S. C. (name withheld) v. Denmark, Communication No. 143/1999, U.N. Doc. CAT/C/24/D/143/1999 (2000).

Communication No. 143/1999

Submitted by: S.C. (name withheld) [represented by counsel]

Alleged victims: The author

State party: Denmark

Date of communication: 17 August 1999

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

Meeting on 10 May 2000,

Having concluded its consideration of communication No. 143/1999, submitted to the Committee against Torture 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 author of the communication, his counsel and the State party,

Adopts its views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication is Ms. S.C., born on 21 August 1965, of Ecuadorian origin, currently seeking asylum in Denmark together with her three minor children. The author claims that she would risk torture if she is returned to Ecuador and that her forced return to that country therefore would constitute a violation by Denmark of article 3 of the Convention. The author is represented by the Danish non-governmental organization "Let Bosnia Live".

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 29 September 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the author to Ecuador pending the consideration of her case by the Committee. In a submission of 29 November 1999 the State party informed the Committee that the author and her three minor children would not be expelled to her country of origin while her communication was under consideration by the Committee.

The facts as presented by the author

2.1. The author states that she became a member of the illegal opposition party Partido Roldosista Ecuatoriano (PRE) in Santo Domingo in April 1995, but underlines that she had been an active supporter since 1985. According to the author, she was arrested on 28 May 1994 after having distributed political propaganda material. She was first held in detention for three days, when she was allegedly ill-treated by being pulled by the hair, beaten and threatened every three hours. The author further states that she was given a six-months probationary sentence, during which she was deprived of her papers, including her passport, and her civil and political rights as an Ecuadorian national.

2.2 The author alleges that she was again detained on 13 December 1995, after having organized and participated in a unauthorized political demonstration of about 200 persons. According to the author, she was kept in detention for 10 days and allegedly starved, kicked and beaten with truncheons before she being sentenced to 10 days' imprisonment. To support her statement, the author refers to copies of medical records from the medical doctor she visited after her release.

2.3 On 26 April 1996, the author was appointed political leader for a women's group of the party. Her main tasks were to organize meetings for women, particularly from poor neighbourhoods, and inform them about their rights. She also provided assistance to families where one or both parents had disappeared.

2.4 The author's fiancé, who was also active in PRE, allegedly disappeared in 1996 after having been taken away by police in plain clothes.

2.5 According to the author, she was again detained on 27 January 1997 for having participated in a political demonstration in Santo Domingo. The author was allegedly sentenced to six months' imprisonment and claims that during her imprisonment she was starved, electric chocks were applied to her fingers and she was raped. After her release, the author contacted a doctor, but no medical records are available. The author further states that, while she was in prison in 1997, her home was broken into and everything was taken, and that she has reason to believe that the police were responsible.

2.6 The author states that at the time of her release she was told by the police to leave the country. However, instead, she joined her family in the mountains, where they had fled to prevent the author's children being taken by the authorities. While in hiding, the author learned from her sister that a warrant for her arrest had been issued because she had not left the party and

had not reported to the police, after her release, as ordered. The author hid in the mountains for six months with her children before she could leave the country, allegedly with the help of PRE.

2.7 The author left Ecuador by car with her children and entered Colombia on 15 August 1998. She travelled on a valid passport issued in September 1996. On 16 August 1998 she left Colombia and arrived in Denmark on 20 August 1998 after having stayed two days in the Netherlands. The author immediately applied for asylum.

2.8 The author's request for asylum was turned down by the Danish Immigration Service on 30 October 1998. Subsequent to her appealing the Immigration Service's decision, the Refugee Board confirmed that decision on 17 February 1999. On 24 March 1999, the non-governmental organization "Let Bosnia Live", on behalf of the author, requested the Board to re-examine the case in light of new information about the author's political activities, including a letter from PRE and a copy of an order for her arrest issued by the Ministry of the Interior, dated 26 February 1999. On 28 May 1999, the Board refused the author's request to renew her application for asylum. On 30 July 1999 an appeal was made to the Ministry of Interior on humanitarian grounds. It was refused on 12 August 1999.

2.9 The author further submits that the case is not and has not been the subject of investigation or settlement, by any other international body.

Complaint

3. With reference to the facts presented, the author fears that she will be subjected to renewed torture if she is returned to Ecuador and that her forced return would therefore constitute a breach by Denmark of article 3 of the Convention.

Observations by the State party

4.1 In a submission of 29 November 1999, the State party informs the Committee that it does not contest the admissibility of the author's communication as to the form. However, the State party submits that the author has failed to establish a *prima facie* case for the admissibility of her communication under article 22 of the Convention and that the Committee should therefore declare it inadmissible. If the Committee does not dismiss the communication for that reason, the State party submits that no violation of the provisions of the Convention has occurred in relation to the merits of the case.

4.2 The State party confirms the author's explanation of the procedure used to exhaust domestic remedies, adding that when she filed her initial application for asylum, the author exercised her right to do so in her own languages. During the detailed and comprehensive initial personal interview conducted with her by the Danish Immigration Service, an interpreter was present at all times. It is further stated that the proceedings of the Refugee Board include the participation of the asylum-seeker and his or her attorney and an interpreter, as well as of a representative of the Danish Immigration Service.

4.3 With respect to the application of article 3 of the Convention to the merits of the case, the State party underlines that the burden is on the author to present an arguable case, in accordance with paragraph 5 of the General Comment on the Implementation of article 3 adopted by the Committee on 21 November 1997.

4.4 In further reference to the above-mentioned General Comment, the State party points out that the Committee is not an appellate, quasi-judicial or administrative body but rather a monitoring body. It is emphasized that the communication does not contain any information that had not already been examined extensively by the Danish Immigration Service and the Refugee Board. The State party submits that, in its view, the author is attempting to use the Committee as an appellate body in order to obtain a new assessment of a claim already considered by Danish immigration authorities.

4.5 In its decision of 17 February 1999 confirming the Immigration Service's assessment of 30 October 1998, the Refugee Board found that it was not convinced that the author had been subjected to persecution as a consequence of political activities, prior to her departure from Ecuador, nor that, upon return to her country of origin, the author would be at risk of persecution, including torture.

4.6 The State party underlines that, according to the practice of the Committee, it is decisive for the assessment of the merits of the case whether information on conditions in the recipient country supports the author's claim. The Committee's attention is drawn to the fact that PRE, in which the author allegedly has had a prominent position, is not an illegal political party as claimed by the author, but one of the largest parties in Ecuador, whom the author was not able to identify, was Head of Government in 1996.

4.7 The State party refers to the findings of the Refugee Board that the author's statements regarding the alleged detentions were characterized by some uncertainty.

4.8 Further, the State party underlines that, during her interview with the Danish Immigration Service, the author produced letters addressed to the Refugee Board by the Party Committee of PRE, a copy of two medical certificates dated 1 June 1994 and 23 December 1995, allegedly issued by her own medical doctor, and a warrant of her arrest dated 12 August 1998. In the interview with the Immigration Service, the author stated that the warrant for her arrest had been issued at that time because she had not resigned from the party as instructed. However, before the Board, the author stated that the document had been issued since she had not left the country as ordered. She had not been served with the warrant directly, but had received a copy from a friend employed by the police. The author only had copies of the medical certificates, allegedly because she did not have any permanent address and was afraid to have original documents in her possession. Taking into consideration the contents of the documents and the author's related statements, compared with the other information on the case, the Board found that the documents were not of a nature to alter its assessment of the case.

4.9 It is submitted that the author's statement regarding rape during her most recent detention should be given little weight, since this information was not brought forward by the author until the proceedings before the Board. Given that the most recent Immigration Service interview with the author prior to the Board's proceedings was conducted by a woman, and given that the author, according to her own statements, had been politically active for women's rights, it seems to decrease her credibility that no evidence to this effect had previously been given, either to the authorities or to her own attorney.

4.10 As to the Refugee Board's decision of 28 May 1999 not to reopen the case, the State party states that the Board emphasized that the new information referred to by the author as new did not contain any elements beyond those already considered by the Board and the Immigration Service during the initial proceedings.

4.11 The State party also draws the attention of the Committee to the assessment of the Board that it seemed improbable that the author would have been deprived of her identity papers for about one year after her alleged release in December 1995 and nevertheless be able to obtain a valid passport in September 1996. Furthermore, it is noted that the author gave inconsistent accounts to the immigration authorities regarding her departure from Ecuador. She has stated that she left the country legally on 15 August 1998 with a genuine passport, but on another occasion she stated that her departure was actually illegal as she travelled in the evening, did not show any passport and was not supposed to leave Ecuador because she was the subject of an arrest warrant.

4.12 In conclusion, the State party points out that the Board did not necessarily deny that in connection with demonstrations the author might have been detained as explained, but the detentions themselves were not a sufficient ground for granting asylum. This would still be the case even if the author had in fact been subjected to physical ill-treatment in connection with these detentions. The State party argues that it also follows from the practice of the Committee that a risk of being detained is not as such sufficient to trigger the protection of article 3 of the Convention and that there is no actual evidence, including medical evidence, supporting the author's claim that she has previously been subjected to torture.

4.13 Finally, the State party notes that Ecuador has not only signed the Convention against Torture but also, by a declaration of 6 September 1988, recognized the competence of the Committee to receive and consider individual communications pursuant to article 22. The State party is aware that the Committee has stated that the fact that a State has acceded to the Convention and recognized the competence of the Committee under article 22 is not in itself sufficient to preclude a return to that country being contrary to article 3, but importance should nevertheless be given thereto.

Comments by the representative of the author

5.1 In his comments on the State party's submission, the representative of the author refers to the State party's position that the author has the responsibility of presenting "an arguable case" that she would be in danger of being subjected to torture upon return to her home country. According to the representative, an arguable case has indeed been presented in the light of the author's previous experiences of persecution, including torture, and owing to her political activities for poor Indian women in Ecuador. Further, the representative points out that, according to the practice of the Committee, it is note necessary that the risk of torture be serious, in the sense of being highly likely to occur; the Committee has previously clearly stated that there need only be "more than a mere possibility of torture".

5.2 The representative considers that the State party's argumentation that PRE, contrary to what has been stated by the author, is a legal party and that its leader was President in 1996, is irrelevant to the main question under consideration, i.e. whether the author runs a risk of being subjected to torture upon return to Ecuador. The argument of the State party is based on opinion and misunderstandings rather than fact.

5.3 The representative argues that more importance should be attached to the two existing letters from the PRE local leadership describing the danger run by the author if she returned to Ecuador in view of her having been the party's leading promoter for women's rights. The Committee's attention is

drawn to the letter dated 20 August 1999, which indicates that the author's replacement as leader of the party's Women's Front has already been arrested. The fact that a warrant for her arrest was issued as late as 26 February 1999 by the Ministry of the Interior ought to indicate that the author is not wanted merely for disturbing public order in the streets through political manifestations.

5.4 The representative further recalls that the author was raped in prison by prison staff, who cooperate closely with the local police. It is therefore not surprising that no medical evidence could be secured. The fact that the author did not reveal this information to the Danish authorities at an earlier stage could be explained by the fact that, like other women in similar situations, she has tried to suppress the event from her consciousness and that for obvious reasons she has limited trust in police officers and interrogators.

5.5 The representative notes that the State party does not find it credible that the author obtained a valid passport while presumably being persecuted by Ecuadorian authorities and takes this as evidence of her not being at risk of torture. This argument is inconsistent with the State party's position that all foreign nationals, including asylum-seekers, travelling to Denmark should apply for valid visas at the nearest Danish consulate before departure.

5.6 Finally, the representative submits that the fact that Ecuador is a party of the Convention is of no relevance. The question is whether Ecuador is in fact implementing the rights provided by Convention, in particular the right of leading opposition politicians not to be subjected to torture.

Issues and proceedings before the Committee

6.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not a communication is admissible under article 22 of the Convention. 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.

6.2 The Committee is further of the opinion that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's representative have provided observations on the merits of the communication, the Committee will proceed with the consideration of those merits.

6.3 The issue before the Committee is whether the forced return of the author to Ecuador would violate the obligation of Denmark under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.4 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Ecuador. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or return to that country; specific grounds must exist indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 From the information submitted by the author, the Committee notes the author's activities for women's rights in Ecuador. It further notes that the State party, although expressing doubts as to the complete veracity of the author's account, do not necessarily dispute that the author might have encountered difficulties with the Ecuadorian authorities because of her political activities. The Committee recalls, *inter alia*, that the author has carried out her political activities as a member of a lawful political party of a country which has ratified not only the Convention against Torture, but has also made the optional declaration under article 22 of the Convention.

6.6 The Committee notes that for the purposes of article 3 of the Convention, the individual concerned must established that he or she faces a foreseeable, real and personal risk of being tortured in the country to which he or she is returned.

6.7 It is the view of the Committee that the information presented by the author does not show substantial grounds for believing that she runs a foreseeable, real and personal risk of being tortured if she is returned to Ecuador.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to Ecuador does not constitute a breach of article 3 of the Convention.

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