

HUMAN RIGHTS COMMITTEE

Devgan v. Canada

Communication No. 948/2000

30 October 2000

CCPR/C/70/D/948/2000

ADMISSIBILITY

Submitted by: Mr. Ravi Devgan (represented by Mr. Harry Kopyto, legal agent)

Alleged victim: The author

State party: Canada

Date of communication: 1 June 2000

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

Meeting on 30 October 2000

Adopts the following:

Decision on Admissibility

1. The author of the communication is Ravi Devgan, a Canadian citizen, born in 1946. He claims to be victim of the violation of his rights under articles 2, 3, 7 and 14 of the International Covenant for Civil and Political Rights by Canada.

Facts as submitted by the author

2.1 On 26 January 1996, the Ontario Court tried the author on one account of fraud and one account of making a false statement, involving separate complainants. The author pleaded not guilty, but was found guilty, and on 17 May 1996 he was sentenced to 90 days of intermittent imprisonment. The author claims that although a civil suit for compensation for the fraud had been settled, he was also ordered to pay compensation to both complainants, under s 725(1) of the Criminal Code.

2.2 The author, represented by a solicitor, gave Notice of Appeal of both conviction and sentence

set by the Ontario Court. However, the solicitor advised the author that if he proceeded with the appeal a higher sentence might be imposed. In August 1999, the author confirmed in writing to his counsel the withdrawal of his Notice of Appeal. Counsel submitted a Notice of Abandonment to the court, which dismissed the appeal as abandoned on 11 August 1999. The author also appealed the compensation orders. In a judgement of 26 May, 1999 the Ontario Court of Appeal set aside one compensation order and reduced the other.

2.3 After withdrawing his appeal against the conviction and sentence the author obtained new advice, which indicated that it would be extraordinary for the Court of Appeal to increase the sentence, given that no cross-appeal was taken by the Crown in respect of the sentence. The author then submitted a motion to set aside the order of abandonment of the appeal. The Court of Appeal for Ontario dismissed the motion on 7 February 2000, holding that there was no basis to set aside the abandonment. The author applied for leave to appeal this decision to the Supreme Court of Canada, which on 23 March 2000 refused the application. Furthermore, the author applied for leave to appeal the Ontario Court of Appeal's judgement in respect of the compensation. The Supreme Court of Canada refused the application on 20 April 2000.

The complaint

3. The author contends that by denying him his right to appeal, the courts violated his rights pursuant to Articles 2, 3, 7 and 14 of the Covenant. He also claims that the courts placed him in double jeopardy by giving a compensation order at the criminal trial, after a civil action had settled the matter, and that this also constitutes a violation of articles 7 and 14.

Issues and proceedings before the Human Rights Committee

4.1 Before considering any claims contained in the communication, the Human Rights Committee must, in accordance with Article 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 that he was denied the right to appeal, the Committee notes that according to the information provided by the author, he initially exercised his right to appeal, but subsequently withdrew the appeal. Nothing in the author's allegations or in the information before the Committee substantiates for purposes of admissibility, the author's claim that in refusing his motion for reopening the appeal the State party violated articles 2, 3, 7 or 14 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.3 As regards the compensation awarded in the criminal trial, the Committee is of the view that the author has failed to substantiate his claim that in awarding compensation the State party violated his rights under articles 7 and 14 of the Covenant. This part of the communication is also therefore inadmissible under article 2 of the Optional Protocol.

5. The Committee therefore decides:

(a) that the communication is inadmissible;

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

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski. Pursuant to rule 85 of the Committee's rules of procedure, member Maxwell Yalden did not participate in the consideration of the communication.

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