

HUMAN RIGHTS COMMITTEE

V. M. R. B. v. Canada

Communication No. 236/1987

18 July 1988

ADMISSIBILITY

Submitted by: V. M. R. B. [name deleted]

Alleged victim: The author

State party concerned: Canada

Date of communication: 25 June 1987 (date of initial letter)

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

Meeting on 18 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 25 June 1987, and further letter dated 20 April 1988) is V. M. R. B, a journalist and citizen of El Salvador, born in 1948, at present residing in Montreal, Canada. He claims to be the victim of a violation by the Government of Canada of articles 2, 6, 9, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 5 January 1982, the author entered Canada at Blackpool, on the United States border, without having any visa to enter or stay in the country. He was detained upon entry, but he applied for admission as a refugee under the Canadian Immigration Act of 1976. On 7 January 1982, he was heard for the first time before an Immigration Adjudicator, pursuant to article 23 (3) (c) of the Act. The latter decided to uphold the author's detention under article 104 (3) (b) of the Act, on the ground that he represented a "danger to the public" and was likely to stay in Canada and not appear for his deportation hearings. This decision was based on a security certificate dated 14 November 1980 and signed by both the Solicitor-

General and the Minister for Employment and Immigration of Canada, according to which the author is a person "who there are reasonable grounds to believe will engage in or instigate the subversion by force of any Government". Under article 19 (1) (f) of the Act, such persons are to be denied entry into Canadian territory.

2.2 The detention order was extended in a succession of weekly hearings before the Adjudicator (from 14 January to 11 February 1982). On 17 February 1982, the Adjudicator ordered the author deported, purportedly on the sole ground that the Minister's certificate of 14 November 1980 was "uncontestable". Testimony on behalf of the author by witnesses produced by his lawyer was deemed unconvincing. After another hearing on 10 March 1982, during which the government representative stated that the author could no longer be regarded as a danger to the public, the Adjudicator ordered the author's release on 11 March 1982. The deportation order, however, was upheld.

2.3 The author claims that the Government of Canada has violated article 9, paragraph 1, of the Covenant by detaining him arbitrarily from 5 January to 11 March 1982, as the detention hearings never established that he represented a danger to the public. He alleges a violation of article 6 because the Canadian Government has refused to assure him formally that he would not be deported to El Salvador, where, the author claims, he would have reasons to fear attempts on his life. It is further claimed that article 19 (1) (f) of the Immigration Act violates the freedoms of political opinion, thought and expression guaranteed by the Covenant. Finally, the author states that the reviews of his detention did not proceed in a fair and impartial manner and that therefore he was the victim of a violation of article 14, paragraph 1, of the Covenant.

2.4 With regard to the requirement of the exhaustion of domestic remedies, the author states that he has taken his case through all court instances, and that his appeals were dismissed by the Immigration Appeal Board, the Federal Court of Canada (first instance), the Federal Court of Appeal and the Supreme Court of Canada. He claims that domestic remedies have been exhausted with the decision by the Supreme Court of Canada of 29 January 1987 not to grant him leave to appeal.

3. By a decision of 19 October 1987, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 12 February 1988, the State party objects to the admissibility of the communication under article 3 of the Optional Protocol, ratione materiae, as incompatible with the provisions of the Covenant, and as an abuse of the right of submission.

4.2 With regard to the facts, the State party points out that the author had already entered Canada in February 1980 and applied for refugee status. Before a decision could be rendered in his case, he left Canada in October, 1980. Investigations showed that "while in Canada, he was tasked and funded by a foreign political party to carry out certain activities which are

prohibited under Canadian law. As a cover for his entry to Canada and for his activities while in Canada, Mr. R. was accredited as a journalist with the ... news agency ... which is known to be directed by a foreign intelligence service". As a result of information made available by the Security Service of the Royal Canadian Mounted Police, it was determined that Mr. R. was a person described under article 19 (1) (f) of the Immigration Act of 1976, which denies admission to Canada to persons for whom there are reasonable grounds to believe that they will engage in or instigate the subversion by force of any Government. Therefore, on 14 November 1980, after the author's departure from Canada, a certificate pursuant to article 39 of the Immigration Act was issued, excluding him from re-entry into Canada, and requiring that he be deported if he entered Canada again. Thus, when on 5 January 1982 he again entered Canada, he was ordered detained pursuant to article 104 of the Immigration Act. The State party emphasizes that

"upon seeking to re-enter Canada ... the author was entitled to a hearing of his refugee claim; however, he was never legally admitted to Canada, pursuant to the rules for admission set out in the Immigration Act, 1976. From 1982 to date, the author has never been lawfully within the territory of Canada, although he has remained in Canada during this time pending the outcome of immigration proceedings".

4.3 With respect to an alleged violation of article 6 of the Covenant, the State party indicates that what the author is complaining of is that Canada might deport him to El Salvador or to another country that would, in turn, return him to El Salvador, where allegedly his life could be in danger. Thus, what the author is in effect claiming is that unless he is given permission to stay in Canada, article 6 of the Covenant will be contravened. In this connection the State party observes that there is no right of asylum in the Covenant, and that a violation of article 6 of the Covenant cannot result from the denial of asylum. Thus, this aspect of the communication should be declared inadmissible ratione materiae. Furthermore, the State party adds that the author's fears are unfounded, since the Government of Canada has publicly stated on several occasions that it would not return him to El Salvador and has given him the option of selecting a safe third country.

4.4 With respect to an alleged violation of article 9, paragraph 1, of the Covenant, the State party indicates that Mr. R's detention from 5 January 1982 to 11 March 1982 was based on the certificate issued jointly by the Canadian Solicitor-General and by the Minister of Employment and Immigration pursuant to article 39 of the Immigration Act, stating that, "based on security and criminal intelligence reports received and considered by us, which cannot be revealed in order to protect information sources, [the author] is a person described in article 19 (1) (f) of the Immigration Act, 1976, his presence in Canada being detrimental to the national interest". Thus, the State party submits that the lawful detention of an alien against whom there exists an exclusion order cannot be deemed to constitute arbitrary detention. Furthermore, the State party explains that in the case of a person seeking asylum, a reasonable amount of time must be allotted to the authorities to collect information, investigate and carefully determine the sensitive question whether an individual poses a danger to national security. In this context the State party refers to article 5, paragraph I (f), of the European Convention on Human Rights, which specifically provides that:

"No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

"(f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition".

While article 9, paragraph 1, of the Covenant is not as specific as the parallel provision in the European Convention, the State party submits that the scope of article 9, paragraph 1, does not cover detention for the purposes of immigration control and that this aspect of the communication should be declared inadmissible ratione materiae.

4.5 Although the author does not invoke article 13 of the Covenant, the State party addresses the issue of the expulsion of aliens as provided for in the Covenant and refers to the Committee's decision in case No. 58/1979 *Maroufidou v. Sweden*, a/ where the Committee held that her deportation from Sweden did not constitute a violation of the Covenant because she had been expelled in accordance with the procedure laid down by the State's domestic law and that there had been no evidence of bad faith or abuse of power. In this context, the Government of Canada asserts that the deportation proceedings against Mr. R. are in compliance with the requirements of article 13 of the Covenant.

4.6 With respect to an alleged violation of article 14, paragraph 1, of the Covenant, the State party submits that a procedure for the expulsion of an alien which is specifically envisaged in article 13 of the Covenant cannot be said to be in violation of article 14. More particularly, the State party observes that the protections contained in article 14 of the Covenant apply to the determination of any "criminal charge" or of any "rights and obligations in a suit at law". It submits that deportation proceedings do not fall into either of these categories; rather, they fall into the domain of public law. Since asylum or deportation proceedings are not covered by the terms of article 14, this aspect of the communication should be declared inadmissible ratione materiae.

4.7 With respect to an alleged violation of articles 18 and 19 of the Covenant, the State party objects that the author has not submitted evidence to substantiate a prima facie case of any violation of his rights to freedom of thought, opinion and expression. Finally, with respect to an alleged violation of articles 2 and 26 of the Covenant, the State party submits that the author has submitted insufficient evidence to disclose a prima facie violation of these provisions, that his allegations are manifestly ill-founded, and that these aspects of the communication should be declared inadmissible as an abuse of the right of submission pursuant to article 3 of the Optional Protocol.

5.1 Commenting on the State party's submission under rule 91, the author, on 20 April 1988, reiterates that the order for his expulsion represents an objective danger to his life and refers to the judicial precedents of the European Commission of Human Rights in this respect. He further argues that his communication does not invoke a right of asylum, and that a distinction must be made between the request for a right of asylum, and asylum resulting from the establishment of certain mechanisms to remedy violations of the Covenant alleged

by individuals. It was not the deportation order which he denounced, but the breach of specific rights guaranteed by the Covenant.

5.2 With respect to the alleged violation of article 14, paragraph. I, the author advocates a broad interpretation of what constitutes "rights and obligations in a suit at law". He refers to the Committee's general comment on article 14, which states that "the provisions of article 14 apply to all courts and tribunals within the scope of that article, whether ordinary or specialized", b/ and suggests that public law disputes also fall under the scope of application of article 14. Furthermore, he recalls that the English version of the Covenant protects rights and obligations "in a suit at law" rather than rights and obligations "de caractere civil", as stated in the French version of the Covenant, which therefore is said to be more restrictive.

5.3 With respect to article 9, the author maintains that this provision should be applied to all situations where an individual has been deprived of his liberty, including for reasons of immigration control.

5.4 The author concludes that with respect to his other allegations, concerning violations of articles 18 and 19, he has at least presented prima facie evidence to the effect that Canada has violated the Covenant. He surmises that the reason why Canadian authorities want to deport him is because of his political opinions:

"National security grounds cannot be invoked unless there is justification for this infringement of a right guaranteed by the Covenant, in this case to be protected against all discrimination The State invokes national security grounds against opinions expressed by an individual as penalizing that individual for having exercised his right to freedom of expression."

The author suggests that the Committee would be ill-advised to have recourse to restrictive interpretations of the Covenant as that would be contrary to its object and purpose.

5.5 With regard to his allegation that he has been subjected to discrimination in violation of articles 2 and 26 of the Covenant, the author contends:

"that the Canadian Government's manoeuvres constitute discrimination against foreign citizens. An alien may not express his opinions, thought or convictions, for in exercising these rights he will not receive the same treatment as a Canadian citizen. The mechanism provided by article 19 (1) (f) of the Canadian Immigration Act is discriminatory in that the accuracy of information concerning an alien as regards ideas or opinions allegedly expressed by him is not verified. The alien cannot enjoy the same protection for his opinions as a citizen expressing the same views."

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the State party has not contested the author's claim that

domestic remedies have been exhausted. It further notes that the same matter is not being examined under another procedure of international investigation or settlement. On the basis of the information before it, the Committee therefore finds that the communication meets the requirements of article 5, paragraph 2, of the Optional Protocol.

6.3 The Committee has also examined whether the conditions of articles 2 and 3 of the Optional Protocol have been met. It observes that a right of asylum is not protected by the Covenant. With regard to the author's allegation that his right to life under article 6 of the Covenant and that his right to liberty under article 9 have been violated, the Committee finds that he has not substantiated either allegation. With regard to article 6 of the Covenant, the author has merely expressed fear for his life in the hypothetical case that he should be deported to El Salvador. The Committee cannot examine hypothetical violations of Covenant rights which might occur in the future~; furthermore, the Government of Canada has publicly stated on several occasions that it would not extradite the author to El Salvador and has given him the opportunity to select a safe third country. With regard to article 9, the Committee points out that this article prohibits unlawful arrest and detention, whereas the author was lawfully arrested in connection with his unauthorized entry into Canada, and the decision to detain him was not made arbitrarily, especially in view of his insistence not to leave the territory of Canada. The Committee also found it necessary to determine whether a claim could be substantiated under article 13, although the author has not invoked it. It observes that one of the conditions for the application of this article is that the alien be lawfully in the territory of the State party, whereas Mr. R. has not been lawfully in the territory of Canada. Furthermore, the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's evaluation of an alien's security rating; moreover, on the basis of the information before the Committee, the procedures to deport Mr. R. have respected the safeguards provided for in article 13. With respect to article 14, the Committee notes that even if immigration hearings and deportation proceedings were to be deemed to constitute "suits at law" within the meaning of article 14, paragraph 1, of the Covenant, as the author contends, a thorough examination of the communication has not revealed any facts in substantiation of the author's claim that he is the victim of a violation of this article. In particular, it emerges from the author's own submissions that he was given ample opportunity, in formal proceedings, including oral hearings with witness testimony, both before the Adjudicator and before the Canadian Courts, to present his case for sojourn in Canada. With respect to articles 18 and 19 of the Covenant, the Committee notes that the author has not submitted any evidence to substantiate how his exercise of freedom of conscience or expression has been restricted in Canada. His apparent contention that the deportation proceedings resulted from the State party's disapproval of his political opinions is refuted by the State party's uncontested statement that, as early as November 1980, he had been excluded from re-entering Canada on clear national security grounds (para. 4.2 above). Deportation of an alien on security grounds does not constitute an interference with the rights guaranteed by articles 18 and 19 of the Covenant. With respect to articles 2 and 26 of the Covenant, the author has failed to establish how the deportation of an alien on national security grounds constitutes discrimination.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol because the author's claims are either unsubstantiated or incompatible with the provisions of the Covenant;

(b) That this decision shall be communicated to the author of the 'communication and to the State party.

Notes:

a/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex XVIII.

b/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI, general comment 13 (21), para.4.