

## HUMAN RIGHTS COMMITTEE

### J. M. v. Canada

Communication No. 559/1993\*

8 April 1994

CCPR/C/50/D/559/1993

### ADMISSIBILITY

*Submitted by: J.M. [name deleted]*

*Alleged victim: The author*

*State party: Canada*

*Date of communication: 7 June 1993*

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

Meeting on 8 April 1994,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is a Canadian citizen, living in Sherbrooke, Quebec. He claims to be a victim of a violation of articles 14 and 26 of the International Covenant on Civil and Political Rights by Canada.

The facts as submitted by the author:

2.1 The author underwent a heart operation in 1978, which was successful but resulted in high blood pressure, controllable by medication. To emphasize his good health, the author mentions that he has successfully participated in two Montreal marathons and several other long-distance runs. On 4 May 1987, the author, who has a bachelor's degree in industrial relations, forwarded his curriculum vitae to the Royal Canadian Mounted Police (RCMP) in order to apply for the post of "personnel agent". On 16 June 1987, during a telephone

conversation with a representative of the RCMP, he was told that only RCMP members with several years' experience could apply for the post of "personnel agent".

2.2 Subsequently, the author applied for the post of constable. He passed an aptitude test and then filled out some forms, in which he provided information about his medical history. On 26 October 1987, the author received a letter from the RCMP, informing him that he was refused a post as constable since he did not meet the medical requirements.

2.3 After having requested clarification, the author was informed by the medical officer of the RCMP that he was refused on the basis of the questionnaire and without medical examination because of his heart operation and resulting high blood pressure, cartilage (a **chondromalacie**) in his right knee (corrected in 1983) and his asthma condition.

2.4 Subsequently, the author contacted the Canadian Human Rights Commission in order to file a complaint against the RCMP for discrimination. After a preliminary inquiry conducted by the Commission, an official complaint was filed in September 1988. In August 1989, the author authorized the Commission to seek three independent medical specialists to examine the author. On 19 December 1989, the author was contacted by the Secretariat of the Commission; he was told that the RCMP had acknowledged that a premature decision had been taken in denying the post to the author without medical examination. He was invited to apply again, without prejudice. The author claims that the Human Rights Commission failed to make a copy of the said letter available to him. The author was also told that the post of "personnel agent" was a civilian post and that the representative of the RCMP had made a mistake in June 1987 by telling him that only members of the RCMP could apply for that post.

2.5 The author asked for a guarantee that the selection procedure and medical examination conducted by the RCMP would be fair and that he would receive equal treatment. Failing to obtain such guarantee to his satisfaction, he decided to ask for monetary compensation (Can\$ 71,948.70) rather than to reapply. On 26 November 1990, he presented his claim to the RCMP; no agreement was reached.

2.6 On 4 December 1990, the author was informed that, on the basis of the inquiry, a recommendation had been made to the Commission to reject the author's complaint. The author was invited to comment on the recommendation, the text of which was transmitted to him. On 3 January 1991, the author challenged the recommendation and demanded that the Commission investigate his complaint further. In this connection, the author notes that the burden of proof was on him and not on the RCMP. On 25 March 1991, the Commission notified the author that it considered that there was no justification for continuing the proceedings.

2.7 On 5 August 1991, the author requested the Federal Court of Canada, Trial Division, for a writ of **certiorari**, in order to quash the Commission's decision and to force it to have his case examined by the **Tribunal des droits de la personne**. The author claimed procedural deficiencies during the handling of his case by the Commission, such as the failure to have the author medically examined by independent experts and the disappearance from the file

of press cuttings about the author's athletic achievements. On 20 September 1991, the Court rejected the author's request, considering that the Commission had exercised its discretion in compliance with the law and the principles of law established in jurisprudence. The judge also noted that the Commission's decision did not affect the author's right to sue the RCMP for alleged damages. The author submits that, since the judge did not err in law, appeal from his judgement is not possible.

The complaint:

3. The author claims that he is a victim of discrimination by the RCMP. He further contends that the Canadian Human Rights Commission has violated the rules of fair procedure and has discriminated against him by accepting the insufficient explanation by the RCMP. He claims that the facts as described amount to violations of articles 14 and 26 of the Covenant.

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee notes that the author claims he is a victim of discrimination by the RCMP, because he was refused a post as a constable solely on the basis of his medical history. The Committee further notes that the police acknowledged having made a mistake in the procedure and invited the author to reapply. The author, however, failed to accept the offer made by the police, demanding monetary compensation instead. The Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, that the proposal made to him by the police was not effective and could not lead to a remedy. The author therefore has no claim under article 2 of the Optional Protocol.

4.3 The Committee further considers that the author has failed to substantiate, for purposes of admissibility, his claim that the procedure before the Canadian Human Rights Commission violated his rights under article 14, paragraph 1, of the Covenant, and that he has failed to submit sufficient evidence in support of the claim under article 26 of the Covenant.

5. The Human Rights Committee therefore decides that:

- (a) The communication is inadmissible under article 2 of the Optional Protocol;
- (b) This decision shall be communicated to the author and, for information, to the State party.

[Text adopted in English, French (original version) and Spanish; will also appear in Arabic, Chinese and Russian in the Committee's annual report to the General Assembly.]

## Footnotes

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

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