

HUMAN RIGHTS COMMITTEE

K.C. v. Canada

Communication No. 486/1992*/

29 July 1992

CCPR/C/45/D/486/1992 **/

ADMISSIBILITY

Submitted by: K.C. [name deleted]

Alleged victim: The author

State party: Canada

Date of communication: 24 February 1992 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 24 February 1992) is K.C., a citizen of the United States of America born in 1952, currently detained at a penitentiary in Montreal and facing extradition to the United States. He claims to be a victim of violations by Canada of articles 6 **juncto** 26 and 7 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 On 27 February 1991, the author was arrested at Laval, Québec, for theft, a charge to which he pleaded guilty. While in custody, the judicial authorities received from the United States a request for his extradition, pursuant to the 1976 Extradition Treaty between Canada and the United States. The author is wanted in the State of Pennsylvania on two charges of first-degree murder, relating to an incident that took place in Philadelphia in 1988. If

convicted, the author could face the death penalty.

2.2 Pursuant to the extradition request of the United States Government and in accordance with the Extradition Treaty, the Superior Court of Québec ordered the author's extradition to the United States of America. Article 6 of the Treaty provides:

"When the offence for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offence, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed or, if imposed, shall not be executed".

Canada abolished the death penalty in 1976, except in the case of certain military offences.

2.3 The power to seek assurances that the death penalty will not be imposed is conferred on the Minister of Justice pursuant to section 25 of the 1985 Extradition Act.

2.4 Concerning the course of the proceedings against the author, it is stated that a **habeas corpus** application was filed on his behalf on 13 September 1991; he was represented by a legal aid representative. The application was dismissed by the Superior Court of Québec. The author's representative appealed to the Court of Appeal of Québec on 17 October 1991.

2.5 Counsel requests the Committee to adopt interim measures of protection because extradition of the author to the United States would deprive the Committee of its jurisdiction to consider the communication, and the author to properly pursue his communication.

The complaint:

3. The author claims that the order to extradite him violates article 6 **juncto** 26 of the Covenant; he alleges that the way death penalties are pronounced in the United States generally discriminates against black people. He further alleges a violation of article 7 of the Covenant, in that he, if extradited and sentenced to death, would be exposed to "the death row phenomenon", i.e. years of detention under harsh conditions, awaiting execution.

The State party's observations:

4. On 30 April 1992, the State party informed the Committee of the author's situation in regard to remedies which are either currently being pursued by him before Canadian courts or which are still available for him to pursue. It indicates that the Court of Appeal of Québec is seized of the matter, and that, if it rendered a decision unfavourable to the author, he could appeal to the Supreme Court of Canada. In the event of an unfavourable decision there, he could still "petition the Minister of Justice to seek assurances under the Extradition Treaty between Canada and the United States that if surrendered, the death penalty would not be imposed or carried out. Counsel for K.C. has in fact indicated that, once remedies before the courts have been exhausted, he will be making representations to the Minister regarding assurances. A review of the Minister's decision is available in the Superior Court of Québec

on **habeas corpus** with appeals again to the Court of Appeal of Québec and the Supreme Court of Canada or on application to the Federal Court Trial Division with appeals to the Federal Court of Appeal and the Supreme Court of Canada. Consequently, there is no basis for [K.C.]'s complaint as he has not exhausted all remedies available in Canada and has several opportunities to further contest his extradition."

Issues and proceedings before the Committee:

5.1 On 12 March 1992 the Special Rapporteur on New Communications requested the State party, pursuant to rule 86 of the Committee's rules of procedure, to defer the author's extradition until the Committee had had an opportunity to consider the admissibility of the issues placed before it.

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

5.3 Article 5, paragraph 2(b), of the Optional Protocol precludes the Committee from considering a communication if the author has not exhausted all available domestic remedies. In the light of the information provided by the State party, the Committee concludes that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

6. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol;

(b) that the Committee's request for interim measures pursuant to rule 86 of the rules of procedure is set aside;

(c) that, in accordance with rule 92, paragraph 2, of the Committee's rules of procedure, the author may, after exhausting local remedies, bring the issue again before the Committee;

(d) that this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Footnotes

*/ All persons handling this document are requested to respect and observe its confidential nature.

**/ Made public by decision of the Human Rights Committee.