Deportation of a failed Tamil asylum seeker to Sri Lanka did not violate article 7 due to the lack of substantiation of personal risk

Substantive Issues
- Torture and ill-treatment

Facts

The author is a Sri Lankan national whose asylum application was rejected by Denmark. Two of two author’s brothers were killed by the Eelam People’s Democratic Party (EPDP) and the military in 1990. From 1994-1997 the author participated in meetings and demonstrations supporting the Liberation Tigers of Tamil Eelam (LTTE) and was regularly harassed and beaten at checkpoints established by the Sri Lankan army and EPDP. In 2007 EPDP paramilitaries burnt down his cousin’s shop, where the author also worked and where they had provided free clothes and food for LTTE members. After the author’s cousin complained to the police and re-opened the shop, the author witnessed his cousin being shot and killed by two EPDP members. Shortly after, the author was asked about his cousin’s death by two individuals whom he assumed were EPDP members. Fearing harassment by the EPDP the author moved his family to another village. One year later the author moved to a third village after hearing that someone had inquired with his aunt as to his whereabouts. In the new village the author did not feel safe and so decided to leave Sri Lanka. He saved some money and returned to his home village in early 2012 to borrow money from his aunt and left Sri Lanka on the 1st February 2012. The author’s aunt subsequently reported that following his last visit in 2012 two persons came looking for him but asked about him “without mentioning his name.” He applied for asylum in Denmark in May 2012 but his application was rejected by the Immigration Service and Appeals Board and the Ministry of Justice refused to grant him a residence permit on humanitarian grounds.

The author fears being killed by EPDP and alleges that by deporting him to Sri Lanka Denmark would violate his rights under article 7. He alleges that any tamil perceived to have links to the LTTE even tenuously is at risk upon return to Sri Lanka of being subject to torture and other ill treatment by state security forces. The author also highlights reports that failed asylum seekers are detained and ill-treated or tortured after having been forcibly returned to Sri Lanka.

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"CCPR-Centre | Denmark: State must not subject Asylum ..." 2014. 7 Sep. 2015 <http://www.ccprcentre.org/ccpr/x-v-denmark/>

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circumstances without further consideration of his claim would violate article 7.

Individual Opinion of Committee Member Fabián Salvioli
The Committee member considered that the Committee could have found that the author would still face a risk if deported to Sri Lanka and in which case the deportation would violate article 7. He notes that while the situation in Sri Lanka is different to the one that existed when the author left the country, the change is still in early stages and it is premature to rule out the possibility that a person in the author’s position could face a real risk if deported. The Committee must decide for the opinion most favourable to the alleged victim in the case of doubt. This is an example of a borderline case that warranted being considered from a pro persona perspective.