HUMAN RIGHTS COMMITTEE

Singer v. Canada

Communication No. 455/1991

8 April 1993

CCPR/C/47/D/455/1991*

ADMISSIBILITY

Submitted by: Allan Singer

Alleged victim: The author

State party: Canada

Date of communication: 30 January 1991

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 5 August 1991 (not issued in document form)

Date of present decision: 8 April 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Allan Singer, a Canadian citizen born in 1913 and resident of Montreal, Canada. He claims to be a victim of "discrimination on languages" by Canada, in violation of the International Covenant on Civil and Political Rights, without however specifically invoking article 26 thereof.

The facts as presented by the author

2.1 The author runs a stationary and printing business in Montreal. His clientele is predominantly but not exclusively anglophone. Starting in 1978, the author received numerous summons from the Québec authorities, requesting him to replace commercial advertisements in English outside his store by advertisements in French. The author appealed against all these summons before the local courts,

and contended that the Charter of the French Language (Bill 101) discriminated against him because it restricted the use of English for commercial purposes; in particular, Section 58 of Bill 101 prohibited the posting of commercial signs in English outside the author's store. In October 1978, the Court of Sessions of Montreal found against him. The Superior Court of Québec, Montreal, did likewise on 26 March 1982, and so did the Court of Appeal of Québec in December 1986.

2.2 The author then took his case to the Supreme Court of Canada which, on 15 December 1988, decided that an obligation to use French only in outdoor advertising was unconstitutional and struck down several provisions of the Québec Charter of the French Language (Charte de la Langue Française). The Québec legislature, however, passed another legislative measure, Bill 178, on 22 December 1988, whose express ratio legis was to override the judgment handed down by the Supreme Court of Canada one week earlier. With this, the author contends, he has exhausted available remedies.

The complaint

3. The author contends that Bill 101, as amended by Bill 178, is discriminatory, in that it restricts the use of English to indoor advertising and places businesses which carry out their activities in English in a disadvantageous position vis-à-vis French business.

Legislative provisions

4.1 The relevant original provisions of the Charter of the French Language (Bill No. 101, S.Q. 1977, C-5) have been modified several times. In essence, however, they have remained substantially the same. In 1977, section 58 read as follows:

"Except as may be provided in this Act or the regulations of the Office de la langue française, signs and posters and commercial advertising shall be solely in the official language."

4.2 The original wording of section 58 was replaced in 1983 by section 1 of the Act to amend the Charter of the French Language (S.Q. 1983, C-56) which read:

"58. Public signs and posters and commercial advertising shall be solely in the official language.

"Notwithstanding the foregoing, in the cases and under the conditions or circumstances prescribed by regulation of the Office de la langue française, public sings and posters and commercial advertising may be both in French and another language or solely in another language..."

4.3 The initial language legislation was struck down by the Supreme Court in La Chaussure Brown's Inc. et al. v. the Attorney General of Quebec (1989) 90 N.R. 84. Following this, section 58 of the Charter was amended by section 1 of Bill No. 178. While certain modifications were made relating to signs and posters inside business premises, the compulsory use of French in signs posters outside remained.

4.4 Section 58 of the Charter, as modified by section 1 of Bill No. 178, now reads:

"58. Public signs and posters and commercial advertising, outside or intended for the public outside, shall be solely in French. Similarly, public signs and posters and commercial advertising shall be solely in French,

"1. Inside commercial centres and their access ways, except inside the establishments located there;

"2. Inside any public means of transport and its access ways;

"3. Inside the establishments of business firms contemplated in section 136;

"4. Inside the establishments of business firms employing fewer than fifty but more than five persons, where such firms share, with two or more other business firms, the use of a trademark, a firm name or an appellation by which they are known to the public.

"The Government may, however, by regulation, prescribe the terms and conditions according to which public signs and posters and public advertising may be both in French and in another language, under the conditions set forth in the second paragraph of section 58.1, inside the establishments of business firms contemplated in subparagraphs 3 and 4 of the second paragraph.

"The Government may, in such regulation, establish categories of business firms, prescribe terms and conditions which vary according to the category and reinforce the conditions set forth in the second paragraph of section 58.1."

4.5 Section 6 of Bill No. 178 modified section 68 of the Charter, which now reads:

"68. Except as otherwise provided in this section, only the French version of a firm name may be used in Quebec. A firm name may be accompanied with a version in another language for use outside Quebec. That version may be used together with the French version of the firm name in the inscriptions referred to in section 51, if the products in question are offered both in and outside Quebec.

"In printed documents, and in the documents contemplated in section 57 if they are both in French and in another language, a version of the French firm name in another language may be used in conjunction with the firm name.

"When texts or documents are drawn up in a language other than French, the firm name may appear in the other language without its French version.

"On public signs and posters and in commercial advertising,

"1. A firm name may be accompanied with a version in another language, if they are both in French and in another language;

"2. A firm name may appear solely in its version in another language, if they are solely in a language other than French."

4.6 Section 10 of Bill No. 178 contains the so-called "notwithstanding" clause, which provides that:

"The provisions of section 58 of the first paragraph of section 68, brought into effect under sections 1 and 6 respectively of the present Bill, shall operate irrespective of the provisions of section 2, paragraph (b), and section 15 of the Constitutional Act of 1982 ... and shall apply notwithstanding articles 3 and 10 of the Charter of Human Rights and Freedoms."

4.7 Another "notwithstanding" provision is incorporated into section 33 of the Canadian Charter of Human Rights and Freedoms, which reads:

"1. Parliament or the legislature of a province may expressly declare in an act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

"2. An act or a provision of an Act is respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

"3. A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

"4. Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

"5. Subsection (3) applies in respect of a re-enactment made under subsection (4)."

The State party's information and observations

5.1 The communication was transmitted to the State party under rule 91 of the Committee's rules of procedure on 5 August 1991. In its submission of 6 March 1992, which also relates to communications No. 359/1989 (Ballantyne/Davidson) and 385/1989 (McIntyre) 1/, the State party notes that a number of litigants have challenged the validity of Bill 178 before the Québec courts, and that hearings on the issue before the Court of Québec were held on 14 January 1992. The proceedings continue, and lawyers for the provincial government of Québec were scheduled to present the point of view of Québec on 23 and 24 March 1992.

5.2 The State party contends that Québec's Code of Civil Procedure entitles the author to apply for a declaratory judgment that Bill 178 is invalid and adds that this option is open to him regardless of whether criminal charges had been instituted against him or not. It argues that consistent with the well-established principle that effective domestic remedies must be exhausted before the jurisdiction of an international body is engaged, Canadian courts should have an opportunity to rule on the validity of Bill 178, before the issue is considered by the Human Rights Committee.

5.3 The State party further argues that the "notwithstanding" clause in Section 33 of the Canadian Charter of Rights and Freedoms is compatible with Canada's obligations under the Covenant, in particular with article 4 and with the obligation, under article 2, to provide its citizens with judicial

remedies. It explains that, firstly, extraordinary conditions limit the use of Section 33. Secondly, Section 33 is said to reflect a balance between the roles of elected representatives and courts in interpreting rights: "A system in which the judiciary is given full and final say on all issues of rights adversely impacts on a key tenet of democracy - that is, participation of citizens in a forum of elected and publicly accountable legislatures on questions of social and political justice ... The 'notwithstanding' clause provides a limited legislative counterweight in a system which otherwise gives judges final say over rights issues".

5.4 Lastly, the Government affirms that the existence of Section 33 per se is not contrary to article 4 of the Covenant, and that the invocation of Section 33 does not necessarily amount to an impermissible derogation under the Covenant: "Canada's obligation is to ensure that Section 33 is never invoked in circumstances which are contrary to international law. The Supreme Court of Canada has itself stated that 'Canada's international human rights obligations should [govern] ... the interpretation of the content of the rights guaranteed by the Charter'." Thus, a legislative override could never be invoked to permit acts clearly prohibited by international law. Accordingly, the legislative override in Section 33 is said to be compatible with the Covenant.

5.5 The State party therefore requests the Committee to declare the communication inadmissible.

6.1 In his comments, the author contends that his case in against Bill 101 and not against Bill 178, and that it is based upon the State party's perceived violations of the provisions of the Constitution Act of Canada 1867, and not on the Constitution Act of 1982. He argues that any challenge of the contested legislation would be futile, in the light of the Québec government's decision to override the Supreme Court's judgment on 15 December 1988 by enactment of Bill 178 a week later.

6.2 The author claims that the "notwithstanding" clause of Section 33 of the Canadian Charter of Rights and Freedoms does not apply to his case, as he had been charged for violating the Charter of the French Language in 1978, before Section 33 took effect. In this context, he argues that no Canadian Government can abrogate or supplant freedoms that were in existence before the Charter came into being, and adds that under the Canadian tradition of civil liberties, rights may be extended but cannot be curtailed.

6.3 Finally, the author asserts that the "notwithstanding" clause of Section 33 is a negation of the rights enshrined in the Charter, as it allows (provincial) legislatures to "attack minorities and suspend their rights for a period of five years".

Issues and proceedings before the Committee

7.1 Before considering any claims 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.

7.2 The Committee notes that issues similar to those raised by the author have been addressed in communications Nos. 359/1989 and 385/1989 (Balantyne/Davidson and McIntyre v. Canada), which were declared admissible on the merits on 11 April 1991 and in respect of which the Committee adopted a decision on the merits on 31 March 1993. The Committee will therefore draw upon its

argumentation in the aforementioned decisions.

7.3 The State party has contended that as the issue of the validity of Bill 178, which amends Bill 101, the legislation challenged by the author, is currently before the courts of Québec and the author could apply for a declaratory judgment that the Bill is invalid, the communication is inadmissible. While taking due note of the State party's argument, the Committee is unable to accept the suggestion that effective remedies would still be available to the author.

7.4 The Committee notes that while some of the original statutory provisions of the Charter of the French Language, which are designed to protect the visage linguistique of Québec, have been modified several times between 1978 and 1988, also after they were found to be unconstitutional and declared inoperative successively by the Superior, Appeal and Supreme Courts, the only effect this has had was that the relevant provisions were replaced by ones that are the same in substance to the ones they replaced, but reinforced by the "notwithstanding" clause of Section 10 of Bill 178. The net result has been that there has been a continued ban on the use of any language other than French in outdoor advertising since 1978, and that it remains a criminal offence to disregard the ban.

7.5 As to whether a declaratory judgment declaring Bill 178 invalid would provide that author with an effective remedy, the Committee notes that such a judgment would still leave the Charter of the French Language operative and intact, and that the legislature of Québec could still override any such judgment by replacing the provisions struck down by others substantially the same and by invoking the "notwithstanding" clause of the Québec Charter of Rights and Freedoms. On the basis of precedent, and in the light of the legislative history of Bill 178 and its predecessors, such a course of action is not merely hypothetical. The net result, a continued ban on languages other than French in outdoor advertising, would remain the same.

7.6 The Committee, moreover, is satisfied that the author has made a reasonable effort to substantiate his allegations, for purposes of admissibility, and that his claims should be examined on the merits. While the author has not invoked specific provisions of the Covenant, the Committee considers that the issues complained of may raise issues under articles 19, 26 and 27 of the Covenant. Furthermore, although the author has specifically challenged only Bill 101, which was amended by Bill 178 in 1988, the Committee is not precluded from examining the compatibility of both laws with the Covenant, as the central issue, language-based discrimination in commercial outdoor advertising, remains the same.

7.7 The Committee is well aware that the State party and the provincial government have already made substantial submissions on the matter under consideration, which concern both the admissibility and the merits of the case. At this stage, however, the Committee must limit itself to the procedural requirement of deciding on the admissibility of the communication. Should the State party wish to make a further submission on the merits, it should do so within six months of the transmittal to it of this decision. The author of the communication will be given an opportunity to comment thereon. If no further explanations or statements are received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee will proceed to adopt its Views in the light of the written information available.

8. The Human Rights Committee therefore decides:

(a) That the communication is admissible;

(b) That any further explanations or statements which the State party may wish to submit to clarify the matter and the measures taken by it, should, in accordance with article 4, paragraph 2, of the Optional Protocol, reach the Human Rights Committee within six months of the date of transmittal to it of this decision. Should the State party not intend to make a further submission in the case, it is requested to so inform the Committee as soon as possible to permit an early disposition of the matter;

(c) That any further explanations or statements received from the State party shall be communicated by the Secretary-General, under rule 93, paragraph 3, of the Committee's rules of procedure, to the author, with the request that any comments that he 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 transmittal;

(d) That this decision be communicated to the State party and to the author.

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

1/ Views adopted by the Committee on 31 March 1993.