



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

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 42367/98
by Mohammed Lemine OULD BARAR
against Sweden

The European Court of Human Rights (First Section) sitting on 19 January 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm
Mr G. Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 21 July 1998 by Mohammed Lemine Ould Barar against Sweden and registered on 23 July 1998 under file no. 42367/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 28 September 1998 and the observations in reply submitted by the applicant on 23 November 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1974, is a citizen of Mauritania. Before the Court he is represented by Mr Peter Bergquist, a lawyer practising in Tyresö, Sweden.

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

The applicant arrived in Sweden on 28 or 29 July 1997, holding a tourist visa valid until 26 August 1997.

On 6 October 1997 he applied for asylum with the National Immigration Board (*Statens invandrarverk*), claiming that he had left his country to escape slavery. The Immigration Board held a hearing with the applicant and his lawyer in November 1997.

In written submissions and at the hearing, the applicant supplied the following information. His father, who is a slave belonging to a certain clan, and his mother, who is not a slave, are divorced. He grew up with his mother in the capital Nouakchott, went to school and later sold clothes in his own shop. His father has a privileged position with his master in the city of Kiffa and has achieved that his children, though being slaves, do not have to work as such. The applicant has to visit his father's master - who also owns the applicant - once a year. On these occasions, the applicant has to perform some minor tasks, *inter alia* serving tea and going to fetch people. He has never been personally threatened by the authorities, the clan or his owner and has not been politically active against the system of slavery, as there are too many Government spies and he would be at great risk if he engaged in such activities. He obtained his passport by bribing a police officer. After his arrival in Sweden, he tore up the passport and other travel documents, as he was afraid of having to return to Mauritania. The visa to Sweden was obtained through the assistance of his uncle who is the Secretary-General for the Association of National Olympic Committees of Africa. He did not apply for asylum immediately, believing that it did not matter when he applied.

The applicant further stated that, if expelled to Mauritania, he would be returned to his father's master who might be angry with him as he has run away and who may punish him according to the master's own laws. The Mauritanian authorities would not be able to – or would not want to – afford him protection. He also fears reprisals from his clan and the State, which supports the system of slavery in the country. Thus, he would be exposed to the risk of being tortured or killed upon return.

By a decision of 28 January 1998 the Immigration Board rejected the applicant's request and ordered his deportation. The Board did not contest that slavery still existed in parts of Mauritania. However, it called into question the applicant's credibility, noting that he had disposed of his passport after his arrival in Sweden and that he had waited a long time before applying for asylum. It also took into account that he had never before expressed his opinions on slavery and that he had never been threatened. Furthermore, the Board found that it had not been shown that the applicant risked being punished for not visiting his father's master. Finally, the Board considered that the general conditions prevailing in Mauritania did not constitute a reason for granting the applicant a residence permit on humanitarian grounds.

The applicant's appeal was rejected by the Aliens Appeals Board (*Utlänningsnämnden*) on 5 June 1998. The Appeals Board shared the opinion of the Immigration Board and stated, in particular, that the applicant himself had not been held in slavery prior to his leaving Mauritania but had been able to study for twelve years and later had supported himself by selling clothes in his own shop.

After the Commission had indicated to the respondent Government that it was desirable that the applicant would not be deported to Mauritania until the Commission had had an opportunity to examine the present application, the National Immigration Board, by decision of 24 July 1998, stayed the execution of the deportation order against the applicant.

COMPLAINT

Invoking Articles 2, 3 and 4 of the Convention, the applicant claims that, upon return to Mauritania, he will be punished for having escaped and for having failed to report to his owner, i.e. his father's master. Allegedly, he may be tortured and may have to perform slave labour.

PROCEDURE

The application was introduced on 21 July 1998 and registered on 23 July 1998.

On 22 July 1998 the Acting President of the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, to indicate to the respondent Government that it was desirable in the interest of the parties and the proper conduct of the proceedings not to return the applicant to Mauritania until the Commission had had an opportunity to examine the application. The Acting President further decided, pursuant to Rule 48 § 2 (b), to bring the application to the notice of the Government and to invite them to submit written observations on the admissibility and merits of the complaint under Article 3 of the Convention.

The indication under Rule 36 was prolonged until further notice by the Commission's decisions of 17 September and 29 October 1998.

The Government's written observations were submitted on 28 September 1998, after an extension of the time-limit fixed for that purpose. The applicant replied on 23 November 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 11 January 1999 the Court granted the applicant legal aid.

THE LAW

1. The applicant complains that his deportation to Mauritania would involve a violation of Article 3 of the Convention, which provision reads as follows:

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

The respondent Government acknowledge that, although slavery is prohibited in Mauritanian law, it appears from various international reports that slavery still exists in that country, above all in the countryside. Mauritanian law does not contain any provisions imposing penal sanctions for the illegal use of forced labour. Masters sometimes punish their slaves in a cruel manner, *inter alia* for attempting to escape. However, several non-governmental organisations working against slavery, though not recognised by the Mauritanian Government, are allowed to function, to issue reports and statements and to assist individuals.

As regards the applicant's personal situation, the respondent Government contend, however, that it has not been shown that he would face a real risk of treatment contrary to Article 3 of the Convention, neither from public officials nor from private individuals. In this connection, the Government observe that the applicant has not engaged in political activities and has not been tortured or otherwise ill-treated. Allegedly, there is nothing to indicate that he is of any particular interest to the Mauritanian authorities. The Government further note that the applicant seems to be very privileged in comparison with many other Mauritians who consider themselves to be slaves. Thus, he has never been held in servitude or been subjected to forced labour but has enjoyed an independent life in the capital far away from his clan and has been able to earn his living by selling clothes in his own shop. Moreover, he has received a twelve-year education in a country where only 34 per cent of the population is literate, according to the latest annual report of Amnesty International, and, in obtaining a visa to Sweden, he was assisted by an uncle who holds a high position within the Olympic movement. In the Government's view, the applicant's fear of ill-treatment is associated with possible future protests and activities against slavery on his part. He does not seem to fear any severe punishment for not having visited his father's master as he was supposed to have done. Further, the applicant has not provided any concrete details of the treatment he fears. On the contrary, he has made allegations of a rather vague and general character. Finally, the Government note that the applicant waited for several months before applying for asylum, which would indicate that he did not think of himself as being in great need of protection.

The applicant submits that slavery and ill-treatment of slaves are wide-spread in Mauritania and that the Mauritanian Government does nothing to prevent the existence of slavery. Rather, it acts against anti-slavery groups and affords no protection to slaves against their owners. Being the son of a slave, the applicant himself is automatically considered to be a slave. His privileged position with his father's master may be changed at any time and he may have to perform slave labour. His fear of reprisals does not relate to future activities but to his own background; his failure to report to his father's master will put him at a real and substantial risk of being subjected to treatment contrary to Article 3 of the Convention, including torture.

The Court recalls 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, an expulsion decision may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of the State, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (cf., e.g., Eur. Court HR, *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 34, §§ 102-103). A mere possibility of ill-treatment is not in itself sufficient (*ibid.*, p. 37, § 111).

The Court considers, furthermore, that the expulsion of a person to a country where there is an officially recognised regime of slavery might, in certain circumstances, raise an issue under Article 3 of the Convention.

In regard to the circumstances of the present case, the Court recalls that slavery has not been officially endorsed by the Mauritanian Government. Rather, it is prohibited by law. Still, it is claimed in reports by various international organisations that vestiges of slavery continue to exist, especially in the countryside, and that the Mauritanian Government has not taken sufficient measures against this practice.

Turning to the applicant's personal situation, the Court notes that he has apparently lived an independent life with his mother's family in the country's capital, where he has been studying and later has set up his own business. He has not taken part in any political activities and has not received any threats from Government authorities, his clan or his father's master. Nor has he had to perform slave labour. It is true that the applicant alleges that he is obliged to report once a year to his father's master and to perform some minor tasks on these occasions. However, although he has referred to the possibility of harsh punishment of run-away slaves, there is no indication that he will be subjected to any such ill-treatment in Mauritania.

Thus, having regard to the submissions made by the parties, the Court considers that there are not substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 of the Convention upon return to Mauritania.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant contends also that his rights under Articles 2 and 4 of the Convention would be violated, should he be returned to Mauritania. In so far as relevant, these provisions provide the following:

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 4:

- “1. No one shall be held in slavery or servitude.
 2. No one shall be required to perform forced or compulsory labour.
- ...”

The Court, having regard to its considerations under Article 3 of the Convention, considers, however, that it has not been substantiated that the applicant would risk being deprived of his life upon return to Mauritania.

In so far as the applicant’s complaints might raise a separate issue under Article 4 of the Convention, the Court refers to the examination of the issue under Article 3 and recalls that slavery has not been endorsed by the Mauritanian Government but, rather, is prohibited by law. The Court finds, therefore, that it has not been substantiated that the applicant will risk treatment contrary to Article 4 upon return to Mauritania.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O’Boyle
Registrar

Josep Casadevall Medrano
President