



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

Distr.
RESTRICTED*

CAT/C/32/D/225/2003
24 May 2004

Original: ENGLISH

COMMITTEE AGAINST TORTURE

**Thirty-second session
(3 – 21 May 2004)**

DECISION

Communication No. 225/2003

Submitted by: Mr. R.S. (represented by the law firm
Henrik Christensen, by Mr. Hans Mogensen)

Alleged victim: Mr. R.S.

State party: Denmark

Date of complaint: 19 November 2002

Date of present decision: 19 May 2004

[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-second session

Concerning

Communication No. 225/2003

Submitted by: Mr. R.S. (represented by the law firm
Henrik Christensen, by Mr. Hans Mogensen.)

Alleged victim: Mr. R.S.

State party: Denmark

Date of complaint: 19 November 2002

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

Meeting on 19 May 2004,

Having concluded its consideration of complaint No. 225/2003, submitted to the Committee against Torture by Mr. R.S. 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:

- 1.1 The complainant is Mr. R.S., an Indian citizen, who at the time of the initial submission resided in Denmark, where he sought asylum. His current whereabouts are unknown. He claims that his return to India after the rejection of his refugee claim would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel.
- 1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 21 November 2002.

The facts as submitted:

- 2.1 The complainant grew up in Bilga (India), in the Philour area, in the district of Punjab, where he lived together on a farm with his parents and 2 brothers. All family members are Sikhs. The complainant went to school for 7 years, before entering into the family farming business. While his uncle and older brother became members of the Sikh Students Federation and the Khalistan Commando Force (KCF), the complainant did not himself participate in any political or religious organizations. In 1994, the complainant's uncle was killed by the police. The avowed aim of the KCF is to obtain independence for Punjab.
- 2.2 In 1995, the complainant's older brother returned to India from Germany, where he had applied for asylum. The police arrested and detained him for about 10-12 days after his arrival, and detained him further on several occasions, until he disappeared on an unspecified date. On 15 September 1997, the police contacted the complainant and asked for information on the whereabouts of his brother. When he replied that he did not know his brother's whereabouts, he was arrested and detained for 10 days. He contends that he was subjected to torture in detention. In April 1998, the complainant was again questioned about the whereabouts of his brother by the police, he was allegedly threatened with death if he did not provide this information.
- 2.3 The complainant was subsequently detained by the police on several occasions, and subjected to torture when in detention. This included beating with a cane, being subjected to electrical shocks, and being hung upside down. According to the complainant, his problems with the police arose from the fact that he transmitted messages sent between his brother and other people from a neighbor village. He was detained 10 to 12 times in total before in June 1999, he escaped to Denmark, with the assistance of a paid agent.
- 2.4 The complainant arrived in Denmark on 17 July 1999 without valid travel documents. He applied for asylum the next day. A brother of his already resided in Denmark since 1998, and had been granted a residence permit pursuant to the article 7, paragraph 1 of the Immigration Act. The complainant applied for a residence permit under the same regulations, but the Danish Immigration Board rejected his application on 12 February 2001.

- 2.5 He complainant then appealed to the Danish Refugee Board, which rejected his claim on 28 June 2001. The majority of the Board members did not believe that the complainant risked persecution if returned to India. They considered that the complainant had not been a member of a political organization in India, nor that he had performed any political activity of importance. Furthermore, they considered it unlikely that he had been subjected to torture while in detention, since his description of the events was unclear, and his allegations were not supported by the findings of the Institute for Forensic Medicine (IFM) in Denmark, in a report dated 16 November 2000. The IFM report concluded that the complainant displayed several physical injuries which did not relate to the torture described, but that he felt pain in his left shoulder which could have been caused by the described torture. They also concluded that the complainant suffered from organic brain damage, but no symptoms of a Post-traumatic stress syndrome. This finding was supported by a report from the Forensic Psychiatric Clinic dated 30 October 2000.
- 2.6 When applying for a reopening of his case, the complainant's counsel provided another medical report, from the Amnesty International Medical Group, dated 28 September 2001, which concluded that some physiological findings were compatible with the complainant's description of torture. On 22 July 2002, the Danish Refugee Board rejected the request for review, and the complainant thus is not entitled to stay legally in Denmark.

The complaint:

3. The complainant fears that, if returned to India, he will be arrested, and tortured or ill treated in detention, because of his and his brother's links to the Sikh Student Federation and the Khalistan Commando Force. The complainant's repeated experience of detention and torture indicates that he risks such treatment upon return to India, and that his deportation by Denmark therefore would amount to a violation of article 3 of the Convention.

The State party's submission:

- 4.1 On 19 May 2003, the State party submitted its observations on the admissibility and merits of the case. It contends that the claim under article 3 should be declared inadmissible, since the complainant fails to establish a prima facie case. In the alternative, the complaint should be dismissed as unfounded.
- 4.2 On the facts, the State party submits that the complainant was interviewed with the assistance of an interpreter, and could apply for asylum in his mother tongue. After the rejection of his application, the complainant filed a complaint to the Committee against Torture, and on the same day, he applied for a residence permit on humanitarian grounds to the Danish Immigration Service, which forwarded it to the Ministry of Refugee, Immigration and Integration Affairs. By letter of 12 March 2003, the Ministry replied that it found no reason to postpone the complainant's deportation. However, at the time of the State party's submission, the complainant had yet not been

deported, nor had the Ministry decided on his application for a residence permit on humanitarian grounds.

- 4.3 As to domestic immigration procedures, the State party submits that when the Danish immigration authorities decide on applications for asylum, it assesses the human rights situation in the receiving country, as well as the risk of individual persecution in that country. Therefore, the complainant uses the Committee only as an appellate body, to obtain a renewed assessment of his claim, since the Danish Immigration authorities have already assessed whether there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to India.
- 4.4 In any event, the complainant has not substantiated his fear of being subjected to torture if returned. His statements about torture experienced are inaccurate, and the examination carried out by the Institute of Forensic Medicine in a major centre for rehabilitation of torture victims, does not support his version of the events. With respect to the report of 28 September 2001 issued by the medical group of Amnesty International, which concluded that the complainant's symptoms were compatible with the alleged experience of torture, the State party recalls that it appeared from that report that it could not be precluded that the complainant's symptoms had arisen in a manner other than by imprisonment and torture.
- 4.5 While considering the evidence of torture experienced insufficient, the State party invokes the Committee's jurisprudence, and submits that torture experienced in any event is not sufficient to conclude that the complainant would suffer such treatment upon return to India.
- 4.6 Finally, the State party argues that it is unlikely that the complainant would be persecuted in India, since his mother lives there without problems, and since he himself after his latest release from detention, managed to lease out his property before departing for Denmark.

The complainant's comments:

5. By notes of 23 and 29 October 2003, counsel advised the secretariat without giving further details that his client had "disappeared", and that the Committee should base its decision on the information already received.

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect 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 examined under another procedure of international investigation or settlement. The Committee notes that the State party itself does not dispute that domestic remedies are exhausted.

- 6.2 In respect of the State party's contention that the claim under article 3 should be declared inadmissible, since the complainant fails to establish a *prima facie* case, the Committee notes the complainant's information about his political activities, that he transmitted messages between his politically active brother and inhabitants people of a neighbor village in Punjab, and that he was detained and tortured by police as a consequence of his family members' political involvement and his own activities. It also takes notes of the medical reports, which are inconclusive about the reasons underlying the complainant's physical and psychological symptoms, and cannot be considered as strong evidence in support of his claim. The complainant has not supported his claim that he was politically active by any documentary or other pertinent evidence, nor has he submitted evidence to explain why the political group he claims to have transmitted messages for were itself targeted by the police. Even if considering that the complainant has been subjected to torture in the past, the Committee finds no reason to consider that he currently is at a personal risk of being subjected to such treatment by the police if returned to India. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.
- 6.3 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. Accordingly, the Committee decides:
- a) that the complaint is inadmissible; and
 - b) that this decision will be transmitted to the author and, for information, to the State party.

[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.]