



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8594/04
by A.A.
against Sweden

The European Court of Human Rights (Third Section), sitting on 2 September 2008 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 24 February 2004,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr A. A. is a Sri Lankan national who was born in 1965. He was represented before the Court by Mr Bertil Spångberg, a lawyer practising in Söderala. The respondent Government were represented by their Agent, Mrs Charlotte Hellner, of the Ministry of Foreign Affairs.

A. The circumstances of the case

1. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The background and proceedings before the national authorities

2. The applicant arrived in Sweden on 13 August 2003. Two days later he applied for asylum in which connection an initial interview was held.

3. On 27 May 2004, the Migration Board (*Migrationsverket*) held a six-hour interview with the applicant, who was represented by counsel. During the interview the applicant stated that he lived in the Gampaha District. His parents and parents-in-law lived, respectively, in the Colombo District and the Gampaha District. His father worked for the Sri Lanka Freedom Party (SLFP) of which the applicant had become a member in 1988.

4. In 1988 the applicant also commenced his military service. His time in the army was very hard because, due to his political convictions, he had been subjected to physical and mental torture by members of the United National Party (UNP) in the army. Consequently, in July 1993 he handed in his resignation and he was granted permission to leave the army on 1 April 1994.

5. Between 1994 and 2001 the applicant worked for the SLFP, which was in power. The applicant helped the party to organise meetings, put up posters, decorate meeting places, set up sound equipment, and so on. During this period he experienced no problems with those who had tortured him in the army and the alleged torture was not the reason why he applied for asylum.

6. His problems started in December 2001, when the UNP returned to power. He and his family began to receive threats in person and by telephone from three named UNP-sympathisers. He had not reported the threats, thinking that would be useless as long as the UNP was in power. The harassment continued for approximately one year. In the evening on 10 December 2002 the said persons came to the applicant's house and threatened to kill him and his family and burn down his house. The applicant escaped and went to his parents-in-law's house. The three men burned down the applicant's house and told his wife that they would kill him. The applicant's wife had tried to report the incident to the police in the District where they lived, but in vain. Then the wife reported the incident to the police in another district, where her father had contacts. Consequently, the three perpetrators were arrested at the end of 2002. They were charged on 3 January 2003 and released on bail the same day. On 14 March 2003 the trial commenced before a magistrates' court, which found that more witnesses were needed. A new hearing was set for 10 April 2003 to which the applicant was summoned. On 9 April 2003 one of the perpetrators

threatened to kill him if he testified. Therefore, he remained in hiding until 2 July 2003, when he left the country. The three men were at large and the applicant feared being killed by them upon his return. Although they were in power again, the SLFP would not be able to protect him due to the tense political situation. The applicant believed that UNP members were persecuting him because his parents were wealthy and could support the SLFP financially. The applicant declared that there were no other reasons for his application for asylum.

7. On 14 September 2004 the Migration Board rejected the applicant's application for the following reasons. The main problem in Sri Lanka concerned the conflict between the Government and the Liberation Tamil Tigers of Eelam (LTTE). However, the general situation had improved since the ceasefire agreement in 2002. Moreover, the applicant had been persecuted by private individuals, against whom judicial proceedings had been initiated. Hence, there were no grounds for believing that the authorities were unwilling or unable to protect the applicant. Finally, the applicant's political activity was legal and the party he supported was one of the major parties in the Sri Lankan parliament, which led a coalition government.

8. The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*) before which he submitted the following new information on his circumstances. Since the applicant had left Sri Lanka, his enemies had continued to threaten and attack his wife so the latter and the applicant's two children had gone into hiding. Moreover, since 1994 the applicant had been a "Most Wanted Person" to be eliminated by the LTTE. The reason for this, the applicant alleged, was that he had worked as an intelligence officer and interrogator in the army and that he had information about the LTTE that could be dangerous for the organisation. Thus, both the UNP and the LTTE wanted to kill him, but they did not cooperate. Instead, they would leave it to criminal elements to watch and persecute him. The applicant was an important member of the SLFP in his home district and therefore the UNP wanted to get rid of him. Furthermore, upon his return the applicant would be questioned and detained for having left the country illegally. Due to his many contacts with the guerrilla while working for the military, he might also be suspected of collaboration with the LTTE. He risked imprisonment or might "disappear". Due to widespread corruption and political considerations he would not be afforded protection by the authorities in Sri Lanka. High-ranking officials within the Parliament, the President's office and the SLFP had advised him to leave the country in order to save his life.

9. In support of his claims the applicant submitted, *inter alia*, an extract from a police report of 30 September 2003 about the events on 10 December 2001 stating that on the latter date the applicant's wife had reported to the police that a named member of the UNP and his

“assassination gang” had tried to kill her and the children and that the named man was a sympathiser of the UNP and the LLTE. Finally, the applicant submitted that he had lost thirteen relatives in the Tsunami and that his mental health had recently deteriorated considerably and he had been hospitalised for suicidal tendencies. In support of the latter assertion the applicant submitted various statements and medical records dating from September 2003 to October 2005. It appeared that the applicant had voluntarily been admitted to a psychiatric hospital from 10 to 17 January 2005 and from 1 to 14 July 2005.

10. On 30 December 2005 the Aliens Appeals Board rejected the applicant’s appeal, observing in particular that the applicant had not previously mentioned being threatened by the LLTE. Hence, his reasons for asylum had been extended during the appeal proceedings. As regards the police report of 30 September 2003, the Board noted that it differed from a previous report of 10 December 2001 which had been submitted to the Migration Board. Thus, in the later report, the man who led the attack was a sympathiser not only of the UNP but also of the LLTE. Accordingly, in view of the applicant’s extended reasons for seeking asylum, the Board did not find the applicant’s allegation that he risked persecution by the LLTE to be credible. Moreover, the Appeals Board subscribed to the Migration Board’s reasons as concerned the applicant’s need of protection. Lastly, it found that the applicant was not suffering from a mental illness of such gravity that a permanent residence permit could be granted on that ground.

11. Having learnt about the decision from the Aliens Appeals Board the applicant was again voluntarily admitted to a psychiatric hospital for a short period of time.

12. During the spring of 2006, under the temporarily amended Swedish Aliens Act, the applicant’s case was re-assessed. In these proceedings the applicant stated, among other things, that in the original proceedings he had not been given the opportunity to tell his whole story, including the fact that he had been threatened both by the UNP and the LLTE. As to the latter organisation, the threats had been caused by the applicant’s activities as an intelligence officer. He had been successful in the army and had undergone military training in Israel. He submitted that the LLTE systematically searched for and killed intelligence officers and that at least 156 intelligence officers had been killed.

13. By decision of 31 May 2006 the Migration Board found no grounds to grant the applicant a residence permit.

14. On 5 June 2006, the applicant lodged an application with the Migration Board claiming that there were impediments to the enforcement of the deportation order and that a re-examination of his application was therefore needed. This application was rejected by the Migration Board on 19 June 2006.

15. On 10 August 2006 the Migration Court (*Länsrätten i Stockhoms Län, Migrationsdomstolen*) decided to stay the enforcement of the deportation order until further notice or until the case was decided.

16. On 18 August 2006, the Migration Court rejected the applicant's appeal. Thus, the deportation order could be enforced immediately. The applicant failed to appeal against the Migration Court's decision to the Migration Court of Appeal.

17. Subsequently the applicant requested that the Migration Board re-examine his case and submitted that he had left Sri Lanka illegally without a passport and therefore risked being detained upon return, that he was considered a deserter, and finally that his health had deteriorated during 2006. In support of the latter he enclosed two medical statements dated 12 June and 29 August 2006. The first had been made when the applicant was receiving inpatient care and stated, *inter alia*, that on several occasions he had threatened to commit suicide if he was not permitted to stay in Sweden. The applicant left the psychiatric clinic in June 2006. The second confirmed the applicant's suicidal tendencies, should he not be granted a residence permit in Sweden. In addition, the applicant suffered from high blood pressure.

18. By decision of 9 November 2006 the Migration Board refused to re-assess the case, finding that the applicant had not submitted any substantial new information.

19. Invoking the worsening situation in Sri Lanka and submitting documents apparently related to alleged threats received by the LLTE, the applicant brought the Migration Board's decision before the Migration Court, which by judgment of 29 January 2007 found for the applicant and referred the case back to the Migration Board for a reassessment.

20. On 25 May 2007 the Migration Board again refused to grant the applicant a residence permit.

21. Firstly, it stated that the situation in Sri Lanka was not such that there was a general need of protection for asylum seekers from Sri Lanka.

22. Secondly, although the conflict between the LTTE and the Sri Lankan Government had resumed in 2006, the confrontations were mainly concentrated in the northern and eastern parts of the country. Hence, the applicant could take up residence in an area which was not affected by the fighting.

23. Thirdly, the UNP had been in power when the applicant left Sri Lanka in 2003. In May 2007, however, the party that the applicant supported, the SLFP, was in Government in coalition with some other political parties. Thus, any previous risk of harassment or acts of revenge from the UNP on account of the applicant's previous activities for the SLFP must have decreased significantly due to the political developments in the country.

24. Fourthly, the Migration Board found that the applicant's allegation that he would risk acts of revenge from LTTE due to his alleged activities as an intelligence officer in the early 1990s lacked credibility. It noted that the applicant had not mentioned this risk until after his asylum application had been rejected. Moreover, given that more than twelve years had passed since the applicant had served in the army it was unlikely that he would be targeted in a terrorist attack by the LTTE because of his alleged role as an intelligence officer.

25. Fifthly, the Migration Board found that the applicant's allegation that he would be punished as a deserter lacked credibility. It noted that service in the Sri Lankan Army was voluntary and that originally the applicant had explained that he had been discharged from military service in 1994. It was only after his asylum application had been rejected twice that he had changed his explanation in this respect. Moreover, although he had stayed in Sri Lanka until 2003, the applicant was never prosecuted for desertion by the relevant authorities.

26. Sixthly, the two medical certificates submitted showed that the risk of suicide in the applicant's case was strongly connected with his concern about returning to Sri Lanka due to the conflict there. Thus, although serious, the applicant's mental health problems were not of a kind that could entitle him to a residence permit in Sweden.

27. Lastly, the applicant had a wife and two children in Sri Lanka and the applicant's possible adaptation to life in Sweden was not such an exceptionally distressing circumstance that it could entitle him to remain.

28. The applicant appealed against the decision to the Migration Court, which on 15 June 2007 decided to stay the enforcement of the expulsion order until further notice. The applicant invoked the same reasons as before the Migration Board, but clarified that he had only been granted temporary leave from the army in 1994. He also alleged having received death threats while in Sweden. Moreover, he submitted various documents, including a document of 8 October 2007 issued by a medical doctor about post-traumatic stress syndrome.

29. On 3 March 2008 the Migration Court upheld the Migration Board's decision not to grant the applicant a residence permit. Its conclusions regarding each issue were in line with those of the Migration Board. It added that the document dated 8 October 2007 was not a medical certificate and was not sufficiently detailed to form a basis for the assessment of the applicant's mental health. Accordingly, there was no information to show that the applicant was suffering from a serious mental illness. Furthermore, the applicant's previous suicidal tendencies were related to his fear of being expelled rather than an expression of severe mental health problems. In these circumstances, the applicant did not have a right to a residence permit by virtue of the state of his mental health.

30. On 10 April 2008 a request by the applicant for leave to appeal against the judgment to the Migration Court of Appeal was refused and the applicant was deported to Sri Lanka on 21 April 2008.

2. Additional information submitted in the proceedings before the Court

31. The applicant has submitted numerous letters to the Court about his situation. In his first letter of 24 February 2004, he stated *inter alia*:

“... I was in the Volunteer Service of Sri Lanka army as an officer, rank of Captain. This is the first time I am writing information letter regarding my case. I relinquished my duties from the service in 2001 during the election. I was involved in politics and was an organiser of SLFP and actually worked for the election. After the general election on 5 December 2001 I had to face many problems from the supporters of United National Party which came into power and was getting death threats continuously. My wife and two children have also been getting threats and are facing harassment. Hence I decided to come to Sweden on political asylum. Therefore I feel that their lives will be in danger. My wife also sick ...”

32. In a letter of 27 October 2004 he stated *inter alia*:

“... I served about 5 years in Sri Lanka Army as an officer. I faced a troublesome period during that time from the terrorist of LTTE and UNP but I tolerated to manage my situation and served. After victory of SLFP the supporters of both UNP and LTTE ... will not allow me to live in Sri Lanka ...”

33. On 8 August 2006 the Court decided not to indicate to the Government of Sweden, under Rule 39 of the Rules of Court, the interim measure he was seeking. However, in accordance with Rule 40 of the Rules of Court, the Government was given notice of the application and asked to reply to the following question: “In view of the current violent situation in Sri Lanka, will the applicant be safe upon return to that country?”

34. Subsequently, having obtained a reply from the Government on 20 October 2006, the proceedings before the Court were stayed pending the outcome of the proceedings before the Migration Board, the Migration Court and the Migration Court of Appeal.

B. Relevant domestic law and practice

35. The basic provisions applied in the present case, concerning the right of aliens to enter and to remain in Sweden, were laid down in the 1989 Aliens Act (*Utlänningslagen*, 1989:529 – hereinafter referred to as “the 1989 Act”). However, the 1989 Act was superseded on 31 March 2006 by a new Aliens Act (*Utlänningslag*, 2005:716 – hereinafter referred to as “the

2005 Act”). Both the 1989 and 2005 Acts define the conditions under which an alien can be deported or expelled from the country, and the procedures relating to the enforcement of such decisions.

36. Chapter 1, Section 4, of the 1989 Act provided that an alien staying in Sweden for more than three months should have a residence permit. Such a permit could be issued, *inter alia*, to an alien who, for humanitarian reasons, should be allowed to settle in Sweden (Chapter 2, Section 4). For example, serious physical or mental illness could, in exceptional cases, constitute humanitarian reasons for the grant of a residence permit if it was a life-threatening illness for which no treatment could be provided in the alien’s home country.

37. Furthermore, under the 1989 Act, an alien who was considered to be a refugee or otherwise in need of protection was, with certain exceptions, entitled to residence in Sweden (Chapter 3, Section 4). The term “refugee” referred to an alien who was outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who was unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country. This applied irrespective of whether the persecution was at the hands of the authorities of the country or if those authorities could not be expected to offer protection against persecution by private individuals (Chapter 3, Section 2). By “an alien otherwise in need of protection” was meant, *inter alia*, a person who had left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 3, Section 3).

38. An alien who was to be refused entry, deported or expelled, in accordance with a decision that had gained legal force, could be granted a residence permit if he or she lodged a new application based on circumstances which had not previously been examined, and if the alien was entitled to a residence permit under Chapter 3, Section 4, or if it would be contrary to the requirements of humanity to enforce such a decision (Chapter 2, Section 5 b). Regard could also be had to serious illness under this provision. Such new applications were lodged with and examined by the Aliens Appeals Board (Chapter 7, Section 7).

39. As regards the enforcement of a refusal of entry, deportation or expulsion, account had to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. By virtue of a special provision on impediments to enforcement, an alien could not be sent to a country where there were reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 8, Section 1).

40. In essence, the 2005 Act did not substantially amend the above provisions, except for the following.

41. Under the 2005 Act, the Aliens Appeals Board was replaced by the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3). Moreover, it is no longer possible to renew applications but, instead, the Migration Board determines, on its own initiative, whether there is any impediment to the deportation or expulsion (Chapter 12, Section 18).

42. Furthermore, on 15 November 2005 certain interim amendments to the 1989 Act entered into force, according to which the Migration Board, upon application by an alien or on its own initiative, could re-determine final decisions already taken by the Aliens Appeals Board. The object of these temporary amendments was to grant residence permits to aliens who, *inter alia*, had been in Sweden for a very long time or where there existed “urgent humanitarian interests” (*humanitärt angeläget*). Special consideration was given to the situation of children. The temporary provisions remained in force until the new Aliens Act entered into force on 31 March 2006. The Migration Board continued, however, to examine applications which it had received before that date but had not yet determined.

C. Background information

43. According to various sources, including recent UNCHR reports on Sri Lanka; UK Home Office Information Report on Sri Lanka, March 2008; US Report Sri Lanka 2006 and 2007; Amnesty International Report 2007 and Human Rights Watch World Report 2007 on Sri Lanka, the situation in Sri Lanka may be described as follows:

General situation

44. Sri Lanka is a constitutional, multiparty republic with a population of approximately 20,000,000. It has ratified several of the major human rights instruments and significant improvements have been made since the 1990s. Nevertheless, serious problems remain, notably due to the ethnic conflict between the Government and the Liberation Tigers of Tamil Elam (LTTE). The latter group was founded in 1972 and originally called the Tamil Tigers. During the conflict, which has lasted for more than twenty years, some 70,000 people are estimated to have been killed and some one million displaced. In February 2002, a ceasefire agreement was signed by the Government and the LTTE, with a commitment by both sides to find a solution to the conflict. In April 2003, however, the LTTE suspended their participation in the peace talks. From June 2004 onwards the ceasefire between the LTTE and the Government came under increasing pressure. In December 2005, violence in the country escalated, but the two sides agreed to direct talks in Geneva in February 2006. The talks resulted in

commitments by both sides to uphold the ceasefire agreement. Both parties asked the Swiss to host a further round of talks in April 2006; this, however, did not take place due to the resumption of large-scale violence. In mid-June 2006 fears about the intensification of the conflict were realised. Air strikes against rebels in the east resumed after the latest round of Geneva-based ceasefire talks failed in late October 2006. The seriousness of the incidents increased leading to additional violence and the suffering of the civilian population. The violence continued during 2007, and in January 2008 the Government announced its withdrawal from the ceasefire agreement with the LTTE. The main incidents of insecurity continue to be reported in the northern and eastern districts of Sri Lanka.

Politics

45. Following independence from Britain in February 1948, the political scene has been dominated by two parties: the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), which is now part of the People's Alliance (PA). The PA won the election in 1994, 1999 and 2000. Although there were reports of violence, intimidation and voting irregularities, the EU Election Observation Mission acknowledged that the result overall reasonably reflected the opinion of the people. In 2001, less than a year after being re-elected, the PA lost their majority and new elections were held in December 2001. The UNP won with 109 seats and the PA came second with 77 seats, which led to an arrangement of political cohabitation between the two rival parties, with the PA's leader as President and the UNP's leader as Prime Minister. In November 2003 the President suspended parliament and declared a state of emergency, which was lifted a few days later, and in January 2004 the SLFP signed an alliance with Janatha Vimukthi Peramuna (JVP) forming the United People's Freedom Alliance (UPFA). In February, the President dissolved Parliament and called general elections in April. The elections in April 2004 produced a new political order with the victory of the UPFA (an SLFP and JVP alliance). Support for the traditional parties dropped, and smaller parties gained significant numbers of seats. The UPFA formed a minority government. Participation at the election was reported to have reached 75% of eligible voters. The poll concluded peacefully. However, there were claims of voter intimidation and electoral malpractice, particularly in the north and east of the country.

Military service

46. Military service in Sri Lanka is voluntary. According to War Resisters International, desertion has been widespread and is punishable under section 103 of the Army Act by up to three years' imprisonment. Due to the paucity of recruits, however, the punishment of deserters rarely occurs. Amnesties for deserters have been announced several times, usually

in the context of recruitment drives. These amnesties allow deserters to return to their units without facing further penalties. In January and November 2007, the Sri Lankan army once again offered an amnesty to deserters.

Returned asylum seekers

47. According to information submitted by the Swedish embassy in Colombo, the British High Commission in Colombo and the Immigration and Refugee Board of Canada, the normal routine for returning asylum seekers seems to be that the Sri Lankan Immigration Services and the Sri Lankan Police are informed beforehand of the returnee's arrival. The passenger is first briefly interviewed by Immigration and then handed to the Sri Lankan Police for a brief statement. The returnee is then allowed to proceed, unless a warrant for his or her arrest existed at the time of leaving Sri Lanka, in which case the returnee may be detained. The procedure is normally supervised by a representative of the expelling country. There is information that some returning asylum seekers may experience some difficulties on return, notably ethnic Tamils, former LTTE-supporters or persons who had previously been detained or interrogated by the Sri Lankan Government.

The availability of mental health care in Sri Lanka

48. According to the Sri Lankan Mental Health Policy adopted by the Sri Lankan Ministry of Healthcare and Nutrition (which is available on the website of the World Health Organisation, WHO), Sri Lanka has one of the best primary care services of its type in the world and is committed to achieving equally high standards in mental health care. Mental illness is extremely common in Sri Lanka and it has been estimated that some 376,000 Sri Lankans suffer from serious debilitating mental illnesses at any given time. There are three major psychiatric hospitals in the Western Province and in addition, the National Hospital situated in Colombo and eleven other general hospitals in urban centres provide specialist facilities for mentally ill patients. There are also centres for the rehabilitation of chronically ill patients in several districts.

49. Moreover, several important NGOs provide psychiatric assessment and treatment, psychological interventions and rehabilitation for both individuals and families. Some of the NGOs have also undertaken mental health training programmes for medical staff and other health and social care professionals. There are also several international NGOs involved with Sri Lanka such as the International Medical Corps (IMC), Médecins du Monde (Mdm) and the International Organization for Migration (IOM), all of which provide essential services. All the patients receiving mental health services from the government sector receive the services and drugs free of

charge. All hospitals with psychiatric services provide drugs identified in the essential drugs list.

50. Furthermore, all treatment for acute psychological/psychiatric problems and disorders (severe depression and in particular potential suicide cases) can be provided in the public sector at no cost to the patient at two of the psychiatric hospitals and several of the general hospitals

51. According to information obtained in December 2004, treatment for Post-Traumatic Stress Disorder (PTSD) is available at both public and private hospitals and clinics in Colombo, in all teaching hospitals and in all private hospitals and clinics in Kandy, Anuradhapura and Jaffna.

52. In 2007, the Sri Lankan Ministry of Health adopted a Health Master Plan to improve healthcare, including mental health care, in Sri Lanka.

COMPLAINT

53. The applicant complained that implementing the expulsion order and returning him to Sri Lanka would be in violation of Articles 2 and 3 of the Convention.

THE LAW

54. The applicant claimed that deportation to Sri Lanka would subject him to a real risk of being killed or subjected to torture or inhuman and degrading punishment, in violation of his rights under Articles 2 and 3 of the Convention. These provisions, in their relevant parts, read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

55. The Government submitted that the application should be declared manifestly ill-founded. While they did not wish to underestimate the concerns that had legitimately been expressed with respect to the human rights and security situation in Sri Lanka, they considered that these could not, in themselves, suffice to establish that the forced return of the applicant to his home country was in violation of Articles 2 or 3 of the Convention. It

had to be shown that the applicant would be personally at risk of being subjected to treatment contrary to the said provisions.

56. Moreover, noting that the applicant's reasons for seeking asylum had been examined nine times, the Government relied on the decisions by the Swedish migration authorities, notably the Migration Board's decision of 25 May 2007 and the Migration Courts' Judgment of 3 March 2008. The Government also pointed out that the applicant's story had escalated constantly during the course of the asylum investigation in a way that contributed to undermining his general credibility.

57. All in all, the Government maintained that the applicant had not been able to substantiate his claim that the Sri Lankan authorities would be unwilling or unable to afford him appropriate protection against possible danger emanating from private individuals, or that there were other substantial grounds for believing that upon his return the applicant would face a real risk of treatment contrary to Articles 2 or 3 of the Convention, or that the deportation of the applicant to his home country in his mental state at the relevant time was contrary to the standards of Article 3 of the Convention.

58. The applicant disagreed and contended that he faced a real risk of being arrested, tortured and killed upon his return to Sri Lanka. He referred to the various reasons invoked before the Swedish national authorities and contested the Government's opinion that there was reason to question his general credibility.

59. The Court first observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 757, §§ 33-34). Similar considerations may apply to Article 2 of the Convention where the return of an alien puts his or her life in danger, as a result of the imposition of the death penalty or for other reasons (see, *inter alia*, *Bahaddar v. the Netherlands* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, opinion of the Commission, p. 270-71, §§ 75-78; and *Sinnarajah v. Switzerland* (dec.), no. 45187/99, 11 May 1999).

60. Moreover, according to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the

circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see, *inter alia*, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 137, ECHR 2007-... (extracts)).

61. The Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return. Exceptionally, however, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the applicant establishes that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in light of the applicant's account and the information on the situation in the country of destination in respect of the group in question (see, *N.A. v. The United Kingdom*, no. 25904/07, 17 July 2008, §§ 115 - 117, to be published).

62. While aware of reports of the occurrence of serious human rights violations in Sri Lanka, the Court does not find them to be of such a nature as to show, on their own, that a violation of the Convention would occur because the applicant was returned to that country.

63. The Court will thus proceed to examine whether the applicant's personal situation was such that his return to Sri Lanka contravened the invoked Articles of the Convention, that is, whether it has been shown that the applicant in the present case ran a real risk, if expelled, of suffering treatment proscribed by Articles 2 and 3 of the Convention.

64. Having arrived in Sweden on 13 August 2003, in two interviews held on 15 August 2003 and 27 May 2004, the applicant explained to the Migration authorities his reasons for requesting asylum, namely that due to his work for the political party SLFP he was persecuted by UNP members. More specifically, he had been persecuted by three named persons, who on 10 December 2002 burned down his house and threatened to kill him and his family. The three perpetrators were arrested at the end of 2002. They were charged on 3 January 2003 and released on bail the same day. On 14 March 2003 the trial commenced before a magistrate's court, which found that more witnesses were needed. A new hearing, to which the

applicant was summoned, was set for 10 April 2003. On 9 April 2003 one of the perpetrators threatened to kill him if he testified. Therefore, he remained in hiding until 2 July 2003, when he left the country. The applicant declared that there were no other reasons for his application for asylum.

65. In line with the Migration Board's decision of 14 September 2004 the Court observes that the applicant's political activity was legal and the party he supported was one of the major parties in the parliament of Sri Lanka, which led a coalition government. Moreover, the persecution in question emanated from private individuals, against whom judicial proceedings had been initiated and there were no grounds for believing that the authorities were unwilling or unable to protect the applicant. In these circumstances, the Court finds that the applicant failed to substantiate that the Sri Lankan authorities would not be able to obviate the risk of persecution by the named individuals by providing appropriate protection.

In his appeal to the Aliens Appeals Board the applicant extended his reasons for seeking asylum, adding that since 1994 he had also been a "Most Wanted Person" to be eliminated by the LTTE. The reason for this, the applicant alleged, was that he had worked as an intelligence officer and interrogator in the army and that he had information about the LLTE that could be dangerous for the organisation.

66. The Government found that there was reason to question the applicant's credibility on this point. The Court acknowledges that, due to the difficult situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged inaccuracies in those submissions (see, among others, *Collins and Akasiebie v. Sweden* (dec.), application no. 23944/05, 8 March 2007; and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005).

67. The Court notes that the applicant did not mention being threatened by the LLTE in his first two interviews with the migration authorities although the interview which was held on 27 May 2004 lasted approximately six hours. Nor did he mention the LTTE in his first letter of 24 February 2004 to the Court. It was not until after the Migration Board had refused to grant him asylum on 14 September 2004 that the applicant claimed to be in danger of revenge from the LTTE due to his alleged activities as an intelligence officer in the early 1990s. More than two years later, namely after the Migration Board's decision of 9 November 2006, the applicant submitted some documents which allegedly concerned the threats that he had received from the LLTE. Taking these circumstances into account, the Court cannot but endorse the national authorities' observations

as to the applicant's credibility. In any event, noting that more than fourteen years had passed since the applicant served in the army, the Court considers that the applicant has failed to substantiate a real and concrete danger of reprisals from the LTTE.

68. The applicant further extended his reasons for seeking asylum, adding that he would be punished as a deserter upon return to Sri Lanka. This allegation was submitted for the first time in a letter of 29 July 2006 to the Court, thus after his asylum application had been rejected twice. Originally, the applicant explained that he had been discharged from military service in 1994 and there is nothing to suggest that the applicant would be considered a deserter by the Sri Lankan authorities. Accordingly, the Court refers to its observations above as to the applicant's credibility. Moreover, although the applicant was granted leave in 1994, he stayed in Sri Lanka until 2003, that is, approximately nine years without being prosecuted for desertion by the relevant authorities. Lastly, there is information showing that the Sri Lankan Government regularly grants amnesty to deserters. Accordingly, the Court finds that the applicant has failed to substantiate his claim that he is at real and substantial risk of suffering treatment proscribed by Articles 2 and 3 of the Convention due to his alleged desertion.

69. Subsequently, the applicant added that he had left Sri Lanka illegally without a passport and consequently would be detained upon his return. Taking into account the information provided as to the normal routine for returning asylum seekers, the Courts finds no elements which could indicate that the applicant, for the invoked reason, would be at real and concrete risk of suffering treatment proscribed by Articles 2 and 3 of the Convention.

70. Lastly, as regards the applicant's state of health the Court emphasises that, according to established case-law, aliens who are subject to deportation cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the deporting State. However, in exceptional circumstances the implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (see, for example, *D. v. United Kingdom*, cited above, § 54).

71. In the present case, it is undisputed that the applicant suffered mental distress and that in the past he had made suicide attempts following decisions to reject his application for asylum. The Court notes, however, that the applicant was admitted for short periods of psychiatric care on a voluntary basis whenever it was needed, and that he had been in regular contact with doctors for medication and counselling after he left the psychiatric clinic in June 2006. More importantly, according to the information available, the risk of suicide in the applicant's case was strongly linked to his concern about returning to Sri Lanka and there was no

indication that the applicant, in the period before the implementation of the deportation order, had threatened to commit suicide. In any event, the fact that a person, whose deportation has been ordered, threatens to commit suicide does not require the Contracting State to refrain from enforcing the deportation, provided that concrete measures are taken to prevent the threat from being carried out (see *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004, and, *mutatis mutandis*, *Ovdienko v. Finland*, (dec.), no. 1383/04, 31 May 2005).

72. The Court also notes that medical treatment is available in Sri Lanka, and finds no reason to believe that the applicant would not benefit from care in his home country, should this be necessary. In any event, the fact that the applicant's circumstances in Sri Lanka would be less favourable than those enjoyed by him while in Sweden cannot be regarded as decisive from the point of view of Article 3 (see *Bensaid v. the United Kingdom*, no. 44599/98, § 38, ECHR 2001-I; and *Salkic and others v. Sweden* (dec.), no. 7702/04, 29 June 2004).

73. Thus, having regard to the high threshold set by Article 3, in the Court's view the present case does not disclose the exceptional circumstances established by its case-law where compelling humanitarian considerations have resulted in a violation of Article 3 (see, among others, *D v. the United Kingdom*, cited above, § 54).

74. Conclusively, the Court finds that it has not been established that there were substantial grounds for believing that the applicant, upon his return to Sri Lanka, would be exposed to a real and substantial risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President