

COMMITTEE AGAINST TORTURE

J.U.A. v. Switzerland

Communication No 100/1997

10 November 1998

CAT/C/21/D/100/1997

VIEWS

Submitted by: J.U.A. (name deleted) (represented by counsel)

Alleged victim: The author

State party concerned: Switzerland

Date of communication: 6 December 1997

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

Meeting on 10 November 1998,

Having concluded its consideration of communication No. 100/1997, 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 into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is J.U.A., a Nigerian citizen born in 1968. He is currently living in Switzerland, where he has applied for asylum, and risks being sent home. He 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 claims that he is a member of NADECO (National Democratic Coalition), the opposition movement. In 1994, he took part in an action committee opposing the plan to hold the Junior World Cup for Football in Lagos, which in his view was an act of political propaganda by the then Government of Nigeria. He contacted some key figures and university leaders with a view to organizing demonstrations in a number of towns, including Enugu, where he grew up. In February 1995, a police officer who was a friend of his father's warned him that the Lagos police had issued a warrant for his arrest because of his activities in opposition to the championship. After learning of the warrant for his arrest, the author, who normally lived in Lagos, went to the town of Epe, where he hid for several months before his departure for Europe.

2.2 On 14 August 1995, the author filed an application for asylum in Switzerland, which was rejected on 28 May 1996 by the Federal Office for Refugees (Office Fédéral des réfugiés - ODR). On 23 September 1997, his appeal was rejected by the Appeal Commission (Commission suisse de recours en matière d'asile - CRA). A request for revision, filed on 6 November 1997, was rejected by CRA on 18 November 1997.

2.3 By way of evidence, the author produced the warrant for his arrest, a document which he claims to have obtained from Nigeria. The Swiss authorities considered the document to be a forgery. The author states that he was unaware of this and that he was acquitted by the St. Gallen district court of the charge of falsifying documents. He likewise points out that the Swiss authorities never contacted any of the persons with whom he worked on preparations for the demonstrations in Nigeria, nor the police officer mentioned above, despite the fact that he provided them with the officer's name and address. In addition, he states that he was not allowed to see the report about his case drawn up by the Swiss Embassy in Lagos, and received only a summary. Finally, he claims that, during his two hearings with the Swiss immigration authorities, he gave the same version of the events that had prompted his departure from Nigeria.

The complaint

3.1 The author points out that the Swiss authorities have not granted asylum to anyone from Nigeria since 1991, despite the fact that some 100 applications are filed every year. He claims that prisoners are systematically tortured in Nigeria, and that rejected asylum-seekers are arrested on their return. In view of his experiences in Nigeria, and of his activities in Switzerland to promote human rights in Nigeria, including the items he has published in Planetá, Ostschweiz and St. Galler Tagblatt, as well as his participation in various demonstrations, he risks being persecuted by the Nigerian authorities if he is sent back. He would in all likelihood be arrested and held under threat of torture.

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

4.1 By letter dated 19 February 1998, the State party informs the Committee that, pursuant to its request under rule 108 (9) of the Committee's rules of procedure, the authorities have

decided to defer sending back the author for so long as his communication is pending before the Committee. The State party also points out that the author has exhausted domestic remedies, and does not contest the admissibility of the communication.

4.2 With regard to the merits, the State party observes that the author filed an application for asylum which was rejected by ODR, *inter alia*, because he had not succeeded in credibly establishing that he belonged to NADECO. Other grounds for CRA's rejection of his appeal and his request for revision were that the author's allegations, in particular concerning the reasons for his departure from his country of origin, were not sufficiently plausible and that the author's fear that he would be persecuted by the Nigerian authorities for his political activities in exile were unfounded.

4.3 Following ODR's decision to reject the application for asylum, particularly on the ground that the allegations that he was wanted by the police were based on two forged arrest warrants, criminal proceedings were brought by the authorities of the canton of St. Gallen for falsification of documents, resulting in the author's acquittal. In its acquittal decision, the court deemed that the non-authentic nature of the documents had not been proved. The court stated that, for the purposes of rendering a decision, it lacked material for a comparison, and considered that ODR had failed to satisfy the requirements of criminal law by not consulting an independent expert.

4.4 The State party argues that the requirements regarding proof differ, depending on whether proceedings are criminal or administrative, and that the criminal decision of the district court by no means constituted a finding that the documents in question were authentic. The decision was substantiated only briefly. It was entirely unclear on what basis the court differed from ODR's findings regarding the ample proof of falsification. The procedure followed by ODR in the case in point was altogether normal and compatible with law, jurisprudence and practice. It was based on the experience and knowledge of the Office, which keeps documentation of its own on the countries of origin of asylum-seekers.

4.5 The arguments presented to the Committee by the author have already been adduced before the Swiss authorities and have been examined by ODR and CRA. The author first attempted to prove that he was wanted by the police, invoking two arrest warrants which in the view of ODR are forgeries. Secondly, to support his claim that he was afraid of arrest, he furnished a list of members of NADECO who had allegedly been arrested, and on which his own name appears; according to information obtained by the Swiss Embassy in Lagos, however, that list did not conform to reality. In fact, most of the individuals whose names appear on it, and who according to the author have been detained, are not in detention. According to the same sources, the author's name was unknown in the inner circles of NADECO, nor was he sought by the police. Furthermore, the author failed to produce, during the asylum process, any reliable official document of attestation, with the result that his identity is not established with certainty.

4.6 In addition, the author's statements contained a number of discrepancies. With regard, for example, to Epe Town, the place where he is said to have hidden before leaving the country, he provided two different accounts of its geographical location, in Lagos and near

Enugu, although those two cities are 500 kilometres apart.

4.7 The author also contends that he risks persecution for his commitment to respect for human rights in Nigeria - political activities in which he has participated since his arrival in Switzerland. In the view of the State party, however, there is insufficient reason to believe that the Nigerian authorities would pay much attention to such opinions, or want to pursue the author on that basis, since his views are mild in comparison to the criticisms levelled at the regime by the Nigerian press or by the opposition in exile, if in fact the Nigerian authorities are even aware of the author's articles, considering the small circulation of the publications in question.

4.8 Finally, the contention that Nigerian asylum-seekers in general, and the author in particular as an asylum-seeker, are arrested on their return is unfounded, according to reliable sources available to the Swiss asylum authorities. No properly substantiated case has been reported that supports the notion that rejected asylum-seekers are systematically persecuted simply for filing an application for asylum.

4.9 Having carefully examined the case in question as well as the situation in the country of origin, the State party consequently considers that there are no substantial grounds for believing that the author would risk being subjected to torture if he returned to Nigeria.

Author's comments

5.1 The author stresses that, despite the brutality of the political regime in Nigeria, the Swiss authorities have systematically rejected all asylum applications by Nigerian citizens for at least seven years now. As for the matter of discrepancies in his statements, he contends that he has consistently said that he went to Epe after learning of the warrant for his arrest, which confirms his credibility.

5.2 It has not been established that the documents he submitted were forged. The decision of the district court was substantiated only briefly because the court suggested that the author should forego a detailed statement of the grounds, but the proceedings themselves were not conducted in a summary manner.

Issues and proceedings before the Committee

6.1 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.

6.2 The Committee must decide whether sending the author back to Nigeria would violate the State party's obligation under article 3 of the Convention not to expel or return (refouler) an individual to another State if there are substantial grounds to believe 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 tortured if sent back to Nigeria. 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.

6.4 In the case in point, the Committee notes that the author has never been arrested or subjected to torture. Nor has the author claimed that persons in his immediate circle or individuals who participated in the events which according to him were the reason for his departure from the country were arrested or tortured. Furthermore, it has not been clearly established that the author continues to be sought by the Nigerian police or that the arrest warrant he furnished is an authentic document. Finally, the author has not cited specific cases of individuals alleged to have been tortured in Nigeria after being rejected by countries from which they had requested asylum.

6.5 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Nigeria, 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 is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

6.6 On the basis of the above considerations, 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 he is sent back to Nigeria.

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 facts before it do not indicate a breach of article 3 of the Convention.

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