

HUMAN RIGHTS COMMITTEE

L.S.N v. Canada

Communication No. 94/1981*

30 March 1984

ADMISSIBILITY

Submitted by: L. S. N. (name deleted) on 6 April 1981

Alleged victim: The author

State party: Canada

Date of decision on admissibility: 30 March 1984 (twenty-first session)

Subsequently withdrawn: 31 July 1985

Decision

1. The author of the communication (initial letter dated 6 April 1981; further submissions of 26 May, 19 July and 26 November 1982 and 28 June 1983) is *L. S. N.*, a 26-year-old Canadian citizen of Indian origin, living in Canada. She states that she lost her Indian status in accordance with section 12 (1) (b) of the Indian Act, after having married a non-Indian on 30 August 1975. Pointing out that an Indian man who marries a non-Indian woman does not lose his Indian status, she claims that the Act is discriminatory on the grounds of sex and contrary to articles 2 (1), 3, 23 (1) and (4), 26 and 27 of the Covenant. As to the admissibility of the communication on the ground of exhaustion of domestic remedies, she states that she finds herself in the same ' situation as Sandra Lovelace (case No. 24/1977).! Sandra Lovelace, in her submission to the Committee, contended that she was not required to exhaust local remedies since the Supreme Court of Canada had held that, notwithstanding the provisions of the Canadian Bill of Rights providing for "equality before the law . . . without discrimination by reason of sex", section 12 (1) (b) was fully operative.

2. By its decision of 21 October 1982, 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. At the same time, the author was requested to furnish factual information in regard to her family and marital circumstances and in regard to any effect of loss of Indian status upon her participation in the life of the Indian community.

3. By a letter of 28 June 1983, the author points out that her communication is similar to that of Mrs. Lovelace in every respect, including the fact that her date of marriage was prior to the entry into force of the Covenant for Canada, and requests that the Committee find Canada in breach of article 27 of the Covenant as previously held in the case of Sandra Lovelace. 4.1. On 23 August 1983, the State party submitted its observations on the admissibility of the communication. It contests the admissibility of the communication in so far as article 26 of the Covenant is concerned, arguing that any claim by the author of the present communication that her rights to equality before the law or to the equal protection of the law have been violated is based on her loss of Indian status on 30 August 1975 as a result of the operation of s. 12 (1) (b) of the Indian Act. Her loss of Indian status was final upon that date; any possible subsequent effects of that loss occurring after the coming into force of the Covenant in Canada were in regard to her family life or her participation in the life of the Indian community. In other words, such effects do not relate to Article 26 of the Covenant. The State party does not contest the admissibility of "the portion of the communication relating to articles 23 and 27, . . . and also the portion relating to articles 2 (1) and 3, but only to the extent that they bear on the interpretation of articles 23 and 27". 4.2 In its submission Canada expresses its commitment to remove from the Indian Act "any provisions which discriminate against women or in some other way offend human rights", referring in particular to the work of a Parliamentary Sub-Committee on Indian Women which, in its report of 21 September 1982 recommended, *inter alia*, that the Indian Act should be amended so that Indian women no longer lose their Indian status upon marrying non-Indians and that Indian women who had previously lost their status should, upon application, be entitled to regain it. The State party affirms that "the necessary steps are now being taken to develop legislation to amend the Indian Act".

4.3 The State party recognizes that at present no domestic remedies are available to the author of the communication. It is, however, pointed out that as of April 1985 (when sect. 15 (1) of the Canadian Charter of Rights and Freedoms will come into effect), there will be an available domestic remedy in Canada for persons who feel that they have been discriminated against on the basis of sex by federal laws.

4.4 The State party also refers to several other provisions of the Constitution Act, 1982 "which are of relevance to the claims of the author of the communication". Particularly mentioned in this connection are sections 24, 25, 27 and 28 of the Act (protection of established rights and freedoms, interpretation of the Charter in a manner consistent with the preservation and enhancement of the multicultural heritage, equal rights for men and women and the right to a remedy before a court when rights guaranteed by the Charter have been infringed).

4.5 In addition, the State party stresses the need for more factual information in the case in order to enable it to make an adequate submission on the merits of the case. It requests in particular factual information in regard to the family and marital circumstances of the author, and in regard to any effect of loss of Indian status upon her participation in the life of the Indian community, as already requested from the author in paragraph 4 of the Committee's decision of 21 October 1982.

5.1 In a letter dated 27 October 1983, the author comments on the State party's submission, contesting in particular the State party's statement that the communication is inadmissible with respect to issues raised under article 26 of the Covenant. The author urges the Committee to consider the individual opinion annexed to case No. 24/1977, Sandra Lovelace, in this respect. The author also rejects as inappropriate the State party's contention that articles 2 (1) and 3 be considered only to the extent that they bear on the interpretation of articles 23 and 27. The author submits that the Committee should declare the communication admissible under articles 2 (1), 3, 23, 26 and 27.

5.2 In a further letter, dated 9 December 1983, the author furnished the following additional information relevant to her family and marital circumstances. She states that she is married, that prior to her marriage she had lived with her parents on the Tobique reserve, that she had been warned that she would not be allowed to live on the reserve if she married a white man, and that since her marriage she has lived in several different white communities. She also alleges in general terms the loss of cultural, political and economic rights as a result of the loss of her Indian status, without, however, any further explanations.

6. The Committee notes the State party's contention that the communication in so far as it relates to article 26 is inadmissible *rationes temporis*, because Mrs N's loss of Indian status was final before the entry into force of the Covenant for Canada. However, the Committee reserves for its examination of the merits the questions of interpretation and application of article 26 as well as of any other article which might be considered, such as article 12. This, examination will depend on the submission by the author of more precise facts on which her claim of violation of the Covenant is based.

7. With regard to the exhaustion of domestic remedies, the Committee takes note of the State party's statement that no domestic remedies are available in the case. Accordingly, the Committee concludes that the communication is not inadmissible under article 5 (2) (b) of the Optional Protocol. 8. The Human Rights Committee therefore decides:

(1) That the communication is admissible in so far as it relates to events said to have continued or taken place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Canada;

(2) That, in accordance with article 4 (2) of the Optional Protocol, the State party shall be requested 'to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(3) That any explanations or statements received from the State party shall be communicated by the Secretary-General to the author, under rule 93 (3) of the provisional rules of procedure of the Committee, with the request that any comments which the author may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(4) That the author shall be requested to furnish, within six weeks of the date of the transmittal to her of this decision, any additional factual information in regard to the communication, and in particular to specify more precisely the respects in which she alleges that the rights under article 23 of the Covenant to. protection of the family, the rights guaranteed under article 27 to persons belonging to minorities with regard to culture, religion or language, and any other rights under the Covenant,'have been violated in her case and the steps, if any, which she has taken to enable her to enjoy those rights in practice (see paras. 4.5 and 5.2 above);

(5) Any information received from the author pursuant to paragraph 4 above shall be transmitted to the State party to enable it to take that information into account in the preparation of its submission under article 4 (2) of the Covenant;

(6) That this decision be communicated to the State party and the author of the communication.

* * *

At its twenty-sixth session, the Committee closed its examination of communication No. 94112 following a letter of 31 July 1985 by the author withdrawing the communication in view of the abrogation of article 12 (1) (b) of the Indian Act. See in this connection HRC 1983 report, pp. 249 et seq.

*/ Not previously published in the annual report of the Human Rights Committee.

1/ Views adopted on 30 July 1981, *Selected Decisions ... I* Vol. 1, pp. 83-87.