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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. 2771/2016*, **

Communication submitted by:	X and Y (not represented by counsel)
Alleged victims:	The authors
State party:	Canada
Date of communication:	22 March 2016 (initial submission)
Date of adoption of decision:	3 November 2016
Subject matters:	Fair trial; freedom of expression; non-discrimination; lack of an effective remedy
Procedural issues:	Exhaustion of domestic remedies; compatibility with the provisions of the Covenant; substantiation of claims
Substantive issues:	Fair trial; freedom of expression; non-discrimination
Articles of the Covenant:	2 (3), 14 (1), 19 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The authors of the communication are X and Y, both nationals of Saudi Arabia residing in Canada. They claim to be the victims of a violation, by Canada, of their rights under articles 2 (3), 14 (1), 19 and 26 of the Covenant. The Optional Protocol entered into force for Canada on 19 August 1976.

Factual background

2.1 X was a medical doctor practising in Saudi Arabia. In June 2005, he began a neurosurgery residency at the University of Ottawa, where he progressed successfully through the first two years of the programme but was placed on a formal remediation plan

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.

at the end of the third year. In 2009, the author started criticizing the quality of the programme and the administration, including for discrimination on the basis of nationality and race, and called the administration a "corrupted dictatorship". On 1 December 2009, the Residency Training Committee of the University of Ottawa decided to dismiss the author from the programme allegedly on account of his behaviour and because of his criticism of the administration. The author's appeal was rejected on 28 March 2010 by a joint entity under the Postgraduate Evaluation Subcommittee; his appeal to the Faculty Council was rejected on 20 September 2010, and the appeal to the Senate Appeals Committee was rejected on 28 January 2011. The author appealed to the Ontario Superior Court of Justice on an unspecified date claiming denial of procedural fairness by the Senate Appeals Committee and an error in its decision to dismiss him from the programme, as well as a violation of his right to freedom of expression. The Court rejected the author's appeal on 28 November 2011, having found that the decision of the Senate Appeals Committee was reasonable and procedurally fair and that the Court had no grounds for revising the academic decision of a university. The author's requests for leave to appeal to the Court of Appeal for Ontario and to the Supreme Court of Canada were denied on 1 October 2012 and 7 March 2013 respectively. The author's civil action for damages to the Ontario Superior Court of Justice was rejected on 11 April 2013 as an abuse of process. The additional requests for leave to appeal were rejected on 18 October 2013 by the Court of Appeal for Ontario and on 13 March 2014 by the Supreme Court of Canada.

2.2 Y started her residency in obstetrics and gynaecology at the University of Ottawa in 2008. On the basis of her previous professional experience, she was enrolled in the third year of the programme. In 2009, she was placed on a three-month remediation plan. In 2012, the author appealed the decision of the Residency Training Committee to place her on probation to the Faculty Council Appeals Committee. Her appeal was rejected on 21 January 2013. Her subsequent appeal to the Senate Appeals Committee was rejected on 29 August 2013. The author appealed to the Ontario Superior Court of Justice claiming that the decision of the Senate Appeals Committee was unreasonable and violated procedural fairness. The Court rejected the appeal on 13 June 2014. On 10 October 2014, the author's request for leave to appeal was rejected by the Court of Appeal for Ontario.

The complaint

3.1 The authors claim that, since the university authorities that adopted the decisions in their cases were not tribunals established by law, they were denied a fair process under article 14 (1) of the Covenant.

3.2 X claims that one of the reasons for his dismissal was his criticism of the programme administration and, therefore, that his right to freedom of expression under article 19 (2) of the Covenant was violated.

3.3 The authors also claim that their rights under article 26 of the Covenant were violated because they were subjected to discrimination by the university authorities.

3.4 Moreover, the authors allege that the State party has failed to provide them with an effective remedy, in violation of article 2 (3), read in conjunction with articles 14 (1), 19 (2) and 26 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 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.

4.2 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.

4.3 The Committee notes that the claims of the authors under article 14 (1) of the Covenant relate to the administrative decisions made by the university authorities based on the facts available to them concerning the performance and behaviour of the authors. The Committee considers, however, that the authors did not establish that they had a prima facie right under Canadian law to participate in a medical residency programme and that, as a result, the determination of such a right should have been the subject of a suit of law adjudicated, pursuant to the provisions of article 14 (1) of the Covenant, by a tribunal established by law, not by the university authorities. In any event, the authors' appeals against the decisions of the university authorities were examined by the State party's courts and nothing on file suggests that the courts conducted themselves in violation of article 14 (1) of the Covenant. The Committee thus concludes that the claims of the authors under article 14 (1) of the Covenant are inadmissible under article 3 of the Optional Protocol and are incompatible with the provisions of the Covenant.

4.4 As for the authors' claims concerning the alleged violation of their rights under articles 19 (2) and 26, the Committee notes that they are based solely on the authors' assumptions and are not duly supported by the relevant documents. From the material on file it also seems that Y has not raised her claim under article 26 of the Covenant before the national courts and has failed, therefore, to exhaust all domestic remedies. The Committee thus finds the authors' claims inadmissible owing to the lack of substantiation under article 2 and owing to the failure to exhaust domestic remedies under article 5 (2) (b) of the Optional Protocol.

4.5 In the light of the above, the Committee decides not to examine the remainder of the authors' claims under article 2 (3), read in conjunction with articles 14 (1), 19 (2) and 26 of the Covenant.

5. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the authors.