

COMMITTEE AGAINST TORTURE

M. A. v. Canada

Communication No. 22/1995

3 May 1995

CAT/C/14/D/22/1995

ADMISSIBILITY

Submitted by: M. A. [name deleted] [represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 14 December 1994

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

Meeting on 3 May 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is M. A., an Iranian citizen, currently in detention in Canada, who claims to be a victim of a violation by Canada of article 3 of the Convention against Torture.
2. The author arrived in Canada on 14 October 1991, and was granted refugee status on 24 May 1992. However, following indications that he was actively working for the Iranian secret service, he was declared a threat to Canadian security and no longer has a right to remain in the country.
3. The author is in the process of challenging the decision by way of a reasonableness hearing before a judge of the Federal Court. He is also challenging the relevant legislation before the Constitutional Court of Canada.

4. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication from an individual, unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonable prolonged or would be unlikely to bring effective relief. In the present case, the author has invoked this exception, arguing that the chances of success are almost non-existent, in view of the prior jurisprudence by the Courts and the process governing the reasonableness hearing. However, in the circumstances of the instant case, the Committee considers that the author has not shown the existence of special circumstances which should absolve him from exhausting domestic remedies. In this connection the Committee observes that, in principle, it is not within the scope of the Committee's competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author's claims.

5. The Committee against Torture therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]