



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

Distr.
RESTRICTED*

CAT/C/35/D/242/2003
30 November 2005

Original: ENGLISH

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

DECISION

Communication No. 242/2003

Submitted by: Mr. R. T. (represented by counsel, Ms. Brigitt Thambiah)

Alleged victim: The complainant

State Party: Switzerland

Date of complaint: 11 December 2003 (initial submission)

Date of the present decision: 24 November 2005

[ANNEX]

Made public by decision of the Committee against Torture.

GE.05-45311

Subject matter: Deportation of complainant to Sri Lanka

Procedural issue: Lack of substantiation of claim

Substantive issues: Non-refoulement

Articles of the Convention: 3, 22

Rules of Procedure: Rule 107 (a) and (b)

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. 242/2003

Submitted by: R. T. (represented by counsel, Ms. Brigitt Thambiah)
Alleged victim: The complainant
State Party: Switzerland
Date of complaint: 11 December 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 24 November 2005,

Having concluded its consideration of complaint No. 242/2003, submitted to the Committee against Torture by Mr. R. 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,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The complainant is Mr. R. T., a Sri Lankan national of Tamil origin, currently residing in Switzerland pending his return to Sri Lanka. He does not invoke any specific provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but his complaint appears to raise issues under article 3 of the Convention. He is represented by counsel, Ms. Brigitt Thambiah.

1.2 On 12 December 2003, the Committee, through its Rapporteur on new complaints and interim measures, transmitted the complaint to the State party and requested, under Rule 108, paragraph 1, of its rules of procedure, not to return the complainant to Sri Lanka while his case was under consideration by the Committee.

The Rapporteur indicated that this request could be reviewed in the light of new arguments presented by the State party. The State party acceded to this request.

1.3 On 12 February 2004, the State party challenged the admissibility of the communication and requested the Committee to withdraw its request for interim measures, pursuant to Rule 108, paragraph 7, of the Committee's rules of procedure. On 2 April 2004, the complainant objected to the State party's motion for withdrawal of interim measures. On 30 June 2004, the Secretariat informed the State party that the admissibility of the communication would be examined separately from its merits.

The facts as submitted by the complainant:

2.1 The complainant claims that he joined the LTTE (Liberation Tigers of Tamil Eelam) in 1992 and participated in armed combat. On 1 April 1994, the LTTE sent him to Colombo without giving reasons. On 20 October 1995, the police arrested him during an identity control in connection with an LTTE attempt, but released him after three days upon payment of a bribe by the LTTE.

2.2 On 12 May 1996, the complainant entered Germany where he unsuccessfully applied for asylum. On return to Sri Lanka on 21 November 1997, he was arrested by the Criminal Investigation Department (CID), but was released after paying a bribe. On 3 February 1998, the complainant was arrested as LTTE suspect by the CID under the Prevention of Terrorism Act. He was detained for 25 days without access to a judge. He was allegedly ill-treated during detention. Following his release, he was required to report to the police on every Sunday for three months. On 11 June 1998, he was again arrested on the suspicion of LTTE membership and was allegedly ill-treated during detention. After 20 days, the Magistrate's Court in Colombo acquitted him and ordered his unconditional release.

2.3 The complainant then went to Singapore. On 25 January 2000, he was returned and arrested by the CID on arrival at the airport. On 30 January, he was released on bail and later acquitted by the Magistrate's Court in Negombo. On 18 June 2000, the CID again arrested him for presumed LTTE contacts, allegedly detained and ill-treated him, until he was acquitted and released by the Magistrate's Court in Colombo on 10 July 2000.

2.4 On 23 August 2000, the complainant made another unsuccessful asylum application at Frankfurt Airport in Germany. Upon return to Sri Lanka on 16 October 2000, he was detained until the Magistrate's Court in Negombo ordered his release on bail. Subsequently, the police allegedly threatened his life on two occasions.

2.5 On 23 February 2001, the complainant applied for asylum at the Swiss Embassy in Colombo. On 27 February 2001, he was invited for an interview on 16 March 2001, which he did not attend. His application was therefore rejected on 11 May 2001.

2.6 Meanwhile, the complainant traveled to China. On 25 October 2001, he was returned to Sri Lanka, after trying to leave Hong Kong for the United States on a false passport. On arrival, he was asked about the reasons for his deportation and was

released after paying a bribe. Between 4 and 9 November 2001, he was allegedly detained and again maltreated by the CID.

2.7 On 16 November 2001, the complainant filed a second asylum application with the Swiss Embassy in Colombo and justified his failure to attend the interview on 16 March 2001 as follows: The night before the interview, security forces had been searching for him, thereby forcing him to go into hiding. He had then left Sri Lanka for Hong Kong, where immigration authorities detained him for five months because of the expiry of his visa. In October 2001, he was returned to Sri Lanka.

2.8 On 19 November 2001, the complainant was interviewed at the Swiss Embassy in Colombo. He stated that he had left Sri Lanka in 1996 without the LTTE's knowledge and had not had contact with Organization since then. On 29 September 2000, he had been detained for six days and subjected to ill-treatment by the CID.

2.9 On 6 March 2002, the Swiss Federal Office for Refugees (BFF) authorized the complainant's travel to Switzerland in order to pursue his asylum proceedings. He arrived in Switzerland on 20 April 2002. During an interview with the BFF on 22 May 2002, he referred to a letter dated 10 February 2001 from the LTTE, stating that the Organization would "forgive" him one last time, as well as to a letter dated 17 January 2002 from the People's Liberation Organization of Tamil Eelam (PLOTE), threatening to arrest him without handing him over to the authorities.

2.10 On 25 September 2002, the BFF rejected the complainant's second asylum application and ordered his expulsion. It challenged the credibility of his account and the authenticity of the letters allegedly sent by the LTTE and the PLOTE. His alleged arrests in 1995, 1998 and 2000 had no sufficient link in time to establish a *present* risk of persecution or ill-treatment. Even if his return to the North-East of Sri Lanka was too dangerous, the complainant had an internal flight alternative in the Southern parts of Sri Lanka.

2.11 On 28 October 2002, the BFF revoked its decision and held another interview with the complainant on 19 December 2002, during which he stated that he had not had any contact with the LTTE since his departure from Jaffna in 1994, and that the Organization had been looking for him since 1995. In February 2003, the BFF invited the complainant's lawyer to comment on the information received from the German immigration authorities, and granted him access to the files of the German asylum proceedings. The lawyer did not comment.

2.12 On 15 May 2003, the BFF rejected the complainant's second asylum application (dated 26 October 2001) and ordered his expulsion, on the following grounds: (a) the absence of any evidence that the complainant was ever detained, indicted or convicted for LTTE membership; (b) the fact that he was acquitted and released after relatively short detention periods; (c) the inconsistencies in his description of the dates and the periods of detention in his applications and in his statements at the Swiss Embassy in Colombo and before the BFF; (d) the context of his arrests, i.e. the Sri Lankan authorities' need to investigate terrorist acts and to check the complainant's status after his forcible return from three different countries;

and (e) the improvement of the general human rights situation in Sri Lanka after the conclusion of an armistice on 22 February 2002.

2.13 On 14 October 2003, the Swiss Asylum Review Board (ARK) dismissed the complainant's appeal on the following additional grounds: (a) further inconsistencies in his account, e.g. the contradiction between his statement before the BFF on 19 December 2002 that he had not had any contact with the LTTE since 1994, and his statement at the Swiss Embassy in Colombo that he left the LTTE in 1996, as well as his claim that the LTTE had paid a bribe to free him from detention in October 1995; or (b) the contradiction between his alleged six-day detention from 29 September 2000 and information from the German border police in Weil am Rhein, according to which he had been in Germany between 23 August and 16 October 2000; (c) the fact that the documents submitted by the complainant merely reflected that he was arrested and released on several occasions, without establishing any link with the LTTE; (d) the lack of authenticity of two letters from a Sri Lankan lawyer, confirming that the complainant had been arrested as an LTTE suspect several times; (e) the absence of a risk of treatment contrary to article 3 of the Convention; and (f) the applicability of the Swiss-Sri Lankan repatriation agreement of 1994, under which the complainant would be in possession of valid documents upon return to Sri Lanka, thus excluding a risk of detention related to identity controls.

2.14 On 20 October 2003, the BFF ordered the complainant to leave Switzerland by 15 December 2003. On 9 December 2003, the Directorate for Labour and Migration of the Canton of Uri convoked the complainant for 16 December 2003 to discuss the modalities of his travel under the voluntary repatriation programme ("swissREPAT") chosen by him.

The complaint:

3.1 The complainant claims that he cannot return to Sri Lanka, from where he fled during the civil war. He fears that he will be arrested upon return to Sri Lanka and requests the Committee to assist him to obtain asylum in Switzerland or a third country.

3.2 From the documents submitted by the complainant, it transpires that he does not only fear persecution and torture at the hand of the Sri Lankan authorities, but also by the LTTE and the PLOTE.

3.3 As part of the file of his asylum proceedings in Switzerland, the complainant submitted, *inter alia*, the following documents: (a) a family notification by the ICRC dated 23 July 1996, in Sinhalese; (b) an ICRC card carrying the complainant's name as well as an ICRC number; (c) a letter dated 26 February 1997 from a Colombo-based lawyer, stating that the complainant had been arrested by the army on 13 July 1996 and detained until 26 February 1997; (d) two letters dated 2 September 2000 and 26 December 2002 from another lawyer, confirming arrests of the complainant in 1995, 1998 and 2000, drawing attention to the unsettled political situation in Sri Lanka, and stating that on return, he would be charged under the Immigrants and Emigrants (Amendment) Act No. 42 of 1998,¹ providing for sentences between one

¹ Read together with Act No. 16 of 1993.

and five years imprisonment, as well as under the Prevention of Terrorism Act, which provides for much longer sentences and involves a risk of being subjected to duress to extract a confession; and (e) a letter dated 28 August 2003 from the manager of the lodge in Colombo where the complainant used to live, warning him that on 7 and 10 August 2003, the CID had come to the lodge to look for him.

State party's observations on admissibility:

4.1 On 12 February 2004, the State party disputed that the complainant's submission meets the minimum requirements of a complaint within the meaning of Rule 107 (a) of the Committee's rules of procedure and, subsidiarily, challenged its admissibility for lack of substantiation of a violation of the Convention.

4.2 The State party submits that Rule 107 (a) requires "that the individual claims to be a victim of a violation by the State party of the provision of the Convention." Rather than substantiating a violation of the Convention, the complainant merely informed UNHCR on an unspecified date about the rejection of his asylum application by the BFF, the possibility to appeal this decision within 30 days, and requested an appointment to "discuss [his] problem before writing an appeal." In the absence of any claim of a violation, the State party considers it impossible to comment on the complainant's submission.

4.3 The State party submits that, albeit still in force, the provisions pertaining to the return of LTTE suspects adopted under the February 2002 armistice are inapplicable to the complainant, who was never suspected of belonging to the LTTE. It reserves the right to submit its merits observations, should the Committee declare the communication admissible.

Complainant's comments:

5.1 On 2 April 2004, the complainant clarified that, rather than his request for consultation with UNHCR concerning the modalities of an appeal to the ARK, his letter of 11 December 2003 formed the basis of his complaint to the Committee. In this letter, which was signed and dated, he expressed his fear to be arrested upon return to Sri Lanka, after his appeal had been dismissed by the ARK on 14 October 2003. It was obvious from his previous experience that, in addition to arrest, he also feared ill-treatment, to which young Tamils were still subjected in Sri Lankan prisons. The documents appended to his complaint reflected that he had been detained several times in Sri Lanka. Moreover, during the Swiss asylum proceedings, he had already raised his claim that he had been maltreated by the CID during detention.

5.2 The complainant argues that the formal requirements for submitting a complaint should not be overly strict for a layman and concludes that his complaint meets the admissibility criteria under the Convention.

Issues and proceedings before the Committee:

6.1 Before considering any claim 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, of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that the complainant has exhausted all available domestic remedies.

6.2 The Committee recalls that for a claim to be admissible under article 22 of the Convention and Rule 107 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility. It notes that the complainant has provided documentary evidence for his arrest on 3 February 1998 and for his release on 10 July 2000 (following his arrest on 18 June 2000) by the Magistrate's Court in Colombo. However, beyond the mere claim that he was subjected to ill-treatment during detention, he has failed to provide any detailed account of these incidents or any medical evidence which would corroborate his claim or possible after-effects of such ill-treatment. Even assuming that the author was ill-treated during detention periods in 1998 and 2000, this did not occur in the recent past.

6.3 The Committee notes that the complainant has not submitted any corroborating evidence in support of his alleged detention and ill-treatment in September and October 2000 or in November 2001.

6.4 Lastly, the Committee notes that the BFF gave the complainant ample opportunity to substantiate his claims, authorizing his travel to Switzerland to pursue his asylum proceedings and interviewing him several times. The BFF did not hesitate to revoke its decision of 25 September 2002 to reassess his asylum application. The Committee observes that the complainant has not provided fresh evidence which would cast doubts on the findings of, or the factual evaluation made by, the BFF and the ARK.

7. The Committee therefore considers that the complainant's claims fail to rise to the basic level of substantiation required for purposes of admissibility, and concludes, in accordance with article 22 of the Convention and Rule 107 (b) of its rules of procedure, that the communication is manifestly unfounded and thus inadmissible.

8. Accordingly, the Committee decides:

- a) that the communication is inadmissible;
- b) that this decision shall be communicated to the State party and to the complainant.

[Done 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.]
