

COMMITTEE AGAINST TORTURE

H. W. A. v. Switzerland

Communication No 48/1996

20 May 1998

CAT/C/20/D/48/1996

ADMISSIBILITY

Submitted by: H. W. A. (represented by counsel)

Alleged victim: The author

State party: Switzerland

Date of communication: 4 April 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 May 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is H. W. A., alias N. B. M., alias H. A., a Syrian citizen. He claims that his forced return to the Syrian Arab Republic would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel.

2.1 The author claims that he left his country at the age of 13 to join the Palestine Liberation Organization (PLO) in Lebanon. In 1984, he was sent by the PLO for special military training to Iraq, where he stayed until 1988. Thereafter he was sent to Libya. Seeing this assignment as a demotion, he left the PLO. He was subsequently enlisted for a special mission, namely an attack on a hotel in Taba (Egypt) used by Israeli soldiers. After starting out on his mission, he decided to abandon it for safety reasons. Fearing reprisals in the Libyan Arab Jamahiriya because of his defection, he decided to seek refuge in Europe.

2.2 Before entering Switzerland, the author entered France, where he requested asylum under a false name. Following the rejection of that request in March 1990, he applied for asylum in Switzerland under his real name on 20 May 1990. The Federal Refugee Office (Office fédéral des réfugiés, ODR) rejected that request on 19 January 1993, and the Swiss Asylum Appeal Board (Commission suisse de recours en matière d'asile, CRA) rejected his appeal on 15 February 1995. His application for review was rejected on 26 January 1996.

3.1 By a letter dated 17 May 1996, the Committee transmitted the communication to the State Party for its comments on its admissibility.

3.2 It appears from a letter from the author dated 22 October 1996 that he is now living in Ireland, where he has filed a request for asylum.

3.3 By a letter dated 17 April 1998, the State party requested the Committee to declare the communication inadmissible on the ground that it had become irrelevant. The State party observed that, after being informed of the deposit of the communication with the Committee, ODR decided on 10 May 1996 not to expel the author from Switzerland. The author nonetheless left Switzerland, arriving on 3 July 1996 in Ireland and filing an application for asylum there. Furthermore, he has authorized the Irish authorities to contact the competent Swiss authorities to obtain from them documents he needs in connection with the new asylum proceedings. The State party argues that it can therefore be considered that it is in Ireland that the author now wishes to obtain asylum.

3.4 Given that the author left Switzerland nearly two years ago and has since been involved in formalities aimed at obtaining asylum in another country, the State party believes that the question of incompatibility of the ODR decision of 19 January 1993 to expel the author from Switzerland with article 3 of the Convention is of no practical or topical interest.

3.5 In his comments of 8 May 1998, the author's Swiss counsel points out that, although the author was indeed informed that ODR authorized him to remain in Switzerland, the formal notification of the decision indicated that the authorization was valid only until 30 June 1996. He explains that, in view of the absence of any request pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the author panicked and left Switzerland. The author had alleged that the cantonal police had orally warned him that, unless he left Switzerland within two weeks, they would take him to the Consulate General of the Syrian Arab Republic.

3.6 The counsel's view is that, since the author could not legally have remained in Switzerland to await the outcome of the proceedings before the Committee, the State Party cannot reasonably maintain that those proceedings have become irrelevant because the author filed an application for asylum in Ireland in July 1996. The counsel observes that that application is still pending and that the question of the incompatibility of the author's forced return with article 3 of the Convention is therefore very definitely of practical and topical interest. He states that, because of an article in the press, the author no longer feels safe in Dublin and would like to return to Switzerland.

Issues and proceedings before the Committee

4.1 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.

4.2 Pursuant to article 22, paragraph 1, of the Convention, the Committee may consider a communication from an individual who claims to be a victim of a State party's violation of a provision of the Convention, providing the individual is subject to that State's jurisdiction and the State has declared that it recognizes the Committee's competence under article 22.

4.3 The Committee notes that the author is no longer in Switzerland and that he has applied for asylum in Ireland, where he has been given a residence permit pending the outcome of the asylum proceedings. Article 3 of the Convention prohibits return (*refoulement*) of a person by a State party to another State where there are substantial grounds for believing that the individual may be subjected to torture. In the case in question, the author, being legally present in the territory of another State, cannot be returned by Switzerland; consequently, article 3 of the Convention does not apply. Consideration of the communication having become irrelevant, the Committee finds the communication inadmissible.

5. Accordingly, the Committee decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the applicant's counsel and to the State party.

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