

## HUMAN RIGHTS COMMITTEE

### Gillan v. Canada

Communication No 936/2000

17 July 2000

CCPR/C/69/D/936/2000

### ADMISSIBILITY

*Submitted by: Mr. Terry Gillan (represented by Mr. Vincent Th. Calderhead, legal counsel)*

*Alleged victim: The author*

*State party: Canada*

*Date of the communication: 9 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 Mr. Terry Gillan, a Canadian citizen, born on 18 November 1980. He claims to be a victim of a violation by Canada of article 14 read together with articles 2 and 26 of the Covenant. He is represented by Mr. Vincent Thomas Calderhead, legal counsel in Halifax.

#### The facts as submitted

2.1 On 22 June 1995, the police arrested the author on an unrelated matter and upon searching him, discovered six unopened bottles of beer in various parts of his clothing. Subsequently, he was charged and tried in the youth court for illegal possession of liquor, contrary to section 78(2) of the Liquor Control Act of Nova Scotia.<sup>1</sup> The evidence led before the court was not challenged by the defence. The defence challenged, however, the relevant legislative framework within which the

prosecution was conducted, which violates the accused's right to be presumed innocent.<sup>2</sup> The Youth Court judge rejected the arguments made by the defence, holding that in light of the evidence before the Court, he need not rely on the evidentiary provisions contained in the impugned legislation, but could convict the author without relying on those sections.

2.2 On 22 January 1998, the Court of Appeal dismissed the author's appeal. It ruled that sections 128 and 130(1) were not relied on by the trial judge and need not have been relied on by him. On 13 August 1998, the Supreme Court of Canada denied leave to appeal. With this, it is submitted that all available domestic remedies have been exhausted.

### The complaint

3. Counsel claims that the evidentiary provisions in the Liquor Control Act of Nova Scotia are in violation of article 14(2) of the Covenant. He states that thousands of Nova Scotians are charged each year with illegal possession of liquor under a flawed legislative scheme. Counsel submits that most people charged with offences under the Liquor Control Act are members of disadvantaged groups in Canadian society.

### 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 Counsel bases his communication on the allegation that sections 128 and 130(1) of the Liquor Control Act of Nova Scotia violate the presumption of innocence, and thus article 14(2) of the Covenant. The Committee notes from the information before it, that the author in was convicted on the basis that his guilt had been proven beyond any reasonable doubt. In the present case, the courts did not rely on the sections of the Liquor Control Act that counsel seeks to attack. The Committee concludes therefore that the communication is inadmissible under article 1 of the Optional Protocol, since the author cannot claim to be a victim of the alleged violation.

5. The Human Rights Committee decides:

a) that the communication is inadmissible under article 1 of the Optional Protocol;

b) that this decision shall be communicated to the author and his counsel 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. 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.

1/ Section 78(2) reads: "Except as authorized by the Act or the regulations, no liquor shall be manufactured, transported, kept or had by any person." Section 89(1) of the Act prohibits possession of liquor by any person under the age of nineteen. It is not disputed that the author was under age at the time of the offence.

2/ Counsel refers to sections 128 and 130(1) of the Liquor Control Act, which read:

"128. If, on the prosecution of any person charged with committing an offence against this Act, in selling or keeping for sale or giving or keeping or having or purchasing or receiving of liquor, prima facie proof is given that the person had in his possession or charge or control any liquor in respect of or concerning which he is being prosecuted, then, unless the person proves that he did not commit the offence with which he is so charged, he may be convicted of the offence."

"130(1) The burden of proving the right to have or keep or sell or give or purchase or consume liquor shall be on the person accused of improperly or unlawfully having or keeping or selling or giving or purchasing or consuming the liquor, notwithstanding that the prosecution has given any evidence whatsoever in addition to the prima facie proof referred to in Section 128."

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