

COMMITTEE AGAINST TORTURE

K.T. v. Switzerland

Communication No 118/1998

19 November 1999

CAT/C/23/D/118/1998

VIEWS

Submitted by: K.T. (Name withheld) [represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 30 September 1998

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

Meeting on 19 November 1999,

Having concluded its consideration of communication No. 118/1998, 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 into account all information made available to it by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is K.T., a citizen of the Democratic Republic of the Congo (DRC) born in 1969 and currently residing in Switzerland, where he is seeking asylum and is at risk of deportation. He maintains that sending him back to the DRC would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention the Committee brought the communication to the attention of the State party on 20 October 1998.

Facts as submitted by the author

2.1 The author states that he was a member of the People's Revolution Movement (MPR) from 1992. He was working on behalf of former President Mobutu and promoting Mobutu's interests. He received money from the MPR and had no other occupation. On 10 May 1997, six soldiers loyal to Laurent-Désiré Kabila questioned him and sacked his house. The author hid for four days at the home of his superior in the MPR before leaving the country on 14 May 1997 using a false passport.

2.2 The author entered Switzerland illegally on 5 June 1997 and the same day applied for asylum at the Geneva Registration Centre. By decision of 13 August 1997, the Federal Refugee Office (ODR) rejected the application and gave the author until 30 September 1997 to leave Switzerland. An appeal against that decision was lodged with the Swiss Commission of Appeal in Refugee Matters (CRA). That appeal was dismissed on 6 August 1998 and a new deadline of 15 October 1998 was set for the author to leave Switzerland.

The complaint

3.1 The author contends that, if sent back to the DRC, he risks being arrested, tortured and even killed by the army or the population, owing to his involvement with the MPR and the fact that President Kabila is currently hunting down all supporters of the former Government. The press and Amnesty International have reported instances of torture and massacres committed by soldiers of the Alliance of Democratic Liberation Forces (AFDL). It is thus a certainty that former supporters of Mobutu are not safe in the Democratic Republic of the Congo.

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

4.1 By letter of 17 December 1998, the State party informed the Committee that it did not contest the admissibility of the communication. By letter of 6 April 1999 it submitted its observations on the merits.

4.2 The State party argues that the CRA did not consider, in its decision of 6 August 1998, that the risk of future persecution alleged by the author conformed with the facts. Firstly, it had not been established that the author had been a member of the MPR, as he had not produced a membership card. Moreover, assuming that he had been a member of that party, it would only have been in a minor role, as he himself had emphasized at his second hearing. That being so, it was somewhat difficult to understand why Kabila's soldiers should have felt the need to question him on the MPR's activities rather than its senior members. Lastly, the CRA had found the author's statements concerning the events of 10 May 1997 to be unconvincing. It was known that the advance guard of the AFDL did not enter the capital until 17 May 1997. The six soldiers in question could thus only have belonged to the regime still in place on that date. Therefore, insofar as it could be accepted that the event actually took place, any fear of persecution would have disappeared with the coming to power of the AFDL, Mobutu's armed forces having been disbanded in the meantime.

4.3 The State party fully endorses the CRA's reasoning concerning the lack of credibility of the author's allegations. It also regards the author's statements as far from sufficient to permit the conclusion that there are serious grounds for believing, within the meaning of article 3, paragraph

1, of the Convention, that the author would be exposed to the risk of torture if the decision to return him was implemented. Finally, it submits additional observations based on article 3, paragraph 2, of the Convention.

4.4 In his communication, the author expresses his fear of being persecuted by the army or the population because of his involvement with the MPR. Fears of persecution by the population are not included among the relevant considerations to be taken into account by the Committee under article 3, paragraph 2, of the Convention. Under the above-cited article 3, paragraph 1, only persecution originating from the army, where accepted, may be recognized as relevant.

4.5 The author never claimed that he had been arrested or tortured in the past. Only on 10 May 1997 did he apparently find himself in trouble, for the first and only time, when Kabila's soldiers allegedly came to his home and questioned him. Yet, as the CRA mentions in its decision, there is no serious evidence that might lead one to think that such an event ever actually took place. Firstly, considering the minor nature of the duties which the author says he carried out for the MPR it is hard to see what reason the AFDL soldiers might have for taking an interest in him rather than in the party's political leaders, who were certainly better informed than he on the subject of the MPR's financial resources. Secondly, on the date given by the author the AFDL's troops had not yet entered the capital. In addition, even if the author's version was accepted - thus implying that his membership of the MPR was an established fact, which is far from being the case - that would in no way constitute a basis for fear of future persecution. It is difficult to see why the author would be tortured on his return if he was not mistreated during his supposed interrogation on 10 May 1997. In order to give sufficient substance to the risk of future persecution, the author should have provided other evidence relating to the period after his escape which would support the belief that the risk of torture was likely to materialize.

4.6 This communication differs from those cases in which the Committee considered that the return of the authors to Zaire would breach article 3 of the Convention. By contrast with the communications *Mutambo v. Switzerland*¹ and *Muzonozo Paku Kisoki v. Sweden*,² the author of the present communication has been unable to demonstrate that he left his country because of persecution suffered in the past or that his political activities in host countries have given rise to a greater fear that he would be tortured if he were returned to his own country. Lastly, the author has not argued that his ethnic origins could expose him to the risk of torture.

4.7 Neither has it been shown that he was a member of the MPR. Notwithstanding his intention to submit his membership card, which supposedly remained at his home after his departure, it would seem that the author has made no move to recover it. Yet, according to information from the Swiss Embassy in Kinshasa, postal links with the DRC are operating normally. Private companies such as DHL and EMS are well established in the capital and provide an effective postal service. Moreover, the author has in no way suggested that his family has been exposed to persecution by the authorities. It must thus be supposed that the author has been at liberty to contact his family with a view to recovering his MPR membership card. That said, even had the author been a member of the MPR, that would not constitute grounds for considering that the risk of torture had been sufficiently established. The former members of the MPR in the DRC number hundreds of thousands, and the Government has taken no general measures of persecution against them. Moreover, the author has been unable to provide detailed information on the duties he performed

for the MPR. In his communication, he has not even deemed fit to provide any information on the subject.

4.8 In the light of the foregoing considerations, the State party concludes that there is nothing to indicate the existence of serious grounds for fearing that the author would personally risk being exposed to torture upon returning to the DRC.

The author's comments

5.1 By letter of 15 July 1999, the author informed the Committee that he was in custody pending his return to the DRC. He reverts to the subject of the Swiss authorities' interpretation as to the origin of the threat to himself in his country. According to the CRA, he ought to have had no fear of persecution, since on 10 May 1997 Kabila's forces had not yet entered Kinshasa. In fact, by 10 May 1997 a number of infiltrators had already reached the capital, although officially the advance guard did not arrive until 17 May. It was soldiers of the AFDL who interrogated the author. There could be no question of his confusing them with soldiers belonging to the armed forces of President Mobutu, who held no fears for him as they knew him.

5.2 The author argues that it is now impossible for him to provide proof of his political activities. As to his MPR membership card, he points out that if communications between the DRC and Switzerland are supposed to be functioning perfectly, which is far from likely given the state of the postal service in Kinshasa, that can only have come about very recently. He had no news of his family for months following his arrival in Switzerland precisely because of the communication problems. He eventually learned through a letter from his mother that she had left Kinshasa some nine months previously to go with his brothers to Brazzaville, owing to the difficulties she had had in Kinshasa. She informed him that, following his departure from the country, his father had been arrested, interrogated and beaten in an effort to make him reveal the author's whereabouts. The letter had remained at his residence in La Chaux-de-Fonds.

5.3 The author did in fact describe in his application for asylum the work he did for the MPR. He had been responsible for mobilizing people at the airport in connection with all travel undertaken by President Mobutu. Consequently he was well known, particularly in Kinshasa. That was the reason for his continuing fear that he would be at risk of recognition and arrest if he returned to the DRC.

5.4 The author contends that the many former employees of President Mobutu who remain in the country without problems have preserved their freedom through payments and bribery. He states that two compatriots whom he met in Switzerland, and whose names he supplies, were arrested on their return to the DRC and imprisoned at Makala.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a 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 considers that there is no reason why it should not declare the communication admissible. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the expulsion of the author to the Democratic Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture if returned to the Democratic Republic of the Congo. In reaching this decision, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country; there must be other grounds indicating that he or she 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 in danger of torture in his or her specific circumstances.

6.4 In the present case it must be pointed out that the author has provided neither the Committee nor the State party with any evidence that he was a member of MPR or that his family has been persecuted by the current regime in Kinshasa. The Committee does not find his explanations for the absence of such evidence convincing. Nor has the author provided evidence of the alleged persecution to which former, in particular junior, members of MPR are supposedly subject at present owing to their support for the country's former president and active backing for the opposition to the regime currently in power.

6.5 The Committee is concerned at the many reports of human rights violations, including the use of torture, in the Democratic Republic of the Congo, but recalls 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 or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

7. 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 decision of the State party to return the author to the Democratic Republic of the Congo does not constitute a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the French text being the original version.]

Notes

1/ CAT/C/12/D/13/1993.

2/ CAT/C/16/D/41/1996.