

## **HUMAN RIGHTS COMMITTEE**

### **G. v. Canada**

**Communication No 934/2000**

**17 July 2000**

**CCPR/C/69/D/934/2000**

### **ADMISSIBILITY**

*Submitted by: Ms. G. (Name deleted)*

*Alleged victim: The author*

*State party: Canada*

*Date of the communication: 29 December 1999*

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

Meeting on 17 July 2000,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is Ms. G., a Canadian citizen, born on 9 May 1949. She claims to be a victim of a violation by Canada of articles 2, 14 (1), 17 (1) and 26 of the Covenant, because of discrimination relating to the country of origin of her academic credentials.

#### **The facts as submitted**

2.1 The author states that she obtained a Ph.D. in educational psychology from the University of Toronto in 1976. Since 1983 she has been repeatedly hired for part-time temporary teaching by the Department of Psychology of the University of Alberta, but has been systematically excluded from competition for permanent positions, despite the fact that she has published three books and numerous articles in academic journals and that she has excellent appraisals for her teaching.

2.2 In July 1993 the author filed a complaint with the Alberta Human Rights Commission for systemic discrimination. On 28 March 1995, the Commission dismissed the complaint and declined to refer it to a Board of Inquiry for a formal inquiry on the basis that there was no evidence of either specific discrimination or systemic discrimination in the author's case. On 5 July 1996, the Court of Queen's Bench denied the application for judicial review and held that the Commission had no jurisdiction over the author's complaint since it related to a ground not specifically listed under the Alberta Human Rights legislation. Since the parties failed to come to an agreement on costs, the Court by decision of 3 February 1997, ordered the author to pay costs.

2.3 On appeal, the Court of Appeal held that systemic discrimination, if established, is merely part of the bundle of evidence that may prove adverse impact upon the complainant. After having revisited the evidence that was put before the Commission, the Court of Appeal decided that the evidence was not sufficient to warrant the case to be directed to a Board of Inquiry. The Court of Appeal therefore expressed no opinion regarding the jurisdictional questions that were raised and dismissed the appeal.

2.4 The author states that she did not appeal to the Supreme Court because that remedy was not in practice available to her because of her lack of financial means. She also states that the outcome of the case, if she would win, would be that the case would be referred back for consideration to the Alberta Human Rights Tribunal, whose members are employees of the Alberta Human Rights Commission. Moreover, such a procedure would be seriously prolonged in time.

### The complaint

3.1 The author claims that she has been discriminated against on the basis of the origin of her degree, because Canadian universities, including the University of Alberta, prefer to hire academics with a degree from a university in the United States of America. The author argues that discrimination on origin of credentials as a rule excludes groups on the basis of their place of origin, as most people will receive training there. She claims that the country origin of educational credentials is a personal characteristic for which discrimination is prohibited.

3.2 The author further complains about unequal treatment by the Alberta Human Rights Commission, the Court and the Appeal Court in relation to her complaint. In this context, she states that there was sufficient prima facie evidence of systemic discrimination, yet the Human Rights Commission refused to refer her case to a Board of Inquiry for investigation. She further complains that the Commission restated her case, and changed it from a systemic discrimination complaint to one of individual adverse impact discrimination. She also complains that the Court of Queen's Bench in refusing her application for judicial review denied her the opportunity to have her case adjudicated. She also challenges the Court's decision to award costs to the University, because the case was a case of review against a decision of the Alberta Human Rights Commission and not against the University (whose decisions are not subject to judicial review under Canadian law). As to the hearing of her complaint by the Alberta Court of Appeal, the author states that the Court met twice with differently constituted panels, and that at the first hearing agreement was reached that her complaint was within the jurisdiction of the Human Rights Commission. However, according to the author, this panel was dissolved without reason given and after a new hearing by the second panel the Court dismissed the appeal. She also claims that the Court of Appeal failed to apply the relevant

case law and that its interpretation of the Alberta Human Rights Protection Act was inconsistent with the Canadian Charter. She further claims that the Court of Appeal exceeded its jurisdiction by substituting its own opinion for that of the Commission without first deciding on the jurisdiction of the Commission. The author states that the end result was that she was precluded from any judicial remedy without ever having her systemic discrimination complaint adjudicated.

3.3 The author also claims that the above constitutes defamation of her character and reputation. In this context, she also complains about an allegedly defamatory letter which is kept in her file at the Alberta University, and which the University refuses to remove, unless she signs an agreement to end all litigation.

#### 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 With regard to the author's claim under article 26, the Committee notes that the author claims that she has been discriminated against on account of the origin of her academic degree. The Committee notes that the author's claim of discrimination was examined by the Court of Appeal and that the Court found that the evidence was not sufficient to make a finding of discrimination. In the opinion of the Committee, the author has failed to substantiate, for purposes of admissibility, that the Court's finding was manifestly arbitrary or amounted to a denial of justice. It is therefore not for the Committee to re-evaluate the facts in the present case. This part of the communication is therefore inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

4.3 The Committee notes that the author's claims under article 14 of the Covenant relate mainly to the evaluation of facts and evidence as well as to the interpretation of domestic law. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case and to interpret domestic legislation. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts and their interpretation of the law were manifestly arbitrary or amounted to a denial of justice. This claim is therefore inadmissible under articles 2 and 3 of the Optional Protocol.

4.4 With regard to the author's claim that the Court of Appeal first heard her claim in a different composition, and that the panel was subsequently dissolved, after which a new hearing was held by a different panel, the Committee notes that this is a bare allegation made by the author and that she has not done anything to exhaust domestic remedies in connection with this claim. The claim is therefore inadmissible under article 5 (2) (b) of the Optional Protocol.

4.5 The Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, that she was a victim of a violation of article 17 of the Covenant. Moreover, it appears that the author has failed to exhaust domestic remedies in connection with this claim. This claim is therefore inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

5. The Human Rights Committee decides:

(a) That the communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;

(b) That this decision shall be communicated to the author and, for information, to the State party.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. P.N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

[Adopted in English French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]