

## COMMITTEE AGAINST TORTURE

### A. L. N. v. Switzerland

Communication No 90/1997

19 May 1998

CAT/C/20/D/90/1997

### VIEWS

*Submitted by: A. L. N. (name deleted)*

*Alleged victim: The author*

*State party: Switzerland*

*Date of communication: 25 July 1997*

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

Meeting on 19 May 1998,

Having completed consideration of communication No. 90/1997 submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken account of all the information communicated to it by the author of the communication and the State party,

Adopts the following:

#### **Views under article 22, paragraph 7, of the convention**

1. The author of the communication is A. L. N., an Angolan born on 25 September 1978. He is currently resident in Switzerland where he has applied for refugee status and risks being sent home. The author claims that his expulsion would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### The facts as submitted by the author

2.1 The author states that on 16 February 1997 his father, a member of the União Nacional para a Independência Total de Angola (UNITA) gave him a video cassette on torture and massacres perpetrated by the Movimento Popular para a Libertação de Angola (MPLA) for him to take to a friend. The cassette contained a scene filmed in 1987 showing soldiers plunging the then nine-year-old author's hand into boiling water in front of his father. The author says that the scars are still visible. He was arrested on the way during an identity check by MPLA soldiers, who took him to an unknown site in Luanda, where he was beaten. He was then forced to take the soldiers to the family home so that they could arrest his father. At the house he managed to escape while the soldiers were momentarily distracted. On 19 February 1997, he left the country on a borrowed passport issued to the son of one of his father's friends and went to Italy. He arrived in Switzerland on 24 February 1997.

2.2 That same day, the author submitted an application for asylum to the Refugee Registration Centre in Geneva (CERA). On 2 June 1997, the Federal Office for Refugees (ODR) rejected the application and ordered his expulsion, finding that the author's statements did not meet the plausibility criteria laid down in article 12 (a) of the Federal Asylum Act. The Office also said there was no evidence to suggest that the author would be specifically and seriously likely, in the event of a return to his country, to be subjected to torture or to cruel, inhuman or degrading treatment.

2.3 The author appealed against this decision before the *Commission de recours en matière d'asile* (CRA), which rejected the appeal in a decision dated 16 July 1997. The Commission found that the author had not shown that his return to his country of origin would put him in danger. It added that the author was young, in good health and, according to his own statements, capable of going back to live in Luanda, since he had already lived there and could count on his family for support.

### The complaint

3. The author says that he is still on the wanted list because of the video cassette and fears for his physical and mental health if sent home. He says that he is part of the Bakongo ethnic minority, and that CRA itself has acknowledged that members of that group are exposed to some danger.

### The State party's observations on the admissibility and merits of the communication

4. On 16 October 1997 the Committee, through its Special Rapporteur, forwarded the communication to the State party for its observations.

5.1 In a reply dated 15 December 1997, the State party indicated that the author had exhausted domestic remedies. The communication could thus be considered on its merits.

5.2 The author's main point, i.e., his arrest after coming into possession of a video cassette showing a scene in which soldiers plunged his hand into boiling water, had not been

consistently related at the two hearings on his application, at CERA and before the Cantonal authorities. His accounts were vague or contradictory as regards both the origin of the video cassette and the way in which it was supposed to have been filmed or what precisely it contained.

5.3 The author said that the soldiers had not asked him who the video cassette was for. There again his story was not credible. Experience unfortunately showed that, as a rule, people arrested in such cases were tortured precisely in order to obtain information about those who had an interest in documents challenging the regime in power.

5.4 The author's account of how he managed to escape was also unconvincing. It did not seem possible that the author, escorted by five guards, should have managed to escape from them as easily as described, without even being pursued.

5.5 On the strength of the author's tale, the scars visible on his hands could not be ascribed with sufficient probability to acts of the kind prohibited by the Convention. They could just as well have resulted from an occupational or domestic accident, for example. The author had submitted no medical certificate indicating that he was still traumatized by the incident as he stated in his communication.

5.6 The State party also said that no causal link could be established between the incident related - the author's suffering at the hands of MPLA soldiers, which dated from 1987 - and his departure for Switzerland.

5.7 As regards the situation in the country, Angola was no longer in a state of civil war or widespread violence. The peace process had passed a milestone with the establishment on 11 April 1997 of a Government of unity and national reconciliation. The author's claim to have been arrested and beaten by MPLA soldiers on 16 February 1997 for being in possession of a compromising video cassette seemed somewhat improbable in the light of the moves towards national reconciliation made by the various opposition groups, including MPLA and UNITA.

5.8 CRA had concluded it would be unreasonable to require the author to be returned to areas under UNITA control or close to the demarcation lines. Elsewhere, failing specific risks, there were adequate safeguards of his safe return at least to the capital or a number of large urban conglomerations along the coast. Living conditions in Luanda, where there were serious problems, were nevertheless not such as to rule out on humanitarian grounds the return of young, single people in good health.

5.9 Lastly, the author said that he belonged to an ethnic minority, the Bakongo, whose members CRA itself acknowledged to face certain dangers. CRA had indeed stated that Bakongos and members of other ethnic groups could not get back to their home districts from Luanda without some danger. But it had also said that, contrary to rumour and despite rivalries more social than ethnic in nature, there was no indication that, since the signature of the Lusaka Protocol, the governmental authorities had taken any steps that directly or indirectly discriminated against or persecuted minority population groups in Angola,

including the Bakongo, members of whom were to be found throughout the State apparatus.

5.10 The fact that Bakongos had previously lived in Luanda or still had family ties there was one factor that entered into consideration in deciding whether or not they could find refuge within the country and survive, socially and economically, in the capital.

5.11 In the present case, the author had not shown that returning to his country of origin would put him in any specific danger. He was young and in good health, and according to his own statements would be able to re-establish an existence in Luanda since he had already lived there and could count on his family for support.

5.12 Even if the Committee concluded that the human rights situation in Angola, including the unfortunate position that the author claimed for his ethnic minority, was serious and gave rise to concern, such a finding would not, in the absence of supplementary indications, be sufficient to establish that the author was in personal danger of being tortured.

5.13 In the light of the foregoing, the State party considered that returning the author to Angola would not constitute a violation of the Convention.

#### Author's comments

6. By letter dated 17 March 1998, the author indicates that the situation in Angola is very unstable and that the country is still at war. If he were expelled, he would thus be in physical danger.

#### Issues and proceedings before the Committee

7. Before considering any claims contained in the communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted, and finds there are no further obstacles to its declaring the communication admissible. Since the State party and the author have both made comments regarding the substance of the communication, the Committee will proceed to consider the communication on its merits.

8.1 The Committee must decide whether sending the author back to Angola would violate Switzerland's obligation under article 3 of the Convention not to expel or return (*refouler*) an individual to another State if there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 The Committee must decide, pursuant to article 3, paragraph 1, if there are substantial grounds for believing that the author would be in danger of being tortured if sent back to Angola. To do so, it must take account of all relevant considerations as called for by article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass

violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her particular circumstances.

8.3 The Committee observes that past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention, but its purpose in considering the communication is to decide whether, if the author were returned to Angola, he would now risk being tortured.

8.4 In the case in point the Committee notes the author's claim to have been tortured in 1987 and beaten upon his arrest in February 1997. The author has however, supplied no evidence, whether medical certificates or other, attesting to acts of torture or ill-treatment or the sequelae of such. In particular, the Committee notes that the author has supplied no detailed information on how he was treated when arrested in February 1997, although it was that arrest that prompted him to leave for Switzerland.

8.5 The author bases his fear of torture on the fact that he is still being sought by MPLA soldiers because of the video cassette. The Committee notes, however, that he has put forward no reason to suggest that he is indeed still wanted. Neither does he make any allusion to the circumstances of his family, including his father, who, according to the author, was also wanted in connection with the video cassette.

8.6 The Committee notes that the situation in Angola, given the peace process, is still difficult, as recently stated in a report by the Secretary-General on the United Nations Observer Mission in Angola (MONUA). The same report states that human rights violations, including torture, which are attributed to the national police among other parties, continue to take place. But it also says that significant progress has been made and that the Government and UNITA have agreed on important points which should enable the peace process to advance. It would therefore seem that the situation in the country has not deteriorated since the author left.

8.7 The Committee points out that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. On the basis of the above considerations, the Committee is of the opinion that such a risk has not been established.

8.8 In the light of the foregoing, the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if sent back to Angola.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the facts before it do not indicate a breach of article 3 of the Convention.

[Text adopted in French (original version) and translated into English, Spanish and Russian.]