HUMAN RIGHTS COMMITTEE

A. S. v. Canada

Communication No. 68/1980

31 March 1981

ADMISSIBILITY

Submitted by: A. S.

Alleged victims: The author, her daughter and grandson

State party: Canada

Date of Communication: 23 May 1980

Date of decision on inadmissibility: 31 March 1981 (twelfth session)

Decision on Admissibility

1. The author of the communication (letter dated 23 May 1980) is a Canadian citizen of Polish origin, at present residing in Ontario, Canada. She submitted the communication on her own behalf and on behalf of her daughter and grandson, alleging that all her efforts to obtain permission from the Canadian authorities for her daughter and grandson to enter Canada in order to join her have been in vain. Without specifying a breach of any particular article of the International Covenant on Civil and Political Rights, she seeks the Committee's assistance in the matter and describes the relevant facts as follows:

2. The author, who was born in Poland, is a Canadian citizen, living in Ontario, Canada. Her daughter, B, born in 1946, and her daughter's son, C, born in 1964, live at Torun, Poland. They are both Polish nationals.

3. In the spring of 1977, the author filed an application on behalf of her daughter and grandson at the appropriate Canadian Immigration Office, requesting permission for them to enter Canada in order to join the author as permanent residents. Six months later, her daughter was informed by the Canadian Consul in Warsaw, Poland, that she was not eligible for entry into Canada, because she did not have a profession and that, before the Canadian authorities could proceed further, an employment guarantee would have to be procured for her. An employment guarantee was thereupon obtained in the author's home town, Windsor, Ontario, but the Windsor Department of Manpower concluded, upon inquiry, that there were

already people available for the job in question (the job of a sales person in a pet store). The author informed the immigration authorities in 1979 that she was willing and able to buy a small business in Windsor (a confectionery store) in order to create an employment opportunity for her daughter and/or grandson. The author was then told to go ahead and to purchase the business in question, but since she is fully employed herself and would need the assistance of her daughter and grandson to run the business, she felt she would not be in a position to purchase, without any assurances that they would be permitted to enter Canada. The immigration authorities then requested, and were furnished with, relevant information concerning the author's income and assets, showing that she is able fully to support her daughter and grandson, being the owner of four housing units in Windsor, all without encumbrance, and having also a steady full-time job, as well as funds in a bank account. This information was furnished to the immigration authorities in June 1979. In spite of repeated inquiries, the author has been unable to obtain any further information about the matter. She feels that her daughter and grandson are unjustly being kept away from her and points out that, in the absence of an entry permit, her daughter and grandson are unable to make the necessary application for permission to leave Poland. She states that there are no domestic remedies that could be further pursued.

4. By its decision of 21 July 1980, 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, and drawing the State party's attention in particular to the provisions of articles 12, 17, 23 and 26 of the International Covenant on Civil and Political Rights.

5.1 In its reply dated 2 December 1980, the State party objected to the admissibility of the communication on the ground that the facts of the case did not reveal any breach of the rights protected under articles 12, 17, 23 and 26 of the Covenant on Civil and Political Rights, and that furthermore the communication did not meet the requirements of article I of the Optional Protocol (which stipulates that the Committee has competence to receive and consider communications from individuals subject to a State party's jurisdiction), since B and her son are not subject to Canadian jurisdiction. In substantiation of its refutation of breaches of articles 12, 17, 23 and 26 of the Covenant, the State party submits the following: that no breach of article 12 exists since B is neither a Canadian citizen nor a permanent resident of that country and therefore was not "arbitrarily deprived of the right to enter [her] own country". As regards article 17, which prohibits arbitrary or unlawful interference with the family by the State, it is argued that this article should be interpreted primarily as negative and therefore could not refer to an obligation by the State positively to re-establish conditions of family life already impaired. As regards article 23, which provides for the entitlement of the family to protection by the State, it is claimed that such protection requires a priori that an effective family life between the members of the family must have existed; it could not be concluded that B and her son had shared an effective family life with A. S., since B, after being adopted by A. S. in 1959, lived with her in Canada for two years only, whereafter she left the country in 1961 to return to Poland, where she married and had a son. The fact that A. S. and B have been living apart for 17 years clearly demonstrates that a prolonged family life does not exist and that therefore no breach of article 23 could be claimed by the author. A. S. 's allegation that her daughter was refused an immigration visa

because she did not have a profession and that this constituted a violation of article 26 of the Covenant, which provides equal protection of the law without any discrimination, is refuted on the ground that the Canadian immigration regulations do not contain any such discrimination.

5.2 The State party further refers to A. S.'s purported willingness to purchase a confectionery store and to offer employment to her daughter and argues that if such employment had existed, and had not only been intended, the Canadian immigration authorities could have examined the existing employment and, if it met the conditions laid down in the Immigration Regulations, 1978, could have certified it as "arranged" employment. In this case A. S.'s daughter would have been granted an immigrant visa. Willingness to create employment could not be substituted for existing employment.

6. No comments on the submission of the State party have been received from the author.

7. In order to substantiate her claim under the Covenant and the Optional Protocol, the author must show that one of the provisions of the Covenant has been violated in her case. The only articles of the Covenant which, in the Committee's view, might be relevant to the consideration of her complaint are articles 12, 17, 23 and 26.

8.1 After careful examination of all the material before it, the Human Rights Committee is unable to conclude that articles 12, 17, 23 and 26 of the International Covenant on Civil and Political Rights are applicable in the case.

8.2 The' Human Rights Committee bases its conclusions on the following facts:

(a) Article 12 states that no one shall be arbitrarily deprived of the right to enter his own country; B and her son are Polish nationals; the provisions of article 12 therefore do not apply in this case;

(b) Articles 17 and 23 provide that no one shall be subjected to arbitrary or unlawful interference with his family and that the family is entitled to protection by the State; these articles are not applicable since, except . for a brief period of 2 years some 17 years ago, A. S. and her adopted daughter have not lived together as a family;

(c) Article 26 provides that all persons are entitled without any discrimination to the equal protection of the law; B was denied entry into Canada in conformity with the provisions of existing Canadian law, the application of which did not in the circumstances of the present case give rise to any question of discrimination on any of the grounds referred to in the Covenant.

9. Since, for the reasons stated above, the author's claims do not come within the scope of protection of the Covenant, the communication is "incompatible with the provisions of the Covenant" within the meaning of article 3 of the Optional Protocol.

The Human Rights Committee therefore decides:

The communication is inadmissible.