Appeals Committee of the Supreme Court on 23 October 1986.

On 10 March 1987 the applicant instituted proceedings in the City Court of Oslo (Oslo Byrett) against the State represented by the Ministry of Social Affairs claiming vindication and damages inter alia on the ground that the abortion allegedly had been carried out contrary to Articles 2, 3, 8 and 9 of the Convention in respect of himself and the foetus. By judgment of 14 June 1988, which was rendered following hearings held from 26 to 31 May 1988, the City Court dismissed some of the applicant's claims and for the remainder found in favour of the State. The Court did not find that any Convention rights had been violated.

The applicant appealed against the judgment to the High Court of Eidsivating (Eidsivating Lagmannsrett). The Court was composed of three professional and four lay judges, one of whom was Director of Finances (økonomichef) at the hospital where the abortion had been carried out. Hearings were held from 30 October to 3 November 1989. The Court heard five experts, three witnesses and the representatives of the parties. Before the High Court the applicant claimed inter alia as follows:

1) that he was entitled to receive information concerning the foetus,

2) that he was entitled to receive information as to whether a danger to the mother's life or health was invoked as a reason for the abortion,

3) that he was entitled to be heard on the question whether or not to terminate the pregnancy,

4) that the abortion was illegal as being inhuman treatment in respect of the foetus,

5) that he was entitled to receive the remains of the foetus after the abortion in order to inter them in accordance with his religion,

6) that he was entitled to have the foetus interred after the abortion,

7) that it was illegal to put the foetus to death, and

8) that the State was not entitled to allow the abortion since the mother did not fulfil the requirements under Norwegian law for terminating the pregnancy after 14 weeks and 1 day.

By judgment of 17 November 1989 the High Court rejected the applicant's claims. In respect of the Convention the High Court stated inter alia:

(translation)

"The question arises whether the Norwegian Act on Termination of Pregnancy violates Article 2 of the Convention when it allows board approved abortion on social indications in the 15th week of the pregnancy. The High Court refers as a starting point to the Supreme Court judgment in the Børre Knutsen case ... . The Supreme Court left the question open whether Article 2 of the Convention protects the unborn life at all and stated in this connection:

> 'In any case the provision must be regarded as not imposing any far-reaching restrictions on the legislator's right to set the conditions for abortion. The Norwegian Act, under which the woman herself makes the final decision whether or not to terminate her pregnancy, provided the operation can be made before the end of the twelfth week of pregnancy, is similar to the legislation of a number of other countries belonging to the same culture and which also have acceded to the European Human Rights Convention. This is hardly immaterial to the consideration of a matter of international law.'

This view on the protection of the foetus under the Convention was expressed by the Supreme Court after considering the Commission's decisions in the case of X v. the United Kingdom (No. 8416/79, Dec. 13.5.80, D.R. 19 p. 244) and the case of Brüggemann & Scheuten v. Germany (Comm. Report 12.7.77).

Thus the High Court finds that a possible protection of the foetus under Article 2 must be decided on the basis of a balance of interests to the extent that the protection is adapted to the degree of biological maturity of the foetus at every stage of its development on the one hand and the considerations which likewise speak in favour of allowing the woman to terminate a pregnancy on the other. The Supreme Court found that an abortion based solely on the woman's choice within the first 12 weeks of pregnancy was not in violation of Article 2. Having regard thereto the High Court does not find that a system, which protects a foetus in requiring a board to establish that the pregnancy, birth or care for the child might place the woman in a difficult situation of life, would be in violation of Article 2 either.

(The applicant) has submitted that the rights of the foetus were particularly strongly protected under Article 8 of the Convention due to the agreement he had with the mother not to terminate the pregnancy.

...

This provision protects the individual's right to family life and according to the Commission's reasoning in the Brüggemann & Scheuten case this provision goes far in protecting the woman's right to abortion. The High Court therefore finds that the provision does not protect the family as such where this runs counter to the rights guaranteed to a spouse.

(The applicant) has furthermore invoked Article 3 of the Convention.

...

The arguments in this respect are based on the assumption that a 14 week and 1 day old foetus can feel pain. The High Court finds that this cannot be decisive and recalls that it would not be contrary to Article 2 to terminate the pregnancy. Nevertheless, the High Court will not exclude that the foetus may be protected under Article 3, but this could be so only in

situations which are alien to Norwegian reality. Torture requires that the evil is intended.

The abortion in this case was carried out with the use of medicine in that the mother received such medicine as provoked an abortion by strong contraction of the uterus so that the foetus dies due to lack of oxygen as the blood supply stops. The foetus will then come out in the same way as during a birth.

The method is used since it minimises the risk of complications for the mother. The process takes such a long time that it is not justifiable from a medical point of view to keep the woman under anaesthesia. Instead she receives painkillers comparable to morphine. The experts have stated that it was not possible to anaesthetise the foetus separately. The possible pain the foetus may suffer was thus based on medical grounds out of consideration for the woman. It is furthermore very doubtful whether the foetus can feel pain at all when it is 14 weeks and 1 day old. The High Court does not need to consider this since its probability is so small that Article 3 would not in any event require the legislator to have regard thereto when considering the woman's interests which are based on medical reasons. It would be a kind of pain which is experienced outside the centre of conscience known to the human brain.

(The applicant) has submitted that Article 8 has been violated since he was not considered a party during the proceedings before the board and could not have its decision tried in the courts. The High Court recalls that the Commission in the case of X v. the United Kingdom concluded that Article 8 did not protect the potential father's procedural rights.

...

The Commission found that, when considering what rights a father had under Article 8, one should take into account the rights of the woman being the person concerned with the pregnancy and whose interests should be protected first of all. The Commission furthermore concluded that the father's right to respect for his family life did not go as far as giving him such procedural rights.

...

Finally, (the applicant) has submitted that Article 9 has been violated since he was not given the remains of the foetus in order to inter them in accordance with his religious convictions.

...

The right to manifest one's religion is not unlimited when it violates the rights of others. Having regard to the woman's rights under Article 8, as interpreted by the Commission in the case of X v. the United Kingdom, the High Court finds that (the applicant's) right to manifest his religion was not violated. To give the foetus to him in order to inter it could be extremely degrading to the woman who has decided to terminate a pregnancy. Such a step must accordingly depend on the woman's acceptance.

Therefore the High Court concludes that the European Convention on Human Rights was not violated."

The applicant asked for leave to appeal against the judgment to the Supreme Court (Høyesterett). In addition to the issues considered by the High Court the applicant also complained of the fact that the Director of Finances at the hospital where the abortion was carried out had participated as a lay judge. On 22 May 1990 the Appeals Committee

of the Supreme Court refused leave to appeal.

B. Relevant domestic law

(translation)

Act no. 50 of 13 June 1975 on Termination of Pregnancy as amended on 16 June 1978

"Section 2. If a pregnancy leads to serious complications for a woman she shall be offered information and advice about the assistance society may offer her. The woman has a right to advice in order to enable her to take the final decision.

If the woman considers, after having been offered information etc. as mentioned and advice in accordance with Section 5, subsection 2, that she nevertheless cannot go through with the pregnancy, she takes the final decision as regards the termination of the pregnancy if this can be done before the end of the 12th week of pregnancy and serious medical reasons do not speak against it.

After the 12th week of pregnancy termination of pregancy may take place if

a) the pregnancy, birth or care for the child may involve an unreasonable burden on the woman's physical and mental health. Regard must be paid to whether she has a predisposition for malady;

b) the pregnancy, birth or care for the child may place the woman in a difficult situation of life;

c) there is a great danger that the child may contract serious illnesses as a result of hereditary predisposition, illness or injurious influence during pregnancy;

d) ...

e) ...

When considering the request for termination based on the conditions mentioned above under a)-c) regard must be paid to the woman's entire situation, including her ability to provide care for the child in a satisfactory way. Particular importance shall be attached to the woman's own opinion on the situation.

The requirements for accepting termination of pregnancy must increase with the progress of pregnancy.

After the 18th week a pregnancy cannot be terminated, except if there are particularly serious reasons for such a step. If there is reason to presume that the foetus is viable, a termination of pregnancy cannot be authorised.

...

Section 4. A request for termination of pregnancy shall be made by the woman herself. ...

Section 5. A request for termination of pregnancy shall be submitted to a doctor. A request after the 12th week of pregnancy may also be submitted to a board.

A woman who has requested termination of pregnancy shall be informed by the doctor (or the board) about the nature of the intervention and its medical effects. If she so wishes, she shall also receive the information and advice which is mentioned in Section 2,

subsection 1.

...

Section 7. If the medical intervention cannot be carried out before the end of the 12th week of pregnancy the doctor shall, after the woman has received the information etc. as mentioned in Section 5, subsection 2, immediately forward the request together with a written report of the grounds advanced by the woman and of his own observations, to the board mentioned in subsection 2. If the request has been sent directly to the board it shall deliberate and decide as soon as the case is ready. ...

Decisions on termination of pregnancy are taken, after consultation with the woman, by a board composed of two doctors.

Section 8. The board's decision to allow or refuse termination of pregnancy shall be accompanied by reasons. The woman, or her representative, shall be informed of the reasons for the decision...
...

Section 10. If the pregnancy involves an imminent risk to the life or health of the woman, it may be terminated regardless of the requirements set out in this Act."

COMPLAINTS

Under Article 2 of the Convention the applicant complains that the termination of the pregnancy involving a 14 week old foetus was unnecessary in order to protect the mother's life or health. Furthermore, he had entered into an agreement with the mother not to deprive the unborn child of its life and he had expressly undertaken to care for the child after its birth. He had vigorously protested against the abortion from the time it was contemplated by the mother.

Under the circumstances which existed in this case, the applicant maintains that the lack of protection of the unborn child under Norwegian law is unsatisfactory and constitutes a violation of Article 2 of the Convention.

The applicant also complains that no measures were taken to avoid the risk that the 14 week old foetus would feel pain during the abortion procedure. He submits that this constitutes inhuman treatment or torture. Furthermore, his request to receive the remains of the foetus in order that they might be buried in keeping with his religious beliefs was rejected. This, in his opinion, constitutes degrading treatment. The applicant invokes Article 3 of the Convention.

The applicant further submits that he had an agreement with the mother to the effect that an abortion would not be carried out and he had made clear his willingness to assume sole responsibility for the child after its birth. Under these circumstances, he complains that Article 6 has been violated as he had no right to 1) object to the proposed abortion; 2) apply to the court in order to prevent or postpone the abortion; 3) be consulted about the proposed abortion; 4) be informed about the abortion; 5) demand that the abortion board consist of impartial individuals and 6) request possession of the unborn child's remains.

Under this provision the applicant also complains that one of the lay judges in the High Court was an employee at the hospital where the abortion was carried out, and that therefore his case was not heard by an impartial tribunal.

Under Article 8 of the Convention the applicant submits that he and the mother were living together as a family although they were not

married and that he had insisted, and the mother had agreed, that no abortion would take place. Under these circumstances, so the applicant alleges, Article 8 of the Convention must ensure that a father to a 14 week old foetus has a minimum of rights regarding his unborn child where the health of the mother is not endangered. In this case, a foetus of this age should be considered to be a part of his family.

In respect of Article 9 of the Convention the applicant submits that the unborn child meant something particular to him and that, at least at the beginning, the mother shared and accepted this view. The planting of three trees in Israel, one for each of the parents and one for the unborn child, illustrates this. The taking of the foetus's life in the absence of a medical necessity was obviously not in accordance with that concept nor was the denial of his request to be given the child's remains in order to inter them.

Such a step would not have implied a lack of respect for the wishes of the mother. There is no evidence that the mother was asked about her wishes regarding this matter by the doctors or any other persons employed by the hospital. Therefore, the applicant finds that he was unnecessarily denied a manifestation of his conscience and religion which for him was extremely important and vital to his health and well-being.

In order to prevent the termination of the pregnancy, the applicant sought the services of an attorney to intervene on his behalf. However, the board would not listen to any argument from the applicant. Furthermore, the applicant's attorney filed a complaint with the ordinary courts but these complaints were not admitted. No other effective remedy exists in Norway. The applicant considers this to be a violation of Article 13 of the Convention.

Finally, the applicant submits that his actions were based on the conviction that the life of an unborn child should be protected and it should not be deprived of life for non-medical reasons. His relationship with the mother rested on that condition which was also accepted by the mother. Furthermore, the pregnancy and birth of the child in question was planned. It was the result of an agreement between two free, independent and equal persons, mature and under no pressure whatsoever. In these circumstances, the applicant complains that discrimination exists against him as he was completely excluded from any decisions made concerning the welfare of his own child. He refers to Article 14 of the Convention.

THE LAW

1. The applicant complains that under the circumstances which existed in the present case the lack of protection of the life of the unborn child under Norwegian law was contrary to Article 2 (Art. 2) of the Convention.

The Commission accepts that the applicant, as a potential father, in the circumstances of the present case was so closely affected by the termination of the pregnancy that he may claim to be a "victim", within the meaning of Article 25 (Art. 25) of the Convention, of the legislation complained of as applied in the present case. The Commission also accepts that he has exhausted domestic remedies as required by Article 26 (Art. 26) of the Convention for which reason the Commission must examine whether the case discloses any appearance of a violation of Article 2 (Art. 2) of the Convention (cf. No. 8416/79, Dec. 13.5.80, D.R. 19 p. 244).

Article 2 (Art. 2) of the Convention reads:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution

of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection."

The Commission first notes that the term "everyone" is not defined in the Convention, nor is the term "life" but it finds that Article 2 (Art. 2) contains two separate though interrelated basic elements. The first sentence of paragraph 1 sets forth the general obligation that the right to life shall be protected by law. The second sentence of paragraph 1 contains a prohibition of intentional deprivation of life. This prohibition is delimited by the exceptions mentioned in the second sentence itself and in paragraph 2. The Commission recalls that in its decision mentioned above it stated:

"All the above limitations, by their nature, concern persons already born and cannot be applied to the foetus.

Thus both the general usage of the term 'everyone' ('toute personne') in the Convention ... and the context in which this term is employed in Article 2 (Art. 2) ... tend to support the view that it does not include the unborn."

However, the Commission also recalls that the first sentence of Article 2 (Art. 2) imposes a broader obligation on the State than that contained in the second sentence. The concept that "everyone's life shall be protected by law" enjoins the State not only to refrain from taking a person's life "intentionally" but also to take appropriate steps to safeguard life (cf. for example No. 11604/85, Dec. 10.10.86, D.R. 50 p. 259).

The Commission finds that it does not have to decide whether the foetus may enjoy a certain protection under Article 2 (Art. 2), first sentence as interpreted above, but it will not exclude that in certain circumstances this may be the case notwithstanding that there is in the Contracting States a considerable divergence of views on whether or to what extent Article 2 (Art. 2) protects the unborn life.

The Austrian Constitutional Court found, for example, that Article 2 para. 1 (Art. 2-1), first sentence, interpreted in the context of Article 2 paras. 1 and 2 (Art. 2-1, 2-2), did not cover the unborn life (Decision of 11 October 1974, Erk. Slg. (Collection of Decisions) No. 7400, EuGRZ 1975, p. 74) whereas the German Federal Constitutional Court, when interpreting the provision "Everyone has a right to life" in Article 2 (2) of the Basic Law stated that "'everyone'... is 'every living human being', in other words: every human individual possessing life; 'everyone' therefore includes unborn human beings" (judgment of 25 February 1975).

When considering the Norwegian abortion legislation in the light of Article 2 (Art. 2) of the Convention the Norwegian Supreme Court stated:

"... abortion laws must necessarily be based on a compromise between the respect for the unborn life and other essential and worthy considerations. This compromise has led the legislator to permit self-determined abortion under the circumstances defined

by the Act.

> Clearly, such a reconciliation of disparate considerations give rise to ethical problems, and clearly too, there will be some disagreement about the system embodied in the Act. The reactions to the Act show that many ... view it as an attack on central ethical principles. But it is equally relevant that others - also from an ethical point of view - regard the Act as having done away with an unacceptable legal situation.
>
> It is not a matter for the courts to decide whether the solution to a difficult legislative problem which the legislator chose when adopting the Act on Termination of Pregnancy of 1978, is the best one. On this point, different opinions will be held among judges as among other members of our society. The reconciliation of conflicting interests which abortion laws require is the legislator's task and the legislator's responsibility. The legislative power is exercised by the People through the Storting. The Storting majority which adopted the Act on Termination of Pregnancy in 1978 had its mandate from the People after an election campaign in which the abortion question was again a central issue, decided moreover not to take the initiative towards any statutory amendment. Clearly, the courts must respect the solution chosen by the legislator" (cf. No. 11045/84, Dec. 8.3.85, D.R. 42 p. 247 at p. 253).

Having regard to this it is clear that national laws on abortion differ considerably. In these circumstances, and assuming that the Convention may be considered to have some bearing in this field, the Commission finds that in such a delicate area the Contracting States must have a certain discretion.

As regards the circumstances of the present case the Commission recalls that the Norwegian Abortion Act itself allows self-determined abortion within the first 12 weeks of pregnancy. From the 12th week until the 18th week of pregnancy a termination may be authorised by a board of two doctors if certain conditions have been fulfilled. After the 18th week a pregnancy cannot be terminated, unless there are particularly serious reasons for such a step. However, if there is reason to presume that the foetus is viable, a termination of pregnancy cannot be authorised.

Furthermore the Commission recalls that the mother, after having received information and advice about the assistance society may offer her, wanted to terminate a pregnancy of 14 weeks and she appeared before a board of two doctors who decided, as appears from the High Court judgment of 17 November 1989, to authorise the abortion, having concluded that the pregnancy, birth or care for the child might place her in a difficult situation of life as set out in Section 2, subsection 3 b of the Act.

As the present case shows there are different opinions as to whether such an authorisation strikes a fair balance between the legitimate need to protect the foetus and the legitimate interests of the woman in question. However, having regard to what is stated above concerning Norwegian legislation, its requirements for the termination of pregnancy as well as the specific circumstances of the present case, the Commission does not find that the respondent State has gone beyond its discretion which the Commission considers it has in this sensitive area of abortion. Accordingly, it finds that the applicant's complaint under Article 2 (Art. 2) of the Convention is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that no measures were taken to avoid the risk that the 14 week old foetus would feel pain during the abortion procedure. He submits that this constitutes inhuman treatment or torture and invokes Article 3 (Art. 3) of the Convention which

reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission has not been presented with any material which could substantiate the applicant's allegations of pain inflicted upon the foetus other than what appears from the courts' judgments mentioned above. Having regard to the abortion procedure as described therein the Commission does not find that the case discloses any appearance of a violation of Article 3 (Art. 3) of the Convention. The Commission has reached the same conclusion in respect of the applicant's complaint under this provision that his request to receive the remains of the foetus was rejected. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant submits that he had an agreement with the mother to the effect that an abortion would not be carried out and he had made clear his willingness to assume sole responsibility for the child after its birth. Under these circumstances, he complains that Article 6 (Art. 6) has been violated as he had no right to 1) object to the proposed abortion; 2) apply to the court in order to prevent or postpone abortion; 3) be consulted about the proposed abortion; 4) be informed about the abortion; 5) demand that the abortion board consist of impartial individuals and 6) request possession of the unborn child's remains.

Under this provision the applicant also complains that one of the lay judges in the High Court was an employee at the hospital where the abortion was carried out, and that therefore his case was not heard by an impartial tribunal.

In so far as relevant Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by an ... impartial tribunal ..."

The Commission recalls that in order for Article 6 (Art. 6) to apply to the proceedings in question it must first ascertain whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf. for example Eur. Court H.R., Skärby judgment of 28 June 1990, Series A, no 180-B, p. 36, para. 27). It is undisputed that under Norwegian law the applicant had no right at all to participate in the proceedings concerning the termination of the pregnancy. Thus he cannot claim on any arguable ground that he had a right under domestic law. It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

4. Under Article 8 (Art. 8) of the Convention the applicant submits that he and the mother were living together as a family although they were not married and that he had insisted, and the mother had agreed, that no abortion would take place. Under these circumstances, so the applicant alleges, Article 8 (Art. 8) of the Convention must grant a father to a 14 week old foetus a minimum of rights regarding his unborn child, where the health of the mother is not endangered. In this case, a foetus of this age should be considered to be a part of his family.

In respect of Article 9 (Art. 9) of the Convention the applicant submits that the unborn child meant something particular to him from a religious point of view. He complains that the taking of the foetus's life in the absence of a medical necessity and the denial of his request to be given the foetus's remains in order to inter them denied

him the right to manifest his conscience and religion.

It is true that Articles 8 and 9 (Art. 8, 9) of the Convention guarantee the right to respect for private and family life and freedom to manifest one's religion. However, the Commission finds that any interpretation of the potential father's right under these provisions in connection with an abortion which the mother intends to have performed on her, must first of all take into account her rights, she being the person primarily concerned by the pregnancy and its continuation or termination. The Commission therefore finds that any possible interference which might be assumed in the circumstances of the present case was justified as being necessary for the protection of the rights of another person.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant furthermore complains about discrimination as he was completely excluded from any decisions made concerning the welfare of his own child. He refers to Article 14 (Art. 14) of the Convention.

The Commission recalls that Article 14 (Art. 14) of the Convention has no independent existence since it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. Furthermore, it safeguards individuals against discriminatory differences only if they are placed in analogous situations (cf. for example Eur. Court H.R., Rasmussen judgment of 28 November 1984, Series A no. 87, pp. 12 and 13, paras. 29 and 35).

In relation to the termination of a pregnancy and the proceedings and decisions concerning this the Commission does not find that the applicant was placed in an analogous situation with the mother. Accordingly, there has been no discriminatory treatment within the meaning of Article 14 (Art. 14) of the Convention for which reason this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant finally complains, under Article 13 (Art. 13) of the Convention, that he had no effective remedy in Norway in respect of his opposition to the termination of the pregnancy.

The Commission recalls that Article 13 (Art. 13) has been interpreted by the European Court of Human rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (cf. for example Eur. Court H.R., Boyle and Rice judgment of 21 June 1988, Series A no. 131, p. 23, para. 52). However, having regard to its above conclusions in respect of the Convention complaints submitted the Commission finds that the applicant does not have any arguable claims. Furthermore, the Commission recalls that the Norwegian High Court considered all complaints which the applicant has submitted to the Commission. In these circumstances the Commission finds no appearance of a violation of Article 13 (Art. 13) of the Convention. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission Acting President of the Commission

(J. RAYMOND) (S. TRECHSEL)