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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1827/2008

Decision adopted by the Committee at its 105th session (9–27 July 2012)

Submitted by:	S.V. (not represented by counsel)
Alleged victim:	The author, his wife T.G. and their three children
State party:	Canada
Date of communication:	26 September 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2008 and 10 March 2009 (not issued in document form)
Date of adoption of decision:	23 July 2012
Subject matter:	Deportation from Canada to Romania
Procedural issue:	Failure to sufficiently substantiate allegations; incompatibility with the Covenant
Substantive issues:	Right to life; prohibition of torture or cruel, inhuman or degrading treatment; right to an effective remedy; right to privacy; liberty and security of the person; protection of the family
Articles of the Covenant:	2, para. 3; 6, para. 1; 7; 9, para. 1; 14; 17; 23, para. 1
Articles of the Optional Protocol:	2; 3 and 5, para. 2 (b)

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (105th session)

concerning

Communication No. 1827/2008*

Submitted by:	S. V. (not represented by counsel)
Alleged victim:	The author, his wife T.G. and their three children
State party:	Canada
Date of communication:	26 September 2008 (initial submission)

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

Meeting on 23 July 2012,

Adopts the following:

Decision on admissibility

1.1 The author of the complaint is Mr. S.V., Moldovan by birth but since 1995 also a citizen of Romania. He resided in Canada and sought protection as a refugee before his eventual deportation with his family to Romania on 25 April 2009. He submits the communication on his behalf and on behalf of his wife, T.G., and their three children. The author complains that his return to Romania would constitute a violation of his human rights as he and his family would face torture in the Republic of Moldova, whence Romania would eventually deport him. The author is not represented by counsel.

1.2 The author requests the Committee to invite the State party not to proceed with the forced removal, which he alleged was imminent at the time of the submission of the complaint, pending the examination of the case. On 3 December 2008, the Committee refused to grant interim measures. On 6 March 2009, the author submitted a new request for interim measures which was again refused by the Committee on 10 March 2009.

The facts as submitted by the author

2.1 The author is a scientist who was involved in anti-communist and human rights activities in the former Soviet Union. He claims that from 1994 to 2001 he was on several

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

occasions illegally arrested, tortured[1] and persecuted. In 2001, the Moldovan secret service confiscated his house and his property and he was deported together with his family to Romania. From 2001 to 2005 he had temporary study visas for Portugal and Spain. He and his family arrived in Canada on 8 November 2005 on a one-year professorship visa. They filed for refugee status in 2006 when the communist party won the elections in the Republic of Moldova.

2.2 On 26 April 2007, the author's claim for protection was rejected by the Refugee Protection Division of the Canadian Immigration and Refugee Board (IRB). The Canadian immigration authorities found the author's testimony credible with respect to his persecution in the Republic of Moldova and the former Soviet Union, but found that he lacked credibility with respect to his inability to establish residence in Romania and with respect to being deported to the Republic of Moldova. They concluded that his removal to Romania would not put the author at risk of torture.[2] The author states that the decision did not take into account the fact that, if deported to Romania, he and his family would eventually be expelled to the Republic of Moldova, as Romania usually re-deports persons to their country of first citizenship.

2.3 The author applied for an order staying the deportation, which was granted on 19 March 2008, and for an application for judicial review, which was granted on 27 June 2008, claiming that the Canadian immigration authorities did not consider new evidence provided by him (i.e. Romanian extradition laws). The author contended that the pre-removal risk assessment (PRRA) officer who rejected his application did not properly assess the newly submitted evidence with respect to the risk he would face in the Republic of Moldova if he was required to return to Romania. The Federal Court, in a decision dated 18 September 2008, dismissed the author's application and considered that PRRA did not err in determining that the evidence about Romanian extradition laws was not admissible since the author did not provide a justification as to why these laws were not reasonably made available for presentation to IRB.

The complaint

3.1 The author makes several complaints in his lengthy submission to the Committee, but does not invoke any articles of the Covenant although he invokes the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The author also complains in general terms of corruption among immigration authorities in Canada and about the fact that he was allegedly being discriminated against in obtaining legal aid for his immigration case.

3.2 First, the author submits that he will be subjected to torture if deported to Romania, as this country will later deport him to the Republic of Moldova, his country of first citizenship pursuant to Romanian extradition laws. It must be noted that on 25 April 2009, the author and his family were deported to Romania.

3.3 Second, the author alleges that in June 2008 Canada refused to grant him and T.G. work permits even when the Federal Court ordered a stay of their removal from Canada on 18 March 2008. The author, therefore, argues that his family of five persons had to survive on a welfare grant of less than 100 dollars a month after paying rent. He alleges that these living conditions are equivalent to starvation and amount to torture by Canada. He further argues that restrictions on access to job opportunities on the basis of immigration and education status, and country of origin are discriminatory.

[1] Medical certificates from 1999 are attached to the complaint.

[2] Pre-removal risk assessment of 11 January 2008, section 4, second and third paragraphs.

3.4 Third, the author also alleges that his personal data including home address and telephone numbers were uploaded on websites belonging to the Canadian Society of Immigration Consultants (CSIC) and a company called "Rogers" without his consent. Furthermore, he alleges that the University of Toronto contacted the Moldovan Embassy in Toronto and sent his personal data to the embassy. This he alleges is a breach of his right to liberty and security of the person.

3.5 Fourth, the author alleges breach of the right to an effective remedy. He alleges that since he and T.G. did not have work permits, they could not have access to justice because they could not afford to pay court filing fees. As such, the author submits that they were unlawfully prevented from accessing the courts.

3.6 Fifth, the author alleges breach of the right to a fair and public hearing in the conduct of immigration matters. He alleges that IRB was not impartial and falsified his passport data and other documents thereby jeopardizing the prospects of success on appeal of any of his applications. He further alleges that, following the decisions of IRB and the Federal Court, their application for refugee status was denied because of the unfair processes that amount to a violation of principles of natural justice. On this point, he submits that, during the hearing of his application by IRB, he and T.G. were not allowed to provide explanations and evidence particularly on Romanian Law No. 302/2004 on extradition of citizens with double citizenship to their countries of domicile. The author further alleges that they were not professionally represented by the legal aid lawyers during the IRB hearing and during the application for leave to apply for judicial review, as these lawyers were incompetent and distorted material facts. The author further alleges that the legal aid lawyers falsified their documents and "cleaned" their affidavits. The author complains that the judges in the Federal Court would not allow the author to present explanations in relation to the effect of Romanian Law No. 302/2004. The author also submits that, during the applications for PRRA and consideration of protection on the basis of humanitarian and compassionate grounds (H&C application), a member of the CSIC, Stela Coldea, who was assigned to assist them with these applications, falsified the H&C application and did not submit the necessary forms and documents. The author alleges that when the PRRA application failed, Ms. Coldea lied to them and tried to extort 10,000 dollars for an appeal before the Federal Court when in fact the she did not have a right appear before the Federal Court.

3.7 Lastly, the author submits that Canadian authorities refused to give T.G. medical assistance when she was six months pregnant. The author alleges that she was discriminated against on the basis of her immigration status and because she was not under the Interim Federal Health Program (IFHP). The author submits that they had applied for an extension of the IFHP which was not granted even when the doctor that attended to her confirmed that she was pregnant and needed urgent medical assistance. The author further alleges that he was refused medical assistance for his high blood pressure, heart problems and medical care for cancer analysis. Finally on this point, the author submits that their underage children were refused medical assistance in winter when they suffered flu and a cold.

State party's observations on the admissibility and the merits

4.1 On 3 June 2009, the State party submitted its observations on the admissibility and the merits of the complaint. The State party submits that the author's claim for refugee protection was heard by IRB, which rendered its decision on 26 April 2007, finding that the author and his family were not Convention refugees and, therefore, not in need of protection. The State party states that IRB considered the fact that the author had lived and worked in Spain, Portugal and the United States of America from 2001 and 2005 without making a refugee claim in any of those countries as indicative of a true lack of fear. The

State party further submits that the author admitted in oral testimony under oath that he did not seek refugee protection in Portugal because he could have a better salary in Canada. For this reason, IRB determined that the author was "country shopping".

4.2 The State party further states that, on 16 August 2007, the author's leave to apply for a judicial review of the IRB decision was refused by the Federal Court. Later in October 2007, the author made an application for a PRRA, which was turned down on 11 January 2008. The author then filed an application for leave to apply to the Federal Court to review the negative decision of PRRA, which was granted on 18 March 2008. This order effectively stayed the family's removal from Canada until the final disposition of the judicial review.

4.3 The State party submits that, on 18 September 2008, the Federal Court threw out the judicial review application on the ground that the new evidence which the author had alleged was not properly assessed by the PRRA officer, namely article 24 of Romania Law No. 302/2004, was not new as it would have been reasonably available for presentation to IRB. The Federal Court, therefore, considered that the PRRA officer did not commit a reviewable error by not admitting this document in evidence. On 12 March 2008, the author applied to IRB to have his claim for refugee protection reopened on the ground that his hearing before IRB had been a breach of justice. On 17 April 2008, IRB dismissed this application on the ground that the author had not established a breach of natural justice. The author then applied for leave to the Federal Court to review the decision by IRB not to reopen his refugee claim. On 15 August 2008, the Federal Court refused to grant leave.

4.4 In January 2008, the author made an H&C application for permanent residence. In the H&C application, the author argued that Romania Law No. 302/2004 on extradition had the effect that if he and his family were to be sent to Romania, they would automatically be extradited to the Republic of Moldova because the family's Romanian citizenship was not effective without establishing domicile in that country. On 9 January 2009, the H&C application was turned down. On 20 April 2009, the author filed an application for leave to apply for judicial review before the Federal Court. The removal of the author and his family from Canada was scheduled for 22 April 2009 and their application to stay this removal was dismissed on 20 April 2009 because the author did not attend the court hearing. The author and his family were deported to Romania on 25 April 2009.

4.5 With regard to the alleged starvation and insufficient financial support, the State party notes that the author has not provided any evidence that he was denied financial assistance but that he merely was dissatisfied with the amount that he and his family were receiving, and with the requirement to periodically prove their continued eligibility for assistance.

4.6 In respect to the author's allegation of refusal of health coverage and refusal for the prolongation of IFHP, the State party submits that IFHP provides essential health-care coverage to eligible persons who can demonstrate financial need. The State party states that refugee claimants in financial need are given basic and supplemental IFHP coverage during their refugee determination process and while waiting for a decision on a PRRA application. The State party submits that the author has not provided any evidence that his family's medical coverage was refused. The State party has no record of refusing the family's application for IFHP. On the contrary, the State party submits that its records indicate that the family's coverage was renewed on 5 January 2009 and was valid until 4 January 2010.

4.7 With regard to the author's allegation that he and his wife paid the necessary fees to extend their work permits in January 2008 but their applications were refused because at the time they were under a removal order, the State party submits that, under regulation 299 of the Immigration and Refugee Protection Regulations, a claimant of refugee protection is

exempted from payment of fees that are normally required for such an application. The State party submits that on 21 January 2008 when the author and his wife made applications for work permits, their claim for refugee status had already been denied and all recourses had been exhausted. The author and his family, therefore, became subject to an enforceable removal order and thus he and his wife were no longer entitled to a work permit pursuant to regulations 206 and 209 of the Immigration and Refugee Protection Regulations. The State party, therefore, submits that their application for work permits was rejected in accordance with the law. The State party also submits that, in June 2008, when the authors were under a temporary judicial stay of removal and made a new application, their application could not be processed without the payment of fees.

4.8 As regards the claim of refusal of free legal assistance and the failure to access justice, the State party states that free legal assistance in the State party for persons in financial need is provided for in the province of Ontario by the Ontario Legal Aid Plan, which covers refugee hearings. However, in the event that legal aid coverage through the plan is not available for a particular legal proceeding, the State party states that there exist legal clinics and student legal aid clinics which may be able to offer assistance. The State party submits that, on 6 April 2009, the author brought an application to the Federal Court for leave and for judicial review of the refusal by the Prime Minister of Canada, the Minister of Citizenship and Immigration, the Minister of Public Safety, the Minister of Health, the Minister of Justice and the Attorney General to give answers and provide solutions for his various complaints, but that he did not pay the requisite court filing fees for this application.

4.9 On admissibility, the State party submits that the whole communication should be declared inadmissible *ratione materiae* as the author does not allege violations of the Covenant but instruments in relation to which the Committee does not have supervisory competence, such as the Universal Declaration of Human Rights and the Convention against Torture. In the alternative, to the extent that some allegations seem to raise issues under the Covenant, the State party submits that the allegations have not been sufficiently substantiated for the purpose of admissibility. In the further alternative, the State party submits that the allegations have not been established to the degree of proof required to found a determination of a violation of the Covenant.

4.10 With regard to allegations appearing to raise issues under the Covenant, the State party provides a detailed response to each one of them. The State party considers that the alleged risk of death or torture or inhuman treatment or punishment in the Republic of Moldova raises issues under articles 6 and 7. However, the State party submits that the author's allegations that if deported to Romania he and his family will in turn be deported to the Republic of Moldova, where they risk death or torture or inhuman treatment or punishment, have not sufficiently been substantiated. The State party, therefore, submits that those aspects of the author's communication are inadmissible pursuant to article 2 of the Optional Protocol.[3] On this point, the State party underscores the fact that while authors

[3] In this context, the State party refers to the Committee's communications No. 970/2001, *Fabrikant* v. *Canada*, decision of inadmissibility adopted on 6 November 2003, para. 9.3; No. 1234/2003, *P.K.* v. *Canada*, decision of inadmissibility, para. 7.3; No. 1562/2007, *Kibale* v. *Canada*, decision of inadmissibility adopted on 22 July 2008,para. 6.4; No. 1534/2006, *Pham* v. *Canada*, decision of inadmissibility adopted on 22 July 2008, para. 7.4; No. 1481/2006, *Tadman and Prentice* v. *Canada*, decision of inadmissibility adopted on 22 July 2008, para. 7.3; No. 1455/2006, *Kaur* v. *Canada*, decision of inadmissibility adopted on 30 October 2008, para. 7.3; No. 1638/2007, *Wilfred* v. *Canada*, decision of inadmissibility adopted on 30 October 2008, para. 4.3; No. 1766/2008, *Anani* v. *Canada*, decision of inadmissibility adopted on 30 October 2008, para. 4.2.

of a communication need not prove their case "[they] must submit sufficient evidence in substantiation of [their] allegations as will constitute a *prima facie* case".[4]

4.11 The State party further submits that, since the allegations concerning risks in Romania are based on substantially the same facts and evidence as was presented to IRB, PRRA and during the H&C application, it is not the role of the Committee to re-evaluate the facts and evidence unless it is manifest that the domestic tribunal's evaluation was arbitrary or amounted to a denial of justice.[5] In the alternative, the State party argues that, in the event that the Committee wishes to re-examine the findings of fact and credibility of domestic tribunals, the State party recalls that IRB determined that the author and his family did not have a credible fear of return to Romania: firstly, based on their failure to claim refugee protection in Spain, Portugal and the United States of America where they lived between 2001 and 2005. Secondly, that the author and his family were country shopping based on the author's admission in oral testimony under oath that he did not seek refugee protection in Portugal because he would not have the salary in Portugal that he would have in Canada. Thirdly, the author was not credible in asserting that he could not obtain domicile in 2001 since, in fact, evidence indicated that he did not obtain Romanian domicile in 2001 because he left for teaching positions in Western Europe. Lastly, on a balance of probabilities, the author and his family would have the rights of all citizens in Romania and that they would not be deported to the Republic of Moldova after three months of their residence.[6] The State party submits that IRB based this finding on the documentary evidence before it such as the Romanian Constitution and other reports which stipulated, inter alia, the equality of citizens; the right of citizens to return to Romania; and that citizens cannot be expelled.

4.12 With regard to the Romanian Law No. 302/2004, the State party submits that the law does not allow for the expulsion of its citizens outside the extradition context. Therefore, in the absence of evidence that the author will be wanted for any criminal charges in the Republic of Moldova that may potentially put him at risk of an extradition request, the State party submits that the author has not established that he and his family would be directly or indirectly at risk of any treatment in violation of article 6 or 7 of the Covenant upon their return to Romania. The State party recalls that the Committee has held that in cases of extradition or deportation, the removing State is responsible for ensuring that the individual will not be exposed to a real risk of a violation of his rights under article 6 in the receiving State.[7] It recalls that a real risk of a violation of an individual's rights means that it must be "the necessary and foreseeable consequence of the deportation", which the material submitted does not support such a conclusion. The State party further submits that the material does not, even on a prima facie basis, establish the fact that "the necessary and foreseeable consequence of the deportation"[8] would be that they would be deported by Romania to the Republic of Moldova where they would be persecuted. With respect to allegations under article 7, the State party recalls that "State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment

[4] *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40* (A/39/40), para. 588.

[5] See communications No. 1234/2003, para. 7.3; No. 1481/2006, para. 7.3; No. 1534/2006, para. 7.4; No. 1562/2007, para. 6.4.

[6] See State party's comments on the admissibility and the merits, dated 3 June 2009, p. 16.

[7] See communications No. 539/1993, *Cox* v. *Canada*, decision of inadmissibility adopted on 3 November 1993, paras. 10.1–10.5; No. 470/1991, *Kindler* v. *Canada*, Views adopted on 30 July 1993, para. 14.3; No. 469/1991, *Ng* v. *Canada*, Views adopted on 5 November 1993, paras. 14.1–14.2; No. 829/1998, *Judge* v. *Canada*, Views adopted on 5 August 2002, para. 10.2.

[8] See communications No. 692/1996, *A.R.J.* v. *Australia*, Views adopted on 28 July 1997, paras. 6.11–6.13; No. 706/1996, *G.T.* v. *Australia*, Views adopted on 4 November 1997, paras. 8.1–8.2.

upon return to another country by way of their extradition, expulsion or refoulement".[9] The State party submits that the author's allegations do not establish a risk at a level beyond mere "theory or suspicion" and certainly do not establish a real and personal risk of torture or cruel, inhuman or degrading treatment or punishment. The State party, therefore, submits that their claims in this regard are inadmissible pursuant to article 2 of the Optional Protocol on the grounds on non-substantiation.

4.13 In respect to the alleged denial of free legal aid, to assist the author with his immigration and court proceedings and other various complaints to State authorities, the State party notes that during the IRB hearing, the author was represented by a barrister and solicitor, and he therefore cannot complain of lack of legal representation at his refugee determination hearing. The State party also recalls that the author alleges that the lawyers that the author consulted asked for additional money (which he terms "extortion") due to the additional time required to review the large volume of documents he sought to present as evidence. The State party submits that there is no requirement under the Covenant for the State to provide free legal aid to litigants wishing to bring innumerable complaints and proceedings. The State party recalls the Committee's Views in *J.O. et al v. Belgium*[10] in which the Committee noted that article 14 of the Covenant obliges States parties to provide legal aid only within the framework of criminal proceedings. Accordingly, the authors' complaints in that case about the competence of their counsels in various civil proceedings, and their inability to pay for continued legal representation, were determined to be incompatible *ratione materiae* with the provisions of the Covenant, under article 3 of the Optional Protocol.

4.14. With regard to allegations concerning the insufficient provision of financial assistance, inadequate free health care and refusal of work permits, the State party submits that these are substantially economic rights and as such, are inadmissible *ratione materiae* under article 3 of the Optional Protocol. In the alternative, the State party submits that these aspects of the communication are inadmissible on the grounds of non-substantiation pursuant to article 2 of the Optional Protocol. On this point, the State party relies on the Committee's Views in *Wilfred v Canada*[11] in which an author's communication based on "general denunciations", without any information to substantiate the alleged violations, was held to be inadmissible under article 2 of the Optional Protocol.

4.15 The State party submits that on the basis of the foregoing considerations, the entire communication should be declared inadmissible on grounds of incompatibility with the provisions of the Covenant pursuant to article 3 of the Optional Protocol or in the alternative, on grounds of non-substantiation pursuant to article 2 of the Optional Protocol. The State party submits that should the communication be declared admissible, the Committee should on the basis of State party's submissions made herein determine that it is wholly without merit.

[9] General comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. A, para. 9. More recently, see general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III , para. 12.

[10] Communication No. 1417/2005, decision of inadmissibility adopted on 28 October 2005, para. 4.4.

[11] Communication No. 1638/2007, para. 4.3.

The author's comments

5.1 On 14 September 2009, the author submitted his comments and reiterates his claims. He adds, however, a further claim under article 7 of the Covenant.

5.2 The author alleges that, on 25 April 2009, during his family's deportation to Romania, officers of the Canada Border Services Agency (CBSA) tortured and abused him and his family, and that they also confiscated and destroyed his documents and fax machine that the author used to transmit documents to the Committee. The author further alleges that on 24 April 2009, three people in civilian clothes, who claimed to have been officers from the Canadian Immigration Office, assaulted the author and attempted to sexually abuse their 10-year-old daughter. The author alleges that it took the intervention of their neighbours and friends for the officers to stop their "criminal actions".

5.3 The author further alleges that, during the enforcement of their deportation order, officials of the State party ordered an obstetric doctor in Toronto, who attended to T.G. during her pregnancy, not to issue medical certificates. The author alleges that the doctor insisted on receiving a fee of 35 dollars for any type of medical certificate. The author further alleges that, on 22 April 2009, T.G., while seven months pregnant, was forced to move over 250 kg of their luggage when the author was arrested by CBSA officers. The author further alleges that the family was put under arrest in a special hotel and were only given food sometime around 2.00 a.m. after "20 hours of torture".

5.4 The author also alleges that, on 23 April 2009, he was interrogated at the enforcement centre of Toronto airport when he complained and requested a lawyer and to have their confiscated goods released, which was refused. The author alleges that they were arrested and moved to Econolodge hotel and, whilst there, an enforcement officer came and took humiliating photos of him and his wife and threatened to kill them if they complained to officials.

5.5 The author states that, upon arrival in Romania on 27 April 2009, the Romanian Boundary Police told them that they would have to leave Romania for Moldova after three months if they did not obtain permanent domicile in Romania. The author alleges his children are not admitted to school and they do not have social and medical assistance. The author further alleges that the family has to evade arrest and deportation as they are at a risk of re-deportation to the Republic of Moldova.

5.6 In response to the specific issues raised by the State party, the author disputes that he had admitted to "country shopping" and to testifying that the reason he did not apply for refugee status in Portugal was because he would receive a better salary in Canada.

5.7 With regard to the State party's argument to declare the communication inadmissible *ratione materiae* on the grounds that the Committee does not have competence over alleged violations of the Universal Declaration of Human Rights and the Convention against Torture, the author submits that it is ridiculous to state that the Committee does not have competence over alleged violations of these instruments. In this regard, the author quotes the preamble of the Covenant, which refers to the recognition that, in accordance with the Universal Declaration of Human Rights, human beings enjoy civil and political freedom as well as economic, social and cultural rights.

5.8 In response to the State party's argument that allegations of refusal of work permits and health coverage, starvation and insufficient financial support are squarely economic complaints and, therefore, they are outside the scope of the Covenant, the author argues that these are not economic complaints. The author submits that the illegal refusal of work permits, medical assistance and starvation and the denial of prenatal care must be viewed in the light of the prohibition against torture and discrimination on the basis of immigration

status. The author therefore submits that the Committee has competence to deal with these allegations in the light of the corresponding provisions of the Covenant.

Additional observations by the State party on admissibility and merits

6.1 On 2 November 2010, the State party submitted additional observations on the admissibility and merits of the communication.

6.2 With regard to allegations of illegal arrest before and during deportation and the subjection to torture, assault and sexual violations, the State party submits a summary of statements of CBSA officers who were charged with the task of facilitating the removal and deportation of the author and his family.[12] In these statements, the officers deny any ill-treatment and assault. The State party further submits that, on 21 April 2009, Officers Andrea Duncan and John Hawley attended the family's apartment and found the author, who stated that he and his family would make arrangements with a friend to drive them to the airport the following day. When T.G. arrived at the apartment, she confirmed the family's travel arrangements. Furthermore, the State party states that an official from the children's school who had come to the apartment with T.G. confirmed that the children would no longer be attending school. The State party submits that on the basis of this information, the officers determined that the family would appear at the airport for removal and did not have to be detained. The State party therefore denies that the author and his family members were arrested and assaulted, and that their belongings were seized.

6.3 In respect to allegations that, on 22 April 2009, T.G., who was seven months pregnant, was made to carry 250 kg of luggage and that the family was put under hotel arrest and tortured with hunger after they were not allowed on the plane, the State party submits that the family missed their plane because they had excess luggage. As such, the family was moved to Econolodge hotel. The State party submits that, although at the time of arrival at the hotel, the kitchen was closed, hotel management agreed to open the kitchen and bring the family a meal to their room at around 10:30 p.m. and not 2.00 a.m. as alleged by the author. The State party states that the officers' conversation and interaction with the family was minimal, kept to pleasantries and was professional throughout the process.

6.4 The State party denies the allegations that, on 23 April 2009, the author was interrogated at Toronto Airport at 10.00 a.m. and that, notwithstanding a complaint to Officer David Sullivan of the Enforcement Centre and a request for a lawyer, nothing was done to assist them. The State party submits that the author reported to Officer David Sullivan to finalize arrangements for the family's rescheduled deportation on 25 April 2009. The Officer determined that the author and his family still had access to their apartment and could stay there until their date of their deportation. As such, two officers, Carlson and Stager, were asked to take the author's luggage that the family was unable to take to the apartment (nine pieces in total) to a storage facility at the airport until the family's deportation. The State party denies the author's allegations that the author was arrested and refused access to a lawyer and that his family had their documents and books confiscated on this day.

6.5 The State party also denies allegations that on the night of 23–24 April 2009, three people in civilian clothes who stated that they were officers of the Canadian Immigration Office assaulted the author and attempted to "violate sexually" his 10-year-old daughter until they were rescued through the intervention of neighbours and friends. The State party submits that these allegations are libellous and inflammatory as no evidence from the

[12] See statements attached to the supplemental submission by the State party to the Committee dated 1 November 2010.

neighbours and friends has been adduced by the author. The State party submits that it has no records indicating that any of its officials had any interaction with the family on this particular day. The State party argues that considering that the author's deportation had been rescheduled for 25 April 2009, there would have been no reason for its officers to visit the family on these days.

6.6 With regard to the author's status in Romania, the State party submits that the fact that the author and his family have been in Romania for a year after their arrival in April 2009 constitutes strong evidence that they will not be deported in the future. Furthermore, the State party submits that Romania became a member of the European Union in January 2007 and as such its citizens, including the author and his family, can travel without restriction throughout other European Union countries. The State party therefore argues that if the author and his family are dissatisfied with their life in Romania, they can freely take up residence and look for employment in any of these European Union countries. The State party submits, therefore, that the new complaints regarding the manner of their removal and their status in Romania should be declared inadmissible on the grounds of non-substantiation, pursuant to article 2 of the Optional Protocol. In the alternative, the State party requests that the author's allegations be declared to be wholly without merit.

Author's comments on State party's additional observations

7.1 On 14 December 2010, the author submitted comments on the State party's additional observations on admissibility and merits. In these comments, the author largely reiterates the comments contained in his previous submission. However, the author also raises a number of issues that were not previously addressed therein.

7.2 With regard to their status in Romania, the author reiterates that T.G. is a dual national of Romania and Ukraine. He alleges that the latter country does not recognize dual citizenship, and as such this has substantial consequences on her and the status of their children. The author submits that Ukranians and Moldovans are treated differently in Romania. The author also claims that they do not have a legal status in Romania, and without a source of income they survive on support from some ethnic Romanians and other people. The author alleges that he and his wife cannot obtain work permits. The author also submits that, based on his fellowship experience in some of the European Union countries, in order to be eligible to apply for positions, it is necessary to present, among other things, "criminal certificates" from all countries of citizenship and countries where they have lived for more than six months. The author submits that, since Ukraine and the Republic of Moldova did not provide such documents to his family when they requested for them in 2005, they could not be eligible to be considered for employment opportunities.

7.3 In respect to the statements attached to the State party's additional observations on admissibility and merits, the author argues that, in this submission, the State party made further falsifications protecting abuse and criminal actions of Canadian officials.

7.4 As regards the State party's comments that on 21 April 2009 CBSA officers attended the author's apartment, where the author stated that he has made arrangements to be driven to the airport by a friend, the author alleges that the officers were not allowed in his apartment. The author alleges that, instead, the officers forced his apartment door open and arrested him before allegedly making an unauthorized search. One police officer and a member of CSIC who extorted money from them and organized their illegal arrest, torture and attempt(s) to violate their daughter. He further alleges that the three people in civilian clothes that came to their apartment on 24 April 2009 indirectly told them that they acted in collusion with the police officer and CSIC member

7.5 The author also alleges that not only did the State party's officials take humiliating photos of their children, but they also put them on the Internet.

7.6 With regard to the State party's response that no official interacted with the family on 24 April 2009 and the complaints of assault and the intervention by neighbours and friends to stop the assault are unsubstantiated, the author submits that one can ask for witness depositions from their neighbours who can confirm these allegations. The author further states that the principal and teachers from their daughters' school could be asked to lodge witness depositions.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee notes the State party's arguments that the communication should be considered inadmissible on grounds of incompatibility with the provisions of the Covenant pursuant to article 3 of the Optional Protocol, or in the alternative, on grounds of non-substantiation, pursuant to article 2 of the Optional Protocol. In this regard, the State party submits that the communication is inadmissible *ratione materiae* as it alleges violations of the Universal Declaration of Human Rights and the Convention against Torture. However, the author submits that the Committee has competence to consider violations under these instruments. In the alternative, the author argues that his claims must be viewed to allege violations of rights under the Covenant.

8.4 The Committee observes that the author's submissions are voluminous and might present difficulties in ascertaining the specific claims that are brought. In this regard, it is prudent that the author's claims are identified for purposes of considering the question of admissibility. The Committee notes that the author's claims emanate from the author's pre-removal period from Canada and the actual removal. They can be said to fall under six heads. First, the author's claim relates to Canada's refusal to recognize him and his family as refugees and their eventual deportation to Romania where they claim they are at a risk of being re-deported to the Republic of Moldova where they are likely to be tortured. Second, the author claims that he and his wife were refused work permits in Canada and as such were made to survive on insufficient welfare grant which amounted to starvation and torture. The author submits that the refusal to grant them work permits and, therefore, access to employment opportunities is discriminatory on the basis of, inter alia, their immigration and education status. Third, the author alleges that their rights to liberty and security of the person were violated when the State party's agents put up their personal data on the website without their consent. Fourth, the author alleges a violation of his rights to an effective remedy and access to justice. Under this head, the author alleges that the requirement to pay court and application fees barred them from pursuing justice because they could not afford to pay for court filing fees. He also alleges that the court process was fraught in that the legal officers who were assigned to them falsified affidavits and that during hearings they were not allowed to provide crucial evidence that affected the outcome of the proceedings. Fifth, the author alleges that the State party refused to give him and his family access to medical assistance. Lastly, the author alleges that during their removal from the State party, they were arrested, harassed and starved. The author alleges that he was assaulted and that his daughter was threatened with sexual abuse.

8.5 The Committee observes that under article 1 of the Optional Protocol, it is only competent to consider communications that allege violations of rights set forth in the

Covenant. The Committee is, therefore, incompetent to consider communications that allege violations of other instruments. However, the Committee notes that the author's claims above may also raise issues under articles 6, 7, 9, 14, 17 and 23 the Covenant.

8.6 With regard to the author's claim that his removal from Canada to Romania would expose him and his family to re-deportation to the Republic of Moldova where he was previously persecuted and tortured because of his anti-communist and human rights activities, the Committee notes that the author argues that article 24 of Romania Law No. 302/2004 on international judicial cooperation in criminal matters, allows Romania to deport people with dual nationality to countries of their permanent residence in the event that there is an extradition request from that country for purposes of prosecuting criminal charges. The author also submits that, although a Romanian citizen, his citizenship in Romania is not effective as he and his family have not been able to establish domicile and that this effectively puts him and his family at a risk of re-deportation as they, allegedly, can only lawfully live in Romania for no more than three months. The Committee also notes the observations of the State party that the material submitted by the author does not support the conclusion, even on a prima facie basis, that the necessary and foreseeable consequence of the deportation would be that the author and his family would be deported by Romania to the Republic of Moldova where they would be persecuted.

8.7 The Committee recalls that an author of communication must, for purposes of admissibility, sufficiently substantiate that he is a victim of an alleged violation of the Covenant. The Committee observes that in order to be re-deported to the Republic of Moldova under the provisions of article 24 of Romania Law No. 302/2004, there must be an extradition request from the Republic of Moldova that the author is wanted for criminal proceedings. The author has not provided any indication that he is wanted or might be wanted on any criminal charges in the Republic of Moldova. The Committee, therefore, concludes that the author has not substantiated, for purposes of admissibility, that there is a real risk that he and his family will be deported from Romania to the Republic of Moldova. The claim is, therefore, inadmissible for non-substantiation under article 2 of the Optional Protocol.

8.8 With regard to the remaining claims, the Committee recalls its jurisprudence that an author must provide sufficient information in order to substantiate the claims and not just base the communication on general denunciations.[13] The Committee notes that the author in the present case has made several allegations of violations of his rights that might fall under articles 6, 7, 9, 14, 17 and 23 of the Covenant. However, the author does not adduce any meaningful evidence to substantiate his claims of violation of these rights. In the circumstances, the Committee finds that the author has failed to sufficiently substantiate, for purposes of admissibility, that he and his family are victims of alleged violations of rights under the Covenant. The claim is, therefore, inadmissible under article 2 of the Optional Protocol.

9 The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol; and,

(b) That the decision should be transmitted to the State party and to the author.

[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.]

[13] Communication No. 1638/2007, para. 4.3.