UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/88/D/982/2001
13 November 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October – 3 November 2006

DECISION

Communication No. 982/2001

Submitted by:	Jagjit Singh Bhullar (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	The author
State party:	Canada
Date of communication:	3 June 2001 (initial submission)
Document references:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 20 June 2001 (not issued in document form)
Date of adoption of decision:	31 October 2006

Subject matter: Expulsion of Sikh from Canada to India

Procedural issue: Exhaustion of domestic remedies

Substantive issues: Issues of non-refoulement - fair trial – protection of family unit and rights of children

Articles of the Covenant: 2, 6, 7, 14, 23 and 24

Articles of the Optional Protocol: 5, paragraph 2(a)

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-eighth session

concerning

Communication No. 982/2001[*]

Submitted by:	Jagjit Singh Bhullar (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	The author
State party:	Canada
Date of communication:	3 June 2001 (initial submission)

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

Meeting on 31 October 2006

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication, dated 3 June 2001, is Jagjit Singh Bhullar, an Indian national born on 10 October 1960 in India. He claims that he would be a victim of violations by Canada of articles 2; 6; 7; 14; 23 and 24 of the Covenant in the event of his return to India. He is represented by counsel, Mr. Stewart Istvanffy.

1.2 On 16 August 2001, the State party advised that it would comply with the Committee's request for interim measures, pursuant to (then) rule 86 (now rule 92) of the Committee's Rules of Procedure that the author not be removed from Canada while the Committee was considering the case.

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

Factual background

2.1 The author was a sympathiser and supporter of the main Sikh political groups in India, including the All-India Sikh Student Federation and Akali Dal (Mann), one of the main Sikh parties in the Punjab. He claims that since 1995 he was subject to of numerous beatings and torture, being suspected of assisting such groups. After the author's escape, the author's family was harassed by police, while his father, a community leader, was threatened with death by members of the Punjabi police. The author also alleges that his wife was raped in police detention while he was sought by the police.

2.2 In 1997, the author decided to leave India. In September 1997, his wife arrived in Canada, and the author followed her in January 1998. In late 1997/early 1998, a child was born to the author and his wife in Canada. On 11 August 1998, a two-member Convention Refugee Determination Panel of the Immigration and Refugee Board heard the status claim of the author and his wife for refugee. The author and his wife were represented by counsel at that hearing.

2.3 On 8 September 1998, the author's claim was rejected. The panel, on the totality of the evidence, determined that the evidence presented by the author and his wife was not credible, inter alia on the basis of significant inconsistencies in the evidence which had not been satisfactorily explained. A "serious possibility" of persecution in the event of return to India had therefore not been made out.

2.4 On 26 October 1998, the author applied to become part of the Post-Determination Refugee Claimants in Canada Class ("PDRCC Class"). Unsuccessful refugee claimants may apply for remaining in Canada under this class, which provides an opportunity for application for permanent residence for individuals who, although not determined to be refugees under the 1951 Convention, face an objectively identifiable risk to life or extreme sanction or inhumane treatment should they be returned to their country of origin. The process also allows for any possible changes to be evaluated prior to removal from Canada. The author was found to be ineligible for this class on account of late filing.

2.5 On 19 January 1999, a second child was born to the author and his wife. On 14 November 2000, the author submitted a request for ministerial exemption on humanitarian grounds, under section 114 of the Immigration Act. He advanced in support his wife's difficult pregnancy, the premature birth of their son in January 1999, his wife's part-time work as a seamstress and his intention of joining her in this employment, and the danger that he would face in India due to his membership in a Sikh group and his "prior political activities".

2.6 On 19 January 2001, the application for a ministerial exemption on humanitarian grounds was rejected, with written reasons. As to the risk of return, the decision noted that Mr. Singh Bhullar had advanced the same material as presented to the Immigration and Refugee Board at the initial hearing, without explaining any of the inconsistencies that had led to the Board's finding of poor credibility. On family issues, the family had been in Canada for only two years and had failed to establish themselves. If the sons were to return to India, they would benefit from the presence of both parents' extended families and adequate educational facilities, and would retain the right to return to Canada.

2.7 On 20 February 2001, the author filed two applications for judicial review. The first concerned the original adverse determination of the Immigration and Refugee Board. As it was submitted over two years past the deadline for such applications, the author requested an extension of time for filing. On 11 June 2001, the Federal Court rejected the request for an extension of the deadline for filing, as the application did not raise a serious question to be tried. The second application for judicial review concerned the decision of 19 January 2001 to decline admission on humanitarian and compassionate grounds. On 17 August 2001, the Federal Court dismissed that application, because filed out of time, since the author had failed to advance a "fairly arguable" case or a serious question to be tried.

The complaint

3.1 The author argues that he would be subject to extra-judicial execution and torture if returned to India, in breach of articles 6 and 7 of the Covenant. There is no mandatory prohibition of returning persons to a risk of death or torture abroad. The decision to expel the author also does not sufficiently consider the non-derogable nature of articles 23 and 24 concerning protection of the family and his Canadian-born children.

3.2 The author further argues that he has no effective legal remedy, in breach of articles 2 and 14 of the Covenant, as the State party's immigration agents are not sufficiently impartial, and lack the independence and competence necessary to undertake the required risk assessments. Such agents are under pressure to decide in favour of expulsion, with an attitude presuming lying or abuse of the system on the part of applicants.

The State party's submissions on admissibility

4.1 On 2 November 2001, the State party disputed the admissibility of the communication, arguing that domestic remedies had not been exhausted with respect to the claim under article 7 and that no *prima facie* violation of the Covenant had been disclosed with respect to any claim.

4.2 With respect to domestic remedies, the State party argues that the author failed to exercise due diligence in pursuing available and effective remedies. He has not demonstrated that the remedies which would have been available to him are not effective or available within a reasonable timeframe. The State party argues that his application under the Post Determination Refugee Claimants in Canada (PDRCC) Class was submitted after expiry of the prescribed deadline, and was accordingly dismissed. His application for judicial review of the Immigration and Refugee Board's adverse refugee determination was also submitted after expiry of the deadline and was dismissed by the Federal Court as not raising a serious question to be tried. His application for judicial review of the rejection of the application for humanitarian and compassionate consideration was also submitted after the expiry of the relevant deadlines for filing and dismissed by the Federal Court.

4.3 The State party adds that no prima facie violation of the Covenant has been disclosed, and the communication is inadmissible for insufficient substantiation. Under article 7, while acknowledging that police violence continues to be a problem in Punjab, the Akali Dal (Mann) political party the author joined in 1993 has formed a coalition government with the leading Bharatiya Janata Party in Punjab. As the author is a member of one of the governing parties of the present coalition, it is unlikely he would be at risk in India.

4.4 On 3 July 2002, the State party commented on the merits of the author's claims. It submits that after reviewing a number of credibility problems in the author's representations to Canadian immigration authorities, and even assuming the veracity of the author's personal history, he has failed to establish that he and his wife would face a foreseeable, personal and imminent risk of torture if returned to India. The State party bases this conclusion on two principal factors: (a) the author's own status as a former ordinary member of the Akali Dal (Mann) Party, who at no time engaged in high profile political activities and thus would be unlikely to be wanted by the authorities if returned to India, and (b) the improved political conditions in Punjab, as attested by the reports of several non-governmental organizations and the Research Directorate of Canada's Immigration and Refugee Board. The State party adds that the author's subsidiary claims under articles 2, 14, 23 and 24 have not been sufficiently substantiated to establish even a *prima facie* violation of these provisions.

Author's comments on the State party's submissions

5.1 On 10 October 2003, the author responded to the State party's submissions. As to the issue of domestic remedies, the author argued that judicial review by the Federal Court is not a full appeal on the merits, but rather is "a very narrow ground of review for gross errors of law", for which leave to appeal must be obtained. In the context of deportation, the application itself has no suspensive effect and must be accompanied by an application for a stay.

5.2 The author claims that the Canadian system for analysis of danger is "a farce" and provides neither a fair nor independent examination of the case prior to deportation. The author argues that the sufficiency of available judicial recourse in Canada has been criticised in a case before the Inter-American Commission on Human Rights. The author contends that he filed for judicial review of the refusal of the pre-removal risk assessment (PPRA), with an application for stay of deportation, submitted under current procedures. The stay of deportation was denied and leave for judicial review was denied.

5.3 Finally, the author also claims to have fully adjudicated the refusal of refugee status at the Immigration and Refugee Board, leave to apply for judicial review having been denied by the Federal Court. As to the fact that PDRCC submissions were not made, the author states that he did not receive the decision by mail and that he was not responsible for missing the statutory deadlines. In addition, the author comments on the merits of the case.[1]

Supplementary submission of the State party

6. On 12 February 2004, the State party responded to the author's submissions on the merits of the case.

[1] See summary in paragraph 4.4.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 As to the issue of exhaustion of domestic remedies, the Committee notes that the State party identifies three distinct avenues of domestic redress that the author was entitled to pursue. Firstly, the author's application for judicial review of the Board's denial of refugee status was filed out of time and dismissed by the Federal Court. Secondly, following the rejection of his application for refugee status, he was entitled to apply for consideration under the Post Determination Refugee Claimants in Canada (PDRCC) Class, which would have been in a position to assess the refoulement issues raised by the author. The author however did not file such a claim within the specified time limits. Thirdly, the author's application for judicial review of the rejection of the claim for humanitarian consideration was also filed out of time, and again rejected by the Federal Court.

7.3 The Committee recalls its jurisprudence that authors are bound by procedural rules such as filing deadlines applicable to the exhaustion of domestic remedies, provided that the restrictions are reasonable.[2] Leaving aside the issue of whether the author's failure to file in a timely manner an application under the Post Determination Refugee Claimants in Canada (PDRCC) (see paragraph 5.3, *supra*), the Committee notes that both applications for judicial review were filed out of time by the author and were not subsequently pursued. The author has failed to advance any reasons for these delays, nor any argument that the specified time limits in question were either unfair or unreasonable. It follows that the author has failed to pursue domestic remedies with the "requisite diligence",[3] and the communication must be declared inadmissible, for failure to exhaust domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

8. Accordingly, the Committee decides:

a) that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol; and

b) that this decision will be transmitted to the author and, to the State party.

[Adopted in English, French and Spanish, the English 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.]

---

[2] See, for example, A.P.A. v. Spain communication No. 433/1990.
[3] Ibid., at paragraph 6.3.