



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2323/2013\*, \*\*

<i>Communication submitted by:</i>	F.Z. and M.Z. (represented by counsel, Joseph W. Allen)
<i>Alleged victims:</i>	The authors and their two minor children
<i>State party:</i>	Canada
<i>Date of communication:</i>	23 December 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 December 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Deportation to Romania
<i>Procedural issue:</i>	<i>Ratione materiae</i> ; level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture; cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	3, 6 (1), 7, 9 (1), 17 (1), 24 (1), 26 and 27
<i>Article of the Optional Protocol:</i>	2

\* Adopted by the Committee at its 125th session (4–29 March 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. In accordance with rule 90 of the Committee's rules of procedure, Committee member Marcia Kran did not participate in the examination of the communication.



1.1 The authors of the communication are F.Z., born on 31 August 1975, and his wife M.Z., born on 8 April 1978. They submit the communication also on behalf of their two minor children: X, born on 11 June 2009, and Y, born on 5 October 2006. The authors are nationals of Romania seeking asylum in Canada and subject to deportation to Romania following the Canadian authorities' rejection of their application for refugee status. They claim that by forcibly deporting them to Romania, Canada would violate their rights under articles 3, 6 (1), 7, 9 (1), 17 (1), 24 (1), 26 and 27 of the Covenant. The Optional Protocol entered into force for Canada on 19 August 1976. The authors are represented by counsel.

1.2 On 27 December 2013, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures decided not to issue a request for interim measures.

### **The facts as submitted by the authors**

2.1 The authors are of Roma ethnicity and used to live in Romania. F.Z. was discriminated against at school and subjected to violence. The abuse by students and teachers reached such a level that he dropped his studies at the end of primary school. Starting from 1993, he worked with his father, in construction. However, since he was Roma, he always had difficulties in being hired. He was also discriminated against at work on account of his ethnic origin.

2.2 In June 2006, he married M.Z. In October 2006, when M.Z. was about to give birth to their first child, the authors went to Bucharest and looked for a hospital. However, five hospitals refused to admit them, so M.Z. had to give birth in dangerous conditions with the help of Roma midwives. They faced a similar experience when their second child was born in 2009.

2.3 In December 2009, F.Z. was assaulted by three young skinheads when he was on a city bus in Bucharest. He twisted his ankle when he was thrown off the bus, and although he was in need of medical help, a nearby hospital refused to admit him. Finally, on 16 July 2010, their eldest child was denied registration at the local day-care centre, as the director did not want to upset the parents of the "real" Romanians. F.Z. went to the centre to demand an explanation. Because F.Z. was infuriated, the director was frightened and called the police, who handcuffed him. F.Z. was taken to an isolated area and severely beaten by police officers with rubber batons. He was warned to be "more polite to Romanians", and was then abandoned. When he sought to file a complaint with the local mayor, he was not believed and was told to stop telling lies. No investigation was carried out.

2.4 The authors therefore decided to join M.Z.'s family in Canada. On 22 August 2010, they arrived in Canada, via Mexico, on fake Italian passports,<sup>1</sup> and requested asylum at the airport, upon their arrival. They claimed that they had been persecuted in Romania due to their Roma ethnicity, marginalized, and subjected to violence at school. They had been refused access to social and health services and had been victims of discrimination on public transport and in places open to the general public such as restaurants, cinemas and discos.

2.5 On 14 January 2013, the Immigration and Refugee Board of Canada refused their application for asylum,<sup>2</sup> considering that they did not fall under the refugee category in the sense of the Convention relating to the Status of Refugees, nor any other category of person in need of international protection. The Board also found the authors' statements contradictory and their accounts of persecution not credible.

2.6 The authors filed an application for leave and judicial review before the Federal Court of Canada, which was dismissed on 31 May 2013 without reasons.

2.7 On 3 January 2014, the authors were removed to Romania.

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<sup>1</sup> Because they had been denied visitor visas to Canada in 2007.

<sup>2</sup> The authors were represented by counsel.

## The complaint

3.1 The authors submit that, by forcibly returning them and their children to Romania, the Canadian authorities would be in violation of their rights under articles 3, 6 (1), 7, 9 (1), 17 (1), 24 (1), 26 and 27 of the Covenant.

3.2 Based on their experience, they allege that, if returned to Romania, they and their two minor children would be persecuted due to their Roma origin. The situation of Roma in Romania is extremely dangerous and they are persecuted on a regular basis. If returned, the authors would be put in an extremely vulnerable situation, with their safety and life in great danger.<sup>3</sup> They also point out that the State party granted refugee status to M.Z.'s father on 8 November 1999, as well as to other members of his family.

3.3 Finally, the authors allege that, following the amendment of the Immigration and Refugee Protection Act on 15 December 2012, asylum seekers cannot file an application for pre-removal risk assessment unless 12 months have passed since the rejection of the asylum request. The authors could not avail themselves of the pre-removal risk assessment. Therefore, domestic remedies have been exhausted. In addition, there is no true appeal on the merits of an Immigration and Refugee Board decision, because the Federal Court rejects 90 per cent of the applications for leave and judicial review and, even if an application is admitted, questions of credibility and appreciation of evidence are only reviewed on a standard of "reasonableness" rather than on a standard of "correctness", as would be the case in a true appeal on the merits. Thus, the authors have never been afforded a fair opportunity to contest the merits of the negative decision by the Immigration and Refugee Board.

## State party's observations on admissibility and the merits

4.1 On 17 June 2014, the State party submitted its observations on admissibility and the merits. It considers that the authors' allegations are inadmissible for two reasons: non-substantiation, and incompatibility of some of the allegations with the provisions of the Covenant.

4.2 The authors' communication to the Committee is based on the same facts and evidence as were presented to the Immigration and Refugee Board. The State party argues that the whole communication is inadmissible on the grounds of insufficient substantiation, because the authors have not explained how any of their rights would be violated by their removal. Their story is not credible; there are important omissions and contradictions concerning central elements of their claim.

4.3 Regarding the claims made by F.Z. of ill-treatment by the police on 16 July 2010 and by three private individuals on a bus in 2009, the Board noted that he had not mentioned the two events in his initial application for protection. When asked about this omission, he stated that he did not remember what he had declared upon his arrival in Canada. He also did not provide any medical documentation regarding these claims.<sup>4</sup> Therefore, the Board did not believe that he had been aggressed by the police in 2010 or by private persons in 2009.

4.4 Moreover, the Board observed that, in his first application form completed upon arrival in Canada, while still at the airport, F.Z. alleged that he had been beaten by three private persons in 2002 and had needed hospitalization for 45 days,<sup>5</sup> but mentioned no other

<sup>3</sup> The authors refer to the "2012 country reports on human rights practices: Romania", of the United States Department of State (19 April 2013), available at [www.state.gov/j/drl/rls/hrrpt/2012/eur/204330.htm](http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204330.htm), in which it is stated that major human rights problems affect the Roma population, such as police mistreatment and harassment, as well as societal discrimination.

<sup>4</sup> He declared that after having been beaten by the police, he did not go to the hospital to get a medical certificate that he could use as evidence for his complaint against the police.

<sup>5</sup> He produced a medical report dated 9 April 2001. He declared that the police had made an official assessment of the event, but that he did not follow up on this with the authorities because he was afraid of the police.

incidents.<sup>6</sup> Subsequently, in the written narrative filed in support of his refugee claim – and in his oral testimony – he entirely omitted to mention the alleged 2002 beating. When asked whether the 2002 incident had really happened, he at first claimed not to know which incident was being spoken about, and only appeared to remember it when shown his application form. When asked why he had omitted mention of that incident, he claimed to have a bad memory.

4.5 For her part, M.Z., in her application form, had failed to mention any acts of violence against her husband. When asked about the omission, she declared that after her long trip to Canada, she had been stressed.

4.6 Despite the authors' lack of credibility, the Immigration and Refugee Board nevertheless considered in detail the objective documentary evidence concerning the general situation of the Roma population in Romania. The Board quoted at length from the sixteenth to nineteenth periodic reports of Romania to the Committee on the Elimination of Racial Discrimination<sup>7</sup> and concluded that, despite the discrimination and stigmatization against Roma, serious efforts by the Government of Romania were being undertaken to turn this situation around and adequate State protection was in place. Their communication thus amounts to nothing more than an attempt to appeal the Board's decision in their case, a matter which is outside of the Committee's competence.

4.7 The State party notes that judicial review has been accepted by this and other Committees as an effective remedy that must be exhausted for the purpose of admissibility. It notes that the current system of judicial review by the Federal Court does provide for "judicial review of the merits". The fact that judicial review is subject to a leave requirement does not make any difference to its effectiveness as a remedy. In this context, the Court's stated test for granting leave is that an applicant needs to show that there is a "fairly arguable case" or "a serious question to be determined". The authors' leave application was denied. Generally, the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. Moreover, the authors have not explained how they have been affected by the 12-month period of ineligibility to apply for a pre-removal risk assessment.

4.8 Romania is a member State of the European Union and is subject to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The authors have not demonstrated that Romania is unwilling or unable to adequately protect them from any serious human rights violation that they may face upon return. The objective documentary evidence shows that Romania is making serious efforts to eliminate discrimination and violence against Roma. As citizens of a member State of the European Union, the authors have the right to move to and reside in any other European Union member State for up to three months, without restriction, and longer if certain conditions are met. In the circumstances, even if the authors were at risk of persecution or other serious human rights violations in Romania – which is expressly denied – they are not in need of the protection of Canada.

4.9 Therefore, the whole communication is inadmissible for non-substantiation, pursuant to article 2 of the Optional Protocol and rule 96 (b) of the Committee's rules of procedure. The authors have failed to explain how their general allegations constitute a violation of the various rights listed. General denunciations are insufficient to substantiate a communication for the purposes of admissibility. Moreover, their evidence consists of the exact same allegations that had been rejected as not credible by a competent domestic tribunal. Other than complaining that the Board "erred", they have not alleged and certainly have not established that the Board's decision was manifestly arbitrary or amounted to a denial of justice.

4.10 In addition, the authors' allegations that their rights under articles 9 (1), 17 (1), 24 (1), 26 and 27 would be violated by their removal to Romania are incompatible *ratione*

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<sup>6</sup> He stated: "Eight years ago I was beaten up on the street because I am a Gypsi [sic]. I spent 45 days in the hospital. I don't want to return to Romania. I want to start my life all over again here in Canada. I want my daughters to grow up in peace with a good education."

<sup>7</sup> CERD/C/ROU/16-19.

*materiae* with the provisions of the Covenant and should be declared inadmissible pursuant to article 3 of the Optional Protocol and rule 96 (d) of the Committee's rules of procedure. These articles do not impose an obligation on States to refrain from removing individuals who may face a real risk of discrimination and unequal treatment in the receiving State.

4.11 Should the communication be declared admissible, the State party asserts on the basis of the same submission that it is wholly without merits.

#### **Author's comments on the State party's observations on admissibility and the merits**

5. On 19 August 2014, the authors' counsel informed the Committee that due to a lack of communication with the authors following their deportation to Romania, he refers to the initial submission of 23 December 2013.

#### **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 93 of its rules of procedure, whether it 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 by forcibly returning them and their children to Romania, the State party would violate their rights under articles 3, 6 (1), 7, 9 (1), 17 (1), 24 (1), 26 and 27 of the Covenant.

6.5 The Committee notes that the authors have alleged a violation of articles 9 (1), 17 (1), 24 (1), 26 and 27 of the Covenant, but without providing any information, evidence or explanation about how their rights under those articles would be violated by the State party through their removal to Romania. The Committee therefore concludes that this part of the communication is insufficiently substantiated and declares it inadmissible pursuant to article 2 of the Optional Protocol.

6.6 The Committee also notes the authors' allegations under articles 6 and 7 of the Covenant that their safety and lives would be in danger if they were returned to Romania due to persecution based on their Roma origin. 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".<sup>8</sup> The Committee notes that the authors have failed to demonstrate that such shortcomings existed in the conduct of the proceedings in their case. The authors have also failed to justify how the 12-month period of ineligibility to apply for a pre-removal risk assessment in itself affected their rights under the relevant provisions. Moreover, while the Committee is well aware that Roma continue to be the victims of racial stereotyping and racial discrimination in different areas in Romania,<sup>9</sup> the authors have not adduced any evidence to demonstrate that, following their deportation to Romania, they ran a real and personal risk of irreparable harm. Accordingly, 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.

<sup>8</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>9</sup> CCPR/C/ROU/CO/5, pp. 2–3; and CERD/C/ROU/CO/16-19.

7. The Committee therefore decides:
- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the authors.
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