

COMMITTEE AGAINST TORTURE

R. K. v. Canada

Communication No 42/1996

20 November 1997

CAT/C/19/D/42/1996

ADMISSIBILITY

Submitted by: R. K. (name withheld)(represented by counsel)

State party: Canada

Date of communication: 22 February 1996

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

Meeting on 20 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is Mr. R. K., a Liberian citizen belonging to the Krahn ethnic group, born on 30 November 1967, currently residing in Canada. He claims that his return to Liberia would constitute a violation of article 3 of the Convention against Torture by Canada. He is represented by counsel.

2.1 The author states that his uncle, who raised him following the death of his father when he was two years old, was politically active; he was a member of the United Liberation Movement of Liberia (ULIMO). In 1985, members of the Krahn community who supported a certain political candidate were accused of electoral fraud. Opposing the Krahn and in response to the alleged fraud, another political party was founded in 1987: the National Patriotic Front of Liberia (NPFL).

2.2 The author states that in 1990, his uncle was murdered by (military) members of the NPFL. They also detained the author's cousin. After these events, the author decided to seek

refuge in the Red Cross office. He paid someone to help him to go to Sierra Leone; he crossed the border with five other persons. In Sierra Leone, the author hid in an ULIMO office.

2.3 One night, soldiers from the NPFL were searching for ULIMO members and the author fled to Israel using his Liberian passport. During his stay in Israel, someone stole his luggage and documents.

2.4 The owner of the place where he was staying helped him to flee to Canada, where he arrived on 8 February 1993. On 26 February 1994, the author married a Canadian woman; a child was born on 19 April 1995.

2.5 Immediately after arriving in Canada, the author requested political asylum. On 20 April 1994, his application was dismissed by the Immigration and Refugee Board of Canada. The author applied to the Federal Court of Canada for leave to appeal against the Board's decision. The Court rejected his request. On 15 December 1995, a request lodged by the applicant in pursuance of the post-claim risk assessment process was rejected. The author was told to leave the country before 22 February 1996.

2.6 It further appears from the communication that the author's wife is sponsoring his application for immigration to Canada. On 20 December 1995, the immigration authorities rejected the author's request for his expulsion to be suspended pending the outcome of the procedure for examination of the immigration application, which was already under way. The author complains that the Canadian authorities refuse to accept the bona fide character of his marriage. Immigration officials are said to have consistently refused to grant his wife an interview to prove the validity of the marriage.

The complaint

3.1 According to the author, if he returns to Liberia he will be killed like his uncle. To substantiate his statements concerning the serious human rights violations occurring in Liberia, where several factions are confronting one another, the author quotes several extracts from a report by Amnesty International, as well as Country Reports on Human Rights Practices from 1994.

3.2 The author claims that his return to Liberia would constitute a violation of article 3 of the Convention against Torture by Canada. He requests the Committee to ask Canada not to expel him while his communication is under consideration by the Committee.

Comments of the State party

4. On 19 March 1996, the Committee forwarded the communication to the State party through its Special Rapporteur to enable it to draw up its comments, and requested it not to expel the author while his communication was under consideration by the Committee; the request was granted.

5.1 In a note dated 9 September 1996, the State party contests the admissibility of the communication. It points out that the author had not exhausted the domestic remedies available before submitting his communication to the Committee against Torture. In addition, his communication did not demonstrate the minimum justification needed to meet the requirements of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5.2 The State party explains that throughout the Canadian immigration process, the author essentially advanced the same allegations as those he is putting forward in support of his communication to the Committee against Torture. He claimed that his uncle had been a member of ULIMO and had been killed by the NPFL, an armed faction which opposed it, on account of his political activities. The author claimed that, because of his relationship with his uncle, his life or his safety would be in danger if he returned to Liberia. Specifically, he feared that he would be tortured.

5.3 The State party points out that the investigations carried out by the Canadian authorities revealed major gaps concerning fundamental and crucial aspects of the author's claims. It was impossible to establish that he was of Liberian origin and that his return to Liberia would entail genuine risks for his life or his safety. Inconsistencies in his statements seriously undermined his credibility and compounded an absence of objective proof of his allegations.

5.4 The State party holds that various domestic remedies were open to the author to challenge the conclusions of the Canadian authorities. Those remedies, had he availed himself of them, would have enabled him to demonstrate as far as possible that the inconsistencies noted in his statements were merely apparent, and that his claims were backed up by a rational explanation of which those responsible for taking a decision on his case were unaware. Yet he had not maintained and pursued a request for judicial review by the Federal Court, and he had not made a request for judicial review by the Federal Court of two other decisions taken by the Canadian authorities. Nor had he made any request for a ministerial waiver on humanitarian grounds.

5.5 The remedies, had the author pursued them, might have brought him relief within a reasonable time limit. All of them offered him a chance to correct and explain the gaps in his dossier before the date of application of the expulsion measure against him, and the remedies ultimately held out the possibility that he would be able to settle in Canada.

5.6 The State party claims that, because of Mr. R. K.'s failure to pursue those remedies before appealing to the Committee against Torture, his communication fails to satisfy the condition set out in article 22, paragraph 5 (b) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It calls on the Committee to declare the communication inadmissible.

Counsel's comments

6.1 In his reply, dated 20 February 1997, counsel describes as speculation the State party's

comments that, had he availed himself of the remedies referred to, the author would have had an opportunity to demonstrate that the Government was mistaken and to win his case.

6.2 He expresses surprise that the State party should argue that the author had not exhausted all remedies, when the Government itself had summoned him to the local immigration office to tell him to arrange for his departure. On that occasion, an immigration official confirmed to the author that he must report for expulsion to Liberia. Since that confirmation had been given by an immigration official responsible for expulsions, the author was in no doubt that his deportation to Liberia was imminent, and that it was to take place shortly after the first summons. Indeed, if it had not been for the appeal lodged by the author with the Committee against Torture, arrangements would have been made and the author would already have been deported to Liberia without further delay. There is no doubt in the applicant's mind - indeed, Canada's machinations in that regard were quite clear - that the department responsible for expulsions was preparing to deport him.

6.3 It is submitted that the Canadian Government had every opportunity to remedy its failure to meet its international obligations but that its bad faith and totally negative attitude to the author's dossier was illustrative of its lack of will to assist him. In that regard, counsel draws attention to the fact that the author had first exhausted all the refugee status determination procedures, and that he had been given a negative response. Moreover, the Canadian Government itself admits that many applicants in the same circumstances as the author and from the same country are granted refugee status.

6.4 Regarding the request made to the Federal Court for judicial review, counsel explains that lodging such a request in no way guarantees success, as a very small percentage of such requests are granted. Moreover, even if in theory applicants have only to show that they have a "fairly arguable case", leave to appeal is granted in fewer and fewer cases. In principle, that makes the appeal procedure in question an illusion for the vast majority of refugees, including the author.

6.5 In any event, since the applicant was married, he had been advised to lodge a request for sponsorship on grounds of marriage, which in view of his circumstances had a good chance of success; but the request had not been successful.

6.6 Regarding the State party's claims that the author had an alleged right to appeal to the Federal Court, counsel states that in actual fact such appeals are non-existent, time-barred or totally ineffective and illusory, since they are inaccessible and discretionary and in no way prevent the Canadian Government from going ahead with the deportation of the author in any event.

6.7 Counsel points out that the Canadian Government is very well aware that access to such procedures is almost never granted in practice, and that in any event they do not prevent the Canadian Government from proceeding with the expulsion.

Issues and proceedings before the Committee

7.1 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.

7.2 In accordance with article 22, paragraph 5 (b) of the Convention, the Committee does not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been or would be unreasonably prolonged or that it is unlikely to bring effective relief to the alleged victim. In the present case, the author acknowledges that he has not pursued a request for judicial review by the Federal Court and has not lodged a request for a ministerial waiver on humanitarian grounds. Even if the author claims that these remedies would be illusory, he has furnished no evidence that they would be unlikely to succeed. The Committee notes that the conditions laid down in article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author of the communication and to the State party.

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