



International Covenant on Civil and Political Rights

Distr.: General
31 December 2021
English
Original: French

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3016/2017*, **

<i>Communication submitted by:</i>	G.P. and G.P. (represented by counsel, Alain Vallières)
<i>Alleged victims:</i>	The authors and their children, A. and D.
<i>State party:</i>	Canada
<i>Date of communication:</i>	11 August 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 24 August 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2021
<i>Subject matter:</i>	Deportation from Canada to India
<i>Procedural issues:</i>	Competence <i>ratione materiae</i> ; substantiation of claims
<i>Substantive issues:</i>	Right to life; cruel, inhuman or degrading treatment or punishment; arbitrary interference with family life
<i>Articles of the Covenant:</i>	6, 7, 9, 17, 23, 24 and 26
<i>Article of the Optional Protocol:</i>	2

1.1 The authors of the communication are Ms. G.P., born on 23 June 1989, and her husband, Mr. G.P., born on 20 October 1986, both nationals of India. They submit the communication on their own behalf and on behalf of their two minor children: A., their daughter, born on 30 June 2016, and D., their son, born on 20 September 2013, both nationals of Canada. The authors are seeking asylum in Canada and are subject to deportation to India following the Canadian authorities' rejection of their application for refugee status. They claim that their deportation to India would constitute a violation by the State party of their rights under articles 6, 7, 9, 17, 23, 24 and 26 of the Covenant. The Optional Protocol entered

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.



into force for the State party on 19 August 1976. The authors are represented by counsel, Alain Vallières.

1.2 On 24 August 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through the Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the authors to India while the communication was under consideration. On 23 February 2018, the State party requested that the interim measures with regard to the authors be lifted on the basis that there was no risk of irreparable harm, as required under rule 94 of the rules of procedure. The Committee rejected the request on 16 November 2018. The State party has postponed the removal of the authors and their children, who currently reside in Canada.

Facts as submitted by the authors

2.1 The authors met in 2009 in Shāhkot, India, where their relationship started. Two years later, they told their parents that they wished to marry. Ms. G.P.'s family was against the union because of the differences in social class and political views between the two families. The two families supported different political parties. In September 2011, Mr. G.P. was attacked in the street by four men, who ordered him to end his relationship with Ms. G.P. The assailants fled, along with Ms. G.P.'s father. The police refused to accept Mr. G.P.'s complaint.

2.2 In November 2011, the authors married in secret. After their return from their honeymoon, on 29 November 2011, the police arrested Mr. G.P., accusing him of having kidnapped Ms. G.P. He was ill-treated by the police while in custody.

2.3 New problems arose when Ms. G.P. fell pregnant. In April 2013, the doctor treating her told her that he had been asked to terminate the pregnancy and kill her. The authors made contact with an "agent" and obtained a visa for Canada in June 2013.

2.4 The authors arrived in Canada on a tourist visa on 12 July 2013 and submitted an application for protection on 27 July 2013.¹ On 25 April 2014, the Immigration and Refugee Board of Canada rejected their application, finding that it lacked credibility for the following reasons: they had provided different answers to the same question; had omitted important information from their asylum form;² and had provided no explanation as to why they had continued to live in their village between 2011 and 2013, even though they were afraid and felt unsafe,³ and why they had returned to live in the village after learning that the doctor treating Ms. G.P. had been asked to kill her. The Board raised doubts about the possibility that a prominent politician in India had been involved with the author's family in an attempt to perpetrate an honour killing and found that the authors had not demonstrated that they would face a serious risk of persecution if they returned to India.

2.5 Moreover, the Immigration and Refugee Board of Canada noted that the authors had given an altogether different account when they had submitted applications for visas at the Canadian embassy in New Delhi.⁴ Although this was flatly denied by the authors, who claimed that the signatures at the end of the documents were not theirs and that the account had been invented wholesale by their "agent", it was not conceivable to the Board that the authors had known nothing at all about the account given. The Board also found that the

¹ The oral hearings, at which the authors were represented by counsel, took place on 15 October 2013 and 1 April 2014.

² The authors failed to indicate that Ms. G.P.'s parents had left India for a period of 11 months; that people were looking for them two or three months after the wedding; and that they were from different castes.

³ During the hearing before the Board, Ms. G.P. noted that, between their wedding and her visit to the doctor, she and her husband had lived a normal life. However, when she was asked to explain why they had suddenly started having problems, she changed her account to say that they had lived in fear and had gone out only when necessary.

⁴ In these applications, Mr. G.P. is described as a businessman and company owner who has a university degree and whose father is a police officer. Ms. G.P. is described as a "housewife" whose father is also a police officer.

signatures on the visa applications were very similar to those on the documents that they had filled out upon arrival in Canada.

2.6 The authors appealed the decision of the Immigration and Refugee Board of Canada, claiming that it had erred in its assessment of their credibility. On 21 October 2014, having re-examined all the evidence, the Refugee Appeal Division of the Board rejected the authors' appeal on the basis that they had failed to demonstrate that the Board had committed a palpable and overriding error that would vitiate its decision. On 10 July 2015, their application for judicial review was rejected by the Federal Court, which held that the Refugee Appeal Division had considered and reasonably rejected all the authors' claims.

2.7 On 26 January 2015, the authors filed an application for permanent residence on humanitarian and compassionate grounds, which was refused on 17 May 2017. The immigration officer confirmed that the authors' account lacked credibility and found that there was no evidence of their mental health problems, since no expert had been consulted to establish that they were experiencing severe psychological trouble that would make their return to their country of origin more difficult. As for honour killings, the officer noted that India condemned such practices and had the resources to combat the problem. The officer went on to note that the extent to which the family was integrated in Canada was not in itself a determining factor in the context of an application for permanent residence on humanitarian and compassionate grounds. The authors had been required to demonstrate that returning to India would cause them insurmountable difficulty and hardship, but that threshold had not been met.

2.8 The immigration officer also considered the children's best interests, noting that these interests did not necessarily outweigh all the other factors combined. He noted that, although the boy – aged 4 years – was seeing a speech-language pathologist for language problems, it had been established that he was trilingual and that it was reasonable to expect that the girl – aged 1.5 years – would also become trilingual. The boy's language problems were said to be caused by repeated ear infections, but, with specialist treatment, he was making steady progress. It was noted that there was no evidence in support of the authors' claim that returning to India would significantly impede their son's linguistic progress, since they had not established that medical or educational resources for language problems did not exist in India.⁵ Lastly, it was determined that the children's best interests lay in keeping the family unit together and that no evidence had been produced to demonstrate that the parents would not be able to care for them once they had returned to their country of origin.

2.9 In conclusion, the immigration officer stated that the children's best interests would not be jeopardized if they returned to India with their parents. The children would also retain their Canadian citizenship, and nothing would prevent them from returning to Canada in the future, if they so wished. On 9 August 2017, the authors applied to the Federal Court for leave and for judicial review of the decision to refuse their application for permanent residence on humanitarian and compassionate grounds. Leave was granted on 12 October 2017, and the Federal Court rejected the application for judicial review on 5 February 2018. The Federal Court noted that the immigration officer had properly considered the best interests of the two children. He had considered the children's young ages, noting that the extent to which they were settled in Canada was minimal, as they were entirely dependent on their parents. The immigration officer had also considered that it was in the children's best interests to be with their parents, as the authors had always provided the best care for their children. He had also considered D.'s speech-language therapy in Canada but had noted that the authors had not submitted any evidence that such therapy would not be available in India. The authors had not attempted to demonstrate to the immigration officer that the children would have to give up their Canadian citizenship in order to receive education and health services in India. For the Federal Court, therefore, the immigration officer's finding with regard to the children's best interests represented an acceptable outcome.

2.10 In February 2016, the authors filed an application for a pre-removal risk assessment and produced several affidavits and letters describing the circumstances that had led them to leave their country. On 17 May 2017, the immigration officer rejected their application,

⁵ The immigration officer further noted that the children's main language was Punjabi.

noting that the authors had relied on the same facts that had been found not to be credible. Moreover, the authors did not explain why they had been unable to produce these affidavits and letters⁶ during the asylum proceedings. The immigration officer also noted that the authors' alleged mental state was not supported by other forms of evidence, such as a psychological report. Lastly, the immigration officer rejected the claims relating to honour killings and the human rights situation in India, since they were not corroborated by facts or events connected with the personal account given by the authors, which had already been found not to be credible. On 21 July 2017, the authors filed an application with the Federal Court for leave and for judicial review of the pre-removal risk assessment decision, which was rejected on 21 September 2017.

Complaint

3.1 The authors claim that the State party has violated articles 6, 7, 9, 17, 23, 24 and 26 of the Covenant.

3.2 The authors invoke article 6 of the Covenant on the basis that they are at risk of an honour killing by Ms. G.P.'s family. They note that this risk stems from their marriage and that Ms. G.P.'s family asked the doctor treating her to kill her. However, although the authors submitted several documents proving their claims, the Canadian authorities refused to believe that they were at risk and questioned their credibility. The findings concerning credibility are based largely on assumptions that are in no way supported by the evidence submitted.

3.3 With regard to article 7 of the Covenant, the authors maintain that the Canadian authorities have access to various sources demonstrating inhuman treatment and corruption by police officers in India. If they arrive in the country – with their children – without valid passports, the authors will most likely be questioned for several hours. Yet G.P. has already been ill-treated during questioning by police officers. Given the methods known to be used by the Indian police, Mr. G.P. has a well-founded fear of being ill-treated again.

3.4 Under article 9 of the Covenant, the authors claim that the State party has documentary evidence that returnees to India may be detained without a proper legal basis, which is necessarily arbitrary. The State party should ensure that the authors will not be placed in such a situation.

3.5 With regard to article 10 of the Covenant, the authors consider that the State party is in possession of reports showing that persons detained in India are not treated humanely. Although members of the family have not been tortured, the fact remains that the conditions of detention are not in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which provide valuable guidance for interpreting the Covenant.⁷

3.6 With regard to article 17 of the Covenant, the authors submit that the State party's decision to deport them, thereby forcing them to choose between leaving their two children, who are nationals of the State party, or taking them with them is to be considered interference with the family, at least in circumstances where substantial changes to long-settled family life would follow in either case.⁸ In view of the number of years spent in Canada, it is incumbent on the State party to demonstrate additional factors justifying the deportation of the parents that go beyond a simple enforcement of its immigration law in order to avoid a characterization of arbitrariness. In the present case, the Committee must find that the deportation of the authors would constitute arbitrary interference with the family, contrary to article 17 (1) of the Covenant, read in conjunction with article 23, in respect of all the persons on whose behalf the communication has been submitted.

⁶ The immigration officer noted that the authors of these letters had not been formally identified and that their statements were not corroborated by other evidence. He therefore considered that these documents did not emanate from independent and objective sources.

⁷ *Potter v. New Zealand* (CCPR/C/60/D/632/1995), para. 6.3.

⁸ *Madafferi et al. v. Australia* (CCPR/C/81/D/1011/2001), para. 9.8; *Byahuranga v. Denmark* (CCPR/C/82/D/1222/2003), para. 11.6; and *Winata et al. v. Australia* (CCPR/C/72/D/930/2000), para. 7.2.

3.7 The authors claim that the children's best interests have not been properly considered by the Canadian authorities. Deporting the authors and their children without waiting for a final decision on the application for review of the decision to reject their application for a visa on humanitarian and compassionate grounds would constitute arbitrary interference with the family, in violation of articles 17 (1) and 23 (1) of the Covenant.

3.8 With regard to article 24 of the Covenant, the authors argue that the immigration officer noted their son D.'s language acquisition problem but also emphasized that his situation had improved as a result of the services provided at his school. However, the officer did not question whether Canadian children with only tourist visas are able to receive care in India and attend a school at which such care could be provided, if such a school even exists. In addition, dual citizenship is prohibited under Indian law, which means that, when the "visit" period is over, the children will have to remain in India without a status or return to Canada, where they have no family and will be placed in the care of social services.

3.9 Lastly, the authors invoke article 26 of the Covenant to claim that the State party's conduct is discriminatory towards Canadian children whose parents' status is precarious. Any child in Canada can attend secondary school free of charge and receive school support and social services. In the present case, D. will not be able to benefit from these services, as he is being forced to leave Canada by the State party. The authors consider that the parents cannot be made to bear all the responsibility and that the State party is also responsible.

State party's observations on admissibility and the merits

4.1 On 23 February 2018, the State party submitted observations on admissibility and the merits. It maintains that the communication should be found inadmissible for incompatibility with the Covenant and lack of substantiation of the authors' claims. Should the Committee find the communication to be admissible, the State party considers that it is without merit.

4.2 To begin with, the State party considers that the claims concerning the violation of articles 6 and 7 of the Covenant have not been sufficiently substantiated. The authors have not demonstrated that they face a personal, real and foreseeable risk of irreparable harm under articles 6 and 7 of the Covenant such as to trigger the non-refoulement obligation. The Canadian authorities, having evaluated all the oral and documentary evidence, found that the claims were not credible and that the authors would not be at risk of irreparable harm if returned to India. This finding was upheld by the Refugee Appeal Division of the Immigration and Refugee Board of Canada and the Federal Court. In fact, the information that the authors provided to the Committee in support of their claims, which is exactly the same as that provided to the Canadian decision-making authorities, does not demonstrate that their removal would expose them or their children to a personal, real and foreseeable risk of torture, death or any other irreparable harm of that kind. The State party recalls that the existence of human rights violations in India does not in itself constitute sufficient grounds for determining that a person would be at risk of torture or ill-treatment upon return to the country.

4.3 In addition, the State party argues that the claims of violations of articles 9, 10, 17, 23, 24 and 26 of the Covenant, which focus almost exclusively on what might happen after removal to India, are incompatible *ratione materiae*. Even if the authors were able to establish, for example, a threat to their personal safety or of interference with their personal lives after their removal, which, in the present case, they are not, the State party nevertheless could not be held responsible, since it bears no responsibility for that threat. In the alternative, should it bear some extraterritorial responsibility for the hardships anticipated by the authors, the State party maintains that the hardships anticipated in the present case are not of the kind envisaged under articles 9, 10, 17, 23, 24 or 26 of the Covenant. The State party contends that the authors have not sufficiently substantiated their claims under articles 9, 10, 17, 23, 24 and 26 of the Covenant, thus rendering their communication inadmissible. The claims and evidence submitted by the authors have already been examined by the Canadian authorities, all of which found that the authors lacked credibility concerning the problems that they allege they might face in India.

4.4 Moreover, with regard to the claims under articles 17 and 23 of the Covenant, the State party contends that the decision to return the authors does not amount to interference

with their family, since it has not taken any steps to separate the children from their parents. The State party is not preventing the children from accompanying their parents to India. Furthermore, although the children are not Indian citizens, the authors have not presented any evidence to demonstrate that the Indian authorities would not issue them with visas allowing them to visit their family in India, including for extended stays. According to the website of the Ministry of Home Affairs of India, citizens can take steps to have their children issued with Overseas Citizenship of India (OCI) or Person of Indian Origin (PIO) cards, which grant entry rights and other long-term privileges. It seems, therefore, that the authors could take the necessary steps to remain in India with their children, thereby keeping the family unit intact. In the alternative, the State party submits that, even if the authors' removal would constitute interference with their family life, they have not sufficiently substantiated their claim that such interference would be arbitrary or unlawful. The right of one family member to remain in Canada does not imply that other family members who are nationals of another State have the same right.

4.5 The State party emphasizes the fact that the authors' children are Canadian citizens and are therefore not subject to removal from Canada. The children will leave Canada only if the parents decide to take the children with them to India. There is therefore no violation of article 24 of the Covenant, since there is no act of State on the part of Canada. The children, given their young age, have no family or sociocultural ties to Canada, and the opposite conclusion cannot be drawn from the authors' communication.⁹ The children's return to India would not constitute a violation of article 24 (1) of the Covenant by the State party even if they would enjoy a less comfortable or favourable standard of living than if they remained in Canada. In addition, throughout the process, objections raised in the children's best interests have been duly considered by the Canadian authorities. The authors had access to the multiple administrative procedures provided for under Canadian law and were represented by a lawyer at each stage.

4.6 Lastly, the State party submits that the authors have misunderstood the Committee's role. Their communication reproduces in full the facts, evidence and claims that have already been put before the Canadian authorities and is essentially aimed only at requesting the Committee to reverse the findings of these authorities. The authors provide no new evidence to suggest that they face a personal risk of irreparable harm in India.

Authors' comments on the State party's observations

5.1 On 27 June 2018, the authors submitted their comments on the State party's observations and reiterated their initial complaint. They consider that, contrary to the State party's assertions, their situation has not been examined in depth. In their view, an examination focused on credibility is not an examination of the merits of an application. During the pre-removal risk assessment proceedings, the officer did not examine all the documents, rejecting most of them because they concerned events previously assessed by the Immigration and Refugee Board of Canada.

5.2 The authors are not invoking a general situation in India but arguing that the risks concern them personally. The State party does not explain why it is of the view that a couple who had entered into a prohibited inter-caste marriage could not be at risk. The authors' case also offers an example of a situation in which irreparable harm could be done to the children. Given that the files of the Immigration and Refugee Board of Canada contain no information concerning education and access to health care for foreign children, it is more than likely that the children will experience problems in this regard. Any delay in the education and any shortcoming in the health care provided for the children will have irreparable effects.

5.3 The authors state that the greater part of the risk faced by their children results from the actions of the Canadian officials. The officials are allowing Canadian children to be sent, with only tourist visas, to a country of which they are not nationals. No one seems to be concerned about what will happen to the children once their visas expire.

⁹ See *Rajan et al. v. New Zealand* (CCPR/C/78/D/820/1998).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

6.4 The Committee takes note of the authors' claim that deporting them to India with their two minor children would constitute a violation of their rights under articles 6, 7, 9, 17, 23, 24 and 26 of the Covenant.

6.5 The Committee first notes that the authors have alleged a violation of articles 9, 17, 23, 24 and 26 of the Covenant but have not provided any information on or evidence or convincing explanation of how their rights under these articles would be violated by the State party through their removal to India. The Committee therefore concludes that this part of the communication is insufficiently substantiated and declares it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee also notes the authors' claims, under articles 6 and 7 of the Covenant, that their safety and lives would be at risk if they were returned to India, owing to their inter-caste marriage of which their parents did not approve. The Committee recalls that it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.¹⁰ The Committee notes that the Canadian administrative and judicial authorities found the authors' statements not to be credible. In addition, it notes that the State party pointed out several discrepancies in the statements made by the authors in their asylum application and during the interviews with the administrative authorities. The Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available when assessing the risk faced by the authors and, nevertheless, owing to the marked inconsistencies in their statements, found that the authors had not demonstrated the likelihood that, in case of return to India, they would face a real and personal risk of irreparable harm justifying asylum. The Committee also considers that the authors have not sufficiently demonstrated the credibility of the statements and documents that they provided to the Canadian authorities. The Committee considers that, while the authors disagree with the factual conclusions of the State party's authorities, they have not shown that the decisions of these authorities were arbitrary or manifestly erroneous or amounted to a denial of justice. Therefore, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the authors.

¹⁰ Human Rights Committee, general comment No. 32 (2007), para. 26. See also *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015), para. 7.3, and *Rezaifar et al. v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.