

Oxford Reports on International Law

MAB and ors v Canada, Admissibility, Communication No 570/1993, UN Doc CCPR/C/50/D/570/1993, (1993) 1-3 IHRR 57, IHRL 2754 (UNHRC 1994), 8th April 1994, Human Rights Committee [UNHRC]

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570/1993 (Application No)

UN Doc CCPR/C/50/D/570/1993 (Official Case No)

(1993) 1-3 IHRR 57 (Other Reference)

IHRL 2754 (UNHRC 1994) (OUP reference)

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Module: International Human Rights Law [IHRL]

Parties: MAB (Canada [ca]), WAT (Canada [ca]), J-AYT (Canada [ca])
Canada

Judges/Arbitrators: Francisco José Aguilar Urbina; Nisuke Ando; Tamás Bán; Marco Tulio Bruni Celli; Christine Chanut; Vojin Dimitrijevic; Omran El Shafei; Elizabeth Evatt; Laurel B Francis; Kurt Herndl; Rosalyn Higgins; Rajsoomer Lallah; Andreas Mavrommatis; Birame Ndiaye; Fausto Pocar; Julio Prado Vallejo; Waleed Sadi; Bertil Wennergren

Procedural Stage: Admissibility

Subject(s):

Freedom of thought, conscience, and religion — Individuals and non-state actors

Core Issue(s):

Whether state interference with the worship and distribution of a prohibited narcotic substance amounted to a violation of the International Covenant on Civil and Political Rights.

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Facts

F1 MAB, WAT, and J-AYT were key members of the 'Assembly of the Church of the Universe', a religious group based in Canada.

F2 A central tenet of the group's beliefs involved the 'care, cultivation, possession, distribution, maintenance, integrity and worship of the "sacrament" of the Church'. Although the authors considered the 'sacrament' to be 'God's tree of life', it was more commonly known as marijuana. (paragraph 2.1)

F3 On 17 October 1990, a constable with the Royal Canadian Mounted Police ('RCMP') sought to join the Church and acquired a few grams of marijuana. This led to the arrests of WAT and J-AYT—and later MAB—under Section 4 of the Controlled Drugs and Substances Act 1996, c 19 (Canada).

F4 The authors argued that their arrests and charges breached the International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976 ('ICCPR'), including Articles 9 (right to liberty and security of person; freedom from arbitrary detention) and 18 of the ICCPR (freedom of religion, thought and conscience) had been violated.

Held

H1 The belief based upon the 'worship and distribution' of a prohibited substance could not fall within the operation of Article 18, nor could an arrest arising from possession of that substance attract the operation of Article 9(1). (paragraph 4.2)

H2 All of the other claims were unsubstantiated. (paragraph 4.3)

H3 Accordingly the communication was inadmissible under Articles 2 and 3 of the Optional Protocol to the International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976. (paragraph 5)

Date of Report: 24 March 2008

Reporter(s): Alexander Pung

Analysis

A1 The UN Human Rights Committee ('HRC') arguably implied that it was impossible for the Assembly of the Church of the Universe to be accepted as 'religion' for the purposes of Article 18.

A2 It was preferable for the HRC to adopt a broad definition of 'religion' for the purposes of Article 18, to guard against an unduly narrow approach which could unfairly exclude marginal groups.

A3 The HRC could have found the Assembly to be a religion, and gone on to find the restriction of its activities involving marijuana to be justified under Article 18(3). This was the approach taken in a later case, *Prince v South Africa*, UN Doc CCPR/C/91/D/1474/2006, 31 October 2007.

Date of Analysis: 29 August 2008

Analysis by: Sarah Joseph; Castan Centre for Human Rights

Instruments cited in the full text of this decision:

International

International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976, Articles 9(1), 14, 18

Optional Protocol to the International Covenant on Civil and Political Rights (16 December 1966) 999

UNTS 171, entered into force 23 March 1976, Articles 1, 2, 3

Rules of Procedure, UN Doc CCPR/C/3/, UN Human Rights Committee, 24 April 2001, Rule 87

Canada

Controlled Drugs and Substances Act 1996, c 19 (Canada), Section 4

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Decision - full text

Decision on admissibility

1. The authors of the communication are M.A.B., W.A.T. and J.-A.Y.T., three Canadian citizens and members of an organization named “Assembly of the Church of the Universe”, based in Hamilton, Ontario, Canada. They claim to be victims of violations by Canada of articles 9, 14, 15 and 17 of the International Covenant on Civil and Political Rights.

The facts as presented by the authors:

2.1 The authors are leading members and “plenipotentiaries” of the “Assembly of the Church of the Universe”, whose beliefs and practices, according to the authors, necessarily involve the care, cultivation, possession, distribution, maintenance, integrity and worship of the “Sacrament” of the Church. Whereas the authors also refer to this “Sacrament” as “God’s tree of life”, it is generally known under the designation **cannabis sativa** or marijuana.

2.2 Since the foundation of the Church, several of its members have come into conflict with the law, as their relationship with and worship of marijuana falls within the scope of application of the provisions of the Canadian **Narcotic Control Act**.

2.3 On 17 October 1990, a constable of the Royal Canadian Mounted Police (R.C.M.P.) entered the Church’s premises in Hamilton, Ontario, under the pretext of wishing to join the Church and to purchase the “Church Sacrament”. She was offered a few grams of marijuana, which led to the arrest of W.A.T. and J.-A.Y.T. All of the marijuana and money found in their possession were confiscated and they were ordered to stand trial before a jury, under the terms of section 4 of the **Narcotic Control Act**. Further investigations into the Church’s activities and properties also led to the arrest and detention of M.A.B.

2.4 The trial of W.A.T. and J.-A.Y.T. was scheduled to commence before a court in Hamilton on 1 November 1993, and the trial of M.A.B. was scheduled to begin on 14 November 1993. Another action based on unspecified charges against M.A.B. filed in the course of 1987, was scheduled to be heard during the week beginning 13 December 1993¹. It is thus obvious that the authors have not yet exhausted available domestic remedies in Canada.

2.5 It should be noted that the judicial authorities, before deciding to hear the authors’ cases, sought to dismiss their arguments on the basis of frivolousness; from the authors’ submission, it appears that all of the authors’ claims based upon alleged violations of their freedom of religion and conscience were indeed dismissed by the Canadian courts. Thus, “many notices of Application for Leave to Appeal to the Supreme Court of Canada” have been dismissed, and an application for leave to appeal to the Judicial Committee of the Privy Council (sic) has been “illegally ignored”.

The complaint:

3.1 The authors contend that they are denied a fair and public hearing before an impartial and independent tribunal. They contend that their previous court actions and constitutional challenges in the Federal Court of Canada, directed against the action or inaction of the Ontario courts and the Attorney-General, both at the provincial and federal level, have not been heard. It is apparent from the authors’ submission that they contend that there is no independent or impartial forum in Canada to hear their complaint. Thus, their complaint is directed against the Parliament of Canada, the Federal Court of Canada, the Supreme Court of Canada, the R.C.M.P., Her Majesty the Queen in Right of Canada, the Parliament of Ontario and the courts of Ontario.

3.2 The authors further contend that their following rights have been violated:

- (a) Their right to liberty and security of person;

- (b) Their right not to be subjected to arbitrary arrest and detention;
- (c) Their right to freedom from interference with their privacy;
- (d) Their right to be free from unlawful attack on their honour and reputation;
- (e) Their right to protection of the law against such interference;
- (f) Their right to freedom of thought, conscience and religion and to manifest these beliefs in worship, practice and religion; and
- (g) Their right to be free from any coercion which would impair their freedom to have or to adopt a religion or belief of their choice.

3.3 The authors request the Committee to intercede to stop the proceedings instituted against them. They request attendance at the Committee's "hearing" of their case, the right to videotape the proceedings, as well as a writ of prohibition preventing the Canadian Government and its agencies from "persecuting and prosecuting the applicants [as] regards the manifestation of their religious beliefs in worship, observance, practice and teaching pertaining to the cultivation, distribution and use of the Church Sacrament ...".

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 the communication is admissible under the Optional Protocol to the Covenant.

4.2 Taking into account the requirements laid down in articles 2 and 3 of the Optional Protocol, the Committee has examined whether the facts as submitted would raise **prima facie** issues under any provision of the Covenant. It concludes that they do not. In particular, a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot conceivably be brought within the scope of article 18 of the Covenant (freedom of religion and conscience); nor can arrest for possession and distribution of a narcotic drug conceivably come within the scope of article 9, paragraph 1, of the Covenant (freedom from arbitrary arrest and detention).

4.3 The Committee further observes that the conditions for declaring a communication admissible include, **inter alia**, that the claims submitted be sufficiently substantiated and do not constitute an abuse of the right of submission. The authors' communication reveals that these conditions have not been met. In particular, the allegations against the judicial authorities of Canada are of a sweeping nature and have not been substantiated in such a way as to show how the authors would qualify as victims within the meaning of article 1 of the Optional Protocol. This situation justifies doubts about the seriousness of the authors' claims under article 14 and leads the Committee to conclude that they constitute an abuse of the right of submission under article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That this decision shall be communicated to the authors and, for information, to the State party.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes:

1/ The communication is dated 14 October 1993. As of 20 January 1994, the authors had failed to provide information about the result of their trials.