



SUBMISSION TO THE COMMITTEE AGAINST TORTURE

The UK authorities' failure properly to implement Article 3 of the Convention

October 1995

**Introduction**

The Immigration Law Practitioners' Association is a non-governmental organisation based in the UK. It comprises over 700 lawyers, academics and other practitioners who are concerned to secure a non-racist, non-sexist, just and equitable system of immigration and nationality law and practice in the UK and elsewhere.

**Request**

We believe that, on inquiry, the Committee may not be satisfied with the way in which the UK authorities have implemented or more precisely failed to implement the obligation contained in Article 3 of the Convention which prohibits the expulsion, return or extradition of a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.

We request that the Committee seek a satisfactory answer to the question of implementation from the UK authorities and, if the Committee considers it appropriate an undertaking properly to implement the obligation.

**The Facts**

In July 1993 the UK adopted national legislation in the form of the Asylum and Immigration Appeals Act 1993 which introduced into UK primary law for the first time the UN Convention relating to the Status of Refugees 1951 and Protocol 1967. Article 33 of that Convention prohibits the refoulement of a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Section 2 of the UK legislation states "Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention [defined as the Geneva Convention relating to refugees]".

In order to ensure the implementation of section 2 of the UK legislation, a right of appeal on the merits of any case with suspensive effect was introduced. Accordingly a person fearing torture on the basis of his race religion, nationality, membership of a social group or political opinion in a country to which it is proposed he be sent has an effective remedy and opportunity to have the merits of the case reviewed by an independent tribunal.

The UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984 is not referred to in the legislation or indeed in any other UK legislation. This means that a person who fears that he will suffer torture on being returned to another state otherwise than on the basis of the five grounds set out in the Geneva Convention has no opportunity to have his case considered on the merits by an independent tribunal. Further, there is no obligation in national law that the UK authorities even consider any application made by an individual not to be expelled on the grounds of a real risk of torture in the country to which he is being expelled.

As members of the Committee are aware, international obligations entered into by the UK authorities do not have automatic effect in the internal legal order of the UK. Unless the obligations are incorporated into domestic law only in the event of UK law being unclear may national courts take into consideration the UK's international obligations. There is no presumption in UK law that the national legislature does not intend to legislate contrary to the UK's international obligations.

Accordingly, there is no remedy in national law by way of a right of appeal on the merits to an independent tribunal where a person maintains that he should not be sent to another state as he will suffer torture there. This is contrary to the spirit and wording of the convention and creates discrimination between persons who fear torture on grounds contained in the Geneva Convention relating to Refugees and those who fear torture on other grounds who should be protected under the Convention on Torture.

### Conclusions

The UK authorities have failed properly to implement Article 3 of the Convention by excluding from the scope of national law an obligation to consider an application to stay expulsion on the basis of a real risk of torture on any ground in the proposed receiving country. Further, the UK authorities have failed to implement faithfully the obligation contained in Article 3 by excluding from the scope of an independent review on the merits persons who fear torture in another state on grounds other than those contained in the Geneva Conventions relating to Refugees.

We respectfully request that the Committee seek an explanation from the UK authorities of these two omissions.

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