



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

Distr.
RESTRICTED*

CAT/C/38/D/305/2006
1 May 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-eighth session
(30 April – 18 May 2007)

DECISION

Communication No. 305/2006

<u>Submitted by:</u>	A. R. A.
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	25 September 2006 (initial submission)
<u>Date of present decision:</u>	30 April 2007

Subject matter: deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issues: none

Substantive issues: risk of torture and cruel, inhuman or degrading treatment or punishment on deportation

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-eighth session

Concerning

Communication No. 305/2006

Submitted by: A. R. A.
Alleged victim: The complainant
State party: Sweden
Date of the complaint: 25 September 2006 (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 30 April 2007

Having concluded its consideration of complaint No. 305/2006, submitted to the Committee against Torture by A. R. A. 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 A. R. A., a citizen of Sri Lanka born on 6 December 1965, awaiting deportation from Sweden to Sri Lanka. Although he does not invoke a specific article of the Convention, his claims appear to raise issues under article 3 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The author is not represented by counsel.

1.2 On 18 October 2006, the Special Rapporteur on New Communications and Interim Measures decided not to issue a request for interim measures of protection¹.

Factual background:

2.1 While in Sri Lanka, the complainant used to help his father, who was a member of the Sri Lanka Freedom Party (SLFP), with his political activities, and later himself became an

¹ It would appear that the author is in hiding and is contactable through a friend.

important member of that party. While serving in the military from August 1988 to April 1994, the complainant was physically and psychologically tortured by members of the United National Party (UNP), because of his political involvement. However, he confirms that this was not the reason he left the country².

2.2 From 1994 to 2001, while the SLFP was in power, the complainant did not encounter any difficulties. However, since 1994, he was categorised as a “most wanted person” by the Liberation Tigers of Tamil Eelam (LTTE), who he claims want to kill him, because of knowledge he acquired in the army about this organisation. From December 2001, when the UNP came back to power, the complainant was threatened and his house was vandalised and burned down by three members of that party. His wife was told that they would kill him. She filed a complaint against the individuals who threatened her husband and they were charged. The complainant was called to give evidence but having received further threats decided not to give evidence and the charges were dropped. The complainant went into hiding and on 2 July 2003 he left the country. He claims that members of the UNP have continued to threaten his wife and children since his departure.

2.3 On 14 September 2004, the Migration Board denied his request for asylum on the basis that Sri Lanka is a democratic state with a well-functioning court system. On 30 December 2005, the Alien’s Appeal Board rejected his appeal, recalling the cease-fire of 2002, and indicating that it did not believe that the complainant was at risk of being persecuted by the LTTE. On 31 May 2006, the Migration Board rejected a request for reconsideration.

2.4 In or around 1 June 2006, upon hearing that his application had been rejected, the complainant attempted suicide but survived. He was transferred from the emergency section of the hospital to the psychiatric section, where, on 3 June, he made three further attempts to terminate his life. His lawyer requested reconsideration of the case and a stay of the deportation order. On 19 June 2006, the Migration Board did not consider that there were new circumstances in the case and rejected the application for reconsideration.

2.5 On 18 August 2006, the Stockholm Civil Court ruled on the complainant’s appeal of the decision of 19 June 2006 and did not consider how the situation in Sri Lanka and the new circumstances invoked by the author demonstrated that he was at a personal risk of persecution in Sri Lanka. The State party does not appear to contest the credibility of the complainant but does not believe that the circumstances put him at risk in the event of deportation.

The complaint:

3. The complainant claims that he faces a real risk of being killed by either the LTTE or the UNP if he is returned to Sri Lanka. In addition, because of his contacts with the LTTE while he was in the army, he may be suspected by the authorities of having links with that organisation, as a result of which he risks imprisonment or disappearance.

² He has not submitted any evidence that he was tortured and this was not the basis of his asylum claim.

State party's observations on admissibility and the author's comments thereon

4.1 On 9 November 2006, the State party contested the admissibility of the complaint. It submits that the complaint is inadmissible under article 22, paragraph 5 (a), of the Convention, as the same complaint is currently before the European Court of Human Rights (ECHR). The application (8594/04) was lodged before the ECHR on 24 February 2004, even though domestic remedies were not exhausted until 31 May 2006. On 9 August 2006, the State party was notified of the application in accordance with Rule 40 of the Rules of the Court (Urgent Notification of an Application). At the same time, the State party was requested to reply to a question posed by the Court. On 20 October 2006, the State party submitted a written statement, in accordance with the Court's request³. The State party notes that the ECHR did not request interim measures of protection regarding the expulsion order. The State party submits that as an application was pending before the ECHR when the present complaint was submitted to the Committee, the current complaint is inadmissible⁴.

4.2 In the event that the Committee does not find the complaint inadmissible for the abovementioned reason, the State party submits that the communication should be considered inadmissible for being manifestly ill-founded, under article 22 paragraph 2 of the Convention and 107 (a) of the Committee's Rules of Procedure and requests the opportunity to elaborate in this argument at a later date.

5. On 30 November 2007, the author responded to the State party's submission, *inter alia*, reiterating his previous claims. He confirmed the State party's information on his application to the ECHR but stated that his legal representative took this initiative while he (the complainant) was in hospital and that after several years the case has still not been considered by the Court⁵.

Issues and proceedings before the Committee

Consideration of 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. It recalls that it shall not consider any communications from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the *same matter has not been, and is not being, examined* under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that the European Court of Human Rights constitutes an examination by such a procedure.

6.2 The Committee considers that a communication has been, and is being examined by another procedure of international investigation or settlement if the examination by the procedure relates/related to the "same matter" within the meaning of article 22, paragraph 5

³ The State party has provided copies of the application to the ECHR, a letter to the Court from counsel for the complainant dated 29 July 2006 and the ECHR's letter of 9 August 2006, to the State party, to demonstrate that the two complaints concern the same matter.

⁴ The State party refers to the Committee's jurisprudence, *A.G. v. Sweden, Complaint no. 140/1999*, paras. 6.2 and 7.

⁵ Following inquiries made by the Secretariat with one of the registrars of the ECHR, it was confirmed on 5 March 2003, that this case is still pending before the Court.

(a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It observes that Application No. 8594/04 was submitted to the European Court by the same complainant, is based on the same facts, and relates to the same substantive rights as those invoked in the present communication. Having concluded that the "same matter" *is being examined* before the European Court, the Committee considers that the requirements of article 22, paragraph 5 (a), have not been met in the present case and that the complaint is thus inadmissible⁶.

6.3 The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the complainant.

[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.]

⁶ *A.A. v. Azerbaijan, Complaint no. 247/2004*, Decision adopted on 25 November 2005; *W.J. v. Austria, Complaint no. 5/1990*, Decision adopted on 22 November 1990; *X. v. Canada, Complaint no. 26/1995*, Decision adopted on 20 November 1995; and *A.G. v. Sweden, Complaint no. 140/1999*, Decision adopted on 2 May 2000.