HUMAN RIGHTS COMMITTEE

J. R. T. and the W. G. Party v. Canada

Communication No. 104/1981

6 April 1983

ADMISSIBILITY

Submitted by: J. R. T. and the W. G. Party (names deleted) on 18 July 1981

Alleged victims: J. R. T. and the W. G. Party

State party: Canada

Declared inadmissible: 6 April 1983 (eighteenth session)/*

Decision on Admissibility

1. The communication (initial letter dated 18 July 1981 and further submissions dated 22 September 1981 and 4 August 1982) is submitted by Mr. T., a 69-year old Canadian citizen, residing in Canada, and by the W. G. F arty, an unincorporated political party under the leadership of Mr. T. since 1976. It is claimed that Mr. T. and the W. G. Party are victims of infringements by the Canadian authorities of the right to hold and maintain their opinions without interference, in violation of article 19 (1) of the International Covenant on Civil and Political Rights, and the right to freedom of expression and of the right to seek, receive and impart information and ideas of all kinds through the media of their choice, in violation of article 19 (2) of the Covenant.

2. 1. The W. G. Party was founded as a political party in Toronto, Ontario, Canada, in February 1972. The Party and Mr. T. attempted over several years to attract membership and promote the Party's policies through the use of tape-recorded messages, which were recorded by Mr. T. and linked up to the Bell Telephone System in Toronto, Ontario, Canada. Any member of the public could listen to the messages by dialing the relevant Telephone number. The messages were changed from time to time but the contents were basically the same, namely to warn the callers "of the dangers of international finance and international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles".

2.2. The Canadian Human Rights Act was promulgated on I March 1978. Section 13 (1) of the Act reads as follows:

It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that the person or those persons are identifiable on the basis of a prohibited ground of discrimination.

2.3. By application of this provision in conjunction with section 3 of the Act, which enumerates "race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and physical handicap" as "prohibited grounds of discrimination", the telephone service of the W. G. Party and Mr. T. was curtailed. It is alleged that section 13 (1) of the Human Rights Act is clearly in violation of the Canadian Bill of Rights. Section I *(d)* of the Bill of Rights guarantees freedom of speech, and section 2 states that it shall not be abrogated, abridged or infringed unless expressly authorized by Act of Parliament. It is claimed that the Canadian Human Rights Act contains no provision authorizing such restrictions.

2.4. Section 32 of the Human Rights Act enables any individual having reasonable grounds for believing that a person is engaging in a "discriminatory practice" to file a complaint before the Canadian Human Rights Commission. Under this provision, a number of Jewish groups and individual Jews filed letters complaining about Mr. T.'s messages. In consequence, the Canadian Human Rights Commission initiated complaint Proceedings against Mr. T. and the W. G. Party on 16 January 1979 for messages recorded on 6 July, 27 September, 17 November, 14 and 19 December 1978 and 9 January 1979, and decided to appoint a Human Rights Tribunal to inquire into the complaints and to determine whether the matters communicated telephonically by the W. G. Party and Mr. T. would be likely to expose persons identifiable by race and religion to hatred and contempt. The hearings of the Tribunal order, and therefore an *ex parte* application was made were carried out on 12, 13, 14 and 15 June 1979 and a to the Federal Court, Trial Division, by the Canadian decision was made on 20 July 1979. The Tribunal found that "although some of the messages are somewhat innocuous, the matter for the most part that they have communicated is likely to expose a person or persons to hatred or contempt by reason of the fact that the person is identifiable by race or religion and in particular, the messages identify specific individuals by name". It held, therefore, that the complaints were substantiated and ordered the W. G. Party and Mr. T. to cease using the telephone to communicate the subject-matter which had formed the contents of the tape-recorded messages referred to in the complaints.

2.5. The Canadian Human Rights Commission sent the decision of the Tribunal to the Federal Court for the purpose of enforcement on 22 August 1979, pursuant to section 43 of the Canadian Human Rights Act, and it was filed pursuant to Federal Court Rule 201 *(I a) (a);* the decision thereupon became enforceable in the same manner as an order of that Court. Section 28 (2) of the Federal Court Act requires that parties seeking judicial review of a Tribunal order initiate proceedings within 10 days of the date the decision is communicated to them. The Canadian Human Rights Act, however, provides that "an appeal lies to a Review Tribunal from a decision of a Tribunal on any question of law or fact or mixed law and fact", and section 42 (1) of the Act lays down a time-limit of 30 days for such appeal.

Mr. T. was, therefore, convinced that he would have 30 days to launch an appeal and, in consequence, failed to appeal within the 10 days set out in section 28 (2) of the Federal Court Act. In these circumstances, Mr. T.'s only redress was to bring a Notice of Motion under Federal Court Rule 324 to extend the time for such appeal. He did so on 14 September 1979, but extension of time was refused on 17 October 1979, on the grounds that: "the material filed in support of the application did not disclose any serious grounds for challenging the validity of the Decision which the applicants wished to attack".

2.6. On 31 August 1979, before the appeal proceedings mentioned above took place, the Canadian Human Rights Commission recorded a new message from the telephone service of the W. G. Party, complaining that "we are now denied the right to expose the race and religion of certain people, regardless of their guilt in the destruction of Canada" and adding "those who do not believe there is a preponderance of certain racial and religious minorities involved in the corruption of our Christian way of life will never understand the simple basis of our way of life-the common denominator". In this connection, the Canadian Human Rights Commission instructed its Legal Counsel to write to Mr. T. He warned Mr. T. on 2 October 1979, that if these particular passages were not deleted from the recordings by 10 October 1979, he would make an application to the Federal Court to enforce the Tribunal order. Mr. T. responded by letter dated 10 October 1979 that, although he did not agree that the passages were n contravention of the order of the Tribunal, he would change the messages.

2.7. Subsequent to Mr. T.'s letter of reply, Mr. T. and the W. G. Party continued to use messages that were deemed to be in contravention of the Tribunal Human Rights Commission to the effect that acts had been committed by Mr. T. contrary to the order of a Human Rights Tribunal. A transcript of the allegedly offensive messages dated 7 and 31 August 1979, 12 October 1979, and 27 November 1979 was placed before the Federal Court. Mr. T. and the W. G. Party were ordered to appear before the Federal Court on 19 February 1980 to hear proof that they had disobeyed the order and to submit a defence.

2.8. The contempt of court proceedings took place before the Federal Court. After hearing the Legal Counsel for the Canadian Human Rights Commission and Mr. T., it concluded that the Commission had established beyond any doubt that Mr. T. and the W. G. Party had disobeyed the order made by the Human Rights Tribunal and had made use of the telephone services to convey the type of messages which they were prohibited from disseminating, namely, that "some corrupt Jewish international conspiracy is depriving the callers of their birthright and that the white race should stand up and fight back". The Court decided on 21 February 1980 that Mr. T. was guilty of contempt of court and sentenced him to one year imprisonment and the W. G. Party to pay a fine of *$5,000.* The sentences were to be suspended as long as Mr. T. and the W. G. Party did not use telephone communications for the dissemination of hate messages.

2.9. Mr. T. and the W. G. Party appealed against this decision within the required period of 30 days. The suspension of sentences was lifted on II June 1980 on the grounds of the nature of an additional message of 3 June 1980, and Mr. T. was committed to the Toronto jail on 17 June 1980. Early in June 1980, Mr. T. hired legal counsel, Mr. R. B., to represent him and

the W. G. Party, and to continue with the appeal to the Federal Court of Appeal. On 24 June 1980, the Federal Court of Appeal ordered that the execution of sentences be stayed pending the disposition of the appeal. On 27 February 1981, the Court dismissed the appeal. The author of the communication alleges that the Court did so without written or oral reasons, and without deciding upon any of the issues raised. An application for leave to appeal to the Supreme Court of Canada was denied by the presiding judge of the Court of Appeal. An application for suspension of the operation of the sentence imposed upon Mr. T. was granted by the Federal Court of first instance on 13 April 1981. Another application by Mr. B. on behalf of Mr. T. and the W. G. Party was brought by way of Notice of Motion for leave to appeal before the Supreme Court of Canada, but was denied on 22 June 1981.

3. The author of the communication states from the foregoing that all domestic remedies have been exhausted and that the same matter has not been submitted for examination under another procedure for international investigation or settlement.

4. In a further letter, dated 22 September 1981, Mr. B. added that, following the denial of Mr. T.'s appeal by the Supreme Court of Canada, he again surrendered to the Sheriff of the Judicial District of York, Province of Ontario, on 27 July 1981, and had been serving his sentence since then. The following claim was also made: pursuant to the provisions of section 7 of the Post Office Act (Canada), which forbids the transmission of "scurrilous material", Mr. T. had, since May 1965, been proscribed from receiving or sending any mail in Canada. The author maintains that there are no domestic recourses to exhaust in this regard under Canadian legislation, and requests that the said proscription be considered by the Human Rights Committee, together with the other claims, as a possible further violation of article 19 of the Covenant. (The author's initial submission of 18 July 1981 indicates that the proscription has also applied to the W. G. Party since 1980.)

5. By its decision of 24 October 1980, the Working Group o f the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

6.1. In its submission dated 10 May 1982, the State party objected to the admissibility of the communication on various grounds.

6.2. As regards the allegation that prosecution under section 13 of the Canadian Human Rights Act resulted in a breach of article 19 and, by inference, articles 2 and 26 of the Covenant, the State party submits that no breach of the Covenant occurred. It states that the impugned provision of the Canadian Human Rights Act does not contravene these provisions of the Covenant, t ut in fact gives effect to article 20 (2) of the Covenant. Thus, not only is the author's "right" to communicate racist ideas not protected by the Covenant, it is in fact incompatible with its provisions, and therefore this part of the communication is in this respect inadmissible under articles 1, 2 and 3 of the Optional Protocol. The State party further contends that, as regards the same allegation, the communication should be declared inadmissible because the W. G. Party and Mr. T. failed to exhaust domestic remedies. The State party, in this respect, notes that Mr. T. and the Party, by their own inaction and

negligence, failed to file their application for judicial review within the time-limits prescribed by law, to seek review of the order of the Tribunal within the time frame provided by law, or to succeed in convincing the Federal Court of Appeal to extend this time by showing that their appeal had some merit; that they could have challenged the validity of the legislation which hey were found to have contravened; consequently, that that negligence, as well as failure to invoke convincing grounds to justify an extension of the time for review, resulted in the loss of these remedies.

6.3. As regards the allegation that the application of section 7 of the Post Office Act resulted in an arbitrary interference with their correspondence contrary to the provisions of article 19 of the Covenant, the State party contends that the evidence shows that there occurred in this respect no breach of this article or, for that matter, of article 17, but that the impugned provision of the Post Office Act gives effect to article 20 of the Covenant, and, therefore, that this part of the communication is inadmissible under article 3 of the Optional Protocol. As regards the question of exhaustion of domestic remedies, the State party submits that Mr. T. and the W. G. Party had failed, at the time the communication was made, to challenge the validity and legality of the Minister's prohibitory order, or its extension, in judicial proceedings before the courts. The State party further states that a prohibitory order may be revoked by the Postmaster-General under certain conditions: "Formerly, section 7 of the Post Office Act and, currently, section 41 of the Canada Post Corporation Act allow for revocation of a prohibitory order if a person ceases to use the mail for a prohibited purpose. Should Mr. T. cease to distribute, personally or through the W. G. Party, scurrilous material, he could apply for the revocation of the 1965 Order."

6.4. The State party furthermore argues, on the question of admissibility, that the complaint of the W. G. Party should be declared inadmissible since un er the preamble and articles 1, 2, 3 and 5 of the Optional Protocol only "individuals" may submit a written communication to the Committee for consideration, but not entities such as the W. G. Party.

7. 1. Mr. B. submitted further comments, dated 4 August 1982, together with supplementary exhibits on the State party's submission of 10 May 1992. Mr. B. alleges that a prohibitory order which was made under section 7 of the Post Office Act in 1965, specifically forbidding Mr. T. and his Party (his Party was then called the " N.O.") to use the Canadian mail, is so broad that mail sent to Mr. T. or the W. G. Party (for the W. G. Party since 9 July 1980) is always returned to the sender and there has been continuous interference for 17 years. Mr. B. also states that this discriminatory policy continued even during the period of Mr. T.'s imprisonment, specifically denying him all mail privileges afforded to other prisoners. The author submits that this practice was in violation of "the Standard Minimum Rules for Treatment of Offenders". It is further alleged that Mr. T. is now disputing this matter further, but his legal counsel was personally inconvenienced thereby in his duty to represent Mr. T. at all times, since correspondence with him was rendered impossible, and that this is clearly a violation of the right to hold opinions without interference.

7.2. Mr. B. further states that, although the State party makes the points that under section 28 (2) of the Federal Court Act parties seeking a review of an order must initiate proceedings within 10 days of the date of the communication of the order to them, "or within such further

time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 10 days, fix or allow", and that Mr. T. was late in filing his application for a review of the order, the visit to the Federal Court Office in Toronto in connection with his affidavit supporting the application for an order extending the time-limit, was made 9 hours after the lapse of the prescribed 10 days. It is, therefore, claimed that the refusal to extend the time was in these circumstances harsh, arbitrary and a misuse of discretionary power. If the application had been granted, it might have been unnecessary to refer the present communication to the Human Rights Committee.

8. On the basis of the information before it the Human Rights Committee, after careful examination, concludes:

(a) The W. G. Party is an association and not an individual, and as such cannot submit a communication to the Committee under the Optional Protocol. Therefore, the communication is inadmissible under article 1 of the Optional Protocol in so far as its concerns the W. G. Party;

(b) As to the author's claim that section 13 (1) of the Canadian Human Rights Act, under which his use of the telephone service has been curtailed, has been applied against him in violation of article 19 of the Covenant, the Committee notes that he failed to file his application for judicial review within the time-limits prescribed by law. It appears, however, in view of the ambiguity ensuing from the conflicting time-limits laid down in the laws in question, that a reasonable effort was indeed made to exhaust domestic remedies in this respect and, therefore, the Committee does not consider that, as to this claim, the communication should be declared inadmissible under article 5 *(2) (b)* of the Optional Protocol. However, the opinions which Mr. T. seeks to disseminate through the telephone system clearly constitute the advocacy of racial or religious hatred which Canada has an obligation under article 20 (2) of the Covenant to prohibit. In the Committee's opinion, therefore, the communication is, in respect of this claim, incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol;

(c) As to the author's claim that the application of section 7 of the Post Office Act resulted in arbitrary interference with his correspondence, contrary to the provisions of article 17 and 19 of the Covenant, the Committee accepts that the broad scope of the prohibitory order, extending as it does to all mail, whether sent or received, raises a question of compatibility with articles 17 and 19 of the Covenant. However, this claim is inadmissible under article 5 *(2) (b)* of the Optional Protocol. Mr. T. did not challenge the validity and legality of the Minister's prohibitory order, or its extension, before the competent Canadian courts. Moreover, a prohibitory order may be revoked under certain conditions and Mr. T. has not applied for such revocation. He has therefore failed to exhaust domestic remedies.

9. The Human Rights Committee therefore decides:

That the communication is inadmissible.

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*/ Mr. Walter Surma Tarnopolsky, pursuant to rule 85 of the provisional rules of procedure, did not participate in the consideration of this communication or in the adoption of the Committee's present decision.