

HUMAN RIGHTS COMMITTEE

J. H. v. Canada

Communication No. 187/1985

12 April 1985

ADMISSIBILITY

Submitted by: J. H. (name deleted) on 1 February 1985

Alleged victims: English speaking members of the Canadian Armed Forces

State party: Canada

Declared inadmissible: 12 April 1985 (twenty-fourth session)

Decision on Admissibility

1. The author of the communication dated 1 February 1985 is J. H., a Canadian national and retired member of the Canadian Armed Forces, living in Ontario, Canada. He alleges that promotion policies in the Canadian Armed Forces are discriminatory and constitute a violation by Canada of article 2, paragraph I, of the International Covenant on Civil and Political Rights.

2.1. It is alleged that Administrative Order 11-6 (1972) of the Canadian Armed Forces, which provides for an increased percentage of officers and soldiers of French mother tongue, has resulted in discrimination on the basis of language, tantamount to a form of racial discrimination, since English-and-French-speaking persons in Canada are of two different ethnic origins. It is alleged that persons of French mother tongue are preferred for promotion within all ranks of the Armed Forces, to the corresponding disadvantage of persons of English mother tongue.

2.2. In late 1978, shortly before his retirement in April 1979, the author, who is of English mother tongue, began his endeavours to point out what he considered to be the linguistic and racial discrimination being practice in the promotion policy of the Canadian Armed Forces. He wrote letters to several opposition Members of Parliament and to two successive Ministers of National Defence. In June 1980 he filed a complaint with the Canadian Human Rights Commission (a statutory body created by federal legislation to administer the Canadian Human Rights Act).

2.3. In 1984 a new administrative order was promulgated (2-15 of 29 June 1984), under which "mother tongue" was no longer to be used to determine the participation ratio of English- and French-speaking members of the Canadian Armed Forces. The reference to "mother tongue" was replaced by "first official language". The author submits that the change was intended to answer the criticism of the prevailing promotion policy. He asserts, however, that the change was only cosmetic and that the same promotion policy continues to be applied today and that the only difference is the manner in which the English and French language and origin are defined.

2.4. As a result of the reworded promotion policy, the Canadian Human Rights Commission felt that there were no longer any grounds for potential ethnic or racial discrimination and informed the author that it would not make a decision in the complaint brought by him. J. H. points out in this connection that there is no legislation in Canada prohibiting discrimination on the basis of language (neither the Charter of Rights and Freedoms, part of the Canadian Constitution, nor the Canadian Human Rights Act includes linguistic discrimination as a prohibited practice). He further submits that the conclusion of the Canadian Human Rights Commission to the effect that there was no discrimination is not a "decision" on which an appeal to the courts could be made. He finally mentions that further correspondence with Members of Parliament and other persons in positions.. of authority have produced no results.

2.5. There is no specific indication in the communication that the author has himself been adversely affected by the policy which he complains about. He requests that his complaint be examined and that the Government of Canada be advised "that it is actually discriminating against English-speaking Canadians in implementing its incentive programmes to assist French-speaking Canadians".

3. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.1. The Committee notes that articles 1 and 2 of the Optional Protocol require that the author of a communication must himself claim, in a substantiated manner, that he is or has been a victim of a violation by the State party concerned of any of the rights set forth in the Covenant. It is not the task of the Human Rights Committee, acting under the Optional Protocol, to review *in abstracto* national legislation or practices as to their compliance with obligations imposed by the Covenant.

4.2. The author of the present communication has not put forward any facts to indicate that he has himself been a victim of discrimination in violation of the provisions of the Covenant. An allegation to the effect that past or present promotion policies are generally to the detriment of English-speaking members of the Canadian Armed Forces is not sufficient in this respect. The Committee, accordingly, concludes that the author has not shown that he has a claim under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

The communication is inadmissible.