

HUMAN RIGHTS COMMITTEE

Riley et. al. v. Canada

Communication No. 1048/2002

21 March 2002

CCPR/C/74/D/1048/2002

ADMISSIBILITY

Submitted by: Mr. Kenneth Riley et al.

State party concerned: Canada

Date of registered communication: 8 February 2001

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

Meeting on 21 March 2002

Adopts the following:

Decision on admissibility

1. The authors of the communication, dated 8 February 2001 , are Kenneth Riley, Howard Stacey Davis, and Kirsten Margrethe Mansbridge, all Canadian nationals, who claim to be victims of violations of articles 2, paragraphs 1 and 3, 9, paragraph 1, 18, 23, paragraphs 3 and 4, and 26 of the International Covenant on Civil and Political Rights. The authors are not represented by counsel.

Facts as presented by the authors

2.1 In 1990, the Canadian government revised the Royal Canadian Mounted Police (“RCMP”) regulations allowing the Commissioner, under section 64 (2) of these regulations, to “exempt any member from wearing any item of the significant uniform...on the basis of the member’s religious beliefs.” Subsequently, one Khalsa Sikh officer was authorised to substitute turbans for the traditional wide brimmed “mountie” stetson and forage cap.

2.2 Riley and Davis are both retired from the Royal Canadian Mounted Police (“RCMP”) and are members of an organisation whose goal is to maintain tradition within the RCMP. The authors sought an order from the Federal Court of Canada (Trial Division), that the Commissioner of the RCMP be prohibited from allowing the wearing of religious symbols as part of the RCMP uniform. In particular, they claimed that the Commissioner’s decision to allow the wearing of the Khalsa Sikh turban instead of the stetson is unconstitutional. On 8 July 1994, the Federal Court dismissed the author’s claim deciding that there was no violation of the Canadian Charter.

2.3 The authors appealed their case to the Federal Court of Canada (Appeals Division). On 31 May 1995, the Appeals Division affirmed the Trial Division’s decision. The author’s application for leave to appeal this decision was subsequently dismissed by the Supreme Court, which did not provide any reasons for its decision.

2.4 The authors state that to understand how they are personally affected by section 64 (2) of the RCMP regulations one must understand that the RCMP is more than a federal police force and that its 20,000 officers permeate all levels of law enforcement in Canada and that the RCMP is an integral part of their daily lives. They also state that the *actio popularis* strategy of the authors’ action in the Federal Court corresponds to the individual obligations entrusted by the Preamble to the Covenant. As the preamble stipulates “the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant”, the authors believe, that they do have standing before the Human Rights Committee.

Complaint

3.1 The authors claim that the display of Khalsa Sikh symbols by Canada’s national police imputes RCMP- State endorsement of the exclusively male “soldier-saint” Khalsa Sikh order, contrary to article 3 of the Covenant.

3.2 They also claim that article 9, paragraph 1, embodies the principle of fundamental justice free of any apprehension of bias. They claim that police officers of the State should not only act in an impartial manner but exhibit an appearance of impartiality when exercising law enforcement powers. According to the authors, there is overwhelming evidence to suggest that the display of religious beliefs by a police officer would raise an apprehension of bias in many Canadians.

3.3 Furthermore, the author’s claim that in order to protect their rights under article 18 of the Covenant the State should remain secular and that section 64(2) of the RCMP regulations violates their rights under this article of the Covenant as it introduces a denominational face to the most visible State agency.

3.4 In addition, the authors claim a violation of article 23, paragraphs 3 and 4, as the Khalsa Sikh religious beliefs uphold the practice of arranged marriages in Canada. It is argued that RCMP affiliation with that Order reflects State endorsement of this practice.

3.5 Finally, the authors claim a violation of articles 26 and 2, paragraph 1, as the authors’ rights (at

least one of whom is a Roman Catholic) to equal protection and equal benefit of the law is violated by this regulation which involves the RCMP in the advancement of Khalsa Sikh religious and political interests. The authors claim that this special status allowed to Khalsa Sikhs, creates a distinction on the basis of religion and is contrary to articles 2, paragraph 1, and 26, as it is denied to other groups.¹

Issues and proceedings before the Committee

4.1 Before considering any claims 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 has noted the authors' claims that they are victims of violations of articles 3, 9, paragraph 1, 18, 23, paragraphs 3 and 4, 26, and 2, paragraph 1, because Khalsa Sikh officers of the RCMP are authorised to wear religious symbols as part of their RCMP uniform. In particular, the Committee notes the authors' claim under articles 26, and 2, paragraph 1, that this is a special status allowed to Khalsa Sikhs, which is denied to other religious groups. The Committee is of the view that the authors have failed to show how the enjoyment of their rights under the Covenant has been affected by allowing Khalsa Sikh officers to wear religious symbols. Therefore, they cannot be considered to be "victims" within the meaning of article 1 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.

Notes

¹ In the judgement of the Federal Court the trial judge stated that "no witness has been called who claimed an exemption on religious or other similar ground and who had been refused. Not only is there no concrete instance of discrimination before me but the Agreed Statement of Fact states that the RCMP would consider any request for exemption on religious grounds on a basis similar to that on which the Khalsa Sikh's request to wear the turban was granted."