

COMMITTEE AGAINST TORTURE

U. S. v. Finland 1/

Communication No. 197/2002

1 May 2003

CAT/C/30/D/197/2002

VIEWS

Submitted by: U. S.

Alleged victim: U. S.

State Party: Finland

Date of complaint: 7 January 2002 (initial submission)

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

Meeting on 1 May 2003,

Having concluded its consideration of complaint No. 197/2002, submitted to the Committee against Torture by Mr. U. S. 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 complaint, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The petitioner is Mr. U. S., a Sri Lankan citizen, currently residing in Finland, and awaiting deportation to Sri Lanka. He claims that his forced return to Sri Lanka would constitute a violation, by Finland, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 10 January 2002, the Committee forwarded the communication to the State party for comments and requested, under rule 108, paragraph 1, not to return the petitioner to Sri Lanka while his communication was under consideration by the Committee. The State party has acceded to this request.

The facts as submitted by the petitioner:

2.1 The petitioner was a member of the People's Liberation Organisation of Tamil Eelam (PLOTE) until 1985, when the organization was forbidden by the Liberation Tigers of Tamil Elam (LTTE). In 1985, the LTTE arrested the petitioner and detained him for four months, during which he was interrogated on the location of PLOTE's weapons. Subsequently, the LTTE interrogated him on several occasions.

2.2 During this period, the petitioner was working as a bus conductor and traveling between areas controlled by the LTTE and the Sri Lankan army. In view of his occupation and the fact that he was no longer a member of the PLOTE, the PLOTE suspected him of cooperating with the LTTE and informed the Sri Lankan army of their suspicion.

2.3 In March 1987, the petitioner was arrested by the Sri Lankan army and detained for almost two years. During his detention, the petitioner was allegedly tortured on a regular basis for a period of six months. He was beaten, kicked, hung in the "chicken position" where he was left to hang from his left shoulder, his genitals were "injured", his hands were burned with a hot object, and he was given electrical shocks while cold water was poured over him.

2.4 After his release on 2 January 1989, the petitioner was re-arrested and interrogated 3-4 times, for up to three days each, by the Indian Peace Keeping Force (IPKF). He was also interrogated by the LTTE in order to find out what he had told the IPKF about members of the LTTE.

2.5 In June 1989, the petitioner escaped to Germany, where he applied for asylum. His application was rejected, and he immediately attempted to go to France. French police arrested him and returned him to Germany. From Germany, he was returned to Sri Lanka in July 1989. On his return, he stayed in the LTTE controlled area of Jaffna until 1995. He was interrogated several times by the LTTE to find out whether he had any connections with the PLOTE.

2.6 In 1996, after the Sri Lankan army occupied Jaffna, the petitioner escaped to Vanni, where he lived with relatives, and then moved on to Hatton. During his time in Hatton, he was arrested twice by the Sri Lankan army, as he was new in the area. In 1998, he was arrested by the Sri Lankan police and detained for three months on suspicion of being a LTTE member. During his detention he was severely beaten; he remains scarred on his lips and behind his ear, as a result of being hit by a gun. In March 1998, and after bribing the police, he was released.

2.7 After his release, the petitioner escaped through Russia to Finland where he arrived on 21 December 1998. He immediately applied for asylum. On 12 February 2001, the Directorate of Immigration rejected his application and issued a deportation order against him. On 13 November 2001, the Helsinki Administrative Court rejected his appeal. The petitioner then applied for leave

to appeal and suspension of the deportation order to the Supreme Administrative Court. On 31 December 2001, his application was rejected.

2.8 The petitioner underwent several physical and psychological examinations after his arrival in Finland. He has submitted six medical reports, three on his physical condition and three on his psychological state dated between 9 October 1999 and 7 January 2002. The reports of 21 September 2000 and 5 October 1999 refer to scars to his lip and behind his left ear. The report of 7 January 2002 states that he suffers from post traumatic stress disorder, that he has a shoulder injury which fits the description of having been hung from one arm, and that he has mental and physical traumas and scars, which were “possibly caused by torture”.

The claim

3.1 The petitioner claims to have exhausted domestic remedies with the dismissal of his application, by the Supreme Administrative Court, for leave to appeal against the deportation order.
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3.2 The petitioner claims that there are substantial grounds to believe that he would be subjected to torture if returned to Sri Lanka, in violation of article 3 of the Convention. He stresses that the human rights situation in Sri Lanka continues to be poor, particularly as concerns members of the Tamil population, and that persons suspected of LTTE membership are in danger of disappearing and being arbitrarily detained and tortured.

The State party’s observations on the admissibility and merits

4.1 On 8 March 2002, the State party submits that it has no objections to the admissibility of the case. On 9 July 2002, submits its observations on the merits. The State party contests the petitioner’s version of the facts as partly inaccurate, in particular his statements relative to his application for asylum in Germany and the events thereafter. It directs the Committee to the decision of the Directorate of Immigration which is alleged to refer to a number of inconsistencies in the petitioner’s description of events. The State party submits that the petitioner’s claims have been considered fairly in the domestic proceedings. It refers to particular asylum cases where the Supreme Court repealed its decision on deportation, to demonstrate that every case is assessed on its relevant circumstances.

4.2 By decision of 22 October 2001, the Directorate of Immigration assessed the petitioner’s personal situation. It found that the course of events from 1983 to 1989 had no immediate impact on the petitioner’s decision to leave his country of origin. According to the petitioner, he returned to his home town, Jaffna, after his application for asylum had been refused by the German authorities. He resided there without problems until 1996, when the Sri Lankan army occupied Jaffna, and when most of the local residents had to move to Vanni. The alleged torture, which took place approximately ten years before the petitioner arrived in Finland, does not as such provide substantial grounds for believing that the petitioner would still be in danger of being subjected to torture.

4.3 The State party submits that the arrests which, according to the petitioner, took place in 1998 give no reason to believe that the Sri Lankan authorities would be particularly interested in the petitioner's activities, as according to the petitioner himself, they were due to the fact that he was new in the area and a suspected LTTE militant. The State party notes that, upon release after his second arrest, he continued to stay two more weeks in Hatton, where he had been arrested, and thereafter in other government-controlled areas, until he left the country. The State party concludes that there is no indication that the petitioner is personally targeted by the Sri Lankan authorities.

4.4 The State party emphasizes that since the end of the 1980's, the petitioner has not been politically active, nor has he participated in the activities of the LTTE. Thus, there are no substantial grounds for believing that he would be in danger of being subjected to torture in his country of origin.

4.5 Although the State party concedes that the medical reports largely support the petitioner's statements concerning his injuries, it argues that they indicate that some healing has already occurred, and that the petitioner no longer requires anti-depression medication. It acknowledges that he still needs regular psychiatric treatment and physiotherapy, but submits that the relevance of the medical reports must be assessed in conjunction with the other facts of the case.

4.6 The State party submits that the petitioner does not display symptoms that could not be treated in his country of origin, and that his state of health is no obstacle to the enforcement of the deportation decision. Considering that the events which allegedly affected the petitioner's health took place in the 1980's, his state of health does not provide substantial grounds for believing that he would be in danger of being subjected to torture in his country of origin.

4.7 The State party submits that, in the past few years, the human rights situation in Sri Lanka has significantly improved. It refers to a document prepared by the UNHCR in 1999 to the EU High Level Working Group on Asylum and Migration, which stated that asylum seekers, who have not been found to fulfill refugee criteria may be returned to Sri Lanka. It refers to the cease-fire reached on 23 February 2002, with which the armed forces of Sri Lanka and the LTTE have since complied. Since then, residents need no longer report at military checkpoints. It also refers to a statement by a UNHCR representative of 21 May 2002, according to which 71,000 Tamil refugees returned home that year, including more than half of whom returned to the Jaffna area. In the State party's view, therefore, in light of the continuing improvement in the situation in Sri Lanka there is no foreseeable, real and personal risk that the petitioner will be tortured on return.

Petitioner's Comments on the State Party's Submission

5.1 In his response, the petitioner reiterates the facts as stated in his initial submission and provides new information. He submits that in August 1985, he buried arms belonging to the Eelam Liberation Organization (TELO), another organization banned by the LTTE, in the garden of his family home. As the LTTE in effect controls the lives of Jaffna residents, the petitioner is afraid of the serious consequences both he and his family will face should the LTTE receive information on these arms. He claims that the LTTE consider the hiding of weapons and ammunition as a serious

offence against the organization and would react harshly to such an act. In addition, as this act constitutes a crime under Sri Lankan law he risks being prosecuted by the authorities. He claims that it was due to fear that he did not provide this information during the asylum procedure. In only bringing up this matter at this stage, the petitioner refers to the jurisprudence of the Committee, with which a victim of torture cannot be expected to give a full and coherent account of his past experiences during the asylum procedure. He also refers to the acceptance by the UNHCR that a person, who owing to his experiences was afraid of the authorities in his country of origin, may be distrustful of all authorities.

5.2 In addition, the petitioner submits that after escaping from Sri Lanka he received information that some of his Tamil friends had been killed, some had joined the army and some had left Sri Lanka. The PLOTE was disbanded in 2000, when its leader was assassinated in Vavuniya. He also submits that as he does not hold a National Identity Card, he will be placed in an extremely risky situation as demonstrated by a report from April 2002 from the UK Home Office Immigration and Nationality Directorate.

5.3 On the current human rights situation in Sri Lanka, the petitioner denies that the situation has improved significantly and invokes reports to this effect of both Human Rights Watch (July 2002) and the U.S. Department of State (Country Report on Human Rights Practices, 2001). According to the former report, there has been little formal attention to human rights concerns in the context of the peace process, in spite of the fact that the civil war has been driven by grave abuses of human rights committed by all sides. Most of the hundreds of detainees are Tamils arrested on suspicion of being linked with the LTTE, the Memorandum of Understanding is not a human rights instrument and there has been evidence of continuing abuse since its acceptance. According to the latter report, there have been serious human rights problems in some areas and the ongoing war with the LTTE continued to lead to serious human rights abuses by both sides. The security forces and police continue to torture and mistreat detainees in police custody and prisons, particularly Tamils suspected of supporting the LTTE. For these reasons, the petitioner expresses the view that there is no credible evidence that the human rights situation has permanently and significantly changed in order to argue justifiably that gross, flagrant or mass violations of human rights no longer occur in Sri Lanka.

5.4 With respect to the medical reports, the petitioner acknowledges that some healing has occurred but that this is immaterial in assessing whether he has been a victim of torture. To him, the State party fails to acknowledge that he was tortured not only in the 1980's but also during his three-month detention in 1998. He argues that it is improbable that the Sri Lankan health care system could provide him with the specialized treatment he needs. On this issue, although he acknowledges that his state of health may not per se constitute substantial grounds for believing that he is in danger of being subjected to torture, it does constitute a relevant fact within the meaning of article 3, paragraph 2 of the Convention in assessing the existence of such a danger.

5.5 The petitioner submits that "the issue at hand is whether ... [there is]... a substantial danger of being subjected to torture in Sri Lanka, not whether he has had a fair asylum procedure in Finland." Thus, the issue touches on the interpretation of article 3 of the Convention, not whether the Finnish asylum decision has been procedurally and materially legal.

5.6 The petitioner argues that the criteria applied by the Committee in the *Elmi v. Australia* ^{3/} case on the broadened notion of “public official or other person acting in an official capacity” applies also to the role of the LTTE in the areas under its control in Sri Lanka. He refers to the exercise, by the LTTE, of quasi-governmental powers in the north and east of the country where it has been in control, the fact that it has been accepted as a negotiating party to the peace negotiations, and that it has recently opened a political office in Jaffna, with the support of the Sri Lankan government. Thus, the petitioner argues, the fear of torture he fears from the LTTE is material in assessing the risk of a breach of article 3.

5.7 The petitioner reiterates that his past experiences of torture caused him severe mental suffering and physical injuries. He argues that due to the unsettled situation in Sri Lanka it is justified to state that he would, in addition to a substantial risk of torture, feel extremely anxious about life in Sri Lanka. He points out that according to his psychiatrist he is in need of specialized treatment and is thus mentally vulnerable to the emotional stress life in Sri Lanka would inevitably cause him. Thus, this in itself may constitute suffering tantamount to torture.

State Party’s Supplementary Comments

6.1 On 28 February 2003, the State party submits that the new information provided by the petitioner on his activities on behalf of the TELO is unreliable as it had never been mentioned by the petitioner until his letter to the Committee of 4 November 2002. His explanation that he was afraid that the LTTE would find out about his activities does not explain his failure to mention this incident earlier in the same way that he mentioned his activities carried out on behalf of the PLOTE, which also acted against the LTTE. Moreover, given that the alleged activities took place nearly twenty years ago, it would be unlikely that the petitioner would be subject to retaliation by the LTTE.

6.2 The State party also submits that the fact that the petitioner returned to Sri Lanka without any adverse consequences after being refused asylum in Germany, supports the view that he would not be personally at risk of being subjected to torture upon his return to Sri Lanka. It refers to the reports submitted by the petitioner on the human rights situation in Sri Lanka and observes that the Directorate of Immigration as well as the national courts already took these reports into account when considering his application for asylum. It also observes that, at least on two occasions, the Committee found that the LTTE may not be considered an authority within meaning of article 3 of the Convention. ^{4/}

Issues and Proceedings Before the Committee

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether or not the forced return of the petitioner to Sri Lanka would violate the obligation of Finland under article 3 of the Convention not to expel a person to another State where there are substantial grounds for believing that he would be in danger

of being subjected to torture.

7.3 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of this determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to 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 a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist 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 specific circumstances.

7.4 The Committee observes 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 petitioner 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).

7.5 The Committee observes that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to Article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

7.6 As to the possibility of the petitioner suffering torture at the hands of the State upon his return to Sri Lanka, the Committee has taken due note of the petitioner's claim that he was previously detained and tortured by members of the Sri Lankan army. It further observes that the petitioner provided medical reports attesting to injuries that were "possibly caused by torture", though none of the reports conclusively confirms that he was tortured during his detention in 1998. The State party does not challenge the authenticity of these reports but notes that the reports themselves attest to a gradual improvement of the author's health and that treatment for his current medical condition would be available in Sri Lanka. The State party does not concede that such torture as the author might have been subjected to was suffered at the hands of the Sri Lankan army – in any event, such events would have occurred over the years ago.

7.7 The Committee notes the relevance of the ongoing peace process, which led to the conclusion of the February 2002 cease-fire agreement between the Government and the LTTE, and the

negotiations between the parties to the conflict which have taken place since... It further recalls the results of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention and its conclusion that, although a disturbing number of cases of torture and ill-treatment as defined by articles 1 and 16 of the Convention are taking place, its practice is not systematic in the State party (Report A/57/44, Chapter IV.B., paragraph 181). It finally notes the opinion of the Office of the High Commissioner for Refugees of March 1999, according to which those who do not fulfill refugee criteria, including those of Tamil origin, may be returned to Sri Lanka, and that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002. In this context, it should also be noted that the petitioner has not been politically active since the mid-1980's.

7.8 The Committee recalls that, for article 3 of the Convention to apply, the individual concerned must face a foreseeable and real risk of being subjected to torture in the country to which he/she is being returned, and that this danger must be personal and present. In the light of the observations in paragraphs 7.6 and 7.7 above, the Committee does not consider that the existence of a personal and real risk has been established by the petitioner.

8. 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 petitioner's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

1/ The petitioner has specifically requested that his name not be used in the published decision or any other public document in which this petition is reproduced. His name should thus be removed once the Committee has decided the case.

2/ The decisions are enclosed in the Finnish language only.

3/ *Communication No. 120/1998.*

4/ The State party refers to *Communication No. 49/1996, SV et al v. Canada, Decision of 15 May 2001* and *Communication No. 138/1999, MPS v. Australia, Decision of 30 April 2002.*