

COMMITTEE AGAINST TORTURE

F. F. Z. v. Denmark

Communication No. 180/2001

30 April 2002

VIEWS

Complainant: Mr. F.F.Z.

State party concerned: Denmark

Date of submission of communication: 1 March 2001

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

Meeting on 30 April 2002,

Having concluded its consideration of communication No. 150/1999, 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 to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

VIEWS

1.1 The complainant is F.F.Z., a Libyan citizen, born on 29 September 1968, currently residing in Denmark, where he seeks asylum. He claims that his return to Libya after dismissal of his refugee claim would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 11 April 2001. Pursuant to rule 108 of the Committee's rules of procedure, the State party was requested not to expel the complainant to Libya pending the consideration of his case by the Committee. The State party confirmed in their submission of 12 June

2001, that the complainant will not be expelled while his complaint is pending.

The facts as submitted

2.1 The complainant lived in the city of Benghazi in Libya since he was born. He finished his degree in economics in 1992, and held his own shop from 1993 till his departure from Libya. His cousin A.A. was a member of the Islamic Movement Al-Jama'a al-Islamiya al-Libya (hereinafter called Al Jama'a). The complainant spent a lot of time with his cousin, and the cousin often borrowed his car, which drew the attention of the Security Service to the complainant. The complainant also supported Al Jama'a, and he frequently attended meetings in the mosques.

2.2 In 1989, Al Jama'a members clashed with the authorities, whereupon the Security Service arrested all persons with connections to the Islamic movement. The complainant was arrested, blindfolded, and taken to an unknown place, where he underwent interrogation during which he was subjected to violence, and forced to confess that he was involved in the Islamic movement. The interrogations lasted two hours, after which the complainant was taken to a cell. Questioning was repeated two days later. After nine days in detention, he was released after having been ordered to cut his links with the Islamic movement.

2.3 From May 1995 until May 1996, he participated in the collection of money for relatives of political prisoners, on the initiative of Al Jama'a. Then, in July 1995, the Security Service came to his shop and brought him to a plantation area outside Benghazi, where he was interrogated for 3-4 hours about his movements and contacts since his arrest in 1989, and then released.

2.4 On 21 May 1996, the Security Service executed the complainant's cousin A.A. extrajudicially for his participation in Al Jama'a. The execution of A.A. is also stated in Amnesty International's report on Libya for 1997. The night to 22 May 1996, the complainant was dragged out of his bed and handcuffed by the Security Service. He was then brought in the boot of a car to a police station where he was confined to a cell, whereupon he was placed facing the wall and exposed to threats and verbal abuse from two persons. After he had stood upright on the same spot for several hours, the Security Service started inquiring the complainant about his contacts and their political activities. He was beaten with fists, the palm of the hand, rifle butts, and kicked, all while he was verbally harassed. After the inquiry, the complainant was brought back to his cell, where he was placed facing the wall, blindfolded and handcuffed.

2.5 Still blindfolded, the complainant was brought in for a new interrogation, this time about his contact with his cousin. At this time, he was not aware that his cousin had been executed. He was told that his cousin had reported to the Security Service that he was involved in the armed part of the Islamic movement, which he denied. Consequently, he was kicked and hit with a stick while the people present were laughing at him. After this inquiry, the complainant was brought back to his cell, where he was detained for eight days, during which he was blindfolded and handcuffed for two days. He was then brought in the boot of a car to another place, where interrogations started all over again. During 11 hours of interrogations which aimed at making the complainant admit his involvement with the Islamic movement, he was beaten and kicked, and then placed on the floor with his feet tied to an upright stick, beaten underneath his feet, and subjected to electric shocks. Finally, he was given

a piece of paper, which he was told was his explanation, and he signed, without knowing the contents of it. He was then returned to his cell.

2.6 After 7-8 days of further detention, the complainant was brought to an office, where two men questioned him whether he had been well treated in prison, which he answered in the affirmative. He was faced with two alternatives; either to serve lifetime imprisonment, or to spy on people who met at the mosque. In order to escape prison, the complainant agreed to spy on people at the mosque, and was released on 15 July 1996, under orders to report to Security Service every Thursday.

2.7 The complainant appeared before the Security Service every Thursday until he left for Tripoli on 21 or 22 August 1996. During his detention, the complainant had decided to leave Libya, but also that he would wait a while before leaving, so as not to risk harming his family. However, another person from the complainant's neighbourhood participating in the same group as he, F.E., and who had been arrested and released on the same day as he, was again arrested in August 1996. This event made the complainant leave immediately for Tripoli. Later on, he learnt that his brother had been arrested and detained for almost a month because the complainant had left. Towards the end of 1997 or early 1998, the complainant was also informed that his friend F.E. had died in prison.

2.8 In Tripoli, the complainant stayed with a relative while waiting for a visa for Denmark that he had applied for before his arrest, in order to go and visit his brother. Since the issuance of a visa took longer than expected, the complainant requested that the visa should be sent to Malta. On 26 August 1996, the complainant sailed illegally to Malta, having had an acquaintance provide an exit stamp for his passport.

2.9 On 27 August, the complainant arrived in Malta, where he obtained the requested visa, and he continued to Denmark on the same day. He entered Denmark with a passport that expired on 24 February 2000 which was last prolonged on 25 October 1995. It contained a visa issued by the Danish consulate in Valetta, Malta. He went first to visit his brother. After some time, he met a woman whom he married in October 1996, and on 6 January 1997, he was granted a residence permit because of his marriage. The couple separated in April 1998, moved back together in March 1999, but finally divorced in December 2000. On 24 April 1997, the complainant applied for asylum.

2.10 On 2 November 1998, the Immigration Service rejected the complainant's application for asylum. The reasons for rejection related to his explanations about the three arrests he had described. Regarding the arrest in 1989, the Immigration Service attached importance to the fact that the complainant was not a member of a political party nor had he participated in any political activities, that the Security Service arrested everybody at the mosque, and this was the reason why the complainant was arrested, that the fact that he was beaten is not by itself a foundation for asylum, and that the complainant was released after nine days.

2.11 With regard to the arrest in July 1995, the Immigration Service deemed important that the arrest was caused by a riot in May between members of Islamic Al Jama'a and the Security Service, where the complainant was not involved, that there were general arrests of many people and not an individual persecution of the complainant, and that he was released after 3-4 hours only. In relation to the arrest in May 1996, the Immigration Service attaches importance to that the complainant was

arrested because his cousin was connected with the Islamic movement and because the Security Service unjustifiably suspected him of the same, that he was subjected to heavy-handed treatment is not by itself a foundation for asylum, and that he was released after about three weeks. The Immigration Service did not consider it as a reason for asylum that the complainant was ordered to provide information about his friends and report to the Security Service every Thursday, nor the fact that his brother was arrested after his departure, bearing in mind that he was released after one month. Also the fact that the complainant collected money for political prisoners was not considered a reason for asylum, since he did not have conflicts with the authorities because of this. The complainant had also stated that it is prohibited to stay outside Libya for more than six months. However, the Ministry of Foreign Affairs confirmed in a letter dated 30 January 1998, that Libyan citizens, who return to Libya more than a year after their legal or illegal departure, would be detained and questioned, and then released after some hours. Finally, the Immigration Service attached importance to the fact that the complainant's passport carried an exit stamp dated 27 August 1996, but that he only applied for asylum on 24 April 1997.

2.12 On 13 January 1999, the complainant was examined by the Amnesty International's Medical Group, Danish Section, which concluded that the symptoms identified in him are often seen in people who have been subjected to extreme strains such as acts of war, detention or torture, and that these symptoms are consistent with consequences of the alleged torture. Furthermore, the Medical Group while not identifying any physical symptoms of torture, considered that the complainant needed treatment because of his serious psychological symptoms. The report was sent to the Danish authorities on 4 February 1999.

2.13 The complainant appealed the Immigration Service decision to the Refugee Board, which confirmed the decision of the Immigration Service on 2 March 1999. Referring to the letter from the Ministry of Foreign Affairs, the Refugee Board considered it unlikely that the complainant would risk persecution upon return to Libya. In addition to repeating some of the argumentation by the Immigration Service, the Refugee Board attached importance to the fact that the complainant left Libya legally on 26 August 1996, where his passport was stamped on his departure, and had therefore no reason to believe that he was exposed to such persecution as envisaged by the law on asylum. Furthermore, the Refugee Board did not give importance to the Amnesty International medical report regarding the complainant, since it provided no objective indications that he was subjected to torture. The complainant's date of deportation was set for 17 March 1999.

2.14 With regard to the Danish authorities' rejection of the complainant's applications for asylum, counsel states that the medical report supports the complainant's submissions concerning torture, and if any doubt remained with the Danish authorities, he should have been given the benefit of the doubt. Furthermore, the complainant applied for asylum only eight months after his arrival in Denmark, because, not knowing about the asylum procedure when arriving, he met a woman, and deemed it a better solution to get married. Counsel further states that the Immigration Service should have looked at the cumulative effects of the complainant's arrests, instead of splitting them up. In this connection, counsel quotes UNHCR Handbook that "Taking isolated incidents out of the context may be misleading. The cumulative effect of the applicant's experiences must be taken into account". Regarding the Refugee Board's consideration of the medical report, counsel stresses that the Danish authorities should have ensured a medical examination of the complainant when he applied for asylum

in 1997, instead he was not examined until 1999, upon request from his lawyer.

The complaint

3. The complainant claims that there are substantial grounds to believe that he will once again be subjected to torture if returned to Libya. He further claims that there exists a consistent pattern of gross and massive violations of human rights in Libya, which according to article 3, paragraph 2 of the Convention against Torture, are circumstances which a State party should take into account when deciding on expulsion.

Observations by the State party

4.1 The State party submitted its observations to the Committee on 12 June 2001. The State party contests the admissibility of the case, and argues that the removal of the complainant to Libya would not entail any violation of article 3 of the Convention.

4.2 The State party reiterates the rationale of the decisions of the Immigration Service and the Refugee Appeals Board. It further adds to the facts in the case, that on 14 November 1997, the complainant was interviewed by an official from the Danish Immigration Service concerning his application for asylum, and was assisted by an interpreter whom he stated that he understood.

4.3 Furthermore, on 22 June 1998, the Danish Immigration Service revoked the complainant's residence permit, since he had discontinued his cohabitation with his Danish spouse and the conditions for a residence permit were no longer fulfilled. The Ministry of the Interior upheld the decision on 9 November 1998.

4.4 On 16 March 1999, the Ministry of the Interior rejected the complainant's application for a residence permit on humanitarian grounds. However, on 25 March 1999, the Danish Immigration Service reissued a residence permit to the complainant upon resumption of cohabitation with his Danish spouse. On 4 April 2001, the Danish Immigration Service again refused to extend the complainant's residence permit, as he no longer cohabited with his spouse. The Ministry of the Interior fixed the time limit for departure from Denmark on 9 May 2001.

4.5 The State party submits that the Refugee Board's decision to reject the complainant's application for asylum was based on a concrete and individual assessment, and reiterates that there are no substantial grounds for believing that returning the complainant to Libya will mean that he would be in danger of being subjected to torture. In this connection, the State party refers to the decision of the Refugee Board, and emphasizes that the Ministry of Foreign Affairs has investigated the matter and reported that many Libyan nationals, who had left Libya illegally, had returned without major problems. Furthermore it was stated that Libyan nationals returning to Libya after more than one year's stay abroad, are detained and questioned by the authorities and then released. Moreover, it is argued that since it is practically impossible for a Libyan national to have his passport extended if he is an object of interest to the authorities, the issuance of a passport to the complainant indicates that he is not a priori a person at risk. In this connection, the State party points out, with reference to *I.O.A. v. Sweden*¹ that a risk of being detained as such is not sufficient to bring a case within the

scope of article 3 of the Convention.

4.6 Furthermore, when assessing the complainant's credibility, the State party points out that the Refugee Board was unable to find that the complainant had been subjected to the treatment alleged, since his statement was not supported by the medical report available, and since no detailed psychological examination nor a diagnosis have been submitted. Even if it is assumed that the complainant had been subjected to the alleged outrages, the State party refers to the Committee's jurisprudence (*A.L.N. v. Switzerland and X, Y and Z v. Sweden*²) that past torture is only one of the elements to be taken into account when examining a claim under article 3 of the Convention, and the object of considering the case is to decide whether, if returned to the country of origin, the complainant would risk being tortured.

4.7 The State party further submits that the events, which, according to the complainant, motivated his departure from Libya, date relatively far back in time, and that his family has not been sought or harassed on account of the complainant since his brother's arrest and release in 1996.

4.8 Reference is made to the case *Tahir Hussain Khan v. Canada*³, where the Committee found that the complainant, if returned to his country of origin which was not a State party to the Convention, would no longer have the possibility of applying to the Committee for protection, unlike the present case where the complainant only risks being returned to a country that has acceded to the Convention.⁴

The complainant's comments to State party's observations

5.1 In a letter dated 1 August 2001, the complainant states that the State party's references to the letter from the Ministry of Foreign Affairs dated 30 January 1998, are not relevant to the case, since the letter allegedly only is about whether Libyan nationals who had left Libya illegally will have problems if returned, and whether it is possible for a Libyan national to have his passport extended if he is an object of interest to the authorities. However, he concedes the statement in the letter that "it is practically impossible for a Libyan national to have his passport extended if he is an object of interest to the authorities", but stresses that this is not the complainant's situation, since he had his passport extended on 25 October 1995, before his problems with the authorities began. Since 8 March 2000, the complainant has unsuccessfully tried to have his passport extended from the Libyan Embassy in Copenhagen.

5.2 With regard to the State party's observations on the Amnesty International medical report, counsel states that it cannot in all cases be expected to find physical signs of torture three years after the torture took place, for instance in the case that the victim was subjected to electrical shocks, "position torture", blows or kicks to the body, and threats of continued torture and rape. Counsel also points out that there is a physical finding in the medical report, regarding the complainant's swollen left foot, which according to the complainant is due to beatings on the soles of his feet. Counsel further refers to an article in *TORTURE*, volume 11, where it is criticized that psychological symptoms do not receive the same recognition by authorities as physical symptoms.

Decision concerning admissibility and examination of the merits

6. Before considering any claim contained in a complaint, 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 international procedure of investigation or settlement. The Committee notes that the State party has raised objections to the admissibility of the petition, and the Committee therefore has to consider the admissibility of the case.

7. In view of the State party's allegations that the complainant has failed to establish a prima facie case for the purpose of admissibility, the Committee considers that he has sufficiently substantiated for purpose of admissibility, his claim that, if returned to Libya he risks being subjected to torture.

8. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he returned to Libya. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In other words, the existence of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of the paragraph.

9. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a given person would be in danger of being subjected to torture after returning to his country; additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

10. In the present case, therefore, the Committee has to determine whether the expulsion of the complainant to Libya would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

11. The State party has pointed out that none of the three arrests to which the complainant was subjected, were related to his political activities. It also submits that the complainant would not have been able to have his passport stamped on his departure from Libya if he had been exposed to persecution at that time, and that the Amnesty International medical report provides no objective indication that he was subjected to gross outrages. Furthermore, the events that motivated the author's departure date far back in time, and his family has not been sought or harassed on account of the complainant since his brother's release in 1996. The Committee considers, on the basis of the information provided, that the political activities that the complainant claims to have carried out, are not of such a nature as to conclude that he runs a real risk of being tortured upon his return. Indeed, he does not seem to be particularly exposed to persecution by the Libyan authorities. The Danish

Ministry of Foreign Affairs has stated that Libyan citizens who return to Libya more than a year after their legal or illegal departure are frequently detained and questioned, but then released after some hours.

12. On the basis of the above considerations, the Committee considers that the complainant has not proved his claim that there are substantial grounds to support his claim that he would risk torture if returned to Libya.

13. 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 removal of the complainant to Libya would not constitute a breach of article 3 of the Convention.

** Pursuant to rule 103, paragraph 1 (c), Mr. Ole Vedel Rasmussen did not participate in the consideration of the complaint.

Notes

¹ Case No. 65/1997.

² Case No. 90/1997 of 19 May 1998, and Case No. 61/1996 of 6 May 1998.

³ Case No. 15/1994 of 18 November 1994.4. The Convention against Torture entered into force for Libya on 15 June 1989, but Libya has not recognized the competence of the Committee under article 22 of the Convention.