

CANADA / JUDGMENT

Singh v. Canada (Public Safety and Emergency Preparedness)

2026 FC 271

COURT

Federal Court

DECIDED

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Decision Content

Date: 20260227

Docket: IMM-16168-24

Citation: 2026 FC 271

Ottawa, Ontario, February 27, 2026

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

KULWINDER SINGH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application for judicial review of a decision by the Immigration Division [ID] of the Immigration and Refugee Board, dated August 20, 2024 [Decision].

[2] The ID found the Applicant inadmissible to Canada under section 35(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] for crimes against humanity committed while he served in the Indian Army.

[3] For the reasons outlined below, this application is dismissed.

II. Background Facts [4] The Applicant is a citizen of India. He is neither a Canadian citizen nor permanent resident and is therefore a foreign national under IRPA. The Applicant entered Canada and claimed refugee status in 2016. In the Applicant's Basis of Claim Form and other documents, he indicated he voluntarily entered the Indian Army in February 1985 and retired in February 2015 after 30 years of service.

[5] During his service, the Applicant was a member of the 17th Punjab Regiment except when he served with the National Security Guard Black Cat Commando from 2010 to 2013. From May 1988 through November 1991, the Applicant was stationed in Jhanghar (Jammu & Kashmir state), with the rank of a Sepoy, as well as the period of September 2010 through November 2013 while serving, in Calcutta (West Bengal) with the Black Cat Commando, with rank of Subedar). The Applicant received a military honour as he was awarded the Special Service medal with clasp.

[6] In September 2017, the Applicant confirmed these details during an interview with a Canada Border Services Agency Enforcing Law Agent. The Applicant's service in the Indian Army is not in dispute.

[7] Based on the Applicant's career in the Indian Army, a report dated June 26, 2018, was prepared pursuant to section 44(1) of IRPA. The report alleged the Applicant was inadmissible to Canada on security grounds, more precisely under section 35(1)(a) of IRPA, which concerns the violation of human or international rights for committing crimes against humanity and war crimes outside of Canada. The Applicant's refugee claim was suspended pending the outcome of his admissibility hearing.

[8] The admissibility hearing before the ID was heard across three sittings in September 2023, December 2023, and March 2024. The Decision was rendered on August 20, 2024.

III. Decision Under Review A. Crimes Against Humanity [9] The ID concluded there are reasonable grounds to believe that the Applicant is inadmissible pursuant to section 35(1)(a) of IRPA for complicity in crimes against humanity because of his membership in the Indian Army from 1988 to 1991 and 2006 to 2009.

[10] The ID found the reliable, objective, and documentary evidence stated the Indian Army committed crimes against humanity in the Jammu and Kashmir region between 1988 and 1991 and between 2006 and 2009. The Indian Army operating in these regions during these periods of political and civil unrest engaged in tortured, rape, and committed extrajudicial killings in widespread or systematic attacks directed against the civilian population and real or suspected militants, with the full knowledge of the army and the participants.

[11] The ID considered the acts committed constitute “crimes against humanity” and “war crimes” as defined in section 6(3) of the Crimes Against Humanity and War Crimes Act (SC 2000, c 24 [CAHWCA]) and meet the criteria established by the Supreme Court of Canada in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [Mugesera] to determine whether a criminal act is a crime against humanity.

[12] The ID considered itself bound by the decision of this Court in *Minister of Public Safety and Emergency Preparedness v Verbanov*, 2021 FC 507 which concluded that a state policy is required for a crime to be considered a crime against humanity, specifically with respect to acts committed after the Rome Statute of the International Criminal Court, UN Doc A/CONF.183/9, July 17, 1998, came into force, in essence on and after July 17, 1998. The ID held, in the case at bar, the crimes against humanity committed by the Indian Army were clearly in furtherance of a state policy.

B. Ezokola Factors for Complicity [13] Following the guidance of the Supreme Court of Canada in *Ezokola v Canada Citizenship and Immigration*, 2013 SCC 40 [Ezokola], the ID assessed whether the Applicant was complicit in the commission of crimes against humanity and war crimes.

[14] The ID concluded the Applicant had voluntarily made a significant contribution to the crimes against humanity committed by the Indian Army with full knowledge of both the crimes and the Army’s criminal purpose while he was in the Jammu and Kashmir region from 1988 to 1991 and 2006 to 2009. The Applicant was not a credible witness as the ID found he minimized the crimes of the Indian Army and the 17th Punjab Regiment, as well as his involvement in those crimes. The Applicant did not attempt to leave the Indian Army. Instead, he joined an elite commando unit from 2010 to 2013.

IV. Issues and Standard of Review [15] The sole issue is whether the decision under review is reasonable. In this respect, the role of the reviewing court is to examine the decision maker’s reasoning and determine whether the decision is based on an “internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 64). Although the party challenging the decision bears the onus of demonstrating the decision is unreasonable, the

reviewing court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (Vavilov at para 99).

[16] In the context of this judicial review, the Court’s task is not to determine whether there were reasonable grounds to believe the Applicant was inadmissible, but rather to determine whether there were such grounds to find the ID’s conclusion reasonable (Rahaman v Canada (Citizenship and Immigration), 2019 FC 947 at para 9; Lapaix v Canada (Citizenship and Immigration), 2025 FC 111 at para 43 [Lapaix]).

V. Legislative Framework [17] Section 35(1)(a) of IRPA provides that permanent residents and foreign nationals are inadmissible to Canada on grounds of violating human or international rights for committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the CAHWCA:

[18] Subsection 35(1) of IRPA states:

Human or international rights violations

Atteinte aux droits humains ou internationaux

35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

35 (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

- (a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;
- a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la Loi sur les crimes contre l’humanité et les crimes de guerre;

[19] Section 6(1) of the CAHWCA provides that every person outside of Canada who commits genocide, a crime against humanity, or a war crime is guilty of an indictable offence.

[20] Sections 4–7 of CAHWCA define offences constituting genocide, crimes against humanity, and war crimes. Section 6(3) defines crimes against humanity as:

... murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (crime contre l’humanité)

... Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity)

[21] The facts constituting inadmissibility must be assessed in light of section 33 of IRPA which sets out the following:

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[22] The standard of assessment for the facts that constitute inadmissibility is that of “reasonable grounds to believe,” requiring more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities (Mugesera at para 114). In essence, the ID will conclude that reasonable grounds exist “where there is an objective basis for the belief which is based on compelling and credible information” (Mugesera at para 114).

[23] Though this standard is permissive, it is not without limits (Lapaix at para 44). The objective basis for the belief must be based on compelling and credible evidence, and the analysis from the decision under review cannot cause “the reviewing court to lose confidence in the outcome reached by the decision maker” (Vavilov at para 122). In other words, a lower standard of proof does not entitle the decision maker to rely on ambiguous, suspect, or unverifiable information (Gonzalez Nunez v Canada (Citizenship and Immigration), 2024 CF 1948 at para 40; Canada (Citizenship and Immigration) v USA, 2014 FC 416 at paras 19-24). Assessing the quality of information remains the decision maker's task (Vavilov at para 125).

VI. Analysis A. Preliminary Issue: New Submissions [24] The Applicant has raised new issues and arguments for the first time on judicial review in the Applicant's Reply. In particular, the Applicant argues the Decision violates his freedom of association pursuant to section 2(d) of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter] and does not respect the International Covenant on

Civil and Political Rights, 1967 [ICCPR]. He further submits the Charter and the ICCPR would require some element of criminal complicity before excluding someone from access to refugee protection.

[25] The Respondent makes no submissions on these new arguments.

[26] In *Tetreault v Attorney General of Canada*, 2025 FC 1337 at paragraphs 41, 47 [Tetreault], Justice Ngo provides a summary of the law on raising new issues before the Court on judicial review:

[41] First, Rule 301 requires that an applicant set out in their Notice of Application a complete and concise statement of the grounds they intend to argue. The Federal Court of Appeal has held that Rule 301 is a mandatory provision with limited exceptions. It ensures that a respondent receives adequate notice of the case being brought against them so that they can meaningfully respond (*Komleva v Canada (Attorney General)*, 2024 FC 1562 at para 21 citing *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at paras 38-42).

...

[47] Second, it is well established in the case law that courts will generally refuse to exercise their discretion to consider a new issue on judicial review where the issue could have been raised before the original decision-maker (*Canada (Attorney General) v EllisDon Corporation*, 2024 FCA 200 at para 54; *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26 [*Alberta Information and Privacy Commissioner*]).

[27] Here, the Applicant did not make submissions on the Charter and ICCPR in his Application for Leave and Judicial Review. Rather, these submissions are found in the Applicant's Reply. Therefore, these issues are not properly before the Court (*Tetreault* at para 40). The Court will not consider them.

B. The Decision Under Review Is Reasonable (1) A Link to a Criminal Purpose is Sufficient to Ground a Crime Against Humanity [28] The Applicant submits that the officer erred in the application of the legal principles by not requiring a criminal act to ground the analysis of whether the Applicant was complicit in or contributed to a crime against humanity. The Applicant states complicity requires a link to a particular crime.

[29] The Respondent submits the ID applied the correct legal principles. The ID identified the correct tests to establish a crime against humanity from *Mugesera* and complicity from *Ezokola*. The Respondent points out the ID correctly identified that the Respondent must demonstrate the Applicant made a voluntary, significant, and knowing contribution to the criminal act or criminal purpose. The Applicant's contribution does not have to be linked to an identifiable crime but can be linked to "wider concepts of common design, such as the accomplishment of an organization's purpose by whatever means are necessary" (*Ezokola* at para 87; *Canada (Citoyenneté et Immigration) v Singh*, 2021 FC 993 at para 34).

- [30] Respectfully, I agree with the Respondent. The Supreme Court of Canada instructs that: “[while] individuals may be complicit in international crimes without a link to a particular crime, there must be a link between the individuals and the criminal purpose of the group — a matter to which we will later return.” (Ezokola at para 8).
- [31] The ID was therefore entitled to conclude the Applicant was complicit and made a voluntary, significant, and knowing contribution to either a criminal act or the criminal purpose of the organization. The ID referred to the criminal purpose to establish the Applicant was complicit in or had contributed to a crime against humanity.
- (2) The ID Applied the Relevant Section of IRPA and the ID’s Assessment of the Applicant’s Complicity in the Commission of Crimes Against Humanity is Reasonable [32] The Applicant submits the ID improperly applied the section 34 test rather than the section 35 test as the Applicant claims the Respondent “[wishes] to import the jurisprudence on membership under Section 34(1)(f)”. While the Respondent makes no direct submissions on this issue, the Respondent does refer to section 35(1) of IRPA in their Memorandum and not section 34(1)(f) as the Applicant alleges.
- [33] With respect, the Applicant’s argument is without merit. The ID does not refer to the legal test for section 34(1)(f) in the Decision and found the Applicant inadmissible under subsection 35(1)(a) of IRPA.
- [34] The Applicant further submits, even if serious human rights abuses have been committed in India, the objective situation does not lend itself to a finding of crimes against humanity. The Applicant submits the ID did not engage with the documentary evidence on human rights violations in India.
- [35] Contrary to the Applicant’s submissions, the ID completed a thorough analysis of the documentary evidence on country conditions in India, particularly about human rights violations committed by the 17th Regiment.
- [36] The ID engaged with the evidence. Vavilov does not require the administrative decision-maker explicitly refer to all of the evidence but requires they “meaningfully grapple with key issues or central arguments raised by the parties” (at para 128).
- [37] I agree the concept of crimes against humanity is not meant to be invoked any time the army or the police have been involved in some kind of abuse. However, the criminal acts committed by the Applicant’s Regiment of the Indian Army at the centre of this case are the torture, rape, and extrajudicial killings committed in a widespread or systematic attack against the civilian population and real or suspected militants with the full knowledge of the army and the participants. The ID reasonably found these constitute crimes against humanity (Mugesera at paras 119, 154-155).

- [38] The Applicant claims section 35 of IRPA does not exclude individuals only because they belong to an organization that has committed a criminal act but instead requires personal and knowing participation in crimes. The Applicant states there is no evidence to support the Respondent's position he was involved in any criminal act. The Applicant does not dispute his service in the Indian Army but denies having been involved in the criminal acts referred to in the Decision.
- [39] The Respondent submits it is not necessary for the individual to have personally engaged in criminal activity or to have been physically present during the commission of the crime (Ezokola at paras 7-8,77; Khudeish v Canada (Citizenship and Immigration), 2020 FC 1124 at para 70; Sarwary v Canada (Citizenship and Immigration), 2018 FC 437 at para 47). According to the Respondent, the ID completed the proper analysis and its Decision is reasonable. Respectfully, I agree with the Respondent. The ID did not conclude the Applicant personally committed crimes against humanity or war crimes but reasonably held he was complicit and contributed to the crimes committed by the Indian Army.
- [40] To come to that conclusion, the ID followed the guidance in Ezokola to determine complicity and considered the 6 non-exhaustive factors proposed by the Supreme Court: (1) the size and nature of the organization; (2) the part of the organization with which the person concerned was most directly concerned; (3) the person concerned duties and activities within the organization; (4) the person concerned position or rank in the organization; (5) the length of time the person concerned was in the organization after acquiring knowledge of the group's crimes or criminal purpose, and (6) the method by which the person concerned was recruited and their opportunities to leave the organization.
- [41] It is only after a thorough analysis of the evidence in the light of these factors the ID determined the Applicant made a voluntary, knowing and significant contribution to the crimes against humanity, and that such crimes were committed by the Indian Army while the Applicant was posted in the region of Jammu and Kashmir, between 1988 and 1991 and 2006 and 2009 as well as after his departure from the region.
- [42] The ID took into consideration the fact that the Indian Army is not considered as an organization with a limited and brutal purpose and the Minister does recognize that it is a legitimate organization responsible for the security of the country. More specifically, the documentary evidence refers to the 17th Punjab Regiment being involved in counter-insurgency activities in the Jammu region for the period of October 1988 to September 1991 under the command of a Colonel who the Applicant confirmed was his commanding officer. According to the documentary evidence, between the periods of 1988-1991 and 2006-2009, the 17th Punjab Regiment used cordon and search operations to suppress insurgency movements which resulted in the deaths of both civilians and militants. Considering the documentary evidence, it was reasonable for the ID to conclude that the Applicant being awarded the Special Service Medal with Suraksha clasp demonstrates that he was active in counter-insurgency activities particularly during the Operation Rakshak in Jammu & Kashmir, during his first posting in the area.

[43] As noted by the ID, for the period of 2006 to 2009, the Applicant was at a higher rank with supervisory powers over lower ranks. The Applicant voluntarily joined the Indian Army where he served for a period of 30 years, which is to be considered as a lengthy period, and did not attempt to leave the organization after his posting. Instead, between 2010 and 2013, the Applicant served in an elite commando unit. The Applicant retired after 30 years of service without being pushed by a desire to not participate in such a mandate.

[44] The Applicant is asking this Court to reweigh the information the ID considered and grappled with. It is not the role of the Court in a judicial review. In the present case, the ID's findings in relation to the Applicant's credibility and his involvement with the Indian Army and the 17th Regiment were reasonably drawn. Having considered the materials filed by the parties and their legal arguments, I conclude that the ID's decision is transparent, justified and intelligible.

VII. Conclusion [45] For the above reasons, this application for judicial review is dismissed. The ID's decision meets the hallmarks of reasonableness, coherence and rationality.

[46] There are no questions of general importance to be certified.

JUDGMENT in IMM-16168-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There are no questions to be certified.

"L. Saint-Fleur"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Stewart Itsvanffy

For The Applicant

Jeanne Robert

Anne-Renée Touchette

For The RESPONDENT

SOLICITORS OF RECORD:

Étude Légale Stewart Istvanffy

Barristers and Solicitors

Montréal (Québec)

For The Applicant

Attorney General of Canada

Montréal (Québec)

For The RESPONDENT

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