



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
Thirty-sixth session
1-19 May 2006

DECISION

Communication No. 248/2004

Submitted by: A. K. (not represented by counsel)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 5 March 2004
Date of present decision: 8 May 2006

[ANNEX]

* Made public by decision of the Committee against Torture.

Annex

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

Thirty-sixth session

concerning

Communication No. 248/2004

Submitted by: A. K. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 5 March 2004

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

Meeting on 8 May 2006,

Having concluded its consideration of complaint No. 248/2004, submitted by Mr. A. K. 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 complainant and the State party,

Adopts the following:

Decision of the Committee under article 22, paragraph 7, of the Convention

1.1 The complainant, Mr. A. K., an Angolan national born on 1 December 1972, is currently in Switzerland, where he applied for asylum on 13 June 2000. His application was rejected on 10 July 2003. The complainant maintains that sending him back to Angola would constitute a violation by Switzerland of article 3 of the Convention. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 15 March 2004. On 1 April 2004, the State party contested the admissibility of the communication. On 30 June 2004, the secretariat informed the State party that the admissibility of the complaint would be considered separately from the merits.

Summary of the facts

2.1 The complainant says he was a supporter of the União Nacional para a Independência Total de Angola (UNITA) and worked for a government agency, where he was spying for UNITA. In January 1993, he warned that the Government was planning to exterminate everyone belonging to the Bakongo ethnic minority. His father, who was also a UNITA supporter, and his mother were killed shortly afterwards. His sister and her husband were reported missing. Shortly afterwards, the complainant left Luanda and went into hiding outside the capital. He was finally arrested in 1998, but managed to escape and left the country on 5 June 2000.

2.2 The complainant arrived in Europe on 12 June 2000 and applied for asylum in Switzerland on 13 June 2000. In a decision dated 10 July 2003, the Federal Office for Refugees rejected his application. According to that Office, the Angolan Government had enacted an amnesty law on 4 April 2002 and the situation in the country had improved: the complainant therefore no longer had any reason to fear persecution because he had spied for UNITA in a government agency. The amnesty applied to UNITA supporters and members of the Angolan army. The ceasefire between UNITA and the Angolan army had held since the end of the civil war and the situation of former UNITA supporters had improved considerably. Under the circumstances, the Federal Office for Refugees deemed it unnecessary to respond to the complainant's allegations, which contained numerous inconsistencies.

2.3 The Federal Office for Refugees argues that, according to demobilized former UNITA fighters, some of whom have since joined the Angolan army, the complainant is unlikely to face persecution by the State authorities for things he did more than 10 years ago. The Office also points out that the complainant did not occupy an important position in UNITA.

2.4 On 11 August 2003 the complainant appealed against the decision of the Federal Office for Refugees. On 7 January 2004, the Asylum Appeals Commission rejected his appeal. The Commission considered that he had not proved that his return to Angola would place him in danger, and therefore upheld the Office's decision ordering his expulsion. By letter of 13 January 2004, the Federal Office for Refugees set 9 March 2004 as the date by which he had to leave Switzerland.

The complaint

3. The complainant asserts that he would be at risk of being tortured for betraying the Movimento Popular de Libertação de Angola (MPLA) if he was returned to Angola, in violation of article 3 of the Convention.

State party's observations on the admissibility of the complaint

4.1 By note verbale of 1 April 2004, the State party argued that the complainant's application failed to meet the minimum conditions established by rule 107 (a) of the Committee's rules of procedure; it also challenged the admissibility of the communication on the grounds that the complainant's allegations had not been substantiated for the purposes of admissibility.

4.2 The State party contests the existence, in this case, of any individual communication within the meaning of article 22 of the Convention. It recalls that, under rule 107 (a) of the Committee's rules of procedure, the individual must claim to be a victim of a violation by the State party concerned of the provisions of the Convention, yet in his letter to the Committee of 5 March 2004, the complainant makes no mention of any violation of the Convention and adduces no arguments to substantiate any such violation. In the State party's view, the letter is really no more than a written authorization for the Federal Office for Civil Protection to "represent [him], write to [him] and correspond with all Swiss authorities in matters relating to [his] asylum".

4.3 The State party argues that it does not know in what respect the Convention might have been violated or what arguments there might be in support of such an allegation. It claims that it is not possible for it to comment on the complainant's communication.

4.4 The State party therefore asks the Committee to find that the letter from the complainant does not constitute a communication within the meaning of article 22 of the Convention. Were it nevertheless to be found to constitute a communication, the State party asks the Committee to rule it inadmissible on the grounds that it contains no allegation whatsoever concerning any violation of the Convention by the State party.

Additional information provided by the complainant

5. The complainant submitted additional information in his letters of 30 March 2004 and 8 April 2004. He was recognized as the father of Nathan Tiapele, a child born on 11 February 2003. In a decision dated 13 February 2004, the justice of the peace in Bäretswil (in the canton of Zurich) ordered him to pay maintenance for his son as from 1 May 2004. In the light of this development, on 30 March 2004, he lodged a further application with the Asylum Appeals Commission, for a review with suspensive effect. In a decision dated 8 April 2004, the Commission ordered that his application for review should be referred to the Federal Office for Refugees and that the expulsion decision should be suspended pending a new decision by that body. The Committee has been informed by the Federal Office for Refugees that this application for review was rejected on 3 June 2004. The complainant appealed against this decision to the Asylum Appeals Commission on 3 July 2004.

State party's comments on the additional information

6. The additional information submitted by the complainant in his letters of 30 March 2004 and 8 April 2004 was transmitted to the State party for comment on 20 April 2004. In notes dated 25 June 2004 and 24 January 2006, the State party maintained the conclusion reached in its comments of 1 April 2004 on the admissibility of the complaint, namely that the communication should be ruled inadmissible as containing no allegation whatsoever concerning any violation of the Convention.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a 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.

7.2 The Committee notes that, on 30 March 2004, the complainant lodged an application for review with the Asylum Appeals Commission and that, on 8 April 2004, the Commission ordered that this application for review should be referred to the Federal Office for Refugees, which rejected the application on 3 June 2004. It likewise notes that the complainant filed an appeal against the latter decision of the Federal Office for Refugees with the Asylum Appeals Commission on 3 July 2004 but the Commission has not yet taken a decision on this appeal. The communication is consequently inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant has not exhausted all available domestic remedies.

8. Accordingly, the Committee against Torture decides:

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

[Adopted in English, French, Russian and Spanish, the French 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.]
