UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
RESTRICTED*

CAT/C/35/D/250/2004
5 December 2005

Original: ENGLISH

Committee against Torture
Thirty-fifth session
(7 – 25 November 2004)

**DECISION**

**Communication No. 250/2004**

| | |
|---|---|
| Submitted by: | Mr. A.H.(Represented by counsel, Mr. Didar Gardezi and Mr. Paul Berkhuizen) |
| Alleged victims: | the complainant |
| State party: | Sweden |
| Date of the complaint: | 18 June 2004 |
| Date of present decision: | 15 November 2005 |

[ANNEX]

*Subject matter:* Deportation of complainant to Iran

*Made public by decision of the Committee against Torture.

*Procedural issue:* exhaustion of domestic remedies, same matter examined under another procedure of international investigation.

*Substantive issues:* Non-refoulement

*Article of the Convention:* 3

ANNEX

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Thirty-fifth session

Concerning

**Communication No. 250/2004**

| | |
|---|---|
| Submitted by: | Mr. A. H.(Represented by counsel, Mr. Didar Gardezi and Mr. Paul Berkhuizen) |
| Alleged victims: | The complainant |
| State party: | Sweden |
| Date of the complaint: | 18 June 2004 |

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

Meeting on 15 November 2005,

Having concluded its consideration of complaint No. 250/2004, submitted to the Committee against Torture on behalf of Mr. A. H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

**Decision of the Committee against Torture under article 22 of the Convention**

1.1 The complaint is Mr. A.H., a citizen of Iran, currently awaiting expulsion from Sweden. He claims that his forcible return to Iran 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 counsels Messrs. Gardezi and Berkhuizen.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 16 June 2004. Pursuant to rule 108, paragraph

1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran while his case was pending before the Committee.

1.3 By submission of 16 March 2005, the State Party requested that the admissibility of the complaint be examined separately from the merits. On 29 March 2005, the Special Rapporteur on New Communications and Interim Measures granted the State party's request, pursuant to Rule 109, paragraph 3 of the Committee's Rules of Procedure.

The facts as presented by the complainant:

2.1 The complainant arrived in Sweden as a student at the end of the 1970s. He later applied for asylum and was granted refugee status on the basis of a declaration that he had been a Kurdish guerrilla soldier, had been shot, and had received injuries to his legs, among other reasons.

2.2 In 1981, the complainant began smuggling Iranians to democratic countries, including Sweden. For that purpose he founded an organization called "Solh" (peace). During the first year of operation, the organization smuggled 50 Iranians out of Iran; by the beginning of 1987, it had smuggled approximately 20,000 Iranians into Sweden. Those smuggled out were principally opposed to the Iran-Iraq war, i.e. soldiers who had deserted the front line or evaded military service, as well as Jews, and Muslims who had converted to Christianity.

2.3 Ever since his arrival in Sweden, the complainant criticized the Iranian regime in European and Swedish media. He published articles in national newspapers criticizing the use of particular types of weapons by the Iranian government during the Iran-Iraq war.

2.4 On 29 June 1982, the complainant was granted refugee status, permanent residence, and a work permit in Sweden. In 1984, he was convicted in Sweden on several counts of forgery of documents and sentenced to one year of imprisonment. In 1988, when he was wanted by the Swedish police, his brother in Sweden informed the authorities that he had left the country in 1987. Consequently, the Swedish Population Office determined that the complainant was no longer resident in Sweden. In 1993, he was convicted by the District Court of Uppsala for aggravated fraud, forgery of documents and violation of the Aliens Act, and sentenced to one year of imprisonment. The District Court ordered his expulsion because he had allegedly visited Iran and lost his entitlement to protection. On appeal, the Svea Court of Appeal quashed the expulsion order but increased the term of imprisonment to four years.

2.5 On 10 May 1995, the Swedish Migration Board withdrew his residence permit as he was no longer considered domiciled in the country. The withdrawal was based on the fact that the complainant had left Sweden and failed to register his re-entry. In its decision, the Migration Board stated that the complainant had re-entered Sweden in August 1996, after which he had not applied for a resident permit. According to the complainant, this decision was arbitrary since it was taken without making investigations into his case, and without allowing him an opportunity to appeal.

2.6 On 7 January 1997, the Uppsala District Court sentenced the complainant to one year of imprisonment for his assistance and complicity in forgery of official documents and ordered his expulsion. In ordering his deportation the District Court noted that the applicant had been repeatedly convicted of document forgery both in Sweden and Denmark. The complainant did not appeal this decision.

2.7 On 25 April 1997, an application was submitted to the Government to cancel the expulsion order as there was a risk that the complainant would be subjected to torture or death on return because, inter alia, of his involvement in smuggling dissident Iranians out of Iran; his views expressed in the media against the Iranian regime; as well as the fact that no investigation about his reasons for seeking asylum had been made since the early 1980s. Moreover, the Swedish Embassy in Teheran reported an investigation in Iran, in which it was stated that the complainant may be punished for activities aimed against national security of the Islamic Republic of Iran and, "in the event that his contacts in Iran cannot protect him from punishment, he probably risks prison sentence. Harsher punishment could not be ruled out".

2.8 On 3 July 1997, the government dismissed the application without giving reasons. On the same day the case was submitted to the European Commission which dismissed the complaint on admissibility grounds—i.e. the complainant's failure to challenge the District Court's judgment of 7 January 1997. Subsequently, an extract from a book written by the complainant was published, in which he argued that religions are the cause of conflict. In his view, this may be taken as criticism directed against the Iranian government. On this basis, a further request was made to the government on 7 July 1997 to cancel the expulsion order; this was rejected.

2.9 On 7 January 2002, the complainant was sentenced by the Court of Appeal of Western Sweden, inter alia, for receiving stolen goods. He was scheduled to be released on 19 June 2004. Thereafter, he was scheduled to be deported to Iran.

The complaint**:**

3.1 The complainant claims that if returned to Iran he will be subjected to torture, corporal punishment, and/or the death penalty for his involvement in smuggling many Iranians dissidents to Sweden and other European countries, and his criticism of the Iranian regime in the media.

3.2 The complainant claims that his refugee status was never revoked and could under no circumstance be deemed to have been revoked by virtue of the 1995 cancellation of his permanent residence permit, since the conditions laid down in Swedish immigration law for the revocation of refugee status, which resemble those set out in the 1951 UN Refugee Convention, were not met either then or subsequently.

3.3 The complainant claims that there is a consistent pattern of gross human rights violations in Iran, and that repression has become harsher. He provides documents from Amnesty International and an organization called FARR to confirm that if returned to Iran he would risk torture and possibly be sentenced to death.

State party's submission on the admissibility of the complaint:

4.1 By submission of 24 September 2004, the State party argues that the complaint primarily concerns expulsion on account of criminal offences. Under the Aliens Act, decisions on expulsion on account of a criminal offence are taken by the court in which the criminal proceedings take place. The court may request a non-binding opinion from the Migration Board on the issue of expulsion, but the Migration Board's opinion is mandatory, when the alien alleges that there are impediments to enforcement of an expulsion order. An alien may not be expelled unless certain conditions are satisfied: he must have been convicted of a crime punishable by imprisonment; it may be assumed that he would continue his criminal activities in Sweden; or, the offence is so serious that he should not be allowed to remain in the country.

4.2 According to Swedish Immigration Law, an alien who holds a permanent residence permit for at least four years when proceedings are initiated against him may be expelled only in exceptional circumstances, i.e. if he has committed a particularly serious crime or been involved in organized criminal activities. A refugee may not be expelled unless he has committed a serious crime against public order, unless security would be seriously endangered if he were allowed to remain, or unless he engaged in activities threatening national security. There is an absolute ban against expelling an alien to a country where there are reasonable grounds for believing that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment. A judgment or order of expulsion on account of a criminal offence is subject to appeal. It may be appealed to the Court of Appeal, and the court's decision may in turn be appealed to the Supreme Court. The Government may cancel a judgment or order for expulsion if it finds that the judgment or order cannot be enforced. The Government's power may be invoked only in respect of judgments or orders for expulsion that have become executory.

4.3 The State party dismisses the complainant's claim that he obtained refugee status in 1982. According to the State Party, he had applied for a permanent resident permit and travel documents in March 1982, which were granted on 29 June 1982. Although, at that time, he was considered to be in need of protection as a refugee, he did not obtain a formal declaration on refugee status because he had not applied for one. In an opinion of 21 March 1984, the Migration Board stated that the complainant was to be considered as a refugee according to Section 3 of the 1980 Aliens Act and thus that he could not be expelled.

4.4 The State party notes that on 25 January 1988, when the complainant was wanted by Swedish police, his brother informed the authorities that he had left the country in October 1987. He returned to Sweden in early 1989. In criminal proceedings before the District Court of Uppsala, in 1993, he stated that he moved from Sweden on 24 August 1987. On 10 May 1995, the Migration Board revoked his residence permit on the grounds that since January 1988 the complainant was reported as having left Sweden. He remained in Sweden to serve the 1993 prison sentence, was released on parole on 12 October 1995 and left the country some time after. He re-entered Sweden on 2 August 1996 without reporting his arrival and without applying for a new residence permit. On 7 January 1997, the District Court of

Uppsala sentenced him to one year of imprisonment, ordered his deportation and banned him from re-entering Sweden. The complainant did not appeal.

4.5 The State party maintains that the complainant has been convicted on repeated occasions, both in Sweden and other European countries, of different crimes related to smuggling Iranians into Western European countries. He was convicted in Denmark in 1992 and in Sweden in 1984, 1990, 1992, 1997 and 2002. He completed his latest conviction on 20 June 2004. However, on 18 June 2004, the Minister of Justice decided that he should remain in custody.

4.6 The State party notes that, on 12 February 1993, the District Court of Uppsala convicted the complainant and ordered his expulsion since, after having left Sweden in 1987, he visited Iran, where the authorities issued a new identification documents for him on the name of H. .S. The court considered that he had voluntarily re-availed himself of the protection of his country of origin. On appeal, however, the Svea Court of Appeal quashed the expulsion order based on the complainant's retraction of his alleged former statement. On 7 January 1977, the same court ordered the complainant's expulsion, taking into account two opinions from the Migration Board that the complainant was ineligible as a refugee, and on the basis that he had been sentenced for crimes punishable by imprisonment, and that there were reasons to believe that he would continue to commit new crimes. The court considered that the complainant was no longer a refugee because he was no longer in need of protection; the special restrictions on the expulsion of refugees were not applicable to his case.

4.7 On 29 April 1997 the complainant submitted his first petition to the Government to obtain a cancellation of the expulsion order. On 16 June 1997, the Swedish Embassy in Iran submitted an opinion which challenged the complainant's allegations. On 3 July 1997, the Government rejected his request. On the same date, he filed an application with the European Commission. On 7 July 1997, he submitted a new application seeking the revocation of the expulsion order, referring to a book on the subject of religious conflicts and an information booklet for asylum-seekers that he had written three years earlier. On 7 July 1997, the Minister of Justice stayed the enforcement of the expulsion order, pending the Government's decision on the new application. On 18 September 1997, the Swedish Embassy in Teheran submitted a second opinion on the complainant's case. On 12 November 1997, he withdrew his second petition with the Government and his request was then struck off its list. On 22 January 1998, the European Commission declared the complainant's application inadmissible for failure to exhaust domestic remedies.

4.8 On 28 January 1998, the complainant re-applied for cancellation of the expulsion order. On 27 March 1998, the Migration Board reported that impediments against the enforcement of the expulsion order under the Aliens Act could not be totally ruled out. On 5 November 1998, the Government granted the complainant a temporary resident permit, valid six months on the grounds of the special circumstances that were considered applicable at the time. Thereafter, the Government rejected two further applications for cancellation of the expulsion order on 13 January 2000 and on 4 July 2002. In those cases, the Migration Board also maintained that impediments against the expulsion of the complainant could not be totally ruled out. On 17 June 2004, the Government rejected the complaint's last request for

cancellation of the expulsion order. The Migration Board informed the Government on 11 June 2004 that no impediments existed against expelling the complainant.

4.9 The State party challenges the admissibility of the complaint since it refers to a matter that has been examined under another procedure of international investigation and settlement (article 22, paragraph 5 (a)). The European Commission for Human Rights already examined the "same matter" and declared his application inadmissible. The case before the Commission concerned the same complainant, the same facts, and the same substantive rights as the case before the Committee.

4.10 The State party further alleges that the complaint is inadmissible for the complainant's failure to exhaust domestic remedies (article 22, paragraph 5(b)), since he did not appeal the judgment of the District Court of Uppsala of 7 January 1997. It adds that an appeal to the competent court of appeal, and, if necessary, a further appeal to the Supreme Court constitute domestic remedies that the complainant must exhaust. There is no basis to consider such remedies as "unreasonably prolonged" or "unlikely to bring effective relief". The remedy available to the complainant through the regular appellate process cannot be replaced by a petition to the Government seeking a cancellation of the expulsion order. Such a petition is an extraordinary remedy that could be considered to be equal to a petition for mercy. Furthermore, no special circumstances exist that would absolve the complainant from his obligation to exhaust domestic remedies.

4.11 The State party adds that the complaint is inadmissible as manifestly ill-founded (article 22 and Rule 107 (b) of the Rules of Procedure), because the complainant failed to meet the basic level of substantiation, for purposes of admissibility.

New communication submitted on behalf of the complainant and complainant's allegations on the admissibility of the case:

5.1 On 14 December 2004, the complainant's newly appointed counsel submitted a new communication on his behalf. According to this complaint, the State party omitted to clarify that:

a) On nine different occasions, Swedish authorities officially declared that there were impediments to the enforcement of the expulsion order;
b) The Uppsala District Court and the Svea Court of Appeals considered that the complainant was a political refugee in Sweden and that impediments against the enforcement of the deportation order did exist;
c) Following the ruling of the European Commission of Human Rights, the State party granted a Temporary Residence and Work Permit to the complainant for six months in November 1998;
d) Legislation other than that invoked by the State party is relevant for the complainant's case;
e) Neither the Uppsala District Court nor the Migration Board commented on the complainant's refugee status and his need for protection;
f) The Migration Board did not give reasons for arbitrarily revoking the complainant's permanent resident permit;

g) The Migration Board did not carry out investigations into the existence of impediments to the enforcement of the expulsion orders;
h) There were contradictions between the Migration Board's statement on 27 March 1998 certifying that "it could not be ruled out that impediments to the complainant return exist" and the opposite conclusion reached on 21 July 2004;
i) In 1997, The Uppsala District Court did not carry out any investigation into the complainant's allegation that his deportation would expose him to a risk of torture;
j) According to Swedish Immigration Law, the government's decision of 7 January 1997 confirming the expulsion order became statute-barred on 7 January 2000, after the four-years statutory time-limit elapsed;
k) The complainant had never forfeited his status as permanent resident or authorized anyone to report him as having left Sweden with the intention to settle elsewhere permanently.

5.2 The complainant challenges the State party's account of the facts, which is said to undermine his credibility. He highlights the following alleged discrepancies between his own account and that of the State party: the complainant did actively participate in the Kurdish rebellion against Khomeini in 1979; he held a prominent position in the Kurdish guerrilla movement; was wounded and shot in both legs; he was active in politics since 1974. Upon arrival in Sweden, on 4 May 1981, he was recognized as a "de facto" refugee in accordance with the 1980 Aliens Act. On 29 June 1982, he was granted "indefinite protection and refugee status", a refugee travel document, and a permanent residence and work permit. He also received written confirmation of his refugee status. The Official Report of the Swedish Embassy in Teheran of 16 June 1997 confirms that he was a political refugee in need of protection.

5.3 The complainant states that in 1981, Kurdish political parties in Iran asked him to found an independent organization that would help Kurdish guerilla members seek asylum in Western Europe, "Sohl", which began helping persecuted Iranians to seek asylum in Sweden and other European countries. The complainant alleges that, in 1984, in retaliation for his activities, Sweden passed a law imposing heavier penalties on those aiding foreigners to enter the country without a valid visa. On 22 February 1984, the District Prosecutor in Uppsala requested that the complainant be expelled from Sweden. On 30 March 1984, the Uppsala District Court dismissed the request on grounds that the complainant was a political refugee.

5.4 The complainant argues that during the 1980s, as a result of the worsening of the political situation in Iran, the flow of asylum-seekers increased, which in turn generated a wave of xenophobia and anti-immigrant discrimination, which was backed up by extreme right-wing Swedish political parties. Many refugees began to be harassed. In 1987, the complainant, who by that time publicly claimed that he had helped at least 20,000 Iranians to settle in Sweden, began receiving death threats and was maltreated on several occasions. During an interview on local radio, he mentioned figuratively that his "soul" had visited Iran to contact H. S., which used to be his alias in the Kurdish guerilla. An official of the Migration Board, however, reported this statement as if he had truly visited Iran. On January 1998, his brother was questioned about his whereabouts and referred that he was traveling. His brother never implied that he was visiting Iran. An employee of the Vaksala Population Registry prepared a note in which the Registry required the complainant to inform the

Population Registry Office of his whereabouts before 4 February 1988. According to the complainant, this note was never delivered to him. On 25 January 1988, the Swedish Population Registry struck the complainant's name from the list of residents. The purpose of striking someone from the National Population Registry is to assure that from that day onward the individual would not be allowed to enjoy the welfare and social benefits extended to legal residents. Since the Registry's decision was never communicated to any other Swedish authority, the complainant continued to receive welfare and social benefits.

5.5 On 17 March 1989, the complainant applied for a renewal of his refugee traveling document, which was granted. He then opened two bank accounts and applied for a new driving license. From 22 May 1991 to 30 December 1992, the complainant served prison sentences in Germany and Denmark. On 30 December 1992, Denmark extradited him to Sweden, in accordance with Sweden's request. In the meantime, the Uppsala District Court prepared to indict the complainant. On 14 January 1993, in a reply to a query from the Uppsala District Prosecutor, the Migration Board stated that the complainant had obtained refugee status on 29 June 1982 and had been domiciled in Sweden ever since. The note added that nothing indicated that the complainant had ceased to be a refugee and that his temporary travel outside Sweden had not affected his refugee status, concluding that impediments against his expulsion existed. At the same time, the note added that the complainant was said to have admitted, in a radio interview, that he had traveled to Iran.

5.6 Later in 1993, the Uppsala District Court sentenced the complainant to one year of imprisonment and ordered his expulsion and a re-entry ban, based on the allegedly false information provided by the Migration Board. The complainant states that the District Court should have carried out an enquiry to determine whether there were any obstacles to ordering his expulsion. The issue of the complainant's alleged deletion from the Swedish Population Registry was discussed at length at the court hearings. On appeal, the Svea Court of Appeal accepted the complainant's arguments, cancelled the expulsion order, but decided to increase the complainant's imprisonment from one to four years. The complainant realized that the issuance of an expulsion order was essentially a "hidden trap" to unreasonably prolong the period of imprisonment.

5.7 On 7 January 1997, the Uppsala District Prosecutor ordered his expulsion, relying on false allegations that the complainant had voluntarily registered himself on 25 January 1988 as having emigrated to another country. The Court did not investigate whether there were any impediments to the enforcement of an expulsion order. The court was also aware of its judgment of 1993, which had been quashed by the Svea Court of Appeal. The complainant argues that it is unlikely that the judges of the District Court had forgotten that the arguments about the complainant's alleged trip to Iran and his removal from the Swedish Population Registry had been proven false in the 1993 proceedings. The court was not authorized to use the same invalid arguments in support of the issuance of another expulsion order. The complainant explains that, in the light of his past experience, he assumed that the 1997 expulsion order was just another "cruel technicality" which would entrap him on appeal, as the Svea Court of Appeal would overturn the expulsion order but impose a heavier prison sentence. For these reasons, he decided not to challenge the part of the judgment which imposed the penalty, but to limit his challenge to the expulsion order by filing an application with the Government. On 11 June 1997, the Government decided that there was no

impediment to implementing the expulsion order. That same day, the complainant applied for legal aid to have the deportation order quashed, which was rejected by the Government. The complainant lodged a complaint with the Swedish Ombudsman on 7 March 1997 and again requested the Government on 25 April 1997 to quash the expulsion order; both were dismissed.

5.8 The complainant claims that the European Court of Human Rights rejected his application on procedural grounds, without having examined the merits. He concludes that his complaint could not be deemed to have been "examined" under another proceeding of international investigation, and that it is admissible. Furthermore, after the European Court of Human Rights handed down its judgment, the Swedish Government granted a temporary residence permit to the complainant on 5 November 1998, which is said to constitute an implicit acknowledgement that there were impediments to implementing the deportation order.

5.9 Concerning the requirement of exhaustion of domestic remedies, the complainant asserts that the removal of his name from the Swedish Population Registry on 25 January 1988, the alleged revocation of his permanent residence permit on 10 May 1995, and the issuance of a new expulsion decision on 7 January 1997 were a plot to unfairly and unlawfully deprive him of his asylum status. For him, the purpose of the 1997 judgment of the Uppsala District Court was to force him to seek a remedy from the higher court which would unlawfully increase his punishment. He points out that he had already complained against the Uppsala District Court's expulsion decision early in 1993, and that the Svea Courts of Appeals had already overturned this decision. For him, the Uppsala District Court was not authorized to issue a second expulsion order when the first expulsion order had been overturned by a higher court according to law. He was convinced that complaining to the same authority would be futile and useless. The Svea Court of Appeal would undoubtedly have overturned the Uppsala District Court's decision but, in doing so, it would have also unlawfully increased the length of his imprisonment. The complainant afirms that he had exhausted all legal remedies in Swedish courts and that he immediately proceeded to exhaust fully all other domestic remedies available to him. He submitted numerous complaints to the Swedish Government and the Swedish Parliament's Ombudsman to have the expulsion order quashed. He further explains that his decision not to appeal to the Svea Court of Appeal was based on the extreme stress, trauma and shock he was experiencing at that moment.

5.10 The complainant argues that the complaint raises questions of facts and law of such a complex nature that their determination requires an examination of the merits.

State party's further comments on the admissibility of the case:

6.1 By note of 18 March 2005, the State party insists that the complaint should be declared inadmissible for non exhaustion of domestic remedies. It challenges the complainant's allegation that applications to the Government and the Parliamentary Ombudsman can replace an appeal to the ordinary courts for purposes of exhaustion of domestic remedies. A petition to the Government is an extraordinary remedy that cannot replace an appeal to the ordinary courts. The State party recalls that the European Commission held that the gist of the complainant's allegations could have been made already

at the level of criminal proceedings against him, ultimately resulting in a request for leave to appeal to the Supreme Court. The State party argues that, since the European Commission concluded that the complainant's petition to the Government could not be considered a remedy for purposes of admissibility, the Committee should do likewise.

6.2 The complainant's submissions to the Parliamentary Ombudsman cannot rectify his omission to appeal the expulsion order. The Parliamentary Ombudsman is not competent to set aside courts decisions; thus, a complaint to this body can hardly be considered capable of bringing adequate and effective redress.

6.3 With regard to further circumstances invoked by the complainant, the State party recalls that article 22, paragraph 5 (b), of the Convention and Rule 107 of the Rules of Procedure only stipulates two permissible grounds for failing to exhaust domestic remedies: i.e. that the remedies are unreasonably prolonged or are unlikely to bring effective relief. The State party maintains that there is no basis for finding that either of these grounds applies to the present case. It recalls that the Committee has observed that, in principle, it is not within its purview to evaluate the prospect of success of domestic remedies, but only to ascertain whether they are proper remedies for the determination of a complainant's claim. Concerning the complainant's case, the State party also recalls that in 1993 the Svea Court of Appeal had ruled in favour of the complainant and set aside the first expulsion order issued against him.

6.4 Concerning the complainant's allegation that he chose not to appeal the expulsion order because of the risk that the prison sentence would be increased arbitrarily if the expulsion order was repealed, the State party considers it irrelevant to the assessment of whether the appeal was likely to bring effective relief or not. Since the expulsion order depends directly on the existence of an alleged risk of torture, there would no longer be any basis for the complainant's claim if the order was set aside. Furthermore, the State party observes that, under the Swedish Penal Code, the expulsion order operates as a mitigating factor in the determination of appropriate punishment. If the expulsion order was later set aside, the relevant sentence would be increased. In any case, punishment is determined according to the severity of the crime, and it cannot be said to be "arbitrary" or "disproportionate".

6.5 Concerning the complainant's allegation that his mental condition at the time of the District Court of Uppsala's judgment prevented him from appealing, the State party notes that this is not a circumstance that would absolve the complainant from exhausting domestic remedies.

6.6 The State party reiterates that the complaint should be declared inadmissible as the "same matter" has been examined under another procedure of international investigation or settlement and as manifestly unfounded. [It contests the complainant's allegation that the expulsion order has become statute-barred under the Aliens Act, because it had not been enforced within four years. According to the State party, the four-year-limit is not applicable to decisions taken by an ordinary court.]

Issues and proceedings before the Committee:

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has taken note of the complainant's argument that he chose not to appeal the 1997 judgment of the Uppsala District Court because risked incurring a heavier sentence if the expulsion order was repealed. It also notes the complainant's allegation that this fear was not merely subjective, but that it was based on his previous experience in 1993, when his term of imprisonment was increased. However, since the Court of Appeal had repealed the expulsion order in 1993, the Committee considers that the complainant has not sufficiently substantiated, for purposes of admissibility, that an appeal to repeal the 1997 expulsion order would have been ineffective. Nor is the Committee persuaded that remedies such as petitions to the Government or the Parliamentary Ombudsman absolved the complainant from pursuing available judicial remedies before the ordinary courts against the judgment which had ordered his expulsion. The complainant's alleged mental and emotional problems at the time of the second Uppsala District Court expulsion order (In 1997) also did not absolve him from the requirement to exhaust domestic remedies. The Committee concludes that, in these circumstances, the complaint is inadmissible for non-exhaustion of domestic remedies, pursuant to article 22, paragraph 5(b), of the Convention.

7.3 Having decided that the complaint is inadmissible for the above-mentioned reason, the Committee deems it unnecessary to consider the other grounds of inadmissibility invoked by the State party.

8. The Committee decides that:

(a) That the complaint is inadmissible under article 22, paragraph 5 (b), of the Convention;

(b) That this decision shall be transmitted to the State party and to the complainant.

[Adopted in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]