

## COMMITTEE AGAINST TORTURE

### A. M. v. Switzerland

Communication No. 144/1999

14 November 2000

CAT/C/25/D/144/1999

### VIEWS

Submitted by: A. M. (name deleted)

Alleged victim: The author

State party: Switzerland

Date of the communication: 12 August 1999

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

Meeting on 14 November 2000,

Having concluded its consideration of communication No. 144/1999, 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 by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. A. M., born in 1974 and a citizen of Chad. He is currently residing in Switzerland, where he applied for asylum on 19 October 1998. His application having been turned down, he maintains that his forcible repatriation to Chad would constitute a violation by Switzerland of article 3 of the Convention against Torture.

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 4 October 1999. At the same time, the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to expel the author to Chad while his communication was under consideration. In a submission

dated 26 November 1999, the State party informed the Committee that measures had been taken to ensure that the author was not returned to Chad while his case was pending before the Committee.

### **The facts as submitted by the author**

2.1 The author has been trained in computing. He was an active member of the Chadian Human Rights League (LTDH), vice-president of one of the components of the Alliance Nationale de Résistance (ANR) and acting vice-president of the Union des Jeunes Révolutionnaires (UJR) for an 18-month period during the president's absence. After this period he was denounced to the security forces by agents who had infiltrated those bodies.

2.2 On 16 September 1998, soldiers came to the author's home during his absence. A police officer friend advised him to leave his house. After he had gone into hiding at his mother's home, the soldiers returned to his house at night. This convinced him he should leave the country.

2.3 The author then requested asylum in Switzerland but his request was turned down. Thereupon he was allegedly forced by the Swiss authorities to contact the Chadian Embassy in France in order to organize his return home. The embassy officials reportedly refused to assist him as they claimed they could not ensure his safety unless he expressly renounced the opposition movement and supported the existing regime.

### **Merits of the case**

3. The author states that, as he is known to the security forces in Chad, he would run a real risk of ill-treatment if he returned there. He considers that it has been sufficiently established, in particular by the International Federation of Human Rights (FIDH), that human rights are being violated on a massive scale in Chad. Moreover, the Swiss Appeal Commission on Asylum Matters has itself recognized that members of LTDH, such as the author, are liable to have serious difficulties with the Chadian security forces. Three LTDH activists disappeared after they were arrested by Sudanese security forces in April 1998 and handed over to the Chadian authorities.

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

4.1 The State party has not contested the admissibility of the communication; in a letter dated 4 April 2000 it commented on its merits.

4.2 The State party points out that a consistent pattern of flagrant or massive violations of human rights in a country does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. There must be other grounds indicating that the individual concerned would be personally at risk.

4.3 In the present case, the State party considers that the risk alleged by the author is insufficiently substantiated. The author's explanations of his political activities were general and vague. At the first hearing relating to his application for asylum, he was unable to provide the names of the organizations he had worked for. Moreover, the information he gave on LTDH was erroneous, and the attestation by the ANR representative which he produced did not indicate clearly

what role he played in ANR. His membership card shows an enrolment date that does not correspond to the date he mentioned to the Swiss authorities. In addition, the State party possessed information to the effect that ANR was not known as an opposition movement in Chad.

4.4 The State party also considers that the account the author has given is not plausible. With regard to his allegations that soldiers were looking for him, it is unthinkable that, if they had really wanted to apprehend him, they would not have gone to his place of work, given his statement that he continued going to work even after the soldiers had shown up at his home, or to his mother's home.

4.5 The State party also refers to the Committee's general comment on article 3, to the effect that considerable weight will be given by the Committee to findings of fact that are made by organs of the State party, and stresses that the communication is only one page long.

4.6 The State party points out that, contrary to the author's claim, ANR has subsidiary bases in the Sudan and the Central African Republic, and its zone of operation is located in eastern Chad. This has been confirmed by documents produced by the author himself. The State party further maintains that the author claimed, on one occasion, that he had been prosecuted for having incited young people to rebel, and on another, that his prosecution was the result of the work of informants who had infiltrated ANR or the youth movement.

4.7 The State party considers that the author's statements regarding his behaviour after the alleged attempts to arrest him and his escape route are again implausible. At the hearings he claimed that he had gone to work during the three or four days preceding his departure, which seems highly unlikely for a person wanted by the police. Moreover, he took the longest and most complicated route across the whole of Chad and the Libyan Arab Jamahiriya on his way to Europe, whereas two of his brothers live in Cameroon and he himself had specialized in smuggling people into Nigeria.

4.8 The State party further points out that the author has never claimed to have been subjected to torture in the past or claimed that relatives of his were harassed because of his activities; he has not pursued his political activity since his arrival in Switzerland.

4.9 The State party points out that this communication is the first occasion when the author has referred to the Union des jeunes révolutionnaires and to his position as vice-president. Until this point he had mentioned only the Chadian Revolutionary Party, the ANR "component" to which he referred having never been clearly identified. With regard to his membership in LTDH, the Swiss Appeal Commission on Asylum Matters clearly stated that, apart from the bogus membership card referred to above, his membership did not sufficiently establish that he ran the risk of being subjected to torture. With regard to the refusal of the Chadian Embassy in France to issue the necessary travel documents to him, the State party observes that the letter from the Embassy makes no mention of the fate awaiting him upon his return to Chad. It merely states that the Chadian authorities are unable to provide such documents. Moreover, if the author was really wanted by the Chadian authorities, they would most likely have encouraged him to return.

#### **The author's comments**

5.1 In a letter dated 20 May 2000, the author commented on the State party's observations on the merits of the communication.

5.2 The author first draws the Committee's attention to the fact that the human rights situation in Chad has continued to deteriorate since 1994. He backs up this statement with various documents and press clippings. Having been a member of LTDH, ANR and UJR, he is convinced that, if arrested, he would be subjected to torture.

5.3 With regard to the State party's observation that he was unable at the first hearing to provide the names of the organizations he was working for, he points out that it was a particularly short hearing and he was not questioned on that point. The subsequent hearings were longer and more detailed, allowing the author to be more specific about his activities.

5.4 As to the discrepancy between the date of joining LTDH shown on his membership card and the date he mentioned in his statements, the author claims that an error was made on the card and he was unable to have it corrected. He also states he had indeed named Mr. Ngare Ada as being acting president of the LTDH.

5.5 As to ANR, the author is surprised that the State party has not heard that the organization is part of the opposition movement in Chad. He has provided several press clippings showing this to be the case, in particular articles referring to a round-table meeting organized in Gabon in 1996. In addition, the author notes that there was an error in the ANR attestation in that he had not sought asylum in the Netherlands but had been unable to have the document corrected.

5.6 Regarding the route he took when fleeing from Chad, the author believes that the route through the Libyan Arab Jamahiriya was less closely watched and the safest one for him to take. He points out that the border with Cameroon is much more closely guarded and there was a strong chance of his being recognized there.

5.7 Lastly, the author does not recall having mentioned that he had gone to work after the soldiers had started looking for him. At that point he had been unable to take any practical steps himself, and it was his wife who had organized his escape from the country.

## **Issues and proceedings before the Committee**

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It 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. It notes also that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As 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 forced return of the author to Chad would violate the obligation of the State party 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 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 upon return to Chad. In reaching that decision, the Committee 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 in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating 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 might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads: “Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable” (A/53/44, annex IX, para. 6).

6.5 In the present case, the Committee notes the State party’s observations to the effect that the author’s statements concerning the alleged risks of torture are vague and general, at times implausible, at times inaccurate and at times inconsistent.

6.6 The Committee finds that the author has not mentioned any forms of persecution to which he was subjected in his country of origin. He was never ill-treated or tortured; nor was he ever questioned or detained by the security forces.

6.7 The Committee also finds that the author has not produced conclusive evidence of, nor demonstrated convincingly his membership of, or activities in, the Chadian Human Rights League, the Alliance nationale de résistance or the Union des jeunes révolutionnaires.

6.8 The Committee therefore finds that it has not been given enough evidence by the author to conclude that the latter would run a personal, real and foreseeable risk of being tortured if returned to his country of origin.

6.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the decision of the State party to return the author to Chad does not constitute a breach of article 3 of the Convention.