

## COMMITTEE AGAINST TORTURE

### A. R. v. Sweden

Communication No. 170/2000

23 November 2001

### ADMISSIBILITY

*Submitted by : A. R. (name withheld)[represented by counsel]*

*Alleged victim: The author*

*State party: Sweden*

*Date of communication: 27 April 2000*

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2001,

Adopts the following:

### Decision

1.1 The author of the communication, dated 27 April 2000, is Mr. A. R., a citizen of Bangladesh, born on 6 September 1966, whose application for refugee status was rejected in Sweden on 19 March 1997. He claims that his deportation to Bangladesh would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 The State party ratified the Convention on 8 January 1986 and made the declaration under article 22 of the Convention at the same time.

1.3 In accordance with article 22, paragraph 3 of the Convention, the Committee transmitted the communication to the State party on 4 October 2000. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to deport the petitioner to Bangladesh pending the consideration of his case by the Committee. In a submission dated 21 November 2000, the State party informed the Committee that the petitioner would not be deported

to his country of origin while his communication was under consideration by the Committee.

### **The facts as presented by the petitioner**

2.1 The petitioner states that since the beginning of the 80's, he was active in the Hindu-Buddha Christian Minority Organization and in the Bangladesh Chattra League.

2.3 During the autumn of 1992, he was attacked and abused by Muslims and detained by the police for his participation in a demonstration where he was allegedly tortured, hit on the soles of his feet and hanged upside down. He was released with the help of his party and went to India for several months.

2.4 He returned later to Bangladesh and became active in the Bangladesh Sharbohara Party (BSP). Beginning 1995, he was again detained during two months by the police for his participation in a political rally. During this period, he was allegedly tortured, and he submits a medical and psychiatric report established in Denmark concerning prior injuries and post-traumatic stress disorder.

2.5 After having spent another month in India, he returned to Bangladesh and became responsible for BSP's public relations and publicity.

2.6 The petitioner was then allegedly advised by others members of his party to leave Bangladesh. The party arranged and financed his flight to Sweden in October 1995.

2.7 The petitioner arrived in Sweden on 24 October 1995 and applied for refugee status. His application was rejected by the Swedish Migration Board on 13 December 1995 and, on appeal, by the Aliens Appeals Board on 19 March 1997.

2.8 Subsequently, the petitioner made three new applications before the Aliens Appeal Board under Chapter 2, Section 5 (b) of the Swedish Aliens Act, which allows to resubmit applications before such body on the basis of factual circumstances that have not been earlier examined by the competent authorities. The petitioner's applications were all rejected, the latest by a decision of 9 April 1999.

### **The complaint**

3.1 The petitioner claims that he was subjected to torture when he was detained in Bangladesh. He submits some medical evidence in this regard.

3.2 The petitioner claims that if he is returned to Bangladesh, he would be again subjected to torture and that the decision forcibly to remove him to Bangladesh would therefore entail a violation of article 3 of the Convention by the State party.

### **State party's observations on the admissibility and merits**

4.1 In a submission dated 21 November 2000, the State party made its observations on the admissibility of the case.

4.2 The State party mainly draws the attention of the Committee to the condition of the exhaustion of internal remedies and to the fact that the decision for removal of the petitioner acquired legal force with the decision of the Aliens Appeals Board of 19 March 1997 and, according to Chapter 8, Section 15 of the Swedish Aliens Act, has become statute-barred after 4 years, on 19 March 2001. By the time the Committee would consider the present communication, the removal decision would therefore no longer be enforceable<sup>1</sup>.

4.3 The State party thus contends that if the petitioner would still like to obtain a residence permit in Sweden, he should make a new application to the Swedish Migration Board, which would have to take into account all circumstances invoked by the petitioner regardless of whether they have already been examined<sup>2</sup>. The decision would also be appealable to the Aliens Appeal Board.

4.4 The State party refers in this regard to an earlier decision taken by the Committee (*J.M.U.M. v. Sweden*, Communication no. 58/1996) in which it decided that the communication was inadmissible for failure of exhaustion of domestic remedies because the new application that had been filed after that the original expulsion decision had lost legal force was still pending before the Swedish Migration Board.

4.5 The State party also considers that the communication could be declared inadmissible as being incompatible with the provisions of the Convention, in the sense of article 22, paragraph 2, because there is no longer any enforceable expulsion order.

### **Counsel comments**

5.1 In a submission dated 28 December 2000, the petitioner transmitted his comments on the observations from the State party.

5.2 The petitioner contends that if he had made a new application for asylum, he would have been taken into custody and the Swedish Migration Board would have probably taken the decision to remove him to Bangladesh, even if such a decision had been appealed. The petitioner argues that he has indeed no chance to be granted refugee status in Sweden because the situation in Bangladesh has not changed since the decision of 19 March 1997 of the Aliens Appeal Board and the State party's immigration authorities would be in the same situation as they were originally. Neither has he any chance to obtain a residence permit on humanitarian grounds for the same reasons. Rather, he would be blamed for having hidden himself and for not having complied with the original decision of 19 March 1997.

5.3 The petitioner considers that since the State party has not granted him refugee status despite the existence of documents proving that he has been tortured in the past, the only possibility for avoiding a risk of torture in Bangladesh is a consideration of his case by the Committee.

### **Additional comments by State party**

6.1 In a submission of 6 April 2001, the State party reiterates that since the original decision of 19 March 1997 was no longer enforceable, the petitioner could make a new application for residence permit, which, as of the date of the submission, has not yet been done. Moreover, according to the State party's legislation, the Swedish Migration Board may also take a decision, appealable before the Aliens Appeal Board, even if the petitioner does not make such a new application. Such a decision had also not been taken at the time of the submission.

6.2 The State party reiterates that the communication should be declared inadmissible for non-exhaustion of domestic remedies. In this regard, the State party considers, that contrary to the petitioner's suggestion, such a new application would be effective to the extent that the Swedish Migration Board would have to take into account new circumstances as well as the one presented before. The petitioner would thus legally be in the same position as when he made his original application. Among the grounds on which he could base his new application are the risks of being subjected to torture if he is returned to his native country, humanitarian grounds, his state of health, and the links he has established with the Swedish society. In this respect, the State party notes that the petitioner has been staying in Sweden for more than five years and, according to available information, would have married a Swedish citizen in 1996.

6.3 Finally, the State party underlines that a direct enforcement of the Swedish Migration Board, without allowing reconsideration on appeal, is possible only in cases where it is obvious that there are no grounds for granting a residence permit. Moreover, if the petitioner has resided in Sweden for more than three months after his first application, such a direct enforcement, which is also appealable to the Alien Appeal Board, could only take place in the presence of exceptional grounds, such as if the petitioner had committed crimes in Sweden. The State party is therefore of the opinion that a direct enforcement is unlikely in the petitioner's case.

### **Issues and proceedings before the Committee**

7.1 The Committee considers that, in the present case, the principle of exhaustion of internal remedies requires the petitioner to use remedies that are directly related to the risk of torture under article 3 of the Convention. The Committee is therefore of the opinion that the elements that are totally unrelated to the allegations of torture, such as his situation in Sweden and the fact that he has married with a Swedish citizen are not within the scope of those that should be addressed in a remedy that has to be exhausted in order to meet the requirements of article 22, paragraph 5 (b) of the Convention.

7.2 Nevertheless, the Committee has been informed that the petitioner has submitted a new application for residence permit on 6 June 2001, which may be decided, inter alia, on the grounds of a risk of torture in his country of origin. The Committee finds therefore that the author has not exhausted domestic remedies.

8. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the petitioner containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the petitioner and his representative.

### **Notes**

<sup>1</sup> The State party explains that, under Swedish law, the three new applications to the Aliens Appeal Board that were made by the author after 19 March 1997 have no incidence on the limitation period.

<sup>2</sup> Such an application would therefore be different in nature from the one referred to under paragraph 2.8.