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COMMITTEE AGAINST TORTURE
Thirty-seventh session
6-24 November 2006

DECISION

Communication No. 288/2006

| | |
|--------------------------------------|-------------------------------------|
| <u>Submitted by:</u> | H. S. T. (represented by counsel) |
| <u>Alleged victim:</u> | The complainant |
| <u>State party:</u> | Norway |
| <u>Date of complaint:</u> | 9 January 2006 (initial submission) |
| <u>Date of the present decision:</u> | 16 November 2006 |

Subject matter: Deportation to face torture and/or cruel inhuman or degrading treatment or punishment.

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment.

Procedural issues: None

Articles of the Convention: 3

[ANNEX]

*Made public by decision of the Committee against Torture.

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-seventh session

Concerning

Communication No. 288/2006

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| <i>Submitted by:</i> | H. S. T. (represented by counsel) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Norway |
| <i>Date of complaint:</i> | 9 January 2006 (initial submission) |
| <i>Date of the present decision:</i> | 16 November 2006 |

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

Meeting on 16 November 2006,

Having concluded its consideration of complaint No. 288/2006, submitted to the Committee against Torture by H. S. T. 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 under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is H. S. T., a Mauritanian national, who was denied asylum in Norway and issued with a departure order on 14 April 2004. His whereabouts are currently unknown (see para. 5.2 below). He claims that if he is returned to Mauritania,¹ he will be subjected to torture, cruel, and inhuman and degrading treatment, which will constitute a violation by Norway of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The application was initially submitted by the

¹ Mauritania became a State party to the Convention against Torture on 17 November 2004 but did not make a declaration under article 22.

complainant himself, but his lawyer provided comments on the State party's submission on the complainant's behalf.²

1.2 On 3 February 2006, the Special Rapporteur on New Communications rejected the complainant's request for interim measures of protection.

The facts as presented by the author

2.1 The complainant claims to be a member of the prohibited movement Force de Libération des Africains de Mauritanie (FLAM). This militant organisation transmitted information to members in exile to alert international human rights organisations and the international press about human rights violations in Mauritania. His role in the organisation was "to recruit and sensitise younger members".

2.2 In Mauritania, the complainant was arrested three times. In 1995, after a student demonstration against "arabisation", he was detained for three days but was not interrogated. In 1996, he was arrested and detained for 14 days in relation to his father's opposition to agricultural reform. From 1996 to 2001, he studied and graduated in engineering in Jordan. Upon his return to Mauritania, he was again arrested in June 2001. He was interrogated and allegedly tortured so as to make him explain his role in the FLAM, and to reveal his brother's whereabouts (his brother obtained asylum in Sweden on the basis of his role as secretary general of FLAM). He was released after two days. In December 2001, he learned that he was wanted by the police and left the country for Norway. In February 2002, he arrived in Norway and applied for asylum on 21 February 2002.

2.3 On 21 February 2003, the complainant's application was denied by the Directorate of Immigration (UDI). On 31 March 2004, his appeal to the Immigration Appeals Board (UNE) was rejected. On 14 April 2004, he was issued a departure order. He initiated judicial proceedings and requested an injunction to stay the order to leave the country until his asylum case had been reviewed by the courts. On 13 September 2005, the Court of First Instance (Oslo byfogdembete) rejected his request. On 8 December 2005, the Court of Appeal (Borgarting lagmannsrett) rejected his appeal. As the complainant did not obtain an injunction to stay the order to leave the country, he did not institute principal court proceedings. In addition, he states that he cannot afford such proceedings.

The Complaint

3.1 The complainant claims that he fears inhuman and degrading treatment if returned to Mauritania, as he would be arrested and tortured or even killed, because of his political activism and his father's and brother's political activities.^{3.2} He claims that he was ordered to leave Norway before his case was heard by the courts, and that the Norwegian court system does not provide for effective remedies. He adds that proceedings have been unreasonably prolonged, and that this is solely the government's fault, which gave as justification its lack of knowledge about Mauritania.

² On 29 January 2006, the complainant sent an e-mail to the Secretariat, stating that he was in hiding and requesting that his e-mail or the address of his lawyer be used for communication with him.

The State party's observations on admissibility

4.1 On 3 April 2006, the State party provided its submission on admissibility only. It explains that generally, applications for asylum are assessed and decided in the first, administrative, instance by the Directorate of Immigration (UDI). Administrative appeals are decided by the Norwegian Immigration Appeals Board (UNE). All asylum seekers are appointed attorneys by the State. The legality of an administrative act may be challenged in Norwegian courts. Thus, asylum-seekers who find their applications for political asylum turned down by the administration have the possibility of filing an application before the Norwegian courts for judicial review and thereby have the legality of the rejection examined. Such an application is not subject to leave by the courts; neither is an application for injunction.

4.2 A concerned party may apply to the courts for an injunction, requesting an order to the administration to defer the deportation of the asylum-seeker. According to the Enforcement of Judgements Act 1992, an order for injunction may be granted if the plaintiff (a) demonstrates that the challenged decision probably will be annulled by the court when the main case is to be adjudicated, and (b) shows sufficient reasons for requesting an injunction, i.e. that an injunction is necessary to avoid serious damage or harm if the expulsion were enforced without the court having had the opportunity to adjudicate in the main case. Where the contested decision is a denial of asylum status, the second requirement in practice merges with the first requirement, which means that in an asylum case an application for injunction depends on whether or not the plaintiff can demonstrate that the challenged decision probably will be annulled by the court in the subsequent main case. In reviewing the legality of administrative asylum decisions the courts have full jurisdiction. The judicial review covers all factual and procedural aspects, as well as interpretation and application of the law.

4.3 On the facts, the State party submits that on 21 February 2003, the UDI rejected the complainant's asylum application, as there were insufficient grounds to demonstrate that he would be persecuted upon return. On 16 March 2004, the UNE rejected the complainant's appeal after oral hearings, during which the complainant made extensive statements, and after examining all the documents provided by the complainant, including his brother's statement and that of Ms. Garba Diallo, professor at the International People's College (IPC), Elsinore, Denmark. According to the UNE, the FLAM was established in March 1983 and was forbidden the following year. During recent years it has mainly operated in exile, from its headquarters in Senegal. There are no reports indicating that the FLAM has either a prominent role in Mauritania or any political power. Neither are there any indications about persecution of ordinary FLAM members. UNE was familiar with the fact that the political opposition in Mauritania faces problems with the authorities, but there are no reliable reports subsequent to 2002 indicating arrests of political opponents, except for the arrest of one of the leaders of an organisation who was working against slavery and was released after two days.

4.4 The UNE highlighted the information provided by the complainant that was vague and inaccurate, regarding both his connection with the FLAM and his relations with the Mauritanian authorities. He had explained that he was wanted by the authorities mainly because he was suspected of being a member of FLAM and because his brother was also a member, but provided no further information. Thus, he was not found to have met the necessary conditions under article 1 (A) of the UN Convention Relating to the Status of Refugees to be granted asylum pursuant to section 16 of the Norwegian Immigration Act.

Neither did he meet the conditions of the non-refoulement clause of section 15 of the Immigration Act, which provides the same protection as article 3 of the ECHR and article 3 of the Convention. Following the decision of the UNE the complainant presented a “request for renewed assessment”. The UNE saw no reason to reverse its former decision. In the State party’s view the complainant’s case was assessed thoroughly, by both the UDI and the UNE.

4.5 On 16 June 2005, the complainant requested a temporary injunction pursuant to chapter 15 of the Norwegian Enforcement Act, to suspend the implementation of the administrative decision to deny asylum or residence permit on humanitarian grounds until the hearing of his main case before the courts. He has not to date brought a main case before the Norwegian courts. On 13 September 2005, the Court of First Instance (Oslo byfogdembete) denied the injunction request. The decision was made after a full day of oral hearings with extensive statements from the complainant, as well as examination of five other witnesses’, including the complainant’s brother. The Government called as an expert witness the regional advisor from Landinfo (Country of Origin Information Center), who has personal and up to date knowledge of the human rights situation in Mauritania. It also called the executive officer from the UNE responsible for the complainant’s case, who testified about how the case was assessed and decided by the immigration authorities.

4.6 The complainant appealed his request for an injunction to the Court of Appeal (Borgarting lagmannsrett), which confirmed the first instance decision on 8 December 2005. It concluded that after reviewing the facts of the case that the complainant would not face a personal risk of persecution if he were to be returned to Mauritania. The complainant did not contest this decision by appealing to the Appeal Committee of the Supreme Court. The complainant was represented by counsel throughout the court proceedings.

4.7 The State party submits that the complaint is inadmissible as manifestly unfounded. In its view there is no substantial risk that the complainant would be persecuted if returned to Mauritania. The mere allegation of membership of FLAM, and the vague allegations that he was tortured during his arrests in 1996 and 2001, do not amount to an arguable claim under the Convention. The complainant has failed to provide any detailed information of the alleged incidents or any medical evidence which supports his claim. According to reliable resources, there is no reason to assume that an ordinary member of FLAM would risk persecution contrary to the Convention upon return.

The complainant’s comments on the State party’s observations

5.1 On 3 July 2006, the complainant commented that the State party has no means of receiving information on the human rights situation in Mauritania directly and that it only relies on outside sources for such information. He submits that the Norwegian courts have only overruled administrative decisions regarding asylum applications on a few occasions, and that this raises a concern about the effectiveness of judicial remedies in the State party. That the courts decided against his application, despite the evidence of an expert with direct experience on the human rights situation in Mauritania, shows the Norwegian court system’s failure to provide for an effective remedy. As a consequence of the State party’s limited knowledge of the situation in Mauritania, and given that the complainant’s brother was awarded refugee status in Sweden, following a fact-finding mission conducted by Sweden, the complainant requests the Committee to gather its own information regarding the factual basis of the complaint, under article 20 of the Convention.

5.2 On 6 July 2006, counsel advised the Secretariat that to her knowledge the complainant is not currently in Norway. She states that he may have been in France a while ago and it is possible that he is in France now. The complainant had called the Secretariat in March 2006, to enquire about the status of his case, and mentioned that he was then in Belgium.

Issues and proceedings before the Committee

Consideration of the admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention and its rules of procedure.

6.2 Pursuant to article 22, paragraph 1, of the Convention, the Committee may consider a communication from an individual who claims to be a victim of a State party's violation of a provision of the Convention, providing the individual is subject to that State's jurisdiction and the State has declared that it recognizes the Committee's competence under article 22.

6.3 The Committee notes that the complainant appears to have left Norway. Article 3 of the Convention prohibits return (refoulement) of a person by a State party to another State where there are substantial grounds for believing that the individual may be subjected to torture. In the present case, as the complainant appears to be no longer within any territory under the State party's jurisdiction, he cannot be returned to Mauritania by the State party. Consequently, article 3 of the Convention does not apply. Consideration of the complaint having become moot, the Committee finds it inadmissible. In light of the aforementioned grounds of inadmissibility, the Committee does not need to address the State Party's contention that the complainant's claim under article 3 should be declared inadmissible as manifestly unfounded.

6.4 Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 107(b) of its revised Rules of Procedure, that the complaint is manifestly unfounded, and thus inadmissible.

7. The Committee against Torture therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the complainant's counsel and to the State party.

[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.]