



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

Distr.
RESTRICTED*

CAT/C/35/D/235/2003
14 December 2005

Original: ENGLISH

Committee Against Torture
Thirty-fifth session
7 – 25 November 2005

DECISION

Communication No. 235/2003

Submitted by: Mr. M. S. H. (represented by counsel, Ms
Gunnel Stenberg)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 26 September 2003 (initial submission)

Date of present decision: 14 November 2005

[ANNEX]

*Made public by decision of the Committee Against Torture.

Subject matter: Deportation from Sweden to Bangladesh; previous experience of torture

Substantive issues: Risk of present and personal risk of torture

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. 235/2003

Submitted by: Mr. M. S. H. (represented by counsel, Ms
Gunnel Stenberg)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 26 September 2003 (initial submission)

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

Meeting on 14 November 2005,

Having concluded its consideration of complaint No. 235/2003, submitted to the
Committee against Torture by Mr. M. S. 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 and the State party,

Adopts the following:

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

1.1 The complainant is M. S. H., born 1973, a citizen of Bangladesh currently residing in Sweden. He claims that his forcible return to Bangladesh 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 counsel.

1.2 On 26 September 2003, the Committee transmitted the complaint to the State party, together with a request under Rule 108, paragraph 1, of the Committee's Rules of Procedure that the complainant not be expelled to Bangladesh pending the Committee's consideration of his complaint; the State party acceded to this request.

Facts as submitted by the complainant:

2.1 The complainant was an active member of the Bangladesh Freedom Party ('Freedom Party') from 1990, and Assistant Secretary of the party at Titumir College from 1995. His activities included calling people to meetings and mass demonstrations. In 1996, the Awami League came to power in Bangladesh, which set out to 'destroy' the Freedom Party. Following a demonstration by the Freedom Party on 1 August 1996, the complainant was arrested by police and taken to a local police station, where he was interrogated about other members of the Freedom Party. He was held for 11 days, during which he was subjected to torture, consisting of beatings with sticks, warm water being poured through his nose, and being suspended from the ceiling. He was released on condition of abandoning his political activities for the Freedom Party.

2.2 The complainant however continued his activities. In January 1997, he received death threats from members of the Awami League. Following a large demonstration of the Freedom Party on 17 March 1999, he was arrested and again tortured by the police; they poured water down his nose and beat him. He was released after seven days in custody, but only after providing a written statement that he would cease his political activities. The police threatened to shoot him if he broke this promise. In February 2000, the Freedom Party participated in a demonstration together with three other parties; shortly afterwards, the complainant learnt from his parents that he had been falsely accused of, and charged under the *Public Safety Act* with, illegal possession of arms, throwing bombs and disrupting public order. Fearing further detention and torture, he fled the country.

2.3 The complainant entered Sweden on 24 May 2000 and applied for asylum on the same day. He referred to his experiences in Bangladesh, and claimed that he feared imprisonment if returned. He invoked NGO and government reports about the human rights situation in Bangladesh, which attested to a climate of impunity for torture, and deficiencies in the legal system. However, the Migration Board noted that the Awami League was no longer in power in Bangladesh, and that accordingly the complainant had no basis to fear persecution at its hands. On 19 December 2001, the Migration Board rejected the asylum application and ordered the complainant to be deported.

2.4 The complainant appealed to the Aliens' Appeals Board, arguing that torture continued to be widespread in Bangladesh despite changes in the political situation. He referred in particular to the so-called 'Operation Clean Heart'. The Appeals Board did not question that the complainant had previously been subjected to torture in

Bangladesh; however it considered that the general human rights situation in Bangladesh was not itself sufficient to place the complainant at risk of torture or other degrading treatment. On 6 March 2003, the Appeals Board upheld the decision of the Migration Board.

2.5 On 21 March 2003, the complainant filed a new application with the Migration Board, and presented detailed medical evidence corroborating the torture to which he had been subjected in Bangladesh, and that he suffered from post traumatic stress disorder. The complainant also invoked a report by the Swedish Foreign Office on Bangladesh dating from 2002, which confirmed that torture was widespread. Based on the above, he claimed to be at risk of torture if returned to Bangladesh. On 19 May 2003, the Migration Board rejected the application, finding that nothing had been submitted by the complainant which would cause it to review its earlier decision.

The complaint:

3. The complainant claims that his deportation to Bangladesh would amount to a violation of article 3 of the Convention, on the basis that there are substantial reasons for believing that he would be subjected to torture or other inhuman treatment in Bangladesh. He states that, although the Awami League is no longer in power, the Freedom Party is also an 'enemy' of the current government, and that changes in the political situation since he left the country do not diminish the risk of mistreatment if returned to Bangladesh.

The State party's observations on admissibility and merits:

4.1 In its observations dated 21 November 2003, the State party objects to the admissibility of the claim and addresses the merits of the case. In relation to admissibility, it submits that the complainant has failed to establish a *prima facie* case of a violation of article 3.

4.2. The State party recalls the procedures governing asylum claims in Sweden. Under Chapter 3 of the *Aliens Act*, an alien is entitled to a residence permit in Sweden if he left his country of nationality because of a well-founded fear of being subjected to torture or other inhuman or degrading treatment or punishment. Chapter 8 prohibits the expulsion of such persons. A residence permit may also be issued to an alien for humanitarian reasons. Aliens cannot be refused asylum until the Migration Board has heard the application. The decision of the Migration Board can be appealed to the Aliens Appeals Board.

4.3 In relation to the complainant, the State party notes that he was interviewed for a first time on the day of his arrival in Sweden. He stated that he had been a member of the Freedom Party since 1990, and, due to his political activities, was arrested in 1996 when the Awami League came to power. He had been arrested and tortured on two occasions, in August 1996 and March 1999. In February 2000, he had been falsely accused of disturbing public order, and following the issue of an order for his arrest, he fled to Sweden with the help of a smuggler. At his second interview on 23 November 2001, he added a number of details about his political activities and his experiences in Bangladesh, including that he had been falsely accused and charged with illegal possession of weapons under the *Public Safety Act*.

4.4 On 19 December 2001, the Migration Board dismissed his application for asylum, noting that the political situation in the country had changed, and that the Awami League was no longer in power. The Board found that he was not entitled to asylum as a refugee or to a residence permit as a person otherwise in need of protection. The complainant's appeal to the Aliens Appeals Board was rejected on 6 March 2003.

4.5 The State party acknowledges that all domestic remedies are exhausted. However, it contends that the communication should be considered inadmissible under article 22, paragraph 2, of the Convention, on the basis that the complainant's submission that he risks being subjected to torture upon return to Bangladesh fails to rise to the basic level of substantiation required for the purposes of admissibility, and is therefore manifestly unfounded.¹

4.6 On the merits, the State party submits that the question is whether there are substantial grounds for believing that the individual concerned would be personally at risk of being subjected to torture in the country to which he is being returned.² It follows that the existence of a consistent pattern of human rights violations in a country does not as such constitute sufficient ground for determining that a particular person would be in danger of being subjected to torture.

4.7 In relation to the general human rights situation in Bangladesh, the State party notes that, whilst problematic, the situation has improved. Violence remains a pervasive element in the country's politics, and supporters of different parties frequently clash with each other and with police during rallies. The police reportedly use torture, beatings and other forms of abuse while interrogating suspects. The government often uses the police for political purposes – thus several members of the Awami League have been detained. But when members of the Swedish Aliens Appeals Board conducted a study tour to Bangladesh in October 2002, they concluded that there was no institutionalized persecution in Bangladesh, and that persecution for political reasons was rare at the grass roots level. Those most at risk of harassment were opposition politicians and party members in leading positions. In any event, the State party emphasizes that the crucial factor in this case is that the Awami League is no longer in power.

4.8 On the complainant's personal circumstances, the State party submits that Swedish asylum law reflects the principles contained in article 3 of the Convention, and that Swedish authorities apply the same test when considering an application for asylum as that applied by the Committee in considering a complaint under the Convention. The authorities have considerable experience in dealing with asylum claims from Bangladesh and in assessing whether a person deserves protection, having regard to the risk of torture and other ill treatment. Between 1990 and 2002 it dealt with over 1700 such applications, and over 700 were granted. For the State party, considerable weight should be attached to the opinions of its immigration authorities, which in the present instance found no reason to conclude that the complainant should be granted asylum.

¹ Reference is made to *H.I.A. v Sweden*, Communication No 216/2002, Views adopted 2 May 2003, para 6.2

² Reference is made to *S.L. v Sweden*, Communication No 150/1999, Views adopted 11 May 2001, para 6.3.

4.9 The State party submits that the complainant in this case bases his claim on the fact that he was twice previously subjected to torture in Bangladesh. It recalls the Committee's jurisprudence that, whilst past torture is one factor to take into account in considering a claim under article 3, the focus of the Committee's deliberation is whether the complainant would *presently* be at risk of torture if returned to his home country; past experience of torture does not of itself establish a present risk.³ Furthermore, the Committee's General Comment and jurisprudence indicate that past experience of torture is pertinent if it has occurred in the *recent* past, which is not the case in the present instance.⁴

4.10 The complainant resumed his political activities after being released from custody the second time, despite the death threat from the police. He was able to continue his political activities until February 2000. He even felt safe enough to participate in a demonstration that was attacked by the police and members of the Awami League. The State party considers that this is indicative of the fact that the complainant may not have believed himself to be in danger.

4.11 The State party notes that the complainant has not provided any evidence that he is wanted by the authorities in connection with criminal charges under the *Public Safety Act*, nor was any information presented about the current state of these charges. In any event, the Act has been repealed in April 2002. In view of the government's information that false accusations tend to be leveled primarily against *senior* opposition figures, individuals active in politics at the grass-root level may avoid harassment by relocating within the country. In the absence of any evidence adduced by the complainant, the State party considers his claim about pending criminal charges to be unfounded. Even if he *did* risk detention in connection with criminal charges, this does not demonstrate that there are substantial reasons for believing that he would face a personal risk of torture.⁵

4.12 The State party reiterates that the political situation in Bangladesh has changed considerably since the complainant left. According to the complainant, it was the ruling party, the Awami League, which persecuted him, but this party was defeated in the general elections of October 2001. There is nothing to suggest that the complainant has anything to fear from the parties currently in power. Indeed, according to information from the Swedish embassy in Dhaka, the ruling BNP and the Freedom Party are both 'anti-Awami League' and on good terms with each other. Accordingly, nothing suggests that the complainant would be in danger of politically motivated persecution which would render him vulnerable to torture.

The complainant's comments on the State party's observations:

5.1 In his comments on the State party's observations dated 26 February 2004, the complainant provides further information about the general human rights situation in Bangladesh. He invokes Amnesty International's report from 2003, which concludes

³ Reference is made to *X, Y and Z v Sweden*, Communication No 61/1996, Views adopted on 6 May 1998, para 11.2

⁴ Reference is made to *S.S. v Netherlands*, Communication No 191/2001, Views adopted on 5 May 2003, para 6.6

⁵ Reference is made to *I.A.O. v Sweden*, Communication No 65/1997, Views adopted on 6 May 1998, para 14.5; and *P.Q.L. v Canada*, Communication 57/1996, Views adopted on 17 November 1997.

that torture has been widespread in the country for years, that successive governments have not addressed the problem, and that there is a climate of impunity. Court proceedings against a public employee, such as a police officer, are only possible with the government's agreement, which is rarely forthcoming. The complainant challenges the State party's assessment that activists at grass roots level are not the subject of false accusations and submits that it is generally such people who are more vulnerable to persecution than leading opposition figures, who are more closely followed by the media, resulting in a certain level of protection.

5.2 In relation to his personal circumstances, the complainant reiterates that he faces a foreseeable, real and personal risk of torture if he is returned to Bangladesh. He argues that, where it is established that a person has been subjected to torture in the past, there should be a presumption that this person runs a risk of torture in the future, unless circumstances have manifestly changed. The complainant argues that in his own case, no fundamental changes have taken place. Those who work for the Freedom Party are still in opposition to the present government, and political opponents continue to be subjected to arrest and torture in Bangladesh. The Freedom party is considered a 'political enemy' by the current government.

5.3 The complainant recalls that, following his release from custody in 1999, he continued his political activities out of conviction, despite the dangers and not because there was no danger, as suggested by the State party. He argues that it is not possible to obtain documents substantiating charges under the *Public Safety Act* until one is actually arrested, and that, although the Act has been repealed, no amnesty has been granted to persons charged under the Act. The complainant notes that in October 2003, he spoke with his mother, who told him that the police had come to look for him, and that they had not believed her when she told them he now lived abroad. This demonstrates that he remains the subject of interest to the authorities. Finally, the complainant submits that the risk of being detained in connection with pending charges, combined with the widespread phenomenon of torture in detention in Bangladesh, and the fact that the complainant has been tortured in the past, together justify the conclusion that he faces a real and personal risk of torture if returned to Bangladesh.

Issues before the Committee:

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. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee notes that the exhaustion of domestic remedies was not contested by the State party in its initial submission.

6.2 The State party objects to admissibility on the grounds that the complainant has not established a *prima facie* case of a violation. However, the Committee considers that the complainant has provided sufficient information in substantiation of his claim to warrant consideration on the merits. As the Committee sees no further obstacles to the admissibility of the communication in this regard, it proceeds to its consideration on the merits.

6.3 The Committee must determine whether the forced return of the complainant to Bangladesh would violate the State party's obligations under article 3, paragraph 1 of the Convention not to expel or return ('*refouler*') an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.4 The Committee recalls its General Comment on article 3, pursuant to which the Committee must assess whether there are 'substantial grounds for believing that the author would be in danger of torture' if returned, and that the risk of torture 'must be assessed on grounds that go beyond mere theory or suspicion'. The risk involved need not be 'highly probable', but it must be 'personal and present'.⁶ In this regard, in previous decisions the Committee has consistently determined that the risk of torture must be 'foreseeable, real and personal.'⁷

6.5 In assessing the risk of torture in the present case, the Committee has noted the complainant's submission that he was twice previously tortured in Bangladesh. However, as the State party points out, according to the Committee's General Comment, previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin; in this regard, the Committee must consider whether or not the torture occurred recently, and in circumstances which are relevant to the prevailing political realities in the country concerned. In the present case, the torture to which the complainant was subjected occurred in 1996 and 1999, which could not be considered recent, as well as in quite different political circumstances, i.e. when the Awami League was in power in Bangladesh and was, according to the complainant, bent on destroying the Freedom Party.

6.6 The Committee has taken note of the submissions regarding the general human rights situation in Bangladesh and the reports that torture is widespread; however, this finding alone does not establish that the complainant himself faces a personal risk of torture if returned to Bangladesh. The Committee observes that the main reasons the complainant fears a personal risk of torture if returned to Bangladesh are that he was previously subjected to torture for his membership in the Freedom Party, and that he risks being imprisoned and tortured upon his return to Bangladesh pursuant to his alleged charges under the *Public Safety Act*.

6.7 The complainant submits that the Freedom Party remains an enemy of the current government. However, the State party's information on this issue is to the contrary. The Committee recalls that in accordance with its General Comment No.1,⁸ it is for the complainant to present an arguable case and to establish that he would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. In the present case, the Committee is not satisfied by the complainant's argument that given current political situation in Bangladesh, he would still be in danger of being tortured merely for being a member of the Freedom Party in a non-prominent position.

6.8 In relation to the charges which the complainant says were filed against him, the Committee has noted both the State Party's argument that no evidence has been produced in support of this contention, and the complainant's response that he would

⁶ General Comment No1, Sixteenth Session (1996).

⁷ *H.K.H. v Sweden*, Communication No 204/2002, Views adopted 28 November 2002.

⁸ General Comment No1, Sixteenth Session (1996).

only be able to obtain such evidence once arrested. The current status of the charges against him remains in any event unclear, since, according to the State party, the relevant legislation has been repealed. While the complainant notes that no amnesty has been issued in relation to offences under the legislation, such an amnesty would ordinarily only apply to a conviction, rather than to criminal charges – the Committee also considers that the complainant has not been able to substantiate his claims that the prosecution of charges fired against him will proceed, even though the relevant legislation has been repealed. As a consequence, it does not consider it likely that the complainant risks imprisonment on return.

6.9 In the circumstances, the Committee concludes that the expulsion of the complainant to Bangladesh would not violate the State party's obligations under article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Bangladesh would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, 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.]
