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HUMAN RIGHTS COMMITTEE
Seventh session

DECISIONS

Communication No. R.6/24

Submitted by: Sandra Lovelace

Alleged victim: the author

State party concerned: Canada

Date of registered communication: 29 December 1977

Documentation references:

Prior decision of Human Rights Committee - 18 July 1978 (CCPR/C/DR(IV)R.6/24)
Prior decision of the Working Group of the Human Rights Committee - 6 April 1979 (CCPR/C/WG(VI)/D/R.6/24)

Date of present decision of the Human Rights Committee: 14 August 1979

DECISION ON ADMISSIBILITY

The author of the communication dated 29 December 1977 is a Canadian citizen of Indian origin, living in Canada. She stated that she was born and registered as "Maliseet Indian" but that she had lost her rights and status as an Indian in accordance with the relevant section of the Indian Act after having married a non-Indian. She stated that, in accordance with that same Act, an Indian man who married a non-Indian woman did not lose his Indian status, and claimed therefore that the Act was discriminat on the ground of sex and contrary to the Covenant. The author submitted "that all domestic remedies have been exhausted insofar as the jurisprudence rests on the decision of the Supreme Court of Canada".

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In a further communication, dated 17 April 1978, the author maintained that the judgement of the Supreme Court of Canada in The Attorney General of Canada v. Jeanette Lavalle, Richard Isaac et.al. v. Yvonne Bédard [1974] S.C.R. 1349, of which she transmitted a copy, was relevant to her claim, that domestic remedies had already been exhausted in Canada with regard to the subject matter she complained of before the Human Rights Committee. In the judgement in question the Supreme Court decided that the provision of the Indian Act, providing that an Indian woman who married a non-Indian lost her Indian status, was valid as the provision in question was not rendered inoperative by section 1(b) of the Canadian Bill of Rights providing for "equality before the law" "without discrimination by reason of ..... sex".

By its decision of 18 July 1978 the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

At its meeting on 6 April 1979, the Working Group of the Human Rights Committee reiterated its request to the State party for information and observations and decided that consideration of the communication be continued at the seventh session of the Committee and its Working Group.

When considering the question of admissibility of the communication the Committee had not received any information or observations from the State party, the second deadline for submission of such observations having expired on 18 May 1979.

With regard to exhaustion of domestic remedies the Committee finds that article 5 (2)(b) of the Optional Protocol does not impose on the alleged victim the obligation to have recourse to the national courts if the highest court of the State party concerned has already substantially decided the question in issue. Accordingly, the Committee concludes that the communication is not inadmissible under article 5 (2)(b) of the Optional Protocol.

The Human Rights Committee therefore decides:

1. That the communication is admissible;

2. That, in accordance with article 4 (2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

3. That any explanations or statements received from the State party shall be communicated by the Secretary-General to the author, under rule 93 (3) of the provisional rules of procedure of the Committee, with the request that any comments which the author may wish to submit thereon should reach the Human Rights Committee in care of the Division of Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

4. That the author shall be requested to submit additional information to the Committee within six weeks of the date of the transmittal of this decision, concerning her age and the date of her marriage;

5. That this decision be communicated to the State party and the author of the communication.