

Canada required to reconsider individual's request for asylum

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By deporting a Pakistani man Canada would be in breach of its international human rights obligations, the Human Rights Committee found, holding that Canada must reconsider the individual's claim to asylum.



Choudhary v Canada (1898/2009)

Summary

In October 2013, the Human Rights Committee was asked to consider whether Canada would violate its obligations under the International Covenant on Civil and Political Rights in deporting an individual to Pakistan and denying their request for asylum.

The communication was submitted by a Pakistani national under the Optional Protocol to the Covenant.

Background

The author of the communication, Mr Naveem Choudhary, was born in Pakistan. He alleges that he was an active Shia member of the Imam Bargah community in Jhelum, Punjab, a group that has been targeted by the Sunni extremist group Sipah-Sahaba Pakistan (SSP) for speaking out against Islamist fundamentalism and violence.

In 1999, SSP opened an office in the author's neighbourhood. The author alleges that between 2000 and 2002, he was a victim of attacks and death threats by SSP members. He also alleges that on one occasion, he and his wife, along with other members of his community were fired at by SSP members. The author further claimed that his complaints to the police authorities in Pakistan did not yield results. After SSP filed a complaint against him with the police, accusing him of insulting the Sunni faith in public, he decided to leave Pakistan.

The author claims that since leaving Pakistan, he learnt that the police had visited his house to arrest him under Pakistan's blasphemy laws, and that an arrest warrant had been issued against him. Blasphemy is punishable by the death penalty under Pakistani law.

In March 2002, the author fled to Canada with his wife via the United States of America, and claimed refugee status in Montreal on 15 April 2002.

On 14 December 2004, the Refugee Protection Division of the Canadian Immigration and Refugee Board (the *Board*) rejected the author's claim for asylum, on the basis that he and his wife had not credibly established their identity. The Board believed that the author's identity document was a counterfeit. His wife's identity document bore the number belonging to a list of documents that the Government of Pakistan had declared to have been stolen. The Board concluded that, since neither the author nor his wife had established their

identities, they had not established the central element of their claim.

On 24 March 2005, the author's application for leave for judicial review was rejected by the Federal Court and a subsequent request to reopen the case on the basis of additional documentation was rejected by the Board. On 29 May 2007, the author's demands for review of the decision on humanitarian and compassionate grounds and by pre-removal risk assessment (PRRA) were rejected. The author's request for judicial review of the PRRA decision was rejected in April 2008. The author also claims that his eldest son, who was left behind in Pakistan was kidnapped in November 2006 as an act of reprisal against him, and that a fatwa had been issued against him by a radical group of Sunnis in Jhelum.

On 31 August 2009, the author filed this communication with the Committee, claiming that: (i) his detention had violated his right to freedom from arbitrary detention (under article 9 of the Covenant); (ii) the domestic asylum procedures had been violated his right to the procedural guarantees under articles 13 and 14 of the Covenant; and (iii) his deportation would violate his rights to life and protection from cruel or inhuman treatment (under articles 6(1) and 7 of the Covenant respectively). He also claimed a violation of his wife and children's rights with respect to their rights to: (i) protection from arbitrary and unlawful interference with the family and home; (ii) protection of the family; and (iii) child protection (under articles 17, 23 and 24 of the Covenant respectively).

The deportation of the author and his family was scheduled for 8 September 2009. A motion for stay of deportation was still pending before the Federal Court at the time of submission of the communication to the Committee.

On 4 September 2009, pursuant to Rule 97 of the Committee's rules of procedure, the Committee requested that Canada not expel the author and his family while the communication was being examined.

The Committee's decision

In considering the admissibility of the author's claims relating to his deportation, the Committee observed that local remedies had been exhausted since the motion for stay of deportation pending before the Federal Court had no suspensive effect against the order for removal. Certain of the author's allegations relating to his detention were held to be inadmissible as these claims had not been raised before domestic courts. The Committee also held that the author's claims relating to the rights of his children under articles 17 and 23 were not admissible, since it was not envisaged that the family would be separated. With regard to the author's claim that the rights of his children under article 24 would be violated due to his children's educational needs not being met in Pakistan, the Committee held that these allegations had not been sufficiently substantiated and were therefore inadmissible.

On the merits of the case, the Committee observed that the author had not been given any further opportunity by the Board to have his refugee claim assessed on the grounds that he had failed to establish his identity at the initial stage of the procedure, despite his identity having subsequently been confirmed. While the author's claims had been examined during the PRRA procedure, such limited assessment could not form a substitute for the type of thorough assessment performed by the Board.

The Committee noted the recent reports that religious minorities including Shias continue to face fierce persecution and insecurity and that the Pakistani authorities are either unable or unwilling to protect them. It observed that the Pakistan government had dropped a proposed amendment to Section 295(C) of the Criminal Code which penalises blasphemy, and that there had been an upsurge of blasphemy cases in 2012. The Committee also noted that a case of blasphemy had been registered against the author, for which Pakistani law prescribed the death penalty. While death sentences for blasphemy appeared to be rarely carried out, there were several reported instances of extra-judicial killings of those accused of the offence.

In view of the above, the Committee held that the expulsion of the author and his family would constitute a violation of articles 6(1) and 7 of the Covenant, read in conjunction with article 2(3) of the Covenant. Given these findings, the Committee did not consider it necessary to examine the author's further claims.

The Committee held that in accordance with article 2(3), Canada was under an obligation to provide the author and his family with an effective remedy, including a full reconsideration of the claim.

Canada must now submit a written response within six months of the Committee's decision, including information about the measures taken to give effect to the Committee's views, and ensure that the Committee's decision is published widely.

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Photo: UN Photo/Jean-Marc Ferré. Palais Wilson. 2010.

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