

K. K. H. v. Canada, Communication No. 35/1995, U.N. Doc. CAT/C/15/D/35/1995 (1995).

Communication No. 35/1995

Submitted by: K. K. H. (name deleted) [represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 6 November 1995

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

Meeting on 22 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a national of Ghana, who arrived in Canada in March 1992 and applied for asylum following his escape from prison where, accused of having participated in an attempt to assassinate the Ghanaian Head of State, he had spent almost four years. He claims that his return to Ghana following the rejection of his application for refugee status would be in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

2. On 9 June 1994, the author's application for asylum was dismissed by the Immigration and Refugee Board of Canada. On review, the Federal Court of Canada dismissed his application by decision of 2 May 1995.

3. The author submits that since the decision of the Federal Court he has received evidence that he was being sought by the Ghanaian authorities. He claims that a notice appeared in the Ghanaian newspaper The Guide in September 1995 stating that he had returned to the country and that he was

wanted for treason. On this basis, the author submits that, as he is wanted by the authorities, his life would be in danger in Ghana and he requests the application of article 3.

4. Before considering a complaint submitted in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

5. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted; this shall not be the rule if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the victim. In the instant case, the Committee notes that in Canada there is a risk-assessment procedure which may be invoked even following a refusal by the Federal Court to grant asylum. It does not appear from the communication that the author has informed the Canadian immigration authorities of the new evidence in support of his claim that his life would be in danger if he had to return to Ghana. The Committee considers that the Canadian authorities should have the opportunity to examine the new evidence submitted by the author before it can consider the communication.

6. The Committee therefore decides:

(a) That the communication, as submitted, is inadmissible;

(b) That this decision shall be communicated to the author of the communication, to his counsel and, for information, to the State party.

[Done in English, French, Russian and Spanish, the French text being the original version.]