Immigration and Refugee Board of Canada
Refugee Protection Division

Commission de l'immigration et du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TB4-07437

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	**Demandeur(e)(s) d'asile**
Date(s) of Hearing	September 6, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision and reasons	May 17, 2019	**Date de la décision et des motifs**
Panel	D. Fox	**Tribunal**
Counsel for the Claimant(s)	Cemal Acikgoz	**Conseil(s) du (de la/des) demandeur(e)(s) d'asile**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Patrick Klauss	**Conseil du (de la) ministre**

Canada

REASONS FOR DECISION

[1] XXXX XXXX, a citizen of Armenia, claims refugee protection pursuant to ss. 96 and 97 of the *Immigration and Refugee Protection Act*[1] (IRPA).

[2] The panel acknowledges that counsel raised an issue with interpretation a full six weeks after the hearing. The panel notes that there was no objection to the quality of interpretation during the hearing, or shortly thereafter. The panel is guided by the Federal Court case in *Mohammadian*,[2] and finds that the claimant waived his right to competent interpretation by failing to object at the first opportunity during the hearing into his claim for refugee status. Further, the panel notes that interpretation at refugee proceedings before the Immigration and Refugee Board of Canada must be "…continuous, precise, competent, impartial and contemporaneous…" but need not be perfect.[3] The panel finds that there is insufficient evidence that the interpretation fell below this standard.

ALLEGATIONS

[3] The claimant's allegations are set out in his Basis of Claim (BOC)[4] form and further explained in his oral testimony. In summary, the claimant alleges that he was a police officer with the Armenian Ministry of police between XXXX and XXXX. In XXXX XXXX he was involved in a police raid of a house cache of illegal weapons and contraband, which belonged to a XXXX XXXX, XXXX XXXX. The claimant alleges Mr. XXXX and his associates targeted him forcing him to flee the country in fear of his life.

MINISTER'S ALLEGATIONS

[4] On May 14, 2015, the Minister served a Notice of Intervention pursuant to subsection 170 (e) of the IRPA, on matters involving credibility, and Article 1F (a) of the Refugee Convention. The Minister alleges that the claimant was a police officer in Armenia from XXXX to XXXX and had achieved the rank of XXXX XXXX receiving numerous metals and XXXXcommendations. The Minister further alleges that the claimant worked at the XXXX XXXX XXXX XXXX XXXX prior to coming to Canada.

[5] The minister alleges that there is extensive documentary evidence that the Armenian police force committed crimes against humanity during the time that the claimant was a police officer, specifically the use of torture of civilians who were detained by police and confessions obtained under torture and duress, as well as "suicides" by civilians who were detained by police. The minister submitted that in accordance with section 98 of IRPA, a person who falls within the parameters of section F of article 1 of the Refugee Convention is not a convention refugee or a person in need of protection, and therefore excluded from protection.

DETERMINATION

[6] Having considered the totality of the evidence, the panel finds that there are serious reasons for considering that the claimant was complicit in crimes against humanity and is excluded from refugee protection pursuant to Article 1F (*a*) and section 98 of the *IRPA.*

ANALYSIS

Identity

[7] The panel is satisfied with the claimant's personal identity and status as a citizen of Armenia on a balance of probabilities. His identity was established based on his oral testimony and by the copy of his passport provided to the panel by Immigration, Refugees and Citizenship Canada (IRCC).[5]

[8] The determinative issue in this case is exclusion under Article 1F (a).

Section 1F (a) of Article 1 of the Refugee Convention

[9] A central issue in this case concerns actions of the claimant while employed by the Republic of Armenia Police Force and whether he should be excluded from making a refugee claim under Section 98 of *IRPA*, which states: "A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection."

[10] Section 1F of the Refugee Convention states:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes […].

[11] There must be serious reasons for considering that the claimant committed one of the criminal acts in question.[6] The standard is lower than the criminal law standard of "proof beyond a reasonable doubt" and the general civil standard of "balance of probabilities."[7]

[12] Having considered the facts of this case, the relevant jurisprudence and the language of Article 1F, the panel finds the claimant is excluded from refugee protection.

Whether the claimant was complicit in committing crimes against humanity

Did the Republic of Armenia Police Force commit crimes against humanity?

[13] In determining whether or not the claimant was complicit in crimes against humanity during his tenure as an officer in the Republic of Armenia Police Force, the panel first considered whether or not the Police Force committed crimes against humanity. Open source documentation indicates the force perpetrated crimes against humanity, including illegal detentions, deaths in custody, police torture during interrogations and investigations throughout Armenia.

[14] Section 4(3) of the *Crimes Against Humanity and War Crimes Act* (S.C. 2000, c. 24) defines crime 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. [emphasis added]

Section 4(4) states that

> For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of Article 8 of the *Rome Statute* are, as of July 17, 1998, crimes according to

customary international law. This does not limit or prejudice in any way the application of existing or developing rules of international law.

Article 7, Crimes against humanity, of the *Rome Statute of the International Criminal Court* (2011) reads as follows:

> 1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a **widespread or systematic** attack directed against any civilian population, with knowledge of the attack:
>
> (a) **Murder;**
> (b) Extermination;
> (c) Enslavement;
> (d) Deportation or forcible transfer of population;
> (e) **Imprisonment** or other severe deprivation of physical liberty in violation of fundamental rules of international law;
> (f) **Torture;**
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
> (i) Enforced disappearance of persons;
> (j) The crime of apartheid;
> (k) **Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health**.
>
> 2. For the purpose of paragraph 1:
>
> (a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against **any civilian population**, pursuant to or in furtherance of a State or organizational policy to commit such attack;
> (b) […]
> (c) […]
> (d) […]
> (e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
> (f) […]
> (g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) […]
(i) […] [emphasis added]

[15] The panel finds that criminally accused individuals and detainees are an identifiable group or a civilian population, as set out in both section 4(3) of the *Crimes Against Humanity and War Crimes Act* and article 7 of the *Rome Statute*. The panel further finds that the objective country condition evidence regarding the treatment of accused individuals by government agents including the police force amounts to persecution.[8]

[16] The Supreme Court of Canada in *Mugesera*[9] found that torture constitutes a crime against humanity when it is **widespread,** systematic and aimed at a civilian population or identifiable group. The open source documentation conveys that during the claimant's tenure, the Armenian Police engaged in torture as an investigatory tool, extrajudicial killings, beating, cruel, inhumane or degrading treatment and arbitrary detentions on a scale that meets this standard.

[17] The National Documentation Package (NDP) for Armenia discusses human rights conditions in Armenia in detail. Item 2.1, the United States (US) Department of State (DOS) *Country Report* for Armenia which was published in March 2017, states in part:

> The most significant human rights issues included: torture; harsh and life threatening prison conditions; arbitrary arrest and detention; lack of judicial independence; failure to provide fair trials; violence against journalists; interference in freedom of the media, using government legal authority to penalize critical content; physical interference by security forces with freedom of assembly; restrictions on political participation; systemic government corruption; failure to protect lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons from violence; and worst forms of child labor, which the government made minimal efforts to eliminate.
>
> The government conducted only cursory investigations into reports of abuses by officials. Law enforcement officers often committed abuses with impunity, at times under direct orders from law enforcement chiefs.[10]

[18] Further in the US DOS Report the following was reported with respect to police torture and other cruel, inhuman, or degrading treatment or punishment:

> The law prohibits such practices. Nevertheless, there were reports that members of the security forces regularly tortured or otherwise abused individuals in their custody. There were no known cases of prosecution of officials who engaged in these practices.

> Police abuse of suspects during their arrest, detention, and interrogation remained a **significant** problem. According to human rights NGOs, most victims did not report abuses due to fear of retaliation. Mistreatment occurred in police stations, which, unlike prisons and police detention facilities, were not subject to public monitoring. According to observers, police used **arrest as a form of punishment**. Criminal justice bodies relied on confessions and information obtained during questioning to secure convictions. According to human rights lawyers, there were no sufficient procedural safeguards against mistreatment during police questioning, such as access to a lawyer by those summoned to the police as witnesses, as well as inadmissibility of evidence obtained through force or procedural violations.
>
> According to human rights observers, hardly any investigations into suspected police mistreatment led to criminal sanctions against law enforcement officers. Human rights lawyers pointed to biased judicial and investigatory practices in torture cases and to the practice of opening investigations of possible false accusations when a victim of torture reported abuse.[11] [emphasis added]

[19] The 2016 Amnesty report at Item 2.2 of the NDP notes that Torture and other ill-treatment by police and in detention facilities continued to be **widely reported**.[12]

[20] The Armenia World Report 2018 notes that the UN Committee Against Torture's January concluding observations noted some improvements, but criticized excessive use of pretrial detention; lack of effective investigations into ill-treatment allegations; **excessive use of force by police**; **violations of detainees' rights**; attacks on journalists; domestic violence; and abuse of children in institutions.[13]

[21] Minister's counsel noted that the 2012 DOS report,[14] which covered the period of the claimant's service, indicated that torture and mistreatment was systemic and routine. The panel considered the detailed information in this report, which stated:

> Witnesses reported that police beat citizens during arrest and interrogation. Human rights NGOs made similar allegations but noted that most cases of police mistreatment were unreported due to fear of retaliation. Most abuses reportedly took place in police stations, which were not subject to public monitoring, rather than prisons and police detention facilities. According to human rights groups many individuals transferred to prisons from police facilities alleged that police tortured, abused, or intimidated them while they were in police custody mainly to extort confessions.
>
> The annual report of the human rights defender (the ombudsman's office) for 2011, released in July, also stated that **police investigative bodies** continued to subject individuals to cruel, inhuman, and humiliating treatment, including

> **psychological pressure, electrical shock, and severe beatings in order to obtain confessions.**[15] [emphasis added]

[22] The panel considered an Institute for War and Peace Reporting (IWPR) report for 2014, wherein it was noted that a wide ranging study by the Civil Society Institute called *Torture in Armenia 2013 to 2014* found that the use of torture was **commonest in the police force,** as a way of extracting confessions from suspects. It was further noted that bail is rarely granted so suspects can be held in pretrial detention for months. Further, according to the Civil Societies Institute's head, Arman Danielyan: "If torture is eliminated in Armenia the police here won't be able to solve a single crime. They currently lack the professional skills and technical means to do so."[16]

[23] The IWPR also noted that the office of the "Armenia human rights ombudsman listed the commonest torture methods as beating with plastic bottles filled with water, suffocation using polythene bags and handcuffs – all things that cause pain but leave no physical trace."[17]

[24] The Civil Society Institute's study includes a variety of interviews from NGO representatives, police officers, and judges. These experts were aware of the instances of both physical and psychological torture by police. The NGO representative concluded that "[d]iverse methods of torture are used by police: beating, using electricity, electroshock, physical violence, batons."[18] A judge was quoted as saying: "If recourse to physical violence does not help to reach the goal, then psychological torture is more effective. Threats to family members generally have significant effect."[19]

[25] The Danish Immigration Service report on Armenia, September 2016, at item 1.4 of the NDP reports that:

> The persisting reports of torture and ill-treatment by the police and other law enforcement agencies, often with a view to obtaining confessions, **are a major concern** identified by the European Committee for the Prevention of Torture (CPT). According to the report from the Commissioner for Human Rights of the Council of Europe Nils Muižnieks from 2015, the reliance of investigative bodies on confessions and information obtained during questioning with a view to securing convictions and the lack of procedural safeguards against ill-treatment from the very outset of custody provide favourable grounds for the occurrence of such abuse.[20] [emphasis added]
>
> …

> The most recent detailed reporting by an international oversight actor on the **conduct of police**, state security and military dates from the October 2014 visit of the Human Rights Commissioner of the Council of Europe. In the report he expressed his concern over the lack of effective investigation into allegations of torture and ill-treatment committed by law enforcement agents, which results in the **impunity** of perpetrators and the **recurrence of such abuse**. In his report the Commissioner referred to the Armenian Criminal Code, under which the definition of **torture does not encompass crimes committed by public officials**, but only those by individuals acting in a private capacity. As a consequence, **no law enforcement agent** or member of the security services has ever been convicted of the crime of torture in Armenia. If police officials and investigators are at all held accountable for resorting to ill-treatment, the charges and convictions are for lesser offences, i.e. abuse of authority or exceeding official powers. On several occasions, persons thus convicted have been granted amnesty.[21] [emphasis added]
>
> …
>
> As for the biggest challenges in the police and law enforcement agencies, the Ombudsman highlighted the need for providing minimum rights set out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT). These rights should not only be enjoyed by **suspects,** but by **all who is apprehended by the police**.[22] [emphasis added]

[26] The panel also considered the December 2012 report by the Norwegian Helsinki Committee wherein summaries of individual case studies confirmed the torture, human rights abuses and extrajudicial killings outlined in the above-noted reports.[23]

[27] The documentary evidence clearly indicates that there is a long established pattern of police brutality and torture against suspects and detainees. Having considered this objective evidence, the panel finds that the information provided therein demonstrates that Armenian police officers perpetrated widespread crimes against humanity, including illegal detentions, deaths in custody, torture during interrogations and extrajudicial killings during the time that the claimant was employed as a police officer.

Analytical framework for complicity: Ezokola test and relevant factors

[28] The issue before the panel is whether there are reasonable grounds to believe the claimant voluntarily made a knowing and significant contribution to the acts of torture, mistreatment and abuses alleged to have been committed by the Armenian Police Force. The "reasonable grounds to believe" standard, which by virtue of section 33 of the Act, requires more than mere suspicion but is a lower standard than proof, on a balance of probabilities.[24]

[29] Complicity rests on the existence of a common goal and the level of knowledge that all parties had of the goal of the organization. In *Ezokola*, the Supreme Court of Canada (SCC) restricted the notion of complicity.

> In light of the foregoing reasons, it has become necessary to clarify the test for complicity under art. 1F(a). To exclude a claimant from the definition of "refugee" by virtue of art. 1F(a), there must be serious reasons for considering that the claimant has voluntarily made a **significant** and **knowing contribution** to the organization's crime or criminal purpose.
>
> We will address these key components of the contribution-based test for complicity in turn. In our view, they ensure that decision makers do not overextend the concept of complicity to capture individuals based on **mere association or passive acquiescence.**[25] [emphasis added]

[30] The SCC established the following test for complicity:

> [91] Whether there are serious reasons for considering that an individual has committed international crimes will depend on the facts of each case. Accordingly, to determine whether an individual's conduct meets the *actus reus* and *mens rea* for complicity, several factors may be of assistance. The following list combines the factors considered by courts in Canada and the U.K., as well as by the ICC. It should serve as a guide in assessing whether an individual has voluntarily made a significant and knowing contribution to a crime or criminal purpose:
>
> (i) the size and nature of the organization;
> (ii) the part of the organization with which the refugee claimant was most directly concerned;
> (iii) the refugee claimant's duties and activities within the organization;
> (iv) the refugee claimant's position or rank in the organization;
> (v) the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
> (vi) the method by which the refugee claimant was recruited and the refugee claimant's opportunity to leave the organization.[26]

[31] The panel acknowledges that there is no evidence to suggest the claimant himself directly committed crimes against humanity. However, this does not undermine a conclusion there are reasonable grounds to believe the claimant contributed to the crimes of the Armenian Police Force. Complicity arises by *contribution*, and while there must be a link between the individual and the crimes or the criminal purpose of the group, an individual may be found complicit in international crimes without being present at or physically contributing to those crimes.[27] Thus the panel's assessment considered whether the claimant's position in the police force as an

XXXX XXXX for an extended period of time provided those reasonable grounds to support a finding of complicity, pursuant to the standard set out in *Ezokola*.

[32] The panel is mindful that the claimant's association with the police force and his knowledge and acquiescence towards the group's activities, without more, does not amount to complicity. Complicity requires a nexus between the claimant's conduct, and the group's crimes.[28]

[33] In order to find culpable complicity, there must be a link between the individual and the crimes or criminal purpose of the group. This link is established where there are reasonable grounds to believe that an individual has voluntarily made a significant and knowing contribution to a group's crimes or criminal purpose.[29]

[34] To be found culpably complicit, the claimant's contribution to the crime or criminal purpose must be (1) voluntary; (2) significant; and (3) knowing.[30]

Assessing the Claimant's connection to the Organization

[35] At the hearing, the claimant was questioned concerning his employment in the Armenian Police Force. The panel has considered the claimant's connections to the force in light of the *Ezokola* factors. Accordingly, the panel considered the link between the duties and activities of the claimant and the crimes perpetrated by the Armenian police force. The panel notes that the claimant's responsibilities during his ongoing tenure with the Armenian Police, particularly since XXXX, were primarily XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.

The size and the nature of the organization

[36] With respect to the size and nature of the organization, the claimant testified that the Armenian Police Force has approximately 30,000 members despite the population of Armenia being less than 3 million. The Minister provided a *Janes's* Article wherein it was noted that the police service in Armenia is a national force, which is tasked with internal security of the country. There are eleven regional commands, with one located in the capital of Yerevan, and theses

commands are subdivided into 52 police stations. It was noted therein that there was a central division that has special designation units and police troops.[31]

[37] In considering the *Ezokola* factors, the panel acknowledges that the Armenian Police force is multifaceted, in so far as it performs both legitimate and criminal acts. As such, the link between the contribution and the criminal purpose may be more tenuous.[32] While the objective evidence as to the size of the Republic of Armenia Police Force, is limited, the claimant alleges that he was involved in XXXX XXXX XXXX XXXX XXXX from XXXX.[33] Given the size and nature of the organization, the panel accepts that there will be many members of the Armenia Police Force who are not complicit in crimes against humanity. However, the panel finds that there is an increased probability that an individual in an XXXX XXXX XXXX XXXX will be complicit.

[38] Thus, the panel has also considered the part of the organization with which the claimant was most directly concerned, as well as his duties and activities and finds that these two factors are significant. The claimant provided his Republic of Armenian Police Service record, wherein it was noted that from **XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX,** he served in the XXXX XXXX XXXX XXXX., subdivision of the Republic of Armenia Police, **XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX** XXXX XXXX XXXX XXXX XXXX XXXX XXXX. It was further noted that he was **XXXX XXXX XXXX XXXX**.[34] From **XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX,** he switched to the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, (XXXX XXXX XXXX XXXX XXXX) where he held the position of XXXX XXXX XXXX. **From XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX,** he was in the same unit holding the position of XXXX XXXX XXXX.[35] From **XXXX XXXX XXXX XXXX XXXX XXXX XXXX, XXXX** he was in the same unit with the same position, but in a different department. **From XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX,** he became a XXXX XXXX XXXX in the Republic of Armenian Police, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.[36]

The claimant's duties and activities within the organization

[39] The claimant testified that he was a XXXX XXXX XXXX with the police force, from XXXX XXXX XXXX despite it not being noted in his employment record or his BOC. He maintained in his BOC that he received XXXX XXXX and his Police ID dated XXXX XXXX XXXX XXXX XXXX indicates that he was a **XXXX XXXX**, with the XXXX XXXX XXXX XXXX XXXX XXXX.[37] The claimant also provided photos of himself with his XXXX XXXX XXXX, who were all XXXX XXXX XXXX XXXX XXXX.[38] Further, in his Military and Police Service Form he writes that from XXXX XXXX to XXXX XXXX he was in a XXXX XXXX XXXX XXXX XXXX XXXX XXXX doing "…XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX."[39]

[40] He testified that he gathered information through informants, and his duty was to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. He testified at his hearing and interview with the Minister that his XXXX XXXX unit was manned by XXXX XXXX and later in XXXX he became a member of a XXXX XXXX XXXX XXXX of XXXX XXXX.[40] He stated in his interview with the Minister that in XXXX he had participated in XXXX XXXX, and testified that in the years XXXX and XXXX his unit had over XXXXcases involving numerous criminals.

[41] Despite the discrepancy in the claimant's testimony and his Police Service Record of the claimant's duties from XXXX XXXX XXXX XXXX the evidence is generally consistent that he transferred to XXXX XXXX XXXX in XXXX, and thereafter changed XXXX within this unit. During this time the claimant was primarily involved with units which XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The claimant served from XXXX until XXXX, and the panel finds that his lengthy and on-going career demonstrates his active support for the organization. The panel finds that these factors weigh in favour of a finding of complicity, in that the claimant's work contributed to the crimes against humanity and criminal acts perpetrated by the local police.

The claimant's time, position, and rank in the organization

[42] The claimant's police service record indicated that he rapidly moved through the ranks of the Armenian Police Force. He started as a XXXX in XXXX XXXX, and became a XXXX XXXX in XXXX. In XXXX he became a XXXX XXXX and a XXXX XXXX, in XXXX.[41] The claimant spent XXXX years in the police force during which the majority of time he engaged in XXXX XXXX XXXX XXXX. The Supreme Court reasoned that "…a high rank or rapid ascent through the ranks of an organization could evidence strong support of the organization's criminal purpose."[42] The panel further acknowledges that "…a lengthy period of involvement may also increase the significance of an individual's contribution to the organization's crimes or criminal purpose."[43] The panel notes further, that the claimant voluntarily joined the police force and remained for a long period of time and these factors weigh in favor of a finding of complicity.

Applying the *Ezokola* contribution based complicity test

[43] In conducting its complicity analysis, the panel has considered whether the evidence points to a finding that there are serious reasons for considering that the claimant's contribution to the criminal purpose or criminal acts of the Republic of Armenia Police force was knowing, significant, and voluntary.

(i) Voluntary contribution

[44] There was no evidence that the claimant was forced into employment of the police force, or that it was obligatory that he remain. The claimant clearly testified that he joined voluntarily and obtained numerous awards and commendations for his service. At no time during his XXXX years of did he indicate that he was under duress to remain in the police force.

(ii) Significant contribution

[45] The panel finds that the claimant's contribution to the Armenian Police Force criminal acts was significant, in that it went beyond mere association with or passive acquiescence to the crimes. The claimant responsibility as a member of the XXXX XXXX XXXX was to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The claimant testimony indicated

that just in the XXXX XXXX XXXX year period alone he was involved in XXXXcases; however, he stated these cases could involve any number of people. The panel finds that, on a balance of probabilities, that he would be arresting people XXXX XXXX XXXX XXXX XXXX.

[46] The panel finds that these actions furthered the regime's practice of arbitrary arrest, detention, torture, and severe mistreatment of suspects and detainees. The *Ezokola* decision affirms that a contribution "…does not have to be 'directed to specific identifiable crimes' but can be directed to 'wider concepts of common design, such as the accomplishment of an organization's purpose by whatever means are necessary….'"[44] Indeed, "…complicity does not require that the individual personally commit the criminal act, but rather that they contribute to it, either directly, or through their role in an organization's criminal purpose."[45]

[47] The panel has also considered relevant case law in assessing the significance of the claimant's contribution. In *Vaezzadeh*, the Federal Court found that the applicant had made a significant contribution to the crimes perpetrated by the impugned organization by referring detainees to others for further action. The evidence suggested that the applicant had referred potential dissenters to his superiors "…knowing that those individuals could be subjected to torture or other mistreatment."[46] In other words, contributing to the possibility of torture and mistreatment was enough to support the finding of a significant contribution.

[48] The panel finds, based on its consideration of the evidence before it, that there are serious reasons for considering that the claimant made a significant contribution towards the criminal acts of the Armenian Police when he arrested numerous Armenian civilians XXXX XXXX XXXX XXXX XXXX XXXX XXXX.

(iii) Knowing contribution

[49] Knowledge exists where there is "…awareness that a circumstance exists or a consequence will occur in the ordinary course of events."[47] The claimant testified that other than instances of abuses committed in the 1990's, he never had knowledge or heard of any abuses committed by the Armenian police. despite the over whelming objective evidence indicating that incidents of torture, illegal arrests, violent interrogations and extrajudicial killings were regularly perpetrated by police officers during the course of arrests and interrogations of suspects.

[50] The Minister noted a 2013 poll conducted by the Civil Society Institute that indicated almost 50% of poll respondents have heard of instances of **torture** against persons by the police.[48] The Minister questioned how ordinary people heard about the instances of torture, and the claimant, who would XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, had never heard of a single incident. Counsel submitted that the fact that he was in a XXXX XXXX XXXX XXXX XXXX XXXX XXXX would account for his lack of knowledge of what was occurring XXXX XXXX XXXX XXXX XXXX. The panel does not agree with counsel's submissions, as the claimant's performance of his duties required him to be in contact with the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. Further, there is evidence before the panel that the claimant's XXXX XXXXunit severely beat a man XXXX XXXX XXXX and causing other injuries.[49] The panel, therefore, finds on a balance of probabilities, that the claimant was aware of the abuses being committed at the XXXX XXXX XXXX, but XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.

[51] The panel notes that the Federal Court discussed the *mens rea* requirement for complicity at length in *Hadhiri*, and affirmed that it is sufficient for a claimant to have recklessly made a significant contribution to a crime or criminal purpose.[50] The court upheld the Refuge Appeal Division's finding that the claimant "…acted recklessly by showing little concern for the fate of the people that he delivered to his colleagues or supervisors after having performed his duties and assumed his own responsibilities within the Ministry of the Interior…," and was therefore complicit.[51] In *Talpur* it was noted that "…while the entire force is not directly responsible for the crimes, those working 'in an operational way on a day-to-day basis, including investigating officers, inspectors and their management' will inherently be more closely linked to the crimes than others."[52] The panel considers that in the present case, the claimant was aware that there was a danger that his conduct could bring about the criminal result, but persisted despite the risk.

[52] The panel finds that there was both a voluntary and a knowing contribution to the organization's crimes or criminal purpose. On the issue of voluntariness, there was no evidence that the claimant was forced into employment of the police force, or that it was obligatory that he remain. With regards to the claimant's knowledge of the crimes against humanity perpetrated by the Armenian Police force, the panel draws an inference from the claimant's position, duties and

tenure in the organization that he knew of and was exposed to the ongoing abuses and widespread incidents of torture.

Summary

[53] The panel finds that the claimant's long-standing tenure and responsibilities during a time when documented human rights abuses were committed by the Armenian Police Force provides serious reason for considering he was complicit in the human rights violations committed by the Armenian Police Force over the years.

[54] The panel finds, based on its consideration of the evidence before it, that there are serious reasons for considering that the claimant made a voluntary, significant and knowing contribution to the commission of the acts of torture and other crimes against humanity perpetrated by the Armenian Police Force. The panel finds in light of the evidence before it that no viable defences, such as duress,are available to excuse the claimant's contribution to the crime. As such, having considered all of the evidence, the panel finds that the claimant is excluded from refugee protection pursuant to Article 1F (a) and section 98 of the *IRPA*.

CONCLUSION

[55] Having considered all of the evidence, the panel finds that the claimant is excluded from refugee protection pursuant to section 98 of the *IRPA* and Article 1F (a) of the Convention.

[56] The panel concludes that the claimant is not a Convention refugee or a person in need of protection. Therefore, his claim is rejected.

(signed) **"D. Fox"**

D. Fox

May 17, 2019

Date

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] *Mohammadian v Canada (MCI)*, 2001 FCA 191 (CanLII).
[3] Ibid., at paras. 4-6.
[4] Exhibit 2, Basis of Claim.
[5] Exhibit 1, Passport.
[6] *Convention Relating to the Status of Refugees* – Article 1F & *Moreno, Jose Rodolfo v. Canada (Minister of Employment and Immigration)*, 1993 F.C.J. No. 912.
[7] *Moreno, Jose Rodolfo v. Canada (Minister of Citizenship and Immigration)*, 1994 1 F.C. 298 (C.A.) & *Zrig, Mohamed v. Canada (Minister of Citizenship and Immigration)*, 2002 1 F.C. 559.
[8] Exhibit 3 National Documentation Package (NDP) for Armenia (30 April 2018).
[9] *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40.
[10] Exhibit 3, NDP for Armenia (30 April 2018), item 2.1, at p. 1.
[11] Ibid., item 2.1, at p. 3.
[12] Ibid., item 2.2, at p. 2.
[13] Ibid., item 2.3.
[14] Exhibit 11, p. 50.
[15] Ibid.
[16] Exhibit 14, p. 47.
[17] Ibid.
[18] Ibid., p. 66.
[19] Ibid.
[20] Exhibit 3, NDP Armenia (30 April 2018), item 1.4, p. 146
[21] Ibid., item 1.4, pp. 11-12.
[22] Ibid., item 1.4 p. 119
[23] Exhibit 11, pp. 78-91.
[24] *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, para. 114.
[25] *Ezokola v. Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, 2 S.C.R. 678, paras. 84-85.
[26] Ibid., para. 91.
[27] Ibid., paras. 7, 8, 77.
[28] Ibid., para. 8.
[29] Ibid., para. 6.
[30] Ibid., paras. 86-90.
[31] Exhibit 12, p. 148
[32] *Ezokola v. Canada (MCI)*, 2013 SCC 40, para. 94.
[33] Exhibit 2, BOC para. 2.
[34] Exhibit 5, p. 6.
[35] Ibid.
[36] Ibid.
[37] Exhibit 5, p. 3.
[38] Exhibit 9, p. 3.
[39] Exhibit 1, Details of Military Service and Police Service stamped XXX XXX XX.
[40] Exhibit 14, Canada Border Service Agency Interview, October 12, 2016, pp. 13-16.
[41] Exhibit 5, p. 5.
[42] *Ezokola v. Canada (MCI)*, 2013 SCC 40, para. 97.
[43] Ibid., para. 98.
[44] *Ezokola v. Canada (MCI)*, 2013 SCC 40, para. 87.
[45] *Sarwary v. Canada (MCI)*, 2018 FC 437, para. 47; *Ezokola v. Canada (MCI)*, 2013 SCC 40, paras. 7-8.
[46] *Vaezzadeh v. Canada (MCI)*, 2017 FC 845, para. 22.
[47] *Ezokola v. Canada (MCI)*, 2013 SCC 40, para. 90.
[48] Exhibit 14, p. 118.
[49] Exhibit 12, p. 3.
[50] *Hadhiri v. Canada (MCI)*, 2016 FC 1284.
[51] *Hadhiri v. Canada (MCI)*, 2016 FC 1284, para. 10.
[52] *Talpur* v. *Canada (MCI)*, 2016 FC 822, para 8.