Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 57/2019**

Communication submitted by: R.K.H.M. (represented by counsel, Esther Lexchin)
Alleged victim: The author
State party: Canada
Date of communication: 22 February 2019 (initial submission)
Date of adoption of decision: 25 August 2023
Substantive issue: Removal to Sri Lanka

1. The author of the communication is R.K.M.H., a national of Sri Lanka born in 1983. He claims to be the victim of violations by the State party of article 13 of the Convention. The Optional Protocol entered into force for the State party on 2 January 2019. The author is represented by counsel.

2. In 2014, the author arrived in Canada and applied for asylum based on the risks he would face in Sri Lanka as a gay man. The author has a cognitive impairment that was undiagnosed when he applied for asylum. He did not therefore receive any accommodation that would have facilitated his participation in the asylum procedure. However, his impairment affected his ability to testify. The Refugee Protection Division of the Immigration and Refugee Board of Canada rejected his asylum application on the ground of credibility concerns based largely on his manner during his testimony and his difficulty answering questions. On 3 June 2015, the Refugee Appeal Division of the Immigration and Refugee Board rejected the author’s appeal. Subsequently, the Federal Court of Canada denied his request for leave to appeal for judicial review.

3. In 2017, the author was diagnosed with a moderate cognitive impairment stemming from a cycling accident he had had many years before, resulting in a lack of spontaneity in responding to questions, difficulty recalling facts, limited comprehension and laboured testimony. The author then applied for a pre-removal risk assessment. He submitted the medical assessment along with further evidence of his sexual orientation and requested an oral hearing. However, the pre-removal risk assessment officer did not organize a hearing or make any accommodation for the author, and on 29 September 2017, rejected his application. Despite being the only decision maker with knowledge of the author’s disability, the officer

* Adopted by the Committee at its twenty-ninth session (14 August–8 September 2023).
** The following members of the Committee participated in the consideration of the communication: Muhammad Salah Al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Alfred Kouadio Kouassi, Abdelmajid Makni, Sir Robert Martin, Markus Schefer and Saowalak Thongkuay. Pursuant to rule 60 of the Committee’s rules of procedure, Laverne Jacobs did not participate in the consideration of the communication.
attributed “significant weight” to the findings in the decision on the author’s asylum application. On 18 July 2018, the Federal Court upheld the decision of the pre-removal risk assessment officer.

4. In October 2018, the author applied for a residence permit on humanitarian and compassionate grounds. Following the issuance of a date for his removal in February 2019, the author applied for deferral of his removal, which was denied. On 21 February 2019, the Federal Court denied his application for leave to appeal for judicial review.

5. The author claims that the denial of reasonable accommodation in the examination of his asylum application amounts to a violation of his rights under article 13 of the Convention. He claims that his removal to Sri Lanka would expose him to irreparable harm, as same-sex conduct is criminalized under section 365 and 365A of the Penal Code of Sri Lanka.

6. On 22 February 2019, the Committee, acting through its Special Rapporteur on Communications under the Optional Protocol, decided to register the communication and granted interim measures requesting the State party not to remove the author to Sri Lanka while his communication was pending.

7. In its observations of 14 November 2019, the State party submitted that the communication was inadmissible _ratione temporis_ and on the grounds that it was manifestly ill-founded and that the author had failed to exhaust domestic remedies. The State party also submitted that the communication was without merit.

8. On 7 October 2020, the State party requested the Committee to discontinue its consideration of the communication, given that on 3 February 2020, the author had been granted permanent residence in Canada following the approval of his application for residence on humanitarian and compassionate grounds. The State party submitted that the positive result addressed the author’s concerns under the Convention. On 19 April 2023, the author informed the Committee that he had no objection to the State party’s request.

9. At a meeting on 25 August 2023, the Committee, having been informed that the author had been granted permanent residence in the State party, concluded that the subject matter of the communication had become moot and decided to discontinue the consideration of communication No. 57/2019.