

[Denmark's consideration of asylum claim found adequate](#)

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The Committee Against Torture was asked to decide whether the proposed deportation of an individual by Denmark would violate its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



Sivagnanaratnam v. Denmark (429/2010)

Summary

In November 2013, the Committee Against Torture was asked to decide whether the proposed deportation of an individual by Denmark would violate its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The communication was submitted by a Sri Lankan national under article 22 of the Convention.

Background

The author, Mallikathevi Sivagnanaratnam, is of Tamil ethnicity. Although she had never been a member of the Liberation Tigers of Tamil Eelam (LTTE), she claimed that there were several circumstances that would lead to her being associated with that organisation and that would therefore make her a target for torture by the Sri Lankan authorities. The author had, for example, organised the widely-publicised funeral of her nephew, a LTTE militant that had been killed in the civil war. Her nephew had been proclaimed a 'martyr' by the LTTE and several militants had attended the funeral. The author and her husband had also sheltered LTTE militants at their house.

The author also claimed that she had been arrested and beaten by the police on several occasions. She claimed that she had been detained for three days when she was arrested in 2003, during which time she was beaten until she had lost all of her teeth. The author also alleged that other members of her family had been targeted by the authorities and that her niece had been killed in 2009.

On 11 October 2008, the author arrived in Denmark having obtained a passport through payment of a bribe. On 25 February 2009, the author applied for asylum. On 19 January 2010, the Danish Immigration Service rejected her application, finding her account of events not sufficiently coherent or credible. On 19 May 2010, the author's appeal was rejected and she was ordered to leave Denmark immediately. In August 2010, the author was detained by the Danish police for deportation.

On 18 August 2010, the author submitted this communication to the Committee claiming that her deportation would result in Denmark violating its obligation, under article 3 of the Convention, not to return an individual to another State where there are substantial grounds for believing that they would be in danger of being

subjected to torture.

The Committee's decision

In considering the complaint's admissibility, the Committee simply noted that the communication had been adequately substantiated and that the same matter had not been and was not being examined under another procedure of international investigation or settlement for the purposes of article 22(5)(a) of the Convention. Accordingly, the Committee declared the communication to be admissible.

On the merits, the Committee expressed its serious concern regarding the continuing and consistent allegations of the widespread use of torture by both the military and the police in many parts of Sri Lanka since the civil war ended in May 2009. It noted, however, that the focus of its enquiry must be whether the author would be at a foreseeable and real risk of being subjected to torture if returned to Sri Lanka. As to the applicable evidentiary standard, the Committee reiterated its position set out in its General Comment No 1 that the risk of torture must go beyond mere theory or suspicion, but need not meet a threshold of high probability.

The Committee noted that the competent authorities in Denmark had thoroughly evaluated all of the evidence and had found her allegation to lack credibility. The Committee also found that the evidence presented by the author was not sufficient to show that the Danish authorities had not conducted a proper investigation of the author's allegations. The Committee further observed that, even assuming that the author had been subjected to torture in the past, there was no evidence that she would still be at risk of being subjected to torture if returned several years after the alleged events had occurred. In particular, the Committee noted that the author had not presented any evidence that the Sri Lankan authorities had been seeking her arrest or had had any interest in her whereabouts in the recent past.

In light of the above, the Committee concluded that Denmark would not breach its non-refoulement obligations under article 3 of the Convention if it were to deport the author to Sri Lanka.

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