HUMAN RIGHTS COMMITTEE

L. P. v. Canada

Communication No. 2/1976

14 August 1979

ADMISSIBLITY

Submitted by: L. P. on 25 November 1976

Alleged victim: The author

State party: Canada

Date of decision on admissibility: 14 August 1979 (seventh session)

Decision on Admissibility

The author of the communication (initial telegram dated 25 November 1976, letters dated 4 December 1977 and 20 March 1978 and further submissions dated 14 July and 23 August 1978) is a North American native Indian, social worker, member of the American Indian Movement for National Liberation, formerly domiciled at the Pine Ridge Reservation, South Dakota, United States of America. He claims to have been unlawfully extradited from Canada to the United States on the basis of false evidence, fabricated either by the United States law enforcement agents in collaboration with Canadian Government officials, or by a Canadian Government official who, in accordance with an administrative arrangement between the Governments of Canada and the United States of America, assisted the latter Government during the extradition proceedings. He also alleges that his extradition was unlawful, inasmuch as he claims that the Government of Canada should have rejected the extradition request of the United States of America, since the alleged acts on which it was based had taken place on the territory of the independent Lakota nation, whose sovereignty Canada has failed to recognize. He further alleges that during his detention in Canada from 6 February 1976 until he was extradited 11 months later (on 18 December 1976), he was subjected to ill-treatment and denied the opportunity to prepare his case for the extradition hearings property.

The decision ordering the author's extradition was rendered by the extradition judge on 18 June 1976 and upheld on appeal by the Federal Court of Appeal on 27 October 1976. The author thereupon addressed himself to the Minister of Justice, asking him to determine that the offences for which his extradition was sought were of a political character and to order,

under the power granted him by law, that he should not be extradited to the United States of America. The Minister of Justice came to the conclusion that the author's extradition was not sought for political of fences.

The author claims that his appeal to the Minister of Justice exempted him from availing himself of the opportunity to appeal the decision of the Federal Court of Appeal to the Supreme Court of Canada. He thus claims to have exhausted domestic remedies, as far as his extradition was concerned. In respect of the allegations of ill-treatment while in custody in Canada, he claims to have exhausted domestic remedies by filing a civil action on 6 August 1976 against the prison authorities concerned and the Government of the Province of British Columbia. He states that this action was "terminated as moot", when the Minister of Justice let the extradition order stand.

The author alleges that the facts complained of constitute breaches by the State party of the following articles of the International Covenant on Civil and Political Rights: articles 1 (1) and (3); 2 (1) and (3) (a); 3; 7; 9 (1); 10; 13; 14 (3) (b); 18 (1); 19 (1) and 26. The Committee observes that the author's reference to some of these articles seems to be secondary to the main complaints, deriving from the same facts.

The Covenant entered into force for Canada on 19 August 1976.

By its submissions, dated 29 May 1978 and 7 March 1979, respectively, furnished in response to the Committee's request for information and observations relevant to the question of admissibility of the communication, the State party rejects the allegations put forward by the author.

In respect of the extradition proceedings, it denies any responsibility for the alleged false evidence introduced at the extradition hearings and observes that any evidence adduced was submitted by or on behalf of the requesting State, the United States of America. It further rejects the contention that the Canadian civil servant, who, for the purpose of the extradition hearings acted on behalf of the United States of America in accordance with the terms of a bilateral treaty between Canada and the United States of America, had any part in the alleged fabrication of false evidence, or any reason to believe that the evidence adduced was fabricated. The State party further observes that L. P. 's extradition was sought on five different counts and that four of these were regarded by the extradition judge as warranting committal. The alleged false evidence, consisting of two affidavits, purportedly made and signed by an eyewitness, pertained to two of the five counts, on the basis of which extradition was sought. These affidavits were introduced at the extradition hearings as evidence of murder of two agents of the United States Federal Bureau of Investigation, near Oglala, South Dakota, on 26 June 1975. Subsequent to the extradition hearing, a third affidavit, made by the same person, and preceding in time the two adduced at the hearings, came to light. This affidavit, which, for one reason or another was not tendered at the extradition hearings, although in the possession of United States authorities at that time, was thoroughly inconsistent with the other two. The State party submits that the decision to commit L. P. for extradition was taken, and reviewed, by competent, independent and impartial tribunals and that this fact has not been challenged by him. The State party further

argues that L. P. failed to seek leave to appeal to the Supreme Court of Canada and that he also failed to apply for a writ of habeas corpus to have the legality of his committal adjudicated. Thus, the State party contends, L. P. failed to exhaust all available domestic remedies, as far as his extradition was concerned.

In respect of L. P.'s claim that he was subjected to illtreatment while in custody in Canada, which claim concerns his confinement in an isolation cell, physical restraint by mechanical means (the use of leg irons) lack of physical exercise and lack of hygienic facilities, the State party submits that two of his three complaints before the appropriate Canadian authorities, filed prior to the entry into force of the Covenant for Canada, namely on 19 February and 15 April 1976, were examined by these authorities and remedied as far as they were found justified. His third complaint, a court action against the Province of British Columbia, instituted on 6 August 1976, i.e., also before the entry into force of the Covenant for Canada, was never adjudicated, the State party submits, because of failure by L. P. to pursue the action.

In respect of the claim that L.P. was denied the possibility of preparing the case regarding his extradition properly, the State party rejects the claim as unsubstantiated and observes that L. P. was afforded privileges going beyond those normally enjoyed by persons detained in prison and that he had numerous visits from his lawyers (including 72 visits from the time the Covenant entered into force, until he was extradited); moreover, it observes that he never made that complaint before the Canadian authorities.

The Human Rights Committee notes that the information and observations furnished by the State party deal both with issues concerning the merits of L. P.'s claims, inasmuch as alleged breaches of the Covenant are concerned, as well as issues of direct relevance to the question of admissibility of his communication under the Optional Protocol. The State party contends that L. P. 's communication should be declared inadmissible under the Optional Protocol because it is:

(a) Partly incompatible with the Covenant (i.e. ratione materiae) as concerning matters not covered by it, and partly abusive (on particular grounds referred to by the State party);

(b) Partly not directed against Canada (i.e. incompatible ratione personae) but in fact against the United States of America;

(c) Partly concerned with events prior to the date of entry into force of the Covenant for Canada (i.e. incompatible ratione temporis);

(d) Lacking in respect of the requirement set out in article 5 (2) (b) of the Optional Protocol, to the effect that the alleged victim of a violation must, before submitting a claim for consideration by the Committee, have exhausted all available domestic remedies.

On the basis of the information before it the Human Rights Committee concludes:

1. In so far as L. P. complains about his extradition and alleges violations of articles 13 and

I (3) of the Covenant, it is not necessary to decide whether any of these provisions might be applicable or whether the facts could be seen to raise issues in that regard, this part of his complaint being inadmissible because the author, by not seeking leave to appeal before the Supreme Court of Canada, failed to exhaust domestic remedies as required by article 5 (2) (b) of the Optional Protocol;

2. In so far as the author complains that he was subjected to various forms of mistreatment in violation of articles 7 and 10 of the Covenant, it is again not necessary to decide whether the alleged facts could raise any issue under these provisions, this part of his complaint being inadmissible ratione temporis as far as events alleged to have taken place prior to 19 August 1976 are concerned, and, for any later events, being inadmissible for failure to exhaust domestic remedies, since he did not pursue the civil action introduced by him, his subsequent extradition from Canada not being a sufficient reason for this failure;

3. In so far as the author also appears to complain that he was arbitrarily arrested and detained, and refers in this respect to article 9 (1), again this part of his complaint is inadmissible ratione ternporis as far as his arrest and his detention prior to 19 August 1976 are concerned, and with respect to his detention after that date, inadmissible for failure to exhaust domestic remedies, e.g. by way of habeas corpus proceedings;

4. In so far as the author complains under article 14 (3) (b) of an alleged denial of access to counsel and insufficient time and facilities to prepare his defence, and even assuming that the said provision, or article 13, or any other provision of the Covenant might be applicable to extradition proceedings, this complaint is in any event partly inadmissible as being out of time (for the period prior to 19 August 1976) and otherwise for failure to exhaust domestic remedies, as it has not been shown that this complaint was ever raised before the competent Canadian authorities.

The Human Rights Committee therefore decides:

The communication is inadmissible.