

A. R. S. v. Canada, Communication No. 91/1981, U.N. Doc. CCPR/C/OP/1 at 29 (1984).

Submitted by: A. R. S. on 8 May 1981

Alleged victim: The author

State party: Canada

Date of decision on inadmissibility: 28 October 1981 (fourteenth session)

Parole--Mandatory supervision--Heavier penalty subsequent to commission of offence--
Concept of victim--Examination of law in abstracto--Compatibility of communication with
Covenant--Inadmissibility *ratione temporis et materiae*

Articles of Covenant: 9 (1), (4) and (5), II, 15 (I) Articles of Optional Protocol: 1, 2 and 3

1. The author of this communication (initial letter dated 8 May 1981 and a further letter dated 8 June 1981) is A.R.S., a 42-year-old Canadian citizen serving a prison sentence at a Canadian federal penitentiary. He claims to be a victim of breaches by Canada of article 15 (1), as well as articles 9 (I), (4) and (5) and 11 of the International Covenant on Civil and Political Rights. He describes the facts of the claim as follows:

2.1 On 22 November 1971 the author was sentenced to 16 years' and 3 months' imprisonment for various offences committed between 30 January and 3 July 1970. The expiry date of the full sentence is 3 February 1988, but the author has been informed in writing that he has earned remission and been credited with statutory remission equal to one third of the sentence and that the date of his release has been set for 8 September 1982. He claims that certain provisions of the Parole Act, which entered into force on 1 August 1970 (i.e. after the dates of commission of each of his offences), introduced the element of "mandatory supervision" for convicted persons released before the expiration of their term of imprisonment.

2.2 The release of the author on 8 September 1982 is contingent on his signing the "mandatory supervision certificate", a requirement which, he claims, did not exist at the time of commission of the offences in question. He contends that "mandatory supervision" is therefore tantamount to a penalty heavier than the one that was applicable at the time when the criminal offences were committed and that this "heavier penalty" constitutes in his case a violation of article 15 (1) of the Covenant. The author further maintains that "mandatory supervision" constitutes a reimposition of punishment which should be regarded as remitted and that the demand that he sign the mandatory supervision certificate (an act, he claims, which would constitute a contract with penalties for failure of fulfilment), or else face the punishment of serving the entire sentence until 3 February 1988, constitutes a criminal action of intimidation in violation of section 382 of the Canadian Criminal Code and of article 11 of the Covenant. The author finally asserts that he is denied the right to challenge before a court the basic legal assumption that the term of imprisonment, in spite of earned remission of the sentence, continues in force after the date of release to the date of expiration, in violation of article 9 (1), (4) and (5) of the Covenant.

3. Before considering any claims contained in a communication, the Human Rights Committee shall, 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.

4. The author of the communication claims that there have been breaches of articles 15 (1), 9 (1), (4) and (5) and 11 of the Covenant.

(a) Concerning the alleged breach of article 15 (1)

5.1 The author's principal complaint is against the introduction by the Parole Act 1970, in August 1970, after the commission of the punishable acts for which he was convicted, of a system of mandatory supervision for all prisoners benefitting from remission of sentence. However, the Committee is of the view that no action taken before the entry into force of the Covenant for the State party concerned can, as such, be judged in the light of the obligations deriving from the Covenant. Moreover, individuals may not criticize national laws in the abstract, since the Optional Protocol gives them the right to bring the matter before the Committee only where they claim to be victims of a violation of the Covenant.

5.2 With regard to the actual implementation of the mandatory supervision, which might give the author cause for complaint, the Committee notes that the author has not yet served the two thirds of his sentence for which he is not entitled to remission and that in addition his release, due on 8 September 1982, depends on his good conduct up to that date. The mandatory supervision system is therefore not yet applicable to him. The possibility of the remission he has earned being canceled after his release is still more hypothetical. In the present situation, therefore, he has no actual grievance such as is required for the admissibility of a communication by an individual under articles 1 and 2 of the Optional Protocol.

5.3 The Committee notes also that mandatory supervision cannot be considered as equivalent to a penalty, but is rather a measure of social assistance intended to provide for the rehabilitation of the convicted person, in his own interest. The fact that, even in the event of remission of the sentence being earned, the person concerned remains subject to supervision after his release and does not regain his unconditional freedom, cannot therefore be characterized as the imposition or re-imposition of a penalty incompatible with the guarantees laid down in article 15 (1) of the Covenant.

(b) Concerning the alleged violation of article 9 (1), (4) and (5)

6. The provisions of Canadian law under which a convicted person remains legally subject to deprivation of freedom until the expiry of the sentence, notwithstanding the remission he may have earned, do not in any way affect the guarantees against arbitrary arrest or detention set out in article 9 of the Covenant.

(c) Concerning the alleged breach of article 11

7. The argument that the legislation in force is contrary to article 11 of the Covenant is clearly groundless. The choice offered to a prisoner to accept release under the system of mandatory supervision or to continue to serve his sentence, does not result in a contractual obligation if the person concerned chooses release and signs the mandatory supervision certificate. It

follows from the law itself that remission may be revoked if further offences are committed during the period of supervision.

8. In the light of the above, the Human Rights Committee considers that the claims of the author do not raise issues under any of the provisions of the Covenant. The Committee therefore concludes that the communication is incompatible with the provisions of the Covenant and, in accordance with article 3 of the Optional Protocol, decides:

The communication is inadmissible.