COMMITTEE AGAINST TORTURE

P. M. P. K. v. Sweden

Communication No 30/1995

20 November 1995

CAT/C/15/D/30/1995

ADMISSIBILITY

Submitted by: P. M. P. K. (name deleted) [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 14 July 1995

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

Meeting on 20 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Zairian citizen who entered Sweden in November 1991 to request asylum. She claims that her return to Zaire following the dismissal of her application for refugee status would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

2. On 31 January 1994, the Swedish Board of Immigration refused the author's application for asylum, noting that the political situation in Zaire had improved and considering that it was not likely that the author would be subjected to persecution or severe harassment. On 13 February 1995, the Aliens Appeal Board confirmed the decision of the Swedish Board of Immigration. The author then submitted a "new application" to the Appeal Board, arguing that the situation in Zaire had not improved, but on 16 March 1995 the Board rejected her

application, considering that the circumstances invoked by the author could not be seen as new evidence.

3. On 22 August 1995, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested the State party not to expel the author while her communication was under consideration by the Committee.

4. By submission of 16 October 1995, the State party challenges the admissibility of the communication. It explains that under chapter 2, section 5, of the Aliens Act, an alien who is to be refused entry or expelled can apply for a residence permit if the application is based on circumstances that have not previously been examined in the case and if the enforcement of the decision on refusal of entry or expulsion will be in conflict with humanitarian requirements. The State party emphasizes that new circumstances cannot ex officio be assessed by the immigration authorities, but only following a so-called "new application". The State party notes that the medical evidence invoked by the author in support of her communication has not previously been submitted to the Swedish immigration authorities, so that neither the Swedish Immigration Board nor the Aliens Appeal Board has had the opportunity to assess it. Considering that a "new application" may be lodged at any time and that the relevant requirements have recently been relaxed, the State party submits that domestic remedies have not been exhausted in the present case.

5. By submission of 10 November 1995, counsel claims that a "new application" under chapter 2, section 5, of the Aliens Act would not be successful. In this connection, she points out that an application has to be based on new circumstances not previously considered and that only 5 per cent of "new applications" succeed. Since the author's request for asylum was refused on the basis that the situation in Zaire had improved, she argues that a "new application" on the basis of the new medical evidence would be rejected on the same grounds.

6. Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication, unless it has ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. In the circumstances of the instant case, the Committee considers that the Swedish domestic authorities should have an opportunity to evaluate the new evidence submitted by the author, before the Committee examines the communication. Moreover, on the basis of the information available, the Committee cannot conclude that the available remedy of a "new application" would be a priori ineffective.

8. The Committee therefore decides:

(a) That the communication is inadmissible;

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

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