

## COMMITTEE AGAINST TORTURE

### J. M. U. M. v. Sweden

Communication No 58/1996

15 May 1998

CAT/C/20/D/58/1996

### ADMISSIBILITY

*Submitted by: J. M. U. M. (name withheld) (represented by counsel)*

*Alleged victim: The author*

*State party: Sweden*

*Date of communication: 27 June 1996*

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 May 1998,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is J. M. U. M., born on 11 June 1956. He is a national of the Democratic Republic of the Congo (formerly Zaire) and alleges a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

#### The facts

2.1 The author left Zaire in June 1990, after having experienced arrest and detention because of his political activities for the Mouvement National Congolaise Lumumba (MNCL). He was given a temporary residence permit in Congo, but left the country because he felt unsafe. He entered Sweden on 14 December 1990 and applied for asylum.

2.2 On 20 January 1992, the Immigration Board rejected his request. The Aliens Appeals

Board rejected his appeal on 3 December 1993. New applications made by the author to the Aliens Appeals Board were likewise rejected. The expulsion order against the order was not enforced because he went into hiding.

2.3 On 27 June 1996, the author presented a communication to the Committee against Torture under article 22 of the Convention. The Committee, through its Special Rapporteur for New Communications, requested the State party on 4 December 1996 not to deport the author while his communication was under consideration.

2.4 On 13 June 1997, the author filed a new application with the Aliens Appeals Board, based on new circumstances in his country of origin, after the Government had been overthrown. The expulsion order against the author was suspended.

2.5 On 27 December 1997, the Aliens Appeals Board concluded that the limitation period of the decision on refusal of entry in the author's case, which had gained legal force on 3 December 1993, had expired and that the decision had become statute barred. The Appeal Board referred the case back to the Immigration Board. On 27 January 1998, the author filed a new application for a residence permit with the National Immigration Board. According to information provided by the State party, the examination of his request shall be carried out as if the request had been made for the first time and the forthcoming decision by the Immigration Board would be subject to appeal to the Aliens Appeals Board.

#### Issues and proceedings before the Committee

3.1 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.

3.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted. In the instant case, the original expulsion order against the author is no longer enforceable and the author is not under immediate threat of being expelled to a country where he would risk to be subjected to torture. The author has presented a new application for a residence permit to the Immigration Board, from which a further appeal would be possible to the Aliens Appeals Board, if necessary. There is nothing to indicate that this new procedure cannot bring effective relief to the author. The Committee is therefore of the opinion that the communication is at present inadmissible for failure to exhaust domestic remedies.

4. The Committee therefore 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 author 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 author and his representative.

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