

FIFTH SECTION

**CASE OF S.S. AND OTHERS v. DENMARK**

(Application no. **54703/08**)

JUDGMENT

STRASBOURG

20 January 2011

**FINAL**

**20/06/2011**

*This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.*

**In the case of S.S. and Others v. Denmark,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Renate Jaeger, *President*,

Peer Lorenzen,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 December 2010,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 54705/08) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Sri Lankan nationals, S.S. and V.S. (“the applicants”), and their two children on 14 November 2008. The acting President of the Chamber decided to grant the applicants anonymity (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Mr Tyge Trier, a lawyer practising in Copenhagen. The Danish Government (“the Government”) were represented by their Agent, Mr Thomas Winkler, the Ministry of Foreign Affairs, and their Co-agent, Mrs Nina Holst-Christensen, the Ministry of Justice.

3. The applicants alleged that an implementation of the deportation order to return them to Sri Lanka would be in violation of Article 3 of the Convention.

4. On 17 November 2008, the acting President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was in the interests of the parties and the proper conduct of the proceedings that the applicants should not be expelled to Sri Lanka pending the Court's decision. On 9 January 2009 the acting President decided to give notice of the application to the Government and granted it priority under Rule 41 of the Rules of Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in Sri Lanka in 1969, 1979, 2000 and 2002 respectively. Currently the applicant husband lives in Germany and the applicant wife lives with the children in an asylum centre in Denmark.

6. It appears that the applicants married on 30 September 1998 in northern Sri Lanka.

7. It also appears that they left Sri Lanka separately for Moscow. It is not known exactly when. The applicant husband was in possession of a valid passport with a study visa inserted. The applicant wife was in possession of a valid passport. Reunited, the applicants went to Ukraine and thereafter to Romania, where they were granted asylum in September 2001. Two children were born to them there. In 2002 the applicants attempted to apply for asylum in Switzerland, but apparently, before a decision was taken, they returned voluntarily to Romania. There, at some unknown time, they were issued with Romanian aliens' passports.

8. On 19 July 2005 the applicants entered Denmark, where the applicant wife's sister and cousin lived. Since they were in possession of Romanian aliens' passports they could enter Denmark without a visa. On 22 July 2005 under section 9a, subsection 1, of the Aliens Act (*udlændingeloven*) they applied for work and residence permits which they were refused on 12 October 2005. The applicants were ordered to leave the country before 15 November 2005.

9. On 14 November 2005 the applicants requested asylum.

10. In support thereof, on 14 and 17 November 2005, the applicant wife stated that she and her parents had moved around a lot within Sri Lanka and had lived both in northern and central Sri Lanka and in Colombo. The applicant wife went to school for twelve years after which she worked as a pre-school teacher. Her family was under surveillance by the police because her father and sister were involved with the Tamil Tigers (LTTE). The applicant had also been a member of and worked for the LTTE for two years from 1995 to 1997, when she lived in the north. She told the LTTE that she was unable to take part in their training because she had asthma. They demanded that she work for them and she thus carried out social work and made sure that the children could attend school and that they were provided with food and medicine. The applicant wife's parents did not like this and sent her to Colombo, where she lived at a boarding house for Tamils. In 1997, it appears, she and all the women at the boarding house were detained by the police, suspected of having blown up a bus. They were not provided with anything to eat or drink during the detention. Subsequently, she was arrested and interrogated on several occasions, including by the Criminal Investigation Department and the military. Her father paid for her release and arranged for her to leave Sri Lanka around October 1999. Her case in Sri Lanka was undecided but she remained on a list of suspects. Upon return, the police would reopen her case and that would harm her entire family. She did not want to ruin her children's chances of having an education.

11. In an asylum registration report of 23 November 2005, the applicant husband stated that he had been a member of the LTTE for three months in 1985, when he was 16 years old. He realised that the organisation was not for him. Thereafter he stayed neutral and was not a member of any political or religious party or organisation. He sold his garage in 1998 in order to leave Sri Lanka, which he did in April 1999. Being unsatisfied with the service in Romania and allegedly having trouble with the mafia there, the family decided to move to Denmark.

12. In an asylum application of 1 December 2005 the applicant husband stated that he had been a member of the LTTE from 1985 to 1986. Having completed his training, he distributed propaganda for the organisation. He owned a garage at which he repaired cars, minibuses and jeeps. Both the LTTE and the military brought their vehicles and would threaten him to work for only one party. The LTTE also asked him to place a bomb in a military jeep. He refused and was then accused of being an informant. He kept a low profile for a while and sold his garage so that he could leave the country. If returned to Sri Lanka, the LTTE would give him a death sentence.

13. According to an interview report of 3 July 2006, prepared by the Immigration Service (*Udlændingestyrelsen*, now *Udlændingeservice*) the applicant husband added, *inter alia*, that when he was a member of the LTTE in 1985 he trained with them three or four times a week, after school or after lunch breaks. He ended his membership because he wanted to finish training to be a mechanic. The LTTE told him that he could still assist them by putting up posters. He did not always comply with their orders because he was afraid of being caught by the authorities. The latter asked him frequently about the LTTE and its whereabouts and he would tell the authorities that he did not know anything. Nothing further would happen. The applicant husband was never wanted, detained or convicted and he had no criminal record. While working as mechanic, he had both the military and the LTTE as customers. In 1996, he refused a request by the LTTE to place a bomb in a military vehicle. He begged them not to cause any problems for him and eventually they left. In the end he felt so much under pressure and suspicion by both parties that he decided to leave the country. His departure was not triggered by a specific event, rather the general problems with the LTTE and the military forces had become too much. In April or May 1998 he sold his garage. Thereafter he married and in October 1998 he travelled on his own to Colombo with a view to leaving Sri Lanka. Six months later he left for Moscow.

14. According to an interview report of 3 July 2006, prepared by the Immigration Service, the applicant wife added, *inter alia*, that she had lived with her family at a boarding house in Colombo for about a year. Before that she had lived at a refugee camp for Tamils who wanted to go to Colombo. Before that, from 1996 to 1997, she had been a forced member of the LTTE's students' organisation and carried out social work for the LTTE. Her father had also carried out social work. He had not been a member of the LTTE but was accused of being a supporter, which caused problems for the family. Her father was detained once in 1985 or 1986, and in 1998 he was detained many times. The police would come to their home which was situated in an area controlled by

LTTE. It was due to their Tamil ethnicity that the family had so many problems with the army. The applicant wife did not know her sister's exact position in LTTE, as she had not been in touch with her for many years, but she assumed that her sister had been a rank-and-file member of the LTTE for four to five years. When the applicant wife was detained in Colombo in connection with the bombing of the bus, she spent half a day at the police station. It was a female suicide bomber wearing sandals who had blown up the bus, and the police therefore checked all girls wearing sandals, including the applicant, who was innocent. Her sister was also arrested in that connection. If returned to Sri Lanka, the applicant wife feared problems with the Sri Lankan army, which would know that she had been away from her country for five years. She did not want to ruin her children's future and she feared that they would not be able to go to school in Sri Lanka.

15. By letter of 31 July 2006 the Aliens Authorities requested the Danish Embassy in Bucharest to provide information about the applicants' basis for residence in Romania. By letter of 3 October 2006, the Embassy stated that the applicant husband had been granted refugee status in Romania on 4 September 2001. His residence permit expired on 22 September 2005 and his passport expired on 27 June 2006. A prohibition on his entry into Romania had been issued against him until 16 May 2021. The applicant wife and the oldest child had also been granted refugee status in Romania on 4 September 2001 and been granted unlimited protection on 14 and 24 September 2004, respectively. Their residence permit for Romania expired on 15 September 2005 and the passport expired on 27 June 2006. The youngest child had obtained refugee status in Romania on 5 July 2002. The applicant wife and the two children had a right to stay in Romania even though their residence permit and passport had expired.

16. On 26 October 2006 the applicants' request for asylum was refused by the Aliens Authorities finding that the applicants' previous connection with LTTE was unknown to the Sri-Lankan authorities and that none of them would face a real and concrete danger of being subjected to treatment contrary to Article 3 of the Convention upon return to Sri Lanka. Thus, they failed to fulfil the criteria under section 7 of the Aliens Act (*Udlændingeloven*) to be granted asylum.

17. The applicants appealed against the decision to the Refugee Appeals Board (*Flygtningeævnet*), before which an oral hearing was held on 4 October 2007. The applicant wife stated, among other things, that her father had led a humanitarian organisation which supported the LTTE. Moreover, while being a member of the LTTE's students' organisation she organised annual meetings and made speeches and read out poetry. She was a publicly known person and LTTE supporter. Her speeches were not political but concerned the situation in the country and the people who had given their lives for it. She had no connection with the high-ranking members of the LTTE and she never carried out any military activities for the organisation. After the marriage, her husband ran into problems with the army and they left because he was wanted.

18. At the same oral hearing before the Refugee Appeals Board, the applicant husband changed his explanation and stated that he had sold his garage already in 1996 and lived in hiding for three years until he left Sri Lanka. He had to leave because the army knew about his work for the LTTE. At some unknown time, several men from the army had pointed at him and said "tiger" and beaten him. The applicant husband submitted a declaration in English from a lawyer in Sri Lanka of 28 September 2005 to "whom it may concern" stating that the applicant husband was one of several suspected of helping LTTE and that he was "wanted by the Sri Lankan police and that there was a case pending against him". The applicant husband explained that the police had come to his home and delivered the letter to his mother. Subsequently, his mother had contacted the said lawyer who had contact with all Sinhalese authorities. The lawyer had said that the applicant husband was wanted for a criminal offence related to the abduction of a man who had worked at his garage. The applicant husband was therefore a wanted person in Sri Lanka and would be killed by the authorities upon return.

19. On 4 October 2007, the Refugee Appeals Board upheld the refusal to grant the applicants asylum. It found that the authorities were not aware of the activities carried out by the applicant wife which ended about two years before her departure. Likewise, it found that the applicant husband's activities had a low profile character. Moreover, having regard to the time that had passed since the activities took place, there was no basis for assuming that the applicants were at risk of persecution upon return. Finally, it found that the applicants' new changed explanations before it lacked credibility and it did not attach any value as evidence to the declaration submitted.

20. On 25 September 2008 the applicants' request for a residence permit on humanitarian grounds was refused by the Ministry of Refugee, Immigration and Integration Affairs (*Ministeriet for flygtninge, indvandrere og integration*).

#### **Subsequent events before the Court and domestic proceedings**

21. On 14 November 2008 the Danish Refugee Council (*Dansk Flygtningehjælp*), an NGO, requested the Refugee Appeals Board to reopen the case. It referred to the applicants' previous explanations and the general deterioration of the security situation in Sri Lanka. In addition it alleged that the applicant husband was of interest to the authorities, most recently in connection with a bombing in 2007, and that the same applied to the applicant wife, who was of interest to the authorities due to her extensive activities for the LTTE; her many arrests; her sister's high-profile membership of the LTTE and subsequent television exposure; and her father's and cousin's affiliation with the LTTE.

22. On 14 November 2008, on the applicants' behalf, the Danish Refugee Council also submitted a letter to the Court of Human Rights requesting that it stay the applicants' deportation.

23. On 17 November 2008, the Court of Human Rights decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was in the interests of the parties and the proper conduct of the proceedings that the applicants should not be expelled to Sri Lanka pending the Court's decision.

24. Consequently, on 18 November 2008 the Refugee Appeals Board extended the time-limit for the applicants' departure until further notice.

25. On 30 March 2009 the Refugee Appeals Board decided to reopen the applicants' asylum case.

26. By letter of 11 June 2009 the applicants' representative forwarded a CD-ROM to the Refugee Appeals Board with a copy of a television broadcast which allegedly showed that the applicant wife's sister was active with the LTTE as a high-profile "training master". The representative maintained that in April 2009 the applicant wife had talked to her father in Sri Lanka.

27. On 16 June 2009 the Refugee Appeals Board decided to suspend the examination of all asylum cases concerning ethnic Tamils from northern Sri Lanka, including the applicants' case.

28. On 16 December 2009, on the basis of the most recent background information concerning Sri Lanka including, *inter alia*, a Memorandum of 26 October 2009 prepared by the Ministry of Foreign Affairs, the Refugee Appeals Board decided to review the suspended cases, including the applicants' case.

29. The Refugee Appeals Board obtained the files on the applicants from the Romanian and the Swiss authorities.

30. During a hearing before the Refugee Appeals Board on 19 April 2010 the applicant wife submitted a photograph of a stage performance and explained that she had played before an audience of more than five hundred people at such theatrical events. The play in question concerned the life story of an LTTE member, who was a martyr. The applicant wife believed that there were people present among the audience who informed the Government about the plays. Furthermore, her father had been deeply involved with the LTTE. The applicant wife added that just before her departure in 1999 she was arrested by the criminal police in Colombo, who said that she was to be interviewed again at a different location. Her father bribed the police and four days after, she left the country. The last time the applicant wife had contact with her family was when she spoke to her cousin in 2009. She last spoke to her mother and sister in 2005. The applicant did not know where her family was. The applicant wife showed a video clip from YouTube to the Refugee Appeals Board, allegedly showing her sister with other LTTE members in November 2007. The applicant had last seen her sister in 1997 when they lived at the boarding house in Colombo. The applicant did not know where her sister was. Finally, the applicant wife submitted that in Denmark, she has participated in demonstrations against the hostilities in Sri Lanka.

31. At the outset of the hearing before the Refugee Appeals Board on 19 April 2010 the applicant husband stated that he was mentally well and capable of being interviewed. He stated that he and his father were attacked by Singhalese in 1983. His father was killed and the applicant sustained an injury to his hand. Moreover, he had inherited the garage from his parents in 1996. The same year

the LTTE had asked the applicant husband to place a bomb in a military vehicle. He had refused but hid the bomb in his garage, where it remained even after he sold the garage for about 300,000 rupees in May 1998. He was afraid that the bomb had been discovered and that he was therefore wanted by the authorities. He left Sri Lanka using a false passport with his own picture. The applicant husband had no contact with his family. He last spoke with them in 2007. However, in 2005 and 2007 he received two letters from his mother who stated that the buyer of the garage had informed the authorities about the bomb in the garage and that the secret police sought her out in order to find him. It appears that he submitted the two said letters from his mother, dated 2005 and 2007, alleging that the authorities were looking for the applicant husband. It also appears that the applicant husband submitted yet another declaration from the same lawyer, who had made the declaration in 2005. It was dated 5 December 2007 to "whom it may concern" and stated, *inter alia*, that the search for the applicant husband "had been intensified by the police, intelligence unit of the Sri-Lankan Army and the parliamentary groups" and that "there were several cases against him for allegedly supporting the LTTE".

32. On 19 April 2010, the Refugee Appeals Board refused to reopen the applicants' case. It found that the most recent general background information would not lead to a revised assessment of the case. More specifically in its letter to the applicant's representative it stated as follows:

The Refugee Appeals Board finds that the applicants have provided new and/or extended information during the reopened proceedings, and that this gives rise to critical doubt about the credibility of the applicants' information, as there appears to be no reasonable explanation for the late appearance of the information, even in view of the information regarding the applicant husband's mental difficulties, see counsel's pleading of 19 April 2010 with exhibits. The applicant wife has thus stated that the reason why she did not inform the Refugee Appeals Board of her LTTE theatre performances in the previous asylum proceedings was that at the time she was not in possession of the photograph now submitted ... The Refugee Appeals Board finds that this is not a reasonable explanation why she did not, at the beginning of her asylum case, inform the Refugee Appeals Board of the high profile that she now invokes. The applicant wife further stated that, in connection with the arrest where her father paid a bribe for her release, she was the only one arrested and that she was to be questioned again at a different location, and that this arrest was the reason for her departure four or five days later. The Refugee Appeals Board finds that this statement contradicts her statement at the interview of 3 July 2006 as reported by the Danish Immigration Service according to which she was arrested with the sister who now lives in Denmark and that her father paid for the release without any conditions. It appears from her asylum application form that the arrest for which her father paid a bribe took place in 1998. Her departure was in March 1999. The Refugee Appeals Board finds that the applicant wife's statement appears to have been extended on essential points and it only considers it a fact that her father did social or humanitarian work in the local community in his home town ... without being a member of the LTTE, that as a member of the LTTE between 1995 and 1997, the applicant wife also did social work for the LTTE, including distribution of food and medicine, that she lived in various places after 1997, at which time she was exposed to general, brief periods of detention, and that one year prior to her departure she lived in Colombo, from where she departed using her genuine national passport. Moreover, the Refugee Appeals Board noted that the information provided by the applicant wife, that the last time she had contact with her father was in 2005, does not correspond with the information provided by the Danish Refugee Council in its letter of 11 June 2009. The Board further notes that the applicant wife's brief arrests were in the nature of general detention in which several other Tamils were detained by the authorities in connection with situations where the LTTE was considered responsible for specific actions. The applicant wife was released unconditionally every time. She stayed in Colombo for about one year with part of her family before her departure. They were registered with the authorities in Colombo. She departed using her own, genuine nationality passport. At the above interview, the applicant wife stated about her sister in the LTTE that she had been a member of the LTTE for four to five years and that she assumed that her sister was a rank-and-file member, but that she had no contact with her. This statement contradicts the information about the sister provided by the Danish Refugee Council in its letter of 11 June 2009.

The applicant husband stated to the Refugee Appeals Board that, contrary to what he stated in 2007, he did in fact own the garage until 1998. He further stated that LTTE left a bomb in his garage, that he hid the bomb there and that that was the reason why he chose to sell the garage ... in May 1998 for 300,000 Sri Lankan rupees. Thereafter, he stayed in various locations until October 1998 when he took up residence in or near Colombo. He did not use his own name and was not registered with the authorities, and in April 1999 he left using a false passport with his picture inserted. The Refugee Appeals Board finds that this statement contradicts the applicant husband's previous statements, including the interview report of 3 July 2006 according to which he stated that he refused to help the LTTE plant the bomb, that the LTTE had eventually left, and that the LTTE as well as people from the Sri Lankan army continued to force him to work for them, that he needed the money but that they did not pay very often, and that he eventually could not stand it and therefore sold his garage in April or May 1998, that he stayed for six months in Colombo before his departure, and that he departed lawfully using his genuine passport in which a study visa had been inserted. In its decision of 4 October 2007, the Refugee Appeals Board rejected the idea that the applicant husband was the subject of a specific search at his mother's house, and on the basis of an assessment of

the applicant's statement at the current Refugee Appeals Board hearing, the Refugee Appeals Board does not find that the current statement and the letter from the mother, which dates from 2007, ... [can] lead to a revised assessment. Therefore, concerning the applicant husband, the Refugee Appeals Board only considers it a fact that he sustained an injury to his hand in 1983 in connection with the assault where his father was killed, that he trained with the LTTE for three months in 1985 and subsequently left without problems to continue his education, that he probably inherited the garage from his mother's family in 1996, that he ran the garage, that he sold the garage in 1998 because both the LTTE and the Sri Lankan authorities were pressuring him to work for them, and that thereafter he stayed in various locations, most recently for six months in Colombo before departing from the airport in Colombo in April 1999 using his own name and his own genuine passport.

... As the applicants' statements are assessed, the Refugee Appeals Board thus deems it a conclusive fact that neither applicant stood out at all in March and April 1999. Neither of them was wanted by the Sri Lankan authorities nor did they have any specific conflicts with the authorities. Both departed lawfully. In the assessment of whether, if they were to return to Sri Lanka, including via Colombo, the applicants, who are ethnic Tamils from northern Sri Lanka, would risk persecution or assault as covered by section 7 of the Aliens Act, including treatment as covered by Article 3 of the ECHR, particularly because a video clip exists on YouTube of the applicant wife's younger sister who allegedly was a high-ranking so-called training master in LTTE according to the information received, the Refugee Appeals Board notes that in the sequence shown the person pointed out in the video clip - in part together with others and in part alone - is seen wearing a uniform and carrying weapons and ammunition and agitating for the LTTE's fight. The person in question speaks directly to the camera. The Board notes that there is no other information available about the applicant's younger sister apart from that provided for the case by the applicant wife herself. In this connection, it gives rise to some uncertainty with the Refugee Appeals Board that the applicant wife stated at the hearing that the last times she had contact with her parents was in 2005, but that a cousin told her in a brief telephone conversation in 2009 that the family was staying in M. According to the information from the Danish Refugee Council ...on 11 June 2009, the applicant wife stated that in April 2009 she was contacted by her father who informed her that he was with her sister, but that they would move to M as soon as possible. Even if it is considered a fact that the sister in question is the person pointed out in the video clip on YouTube, the Refugee Appeals Board finds that, in view of the applicants' insignificant profile as described above, their return would not put them at risk of persecution or assault as covered by section 7 of the Aliens Act. This assessment takes into consideration that the applicants departed lawfully from Sri Lanka in 1999 and are now thirty-one and forty years old, respectively. Although the applicants are ethnic Tamils from northern Sri Lanka, neither of them has had specific conflicts with the Sri Lankan authorities and cannot be considered to be wanted or having been wanted previously. In this respect, the Refugee Appeals Board finds that the circumstance that as ethnic Tamils from northern Sri Lanka the applicants may risk being questioned by authorities when entering the country does not lead to a revised assessment of the case in terms of asylum law. In this assessment, consideration has been had to the background information available to the Refugee Appeals Board, from which it appears that the individuals at particular risk of being detained and investigated upon entry in Colombo are young Tamils, men in particular, from northern and eastern Sri Lanka: those without ID; those not resident or employed in Colombo; and those recently returned from the West, see United Kingdom: Home Office, Report of Information Gathering Visit to Colombo, Sri Lanka 23 -29 August 2009. It further appears from the background material available to the Board that, in general, individuals who have previously supported LTTE on a lower level are not of interest to the authorities, see Home Office, Operational Guidance Note, Sri Lanka, August 2009, and Home Office, Report of Information Gathering Visit to Colombo, Sri Lanka 23 - 29 August 2009. Therefore, the Refugee Appeals Board finds that, following an overall assessment of the specific circumstances of the present case, including the specific assessment that must be made according to the Court's decision of 6 August 2008, *NA. v. The United Kingdom*, the applicants cannot be considered to be in such a position upon return that it justifies asylum. The injury to the applicant husband's little finger on his right hand is found not to lead to another assessment. The circumstance that the applicant wife has participated in demonstrations in Copenhagen as one of several Tamil demonstrators is also found not to lead to another assessment. Accordingly, the applicants are still not entitled to a residence permit under section 7 of the Aliens Act as they, if they return, are not considered to be at risk of persecution that could motivate asylum or of inhuman or degrading treatment or punishment as covered by section 7, subsection 2 of the Aliens Act ... No time limit for departure is fixed as ...the Court has requested the Danish Government not to return the applicants by force for the time being with reference to Rule 39 of the Rules of Court. If the applicants' basis for lawful residence in Denmark lapses, they must leave Denmark immediately ... If the applicants do not leave voluntarily, they may forcibly be returned to Sri Lanka...

33. At some unknown time thereafter the applicant husband moved to Germany and obtained a residence permit.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Asylum proceedings in Denmark

34. By virtue of section 7 of the Aliens Act (*Udlændingeloven*), asylum is granted to aliens who satisfy the conditions of the Geneva Convention. Applications for asylum are determined in the first

instance by the former Aliens Authorities (now called the Immigration Service) and in the second instance by the Refugee Appeals Board.

35. Pursuant to section 56, subsection 8, of the Aliens Act, decisions by the Refugee Board are final, which means that there is no avenue for appeal against the Board's decisions. Aliens may, however, by virtue of Article 63 of the Danish Constitution (*Grundloven*) bring an appeal before the ordinary courts, which have authority to adjudge on any matter concerning the limits to the competence of a public authority.

36. By virtue of section 54, subsection 1, second sentence, of the Aliens Act the Refugee Appeals Board itself sees that all facts of a case are brought out and decides on examination of the alien and witnesses and procuring of other evidence. Consequently, the Board is responsible not only for bringing out information on all the specific circumstances of the case, but also for providing the requisite background information, including information on the situation in the asylum-seeker's country of origin or first country of asylum. For this purpose, the Refugee Appeals Board has a comprehensive collection of general background material on the situation in the countries from which Denmark receives asylum-seekers. The material is up-dated and supplemented on a continuous basis. The background material of the Refugee Appeals Board is obtained from various authorities, in particular the Danish Ministry of Foreign Affairs and the Danish Immigration Service. In addition, background material is procured from various organisations, including the Danish Refugee Council, Amnesty International and other international human rights organisations and the UNHCR. Also included are the annual reports of the US State Department (Country Reports on Human Rights Practices) on the human rights situation in a large number of countries, reports from the British Home Office, reports from the documentation centre of the Canadian Refugee Appeals Board, reports from the Swedish Ministry for Foreign Affairs, reports from EURASIL (European Union Network for Asylum Practitioners), reports from the authorities of other countries and to some extent articles from identifiable (international) journals. Moreover, the Board may request the Danish Ministry of Foreign Affairs to issue an opinion on whether it can confirm information from a background memorandum drafted in general terms. The Refugee Appeals Board also retrieves some of its background material from the Internet. Internet access also enables the Board to obtain more specific information in relation to special problems in individual cases.

37. Usually, the Refugee Appeals Board assigns counsel to the applicant. Board hearings are oral and the applicant is allowed to make a statement and answer questions. The Board decision will normally be served on the applicant immediately after the Board hearing, and at the same time the Chairman will briefly explain the reason for the decision made.

### III. RELEVANT INFORMATION ABOUT SRI LANKA

#### **Events occurring after the cessation of hostilities in May 2009**

38. Extensive information about Sri Lanka can be found in *NA. v. the United Kingdom*, no. 25904/07, §§ 53-83. The information set out below concerns events occurring after the delivery of the said judgment on 17 July 2008 and, in particular, after the cessation of hostilities in May 2009.

39. Fighting between the Sri Lankan army and the LTTE intensified in early 2009, with the army taking a number of rebel strongholds in the north and east of the country. On 19 May 2009, in an address to the country's parliament, the President of Sri Lanka announced the end of hostilities and the death of the leader of the LTTE, Velupillai Prabhakaran. It was also reported that most, if not all, of the LTTE's leadership had been killed.

40. The previous day, the United Nations Office for the Coordination of Humanitarian Affairs had estimated that around 220,000 people had already reached internally displaced persons' camps, including 20,000 in the last two or three days. In addition, it was believed that another 40,000-60,000 people were on their way to the camps through the crossing point at Omanthai, in the northern district of Vavuniya.

41. In July 2009, the South Asia Terrorism Portal reported that the number of killings in Sri Lanka in the previous three years (including deaths of civilians, security forces and members of the LTTE) was: 4,126 in 2006; 4,377 in 2007; 11,144 in 2008 and 15,549 between 1 January 2009 and 15 June 2009. An estimated 75-80,000 people were reported to have been killed in total over the



course of the 26 year conflict.

42. In July 2009, in a “Note on the Applicability of the 2009 Sri Lanka Guidelines”, the United Nations High Commissioner for Refugees (UNHCR) observed that:

“Notwithstanding the cessation of the hostilities, the current protection and humanitarian environment in Sri Lanka remains extremely challenging. In the North, nearly the entire population from the territory formerly held by the LTTE in the North (285,000 Tamils) has been confined to heavily militarized camps in the Northern region. Although the government has gradually reduced the military presence in the camps and has pledged to start the progressive return to their villages of origin of the majority of those in the camps, it is clear that this may take a considerable amount of time. The lack of freedom of movement remains the overriding concern for this population restricting its ability to reunite with family members outside the camps, access employment, attend regular schools, and ultimately choose their place of residence.”

43. A Human Rights Watch [HRW] press release, dated 28 July 2009, reported that:

“The government has effectively sealed off the detention camps from outside scrutiny. Human rights organizations, journalists, and other independent observers are not allowed inside, and humanitarian organizations with access have been forced to sign a statement that they will not disclose information about the conditions in the camps without government permission. On several occasions, the government expelled foreign journalists and aid workers who had collected and publicized information about camp conditions, or did not renew their visas.”

44. A further Human Rights Watch press release dated 26 August 2009 set out concerns that more than 260,000 Tamil civilians remained in detention camps without the freedom to leave.

45. In August 2009, the first post-war local elections were held in Northern Sri Lanka. The British Broadcasting Corporation reported that voter turn-out was low due to the number of people who were still displaced. The governing party, the United People's Freedom Alliance, took the majority of seats in the biggest city in the region, Jaffna. However, the Tamil National Alliance, a party sympathetic to the defeated LTTE, took the majority of seats in Vavuniya, the other town where polling took place.

46. On 7 September 2009, James Elder, the official spokesman for the United Nations Children's Fund in Sri Lanka was ordered to leave Sri Lanka because of adverse remarks that he had made to the media about the plight of Tamils in the government-run camps.

47. On 10 September 2009 the Sri Lankan Official Government News Portal announced that the motion to extend the State of Emergency (under which the authorities have extensive anti-terrorism powers and heightened levels of security including checkpoints and road blocks) by a further month had been passed by Parliament with a majority of 87 votes.

48. In a report dated 22 October 2009, the United States of America State Department published a report entitled “Report to Congress on Incidents During the Recent Conflict in Sri Lanka”, which compiled incidents from January 2009, when the fighting intensified, until the end of May 2009. Without reaching any conclusions as to whether they had occurred or would constitute violations of international law, it set out extensive reports of enforced child soldiers, the killing of captives or combatants trying to surrender, enforced disappearances and severe humanitarian conditions during the hostilities.

49. On 21 November 2009, the Sri Lankan Government announced its decision that all internally displaced persons would be given freedom of movement and allowed to leave the detention camps from 1 December 2009.

50. In its Global Appeal 2010-2011, the UNHCR reported that:

“The Government-led military operations in northern Sri Lanka which ended in May 2009 displaced some 280,000 people, most of whom fled their homes in the last few months of the fighting. The majority of these internally displaced persons (IDPs) now live in closed camps in Vavuniya district, as well as in camps in Mannar, Jaffna and Trincomalee. An additional 300,000 IDPs, some of whom have been displaced since 1990, are also in need of durable solutions.

The IDPs originate mainly from the Mannar, Vavuniya, Kilinochchi, Mullaitivu and Jaffna districts in northern Sri Lanka, as well as from some areas in the east of the country. Though the end of hostilities has paved the way for the voluntary return of displaced people, some key obstacles to return remain. For instance, many of the areas of return are riddled with mines and unexploded ordnance. Not all are considered to be of high risk, particularly those away from former frontlines, but mine-risk surveys and the demarcation of no-go areas are urgently needed.

Other key obstacles to return include the need to re-establish administrative structures in areas formerly held by the Liberation Tigers of Tamil Eelam; the destruction or damaged condition of public infrastructure and private homes; and the breakdown of the economy - including agriculture and fisheries.

The Government of Sri Lanka is planning the return framework, and it has called on UNHCR for support with return transport, non-food items, return shelter, livelihoods support and assistance in building the capacity of local authorities.

With some progress having been recently achieved, it is hoped that a substantial number of IDPs will be able to return to their places of origin in the latter half of 2009, but a large portion of new IDPs are also likely to remain in the camps and with host families until well into 2010.”

51. In a Human Rights Report 2009, dated 11 March 2010, the United States of America State Department stated that the Sri-Lankan Government accepted assistance from NGOs and international actors for the IDP camps but management of the camps and control of assistance were under the military rather than civilian authorities. Food, water, and medical care were all insufficient in the first few weeks after the end of the war, but by July the situation had stabilised and observers reported that basic needs were being met. In June the military withdrew from inside the camps but continued to provide security around the barbed wire-enclosed perimeter. The IDPs in the largest camp, Manik Farm, were not given freedom of movement until December, when a system of temporary exit passes was implemented for those who had not yet been returned to their districts of origin. Some observers said that this exit system still did not qualify as freedom of movement.

52. Human Rights Watch, in their report, World Report 2010, estimated that six months after the main fighting ended, the Government continued to hold more than 129,000 people (more than half of them women and girls) in the camps. Over 80,000 of these were children. The camps were severely overcrowded, many of them holding twice the number recommended by the UN. As a result, access to basic requirements such as food, water, shelter, toilets and bathing, had been inadequate. These conditions imposed particular hardships on the elderly, children and pregnant women. The camps were under military administration, and effective monitoring by humanitarian agencies was lacking. The authorities failed to provide camp residents with sufficient information about the reason for their continued detention, the whereabouts of relatives, or the criteria and procedure for their return home.

53. The United Kingdom Border Agency Country of Origin Information Report on Sri Lanka of 11 November 2010 (“the November 2010 COI Report”) stated as follows:

4.23 The International Crisis Group (ICG) report *Sri Lanka: A Bitter Peace*, 11 January 2010, also referred to “extra-legal detention centres” maintained by the military and observed: “These detained have had no access to lawyers, their families, ICRC or any other protection agency, and it is unclear what is happening inside the centres. In addition, ‘the grounds on which the ex-combatants have been identified and the legal basis on which they are detained are totally unclear and arbitrary’. Given the well-established practice of torture, enforced disappearance and extra-judicial killing of LTTE suspects under the current and previous Sri Lankan governments, there are grounds for grave concerns about the fate of the detained. The government has announced that of those alleged ex-combatants currently detained, only 200 will be put on the trial; most will be detained for a further period of ‘rehabilitation’ and then released.”

...

4.25 Referring to the “at least 11,000 people” detained “in so-called ‘rehabilitation centers’” because of their alleged association with the LTTE, the HRW [document *Legal Limbo, The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, released on 29 January 2010, observed: “The government has routinely violated the detainees’ fundamental human rights, including the right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority, and the right of access to legal counsel and family members. The authorities’ consistent failure to inform families of the basis for the detainees’ arrest and their whereabouts raises serious concerns that some detainees may have been victims of torture and ill-treatment, which are more likely to take place where due process of law is lacking and which have long been serious problems in Sri Lanka. Given the lack of information about some detainees, there is also a risk that some may have been ‘disappeared’.”

4.31 The UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010 reported that “In the wake of the conflict, almost 11,000 persons suspected of LTTE links were arrested and detained in high-security camps” adding that “According to a Government survey, as of 1 March 2010, 10,781 LTTE cadres were being held at 17 centres. Among the detainees were 8,791 males and 1,990 females.” and noted that “Some of the adult detainees have...been released after completing rehabilitation programmes or because they were no longer deemed to present a risk, including some persons with physical disabilities.”

54. The November 2010 COI Report also set out:

4.09 The EIU [The Economist Intelligence Unit], Country Report, Sri Lanka, July 2010 reported: “The EU has

warned that Sri Lanka faces losing trade advantages under the Generalised System of Preferences-Plus (GSP-Plus) scheme from August 15th, unless the Government commits itself in writing to improving its human rights record. The EU has put forward 15 conditions that it says the Government needs to promise to meet within the next six months. These include: ensuring that the 17th amendment to the constitution, which requires that appointments to public positions be impartial and reflect the country's ethnic and religious mix, is enforced; repealing parts of the Prevention of Terrorism Act that are incompatible with Sri Lanka's covenants on political and human rights; reforming the criminal code to allow suspects immediate access to a lawyer on arrest; and allowing journalists to carry out their professional duties without harassment. However, the Government has rebuffed the EU, stressing that the issues that it has raised are internal political matters that should not be linked to trade. "The EU is not the only international body currently putting pressure on the government. Sri Lanka has also rejected the UN's appointment of a three-member panel to examine possible human rights violations during the island's civil war. The Sri Lankan authorities have warned that they will not provide visas for panel members to enter the country."

...

4.11 The EIU, Country Report, Sri Lanka, August 2010 noted that: "The decision by the UN secretary-general, Ban Ki-moon [on 22 June 2010], to appoint a panel to examine accountability issues stemming from the final stages of the island's civil war, which ended in May 2009, has prompted a strong reaction in Sri Lanka ...

4.12 On 17 September 2010 the UN News Service reported that "Secretary-General Ban Ki-moon has held his first meeting with the panel of experts set up to advise him on accountability issues relating to alleged violations of international humanitarian and human rights law during the final stages last year of the conflict in Sri Lanka." The source also noted that the role of the experts was to examine "the modalities, applicable international standards and comparative experience with regard to accountability processes, taking into account the nature and scope of any alleged violations in Sri Lanka."

### **The treatment of returned failed asylum seekers at Colombo airport**

#### *United Kingdom Government Reports*

55. The United Kingdom Border Agency Country of Origin Information Report on Sri Lanka of 18 February 2009 ("the February 2009 COI Report") sets out a series of letters from the British High Commission – hereafter "BHC", Colombo, on arrival procedures at Colombo airport. In its letter of 28 August 2008, the BHC observed:

"[T]he correct procedure for [Department of Immigration and Emigration [DIE]] officers is to record the arrival of these persons manually in a logbook held in the adjacent Chief Immigration Officer's office. The name, date and time of arrival and arriving flight details are written into the log. It records why the person has come to their attention and how the case was disposed of. I have had the opportunity to look at the log, and it appears that the only two ways of disposal are to be passed to the Criminal Investigations Department [CID], or allowed to proceed.

The office of the State Intelligence Service [SIS] is in the immigration arrivals hall and an officer from SIS usually patrols the arrivals area during each incoming flight. Invariably, if they notice a person being apprehended they approach IED [Immigration and Emigration Department] and take details in order to ascertain in [sic] the person may be of interest to them. Their office contains three computer terminals, one belonging to the airport containing flight information and two stand-alone terminals. If an apprehended person is considered suitable to be passed to CID, they are physically walked across the terminal building to the CID offices. A CID officer should then manually record the arrival of the person in a logbook held in their office...often persons shown in the DIE logbook to have been handed to CID are never actually recorded as being received in the CID logbook. It is believed that CID has allowed these persons to proceed and no action has been taken against them."

56. The same letter also noted that CID offices at the airport contained two computers, which were not linked to any national database. Any checks on persons detained or apprehended were conducted over the phone with colleagues in central Colombo. There were no fingerprint records at the airport. One computer contained records of suspects who had been arrested and charged with offences, and court reference numbers. It continued as follows:

"Were a Sri Lankan national to arrive at Colombo Airport having been removed or deported from the United Kingdom, they would be in possession of either a valid national Sri Lankan passport, or an emergency travel document/temporary passport, issued by the Sri Lankan High Commission in London. The holder of a valid passport would have the document endorsed by the immigration officer on arrival and handed back to him/her. A national passport contains the national ID card number on the laminated details page. I have made enquiries with the DIE at Colombo Airport, and with the International Organisation for Migration who meet certain returnees at the airport, and both have confirmed that a person travelling on an emergency travel document is dealt with similarly. They too have the document endorsed by the immigration officer on arrival and returned to them. Before issuing an emergency travel document, the Sri Lankan High Commission in London will have details of an applicant confirmed against records held in Colombo and will thus satisfactorily confirm the holder's nationality

and identity. If a returnee subsequently wishes to obtain a national identity card, they have to follow the normal procedures.”

57. In a letter dated 22 January 2009, the BHC reported that an official had spent several hours observing the return of failed asylum seekers from the United Kingdom, including those who were in possession of emergency travel documents, issued by the Sri Lankan High Commission in London. In the official's opinion, the fact that certain returnees had been issued with emergency travel documents by the Sri Lankan High Commission in London did not seem to make any difference to their treatment upon arrival.

58. The Report of Information Gathering Visit to Colombo on 23 to 29 August 2009, conducted jointly by the Foreign and Commonwealth Office Migration Directorate and United Kingdom Border Agency Country of Origin Information Service (“the Report of Information Gathering Visit, August 2009”), concluded that all enforced returns (of whatever ethnicity) were referred to the CID at the airport for nationality and criminal record checks, which could take more than 24 hours. All enforced returns were wet-fingerprinted. Depending on the case, the individual could also be referred to the SIS and/or the Terrorist Investigation Department for questioning. Anyone who was wanted for an offence would be arrested.

59. The report set out that those with a criminal record or LTTE connections would face additional questioning and might be detained. In general, non-government and international sources agreed that Tamils from the north and east of the country were likely to receive greater scrutiny than others, and that the presence of the factors below would increase the risk that an individual could encounter difficulties with the authorities, including possible detention:

- Outstanding arrest warrant
- Criminal record
- Connection with the LTTE
- Bail jumping/escape from custody
- Illegal departure from Sri Lanka
- Scarring
- Involvement with media or NGOs
- Lack of an ID card or other documentation

60. The United Kingdom Border Agency Country of Origin Information Report on Sri Lanka of 11 November 2010 set out the following:

33.20 The BHC letter of 30 August 2010 went on to observe that: “At the beginning of 2010, partly due to the large numbers of Sri Lankans being returned from around the world and causing logistical problems, CID procedures were relaxed in that they no longer had to detain returnees until written confirmation was received from the local police. All returnees are still interviewed, photographed and wet fingerprinted. The main objective of these interviews is to establish if the returnee has a criminal record, or if they are wanted or suspected of committing any criminal offences by the police. The photographs are stored on a standalone computer in the CID office at the airport. The fingerprints remain amongst paper records also in the CID office at the airport. Checks are initiated with local police, but returnees are released to a friend or relative, whom CID refers to as a surety. This surety must provide evidence of who they are, and must sign for the returnee. They are not required to lodge any money with CID. “The main CID offices at Colombo Airport, which are housed on the ground floor adjacent to the DIE embarkation control, are currently undergoing a complete refurbishment funded by the Australian government. The one completed office suite has three purpose built interview rooms, and facilities where returnees can relax and eat meals.”

...

33.22 A British High Commission letter of 14 September 2010 reported: “There is strong anecdotal evidence that scarring has been used in the past to identify suspects. Previous conversations with the police and in the media, the authorities have openly referred to physical examinations being used to identify whether suspects have undergone military style training. More recent claims from contacts in government ministries suggest that this practice has either ceased or is used less frequently. At the very least it appears that the security forces only conduct these when there is another reason to suspect an individual, and are not looking for particular scars as such, but anything that may indicate the suspect has been involved in fighting and/or military training. There is no recent evidence to suggest that these examinations are routinely carried out on immigration returnees.”

### *Other Sources*

61. On 19 October 2009, Tamilnet reported that twenty-nine Tamil youths were taken into custody by the State Intelligence Unit of the Sri Lanka Police at the International Airport in two

separate incidents whilst trying to leave Sri Lanka. It was also reported that since July 2009, special teams of the State Intelligence Unit and police had been deployed in the airport to monitor the movement of Tamils who try to go abroad.

### **The treatment of Tamils in Colombo**

#### *United Kingdom Government Reports*

62. The Report of Information Gathering Visit, August 2009, stated that the frequency of cordon and search operations had not reduced significantly in recent months, though there were fewer large-scale operations than in previous years. In general, young male Tamils originating from the north and east of the country were most at risk of being detained following cordon and search operations, with the presence of the risk factors set out above increasing that risk. Those without employment or legitimate purpose for being in Colombo were also likely to be seen as suspect. The same report also noted that most sources agreed that there had been few, if any, abductions or disappearances since June 2009. There was not a great deal of available information about the profile of Tamils targeted for abduction, although it appeared that people linked to the media might be more vulnerable. Police did not generally carry out effective investigations. It went on to note that most sources agreed that there had not been any significant reduction in the number of checkpoints in Colombo, whose stated purpose remained to detect and prevent terrorist activity. In general those most likely to be questioned were young Tamils from the north and east; those without ID; those not resident or employed in Colombo; and those recently returned from the West. However, most sources said that arrests at checkpoints were rare and none had been reported since June 2009. It was reportedly fairly likely that someone would be stopped at a checkpoint *en route* from the airport to Colombo city. Finally, it clarified that people who wished to live in Colombo but did not originate from there must register with the local police station with a national ID card or full passport, and details of planned length and purpose of stay. In theory, whilst anyone was entitled to register to stay in Colombo, some sources suggested that young Tamil men originally from the north or east of the country could encounter difficulties and face closer scrutiny. The presence of any of the risk factors set out above would also attract greater attention from the police.

### **The treatment of Tamils in general**

#### *United Nations Reports*

63. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, April 2009 (“UNHCR 2009 Sri Lanka Guidelines”) observed that:

“The significant majority of reported cases of human rights violations in Sri Lanka involve persons of Tamil ethnicity who originate from the North and East...In Government-controlled areas, Tamils who originate from the North and the East, which are, or have been under LTTE control, are frequently suspected as being associated with the LTTE. For this reason, Tamils from the North and the East are at heightened risk of human rights violations related to the implementation of anti-terrorism and anti-insurgency measures. While this risk exists in all parts of Sri Lanka, it is greatest in areas in which the LTTE remains active, and where security measures are heaviest, in particular the North and parts of the East, and in and around Colombo.”

64. The Guidelines also noted that the Government had been heavily criticised for the high number of Tamils who have been subjected to arrest and security detention, particularly on the basis of information gathered in registration exercises and questioning at cordons and road checkpoints in and around the capital.

65. The UNHCR 'Note on the Applicability of the 2009 Sri Lanka Guidelines', dated July 2009, observed:

“The country of origin information that UNHCR has considered indicates that Tamils from the North of Sri Lanka continue to face a significant risk of suffering serious human rights violations in the region (and elsewhere in the country) because of their race (ethnicity) or (imputed) political opinion. Tamils in the North are still heavily targeted in the security and anti-terrorism measures described in the Guidelines. Wide scale detention and confinement of Tamils from the North remains a serious concern. Pro-Government paramilitary elements also continue to operate with impunity against Tamils in the North.”

66. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of

Asylum-Seekers from Sri Lanka of 5 July 2010, which superseded the April 2009 Guidelines contained information on the particular profiles for which international protection needs may arise in the current context. It was stated that:

“given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. It is important to bear in mind that the situation is still evolving, which has made the drafting of these Guidelines particularly complex.”

67. In summary, the following were UNHCR's recommendations: All claims by asylum seekers from Sri Lanka should be considered on the basis of their individual merits according to fair and efficient refugee status determination procedures and up-to-date and relevant country of origin information. UNHCR considered that, depending on the particular circumstances of the case, some individuals with profiles similar to those outlined in the Guidelines require a particularly careful examination of possible risk. These risk profiles, while not necessarily exhaustive, are set out below:

- (i) persons suspected of having links with the Liberation Tigers of Tamil Eelam (LTTE);
- (ii) journalists and other media professionals;
- (iii) civil society and human rights activists;
- (iv) women and children with certain profiles; and
- (v) lesbian, gay, bisexual and transgender (LGBT) individuals.

It was also stated that in the light of Sri Lanka's 26 year internal armed conflict, and a record of serious human rights violations and transgressions of international humanitarian law, exclusion considerations under Article 1F of the 1951 Convention Relating to the Status of Refugees may arise in relation to individual asylum seeker claims by Sri Lankan asylum seekers.

#### *Other Sources*

68. The BBC reported in March 2010 that the Colombo Police force had opened four special units in Colombo suburbs able to take statements in Tamil, with plans for more. Previously, Tamil-speaking Sri Lankans had to rely on a friend to translate their complaints into Sinhala.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicants complained that an implementation of the deportation order to return them to Sri Lanka would be in violation of Article 3 of the Convention, which in so far as relevant read as follows:

#### **Article 3**

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

70. The Government contested that argument. Moreover, they maintained that the applicant husband could no longer claim to be a victim within the meaning of Article 34 because he had left Denmark and obtained a residence permit in Germany.

#### **A. Admissibility**

71. As to the question of whether the applicant husband may claim to be the victim for the purposes of Article 34 of the Convention in view of the fact that subsequently he was granted a

residence permit in Germany, the Court considers that this issue is closely linked to the substance of his complaint under Article 3. It therefore joins the preliminary objection raised by the Government in this respect to the merits of the case.

72. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The applicants*

73. The applicants maintained that, in general, returning ethnic Tamils from the north and east of Sri Lanka would be contrary to Article 3 of the Convention.

74. Moreover, the applicants would be particularly exposed to being subjected to treatment contrary to Article 3 of the Convention by the Sri Lankan authorities upon return due notably to the following risk factors: a) the applicant wife was significantly involved with and a member of the LTTE from 1995 to 1998 and that she is certain that the authorities are informed about at least her theatre performances about martyred LTTE members; b) the applicant wife was arrested and detained on many occasions suspected of LTTE activities; c) there was suspicion that a criminal record and an arrest warrant existed against her; d) the applicant husband was a member of the LTTE for three months in 1985; e) he hid an LTTE bomb in his garage, where it was found by the buyer of the garage, who informed the authorities about it; f) that therefore he is wanted by the police on suspicion of supporting the LTTE; g) both applicants have relatives who were members of the LTTE, including the applicant wife's sister who was a high-ranking training master, which is demonstrated by her appearance in 2007 in footage on YouTube; h) the applicants have made an asylum claim abroad; i) the applicant husband has a visible hand injury sustained in 1983; and j) the applicant wife has participated in demonstrations in Copenhagen against the hostilities in Sri Lanka.

75. In addition, on arrival at Colombo airport the applicants would be at risk of persecution and of being subjected to outrages by the Sri Lankan authorities, which have the technological means and procedures in place to identify failed asylum seekers and those wanted by the authorities.

### *2. The Government*

76. The Government maintained that no violation of Article 3 would occur if the applicants were to be returned to Sri Lanka and that they had failed to demonstrate that they would be of sufficient interest to the authorities as to warrant their detention or interrogation upon return.

77. Referring to the decisions by the Refugee Appeal Board, including its most recent of 19 April 2010 which specifically considered the case in the light of *NA. v. the United Kingdom* (cited above), the Government maintained that the applicants have not been subjected to actions on the part of the authorities reflecting that they were of interest to them prior to their lawful departure in 1999. Having regard to the facts found established by the Refugee Appeal Board neither applicant stood out to the authorities when they departed lawfully using passports issued by the Sri-Lankan authorities in 1999 and neither of them were subsequently wanted by the Sri Lankan authorities.

78. The Government also found, in line with the Refugee Appeals Board's findings in the reopened proceedings, that the most recent information submitted by the applicants should be disregarded, namely that the applicant wife had a particular profile via her theatrical LTTE performances and that a few days before departing from Sri Lanka she had been arrested and was to be interrogated again at another location, when her father paid a bribe for her release. Likewise, the Government refused to accept as a fact that the applicant husband was wanted by the Sri Lankan authorities and that the latter had sought out his mother in order to find him. There was no reasonable explanation for the late presentation of that information, which contradicted the applicants' previous statements.

79. The Government were therefore of the opinion that the present case is clearly distinguishable from *NA. v. the United Kingdom* (cited above) and that all the possible risk factors identified by the applicants taken cumulatively, also in the light of the current situation in Sri Lanka, do not constitute a sufficient basis for concluding that, upon return to Colombo airport or at a later date, the applicants

would be of sufficient interest to the authorities in their efforts to combat the LTTE to warrant their detention and interrogation.

### 3. The Court

#### (a) General principles

80. The Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-....; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67, *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42).

81. However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008).

82. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned 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 (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). 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 (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

83. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

84. If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi v. Italy*, cited above, § 133). A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light since the final decision taken by the domestic authorities (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, ECHR 2007-I (extracts)).

85. The foregoing principles, and in particular the need to examine all the facts of the case, require that this assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination. This in turn must be considered in the light of the general situation there as well as the applicant's personal circumstances (*Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108). In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination.

86. The Court has never ruled out 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 the light of the applicant's account and the information on the situation in the country of destination in respect of the group in question. In determining whether it should or should not insist on further special distinguishing features, it follows that the Court may take account of the general situation of violence in a country. It considers that it is appropriate for it to do so if that general situation makes it more likely that the authorities (or any persons or group of persons where the danger emanates from them) will systematically ill-treat the group in question (*NA. v. the United Kingdom*, no. 25904/07, §§ 115- 117, 17 July 2008).

(b) Assessing the risk to Tamils returning to Sri Lanka

87. In *NA. v. the United Kingdom* (cited above), the Court made a number of general findings relating to the assessment of the risk of Tamils returning to Sri Lanka.

88. It noted, among other things, that the United Kingdom Asylum and Immigration Tribunal had recognised a number of factors (§§ 30 - 42) which might increase the risk of serious harm to Tamils from the Sri Lankan authorities in Colombo. The factors were set out in a headnote as follows:

“(1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors may increase the risk, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/or outstanding arrest warrant; bail jumping and/or escaping from custody; having signed a confession or similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; having relatives in the LTTE. In every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a check list.

(2) If a person is actively wanted by the police and/or named on a Watched or Wanted list held at Colombo airport, they may be at risk of detention at the airport.

(3) Otherwise, the majority of returning failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment.

(4) Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on a Lodge where they are staying. In general, the risk again is no more than harassment and should not cause any lasting difficulty, but Tamils who have recently returned to Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above may then come into play.

...”

89. The Court stated (§§128-130) that while account had to be taken of the general situation of violence in Sri Lanka at the present time, it was satisfied that it would not render illusory the protection offered by Article 3 to require Tamils challenging their removal to Sri Lanka to demonstrate the existence of further special distinguishing features which would place them at real risk of ill-treatment contrary to that Article. Therefore, the Court considered that it was in principle legitimate, when assessing the individual risk to returnees, to carry out that assessment on the basis of the list of “risk factors”, which the domestic authorities, with the benefit of direct access to objective information and expert evidence, had drawn up. It noted that the United Kingdom Asylum and Immigration Tribunal had been careful to avoid the impression that the risk factors were a “check list” or exhaustive, and did not consider it necessary to identify any additional risk factors, which had not been duly considered by the domestic authorities. The Court emphasised, however, that the assessment of whether there was a real risk must be made on the basis of all relevant factors which may increase the risk of ill-treatment. Due regard should also be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk; but when taken cumulatively and when considered in a situation of general violence and heightened security, the same factors may give rise to a real risk. Both the need to consider all relevant factors cumulatively and the need to give appropriate weight to the general situation in the country of

destination derive from the obligation to consider all the relevant circumstances of the case.

90. Moreover, on the basis of the evidence before it, the Court found (§133) that, in the context of Tamils being returned to Sri Lanka, the protection of Article 3 of the Convention enters into play when an applicant can establish that there are serious reasons to believe that he or she would be of sufficient interest to the authorities in their efforts to combat the LTTE as to warrant his or her detention and interrogation.

91. In respect of returns to Sri Lanka through Colombo, the Court found (§§134-136) that there was a greater risk of detention and interrogation at the airport than in Colombo city since the authorities would have greater control over the passage of persons through an airport than they would over the population at large. In addition, the majority of the risk factors identified by the United Kingdom Asylum and Immigration Tribunal would be more likely to bring a returnee to the attention of the authorities at the airport than in Colombo city. It was also at the airport that the cumulative risk to an applicant, arising from two or more factors, would crystallise. Hence the Court's assessment of whether a returnee is at real risk of ill-treatment may turn on whether that person would be likely to be detained and interrogated at Colombo airport as someone of interest to the authorities. While this assessment is an individual one, it too must be carried out with appropriate regard to all relevant factors taken cumulatively including any heightened security measures that may be in place as a result of an increase in the general situation of violence in Sri Lanka. Furthermore, although noting that the objective evidence before it contained different accounts of the precise nature of the procedures followed at Colombo airport and the nature of the information technology there, the Court considered at the very least that the Sri Lankan authorities have the technological means and procedures in place to identify at the airport failed asylum seekers and those who are wanted by the authorities. The Court further found that it was a logical inference from those findings that the rigour of the checks at the airport is capable of varying from time to time, depending on the security concerns of the authorities. These considerations must inform the Court's assessment of the risk to the applicant.

92. Finally (§137) it could not be said that there was a generalised risk to Tamils from the LTTE in a Government controlled area such as Colombo. The Court accepted the findings of the domestic authorities that individual Tamils might be able to demonstrate a real and personal risk to them from the LTTE in Colombo. However, it also accepted their assessment that this would only be to Tamils with a high profile as opposition activists, or those seen by the LTTE as renegades or traitors. The Court therefore considered that it also had to examine any complaint as to the risk from the LTTE in the context of the individual circumstances of an applicant's case.

93. On the basis of the objective information set out above (see paragraphs 38 – 68) concerning Sri Lanka after the passing on 17 July 2008 of the judgment in *NA. v. the United Kingdom* (cited above), the Court finds that since the end of hostilities in Sri Lanka and the death of the leader of the LTTE in May 2009, there has been progress, *inter alia*, on the reintegration of internally displaced persons and on the treatment of Tamils in Colombo. However, there is no evidence of an improvement in the human rights situation of Tamils suspected of having or recently having had links with the LTTE.

94. The Court therefore maintains its conclusion in *NA v. the United Kingdom* (cited above) that there is not a general risk of treatment contrary to Article 3 to Tamils returning to Sri Lanka. The protection of Article 3 of the Convention will enter into play only when an applicant can establish that there are serious reasons to believe that he or she would be of sufficient interest to the authorities to warrant his or her detention and interrogation upon return (*NA. v. the United Kingdom*, *ibid*, § 133).

95. The assessment of whether there is a real risk must therefore continue to be made on a case by case basis considering all relevant factors, (as set out in the United Kingdom Asylum and Immigration Tribunal Country Guidance case of *LP* and endorsed in *NA. v. the United Kingdom*, *ibid*, § 129-130) which may increase the risk of ill-treatment, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/or outstanding arrest warrant; bail jumping and/or escaping from custody; having signed a confession or similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; and having relatives in the

LTTE. The Court would also reiterate that due regard must continue to be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk, but may do so when taken cumulatively (*NA. v. the United Kingdom*, *ibid*, § 130) bearing in mind any heightened security measures that may be in place as a result of any deterioration in the general situation in Sri Lanka.

(c) The applicants' case

96. On the basis of the foregoing observations, the Court will examine the applicants' particular circumstances in order to determine whether there would be a violation of Article 3 if they were to be expelled to Sri Lanka.

97. At the outset it notes that the applicants have no legal basis for staying in Denmark and that by virtue of the Refugee Appeals Board's decision of 10 April 2010 they may forcibly be returned to Sri Lanka if they do not leave voluntarily. Apparently, the applicant husband did leave Denmark voluntarily and obtained a residence permit in Germany. However, the Court has not received any indication that the deportation order of 10 April 2010 can no longer be enforced as to the applicant husband, should he enter Denmark anew, for example to maintain contact with his wife and children there. Thus, although the imminent danger of his being forcibly returned to Sri Lanka by the Danish authorities has clearly diminished it cannot be said to be eliminated. In any event the Court does not consider it necessary to rule on the Government's preliminary objections, which it joined to the merits of this complaint, as it considers that the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3 of the Convention for the reasons which follow.

98. In assessing the risk to the applicants from the Sri Lankan authorities, the Court will examine the strength of their claim to be at real risk as a result of an accumulation of the risk factors identified.

99. The applicants are of Tamil ethnicity and have Tamil features. They have both lived in the North of Sri Lanka.

100. The applicant husband is forty-one years old and the applicant wife is thirty-one years old.

101. The applicants left Sri Lanka in 1999, that is eleven years ago.

102. On 19 July 2005 with Romanian aliens' passports, the applicants entered Denmark, where the applicant wife's sister and cousin lived.

103. On 14 November 2005 the applicants requested asylum.

104. In support thereof, on 14 and 17 November 2005, the applicant wife stated, *inter alia*, that she had been a member of and worked for the LTTE for two years from 1995 to 1997. Her work consisted of carrying out social work and making sure that the children could go to school and that they were provided with food and medicine. The applicant wife's parents did not like this and sent her to Colombo. In 1997, it appears, she and several other Tamil women were detained by the police suspected of having blown up a bus. Her father paid for her release. Subsequently she was arrested and interrogated on several occasions. Her father arranged for her to leave Sri Lanka around October 1999. Her case in Sri Lanka was undecided but she remained on a list of suspects. Her family was under surveillance by the police because her father and sister were involved with the LTTE.

105. On 3 July 2006 the applicant wife added, *inter alia*, that she had been a forced member of the LTTE's students' organisation from 1996 to 1997 and carried out social work for them. Her father had also carried out social work. He had not been a member of the LTTE but was accused of being a supporter, which caused problems for the family. He was detained many times in 1998. The police would come to their home which was situated in an area controlled by LTTE. It was due to their Tamil ethnicity that the family had so many problems with the army. The applicant wife did not know her sister's exact position in the LTTE, as she had not had contact with her for many years, but she assumed that her sister had been a rank-and-file member of the LTTE for four to five years.

106. In the applicant husband's asylum request of 23 November and 1 December 2005 he stated that he had been a member of the LTTE for three months in 1985, when he was 16 years old. He realised that the organisation was nothing to him. Thereafter he stayed neutral and was not a member of any political or religious party or organisation. He owned a garage where he repaired cars, minibuses and jeeps. Both the LTTE and the military brought their vehicles and would threaten him to serve only one party. The LTTE also asked him to place a bomb in a military jeep. He refused and was then accused of being an informant. He kept a low profile for a while and sold his garage in

1998 in order to leave Sri Lanka, which he did in April 1999.

107. On 3 July 2006 the applicant husband added, *inter alia*, that he was never wanted by the authorities, detained or convicted and he had no criminal record. In 1996, he refused a request by the LTTE to place a bomb in a military vehicle. He begged them not to cause any problems for him and eventually they left. His departure was not triggered by a specific event, rather the general problems with the LTTE and the military forces had become too much.

108. On 4 October 2007, in the appeal proceedings before the Refugee Appeals Board, after the Aliens Authorities' refusal of 26 October 2006 to grant the applicants asylum, the applicant wife added that she was a publicly known person and LTTE supporter because she had organised annual meetings where she read out poetry. The applicant husband changed his explanation, saying that he had sold his garage already in 1996 and lived in hiding for three years until leaving Sri Lanka. He had to leave because the army knew about his work for the LTTE. He submitted a declaration on 28 September 2005 and stated that he was wanted by the Sri Lankan police for a criminal offence related to the abduction of a man, who had worked at his garage. The same day, the Refugee Appeals Board upheld the refusal to grant the applicants asylum.

109. Subsequently, in their request of 14 November 2008 to the Refugee Appeals Board for a reopening of the proceedings, the applicants alleged that they were both wanted by the authorities and that the applicant wife's sister was a high-profile LTTE member. In support of the latter, on 11 June 2009 her representative submitted a copy of a television broadcast.

110. Finally, on 19 April 2010, at a hearing before the Refugee Appeals Board the applicant wife submitted a photograph of one her alleged stage performances before an audience of more than five hundred people. She added, *inter alia*, that her father had been deeply involved with the LTTE and that just before her departure in 1999 she had been arrested by the criminal police in Colombo, who said that she was to be interviewed again at a different location. Her father bribed the police and four days after, she left the country. The applicant husband changed his account and stated that in 1996 he had refused to place the LTTE bomb in a military vehicle, but he had hidden the bomb in his garage. It remained there even after he sold the garage in May 1998. His mother had told him that the buyer of the garage had informed the authorities about the bomb and consequently he was wanted by the secret police. He also left Sri Lanka using a false passport.

111. The Court notes in this respect the Refugee Appeals Board's finding on 10 April 2010 that the applicants had not reasonably explained why they had not furnished the new information during the original asylum proceedings, which gave rise to critical doubt about its credibility. Accordingly, the Refugee Appeals Board could only consider it a fact that the applicant wife's father did social or humanitarian work in the local community without being a member of the LTTE, that as a member of the LTTE between 1995 and 1997, the applicant wife also did social work for the LTTE, that she lived in various places after 1997, at which time she was exposed to general, brief detentions, and that one year prior to her departure she lived in Colombo, until she left using her own genuine passport. As regards the applicant husband it could only consider it a fact that he was a member of the LTTE for three months in 1985 and subsequently left without problems to continue his education, that he ran a garage and sold it in 1998 because both the LTTE and the Sri Lankan authorities were pressuring him to work for them, and that thereafter he stayed in various locations before departing from the airport in Colombo in April 1999 using his own genuine passport. The Court finds no grounds for concluding that such finding was wrong. Accordingly, it does not find it established that the applicants had supported LTTE on more than a lower level, or that they were of interest to the authorities in 1999, when they departed lawfully, or that they were subsequently wanted by the Sri Lankan authorities, or that upon return they would be of interest to the authorities due to their previous involvement with LTTE, which took place more than twelve years ago.

112. In the Court's view the fact that the applicant wife's sister was a member of the LTTE carries little weight in the present case (see *NA. v. the United*, cited above, § 146), even if she was a high-profile member and appears on footage on YouTube. It also observes in this connection that the applicant wife on 3 July 2006 explained that she had not been in touch with her sister for many years.

113. The applicants maintained that they were at great risk of being detained and interrogated on their arrival at Colombo airport and the applicant husband pointed out that he has an injury to his hand from 1983. The Court observes, however, that he did not have any problems in leaving the

country in 1999 (see also *NA. v. the United*, cited above, § 144).

114. Furthermore, as regards the risk of being arrested at Colombo airport, the Court reiterates the arrival procedures there (see paragraphs 55 -61) and repeats that there is no indication that the applicants and notably the applicant wife have ever been recorded by the Sri Lankan authorities in connection with arrest or detention. Nor is there any indication that photographs, fingerprints or other means of identification have been stored by the Sri Lankan authorities in order to enable them to identify the applicants upon return.

115. In the Court's view the present case is thus clearly distinguishable from *NA. v. the United Kingdom* (cited above), in which NA. left Sri Lanka clandestinely after having been arrested and detained by the army on six occasions between 1990 and 1997 on suspicion of involvement with the LTTE. During one or possibly more of these periods of detention he was ill-treated and his legs were scarred from beatings with batons. Moreover, during his most recent detention, NA. had been photographed and his fingerprints had been taken. His father had also signed certain papers in order to secure NA.'s release.

116. The Court also observes that there are no grounds for believing that the Sri Lankan authorities are informed that the applicants have made an asylum claim abroad, or have participated in demonstrations in Denmark, and they will not be deported from a location which is considered a centre of LTTE fundraising.

117. In conclusion, having regard to the current general situation in Sri Lanka taken cumulatively with the risk factors identified above, the Court finds that there are no substantial grounds for finding that the applicants, including their children, would be of interest to the Sri Lankan authorities if they were returned. In those circumstances, the Court finds that an implementation of the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

118. In their observations of 31 May 2010 the applicants also complained that it would be in violation of Articles 3 and 8 of the Convention to return them to Sri Lanka because the applicant husband was mentally and physically ill and because the applicants would be separated from their family in Denmark. They submitted various documents from 2008 and 2009 to this effect. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

119. The Court notes that the applicant failed to raise, either in form or substance, before the domestic courts the complaint made to it under Article 8. Moreover, in the light of all the material in its possession, and in so far as the criteria set out in Article 35 § 1 have been complied with and the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of Articles 3 or 8 of the Convention. It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

## III. RULE 39 OF THE RULES OF COURT

120. The Court points out that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

121. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must continue in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the Government's objection as to the applicant's victim status to the merits, and that it is not necessary to rule it;
2. *Declares* the complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that an implementation of the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3 of the Convention;
4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to deport the applicants until such time as the present judgment becomes final or further order.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Renate Jaeger  
Registrar President

S.S. AND OTHERS v. DENMARK JUDGMENT

S.S. AND OTHERS v. DENMARK JUDGMENT