

COMMITTEE AGAINST TORTURE

Mohamed v. Greece

Communication No 40/1996

28 April 1997

CAT/C/18/D/40/1996

VIEWS

Submitted by: Jamal Omer Mohamed

Alleged victim: The author

State party: Greece

Date of communication: 8 February 1996 (initial submission)

Date of decision of admissibility: 14 November 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 28 April 1997,

Having concluded its consideration of communication No. 40/1996, submitted to the Committee against Torture by Mr. Jamal Omer Mohamed 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 representative and the State party,

Adopts its

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Mr. Mohamed Jamal Omer, an Ethiopian citizen from Dire Dawa, born in 1970, currently residing in Greece. He claims to be a victim of a violation by Greece of article 3 of the Convention against Torture.

The facts as submitted by the author

2.1 The author states that he was arrested by "kebele" (local administrative)¹ officers in Ethiopia in 1988 after having begun to give lessons in the local mosque in November of that year. He was accused of "anti-revolutionary" activities and held in detention for an unspecified period of time.

2.2 At the beginning of 1989, he was nominated by his peers from school to participate in a political course of one month in Addis Ababa. The nomination was approved by the local administrative officers. After having completed the course, the author was informed that he was to be sent to a remote area in the country for the purpose of recruiting farmers as soldiers for the Government forces. The area in question was populated by a majority of people of Oromo ethnic origin and was said to be a centre for activities of the Oromo Liberation Front (OLF).

2.3 The author, as well as other participants in the political course who had been selected for the mission which was aimed at breaking OLF influence in the area, considered the task impossible and protested. However, they were sent to the region under threat of execution. Fighting broke out on their arrival and the local inhabitants threw stones at them. Local OLF activists threatened them with death and urged them to leave the area within 48 hours. The author decided to leave the area without further delay and returned to his home town. He was reported missing by representatives of the Government. In Dire Dawa he was arrested, on an unspecified date, by the local administrative officers, and held in detention for an unspecified period of time, accused of being an OLF collaborator. He states that he was subjected to torture during the detention.

2.4 In support of these claims, the author refers to an enclosed document issued by the Medical Rehabilitation Centre for Torture Victims in Athens on 20 November 1994. According to the report, the author was examined by a neurologist and an orthopedist, as well as interviewed by a psychologist, during six sessions in October 1994. The report states that he had been subjected to various forms of torture and subsequently suffered from severe headaches, as well as from pains in the right knee and right foot. Reference is also made to a translation of a report from a hospital in Athens, dated 1 February 1995, concerning an electroencephalogram.

2.5 As a consequence of the ill-treatment, the author was taken ill. He had a high temperature and vomited repeatedly. He was therefore transferred to a hospital in Dire Dawa. While he was hospitalized there was an exchange of fire in the town between Government soldiers and OLF activists and the power was cut off. He managed to escape from the hospital during the confusion that followed. In this context, he contends that "a security guard shot my father dead". As Government representatives intensified the search for him, he decided that he had to flee the country.

2.6 The author contends that he crossed the border to Somalia in December 1989 and was held in detention there from 1 January 1990 for five months, accused of illegal entry. Following his release in Somalia, he states that he was told by "the United Nations office to

register with the police". However, the police would not let him register as a refugee "because of the political situation and [his] being a member of the Aderic Tribe". The author contends that, with the help of a friend in Somalia who provided him with a passport and air fare, he managed to leave Somalia for Turkey, on an unspecified date. He states that he was informed by the police in Turkey that Africans were not allowed to register as refugees and that, for practical purposes, he was forced by the Turkish police to cross the border to Greece, on an unspecified date.

2.7 Upon his arrival in Greece, the author was informed by the Office of the United Nations High Commissioner for Refugees (UNHCR) that, before registering with UNHCR as a refugee, he must first register with the Greek police. When he attempted to register with the police, he was told that he had first to obtain from the International Catholic Migration Commission (ICMC) a document certifying his country of origin. However, since 1991 the ICMC had ceased to issue such documents. Without this document, the Greek Ministry of Public Order, in a decision dated 27 October 1992, refused to register him, as did the Greek Council for Refugees and UNHCR. The author claims that he was requested, when entering Greece, to indicate a third country to which he would not raise any objections to being deported and that he then mentioned Canada. His request for asylum in Greece was later rejected "because, after a two-year illegal stay in Greece, his application is made to facilitate his transfer to Canada".

The complaint

3.1 The author claims that his return to Ethiopia would constitute a violation by Greece of article 3 of the Convention against Torture. The author fears that, although he is not currently under an expulsion order, he is at risk of being deported at any time in view of the fact that he has no asylum, residence or work permit.

3.2 In support of his argument that he fears torture upon return to Ethiopia, the author refers to an Amnesty International report of April 1995 regarding the human rights situation in Ethiopia and, in particular, to the case of a certain Hussein, from Dire Dawa, who was accused of being an OLF collaborator in 1993, held in detention and allegedly subjected to torture. He also refers to the case of a Mr. Temteme Addisalem Mengistu, who returned to Ethiopia from Greece after obtaining assurances from the Greek Council for Refugees that his safety was guaranteed, and who was immediately arrested upon arrival, in October 1994.

State party's observations

4. On 28 February 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments on admissibility.

5.1 By its submission of 19 April 1996, the State party challenges the admissibility of the complaint. It notes that, in its view, there are no grounds for a complaint under article 3 of the Convention against Torture, given that the author has not been expelled from Greece, nor has an order for his expulsion been issued. It further points out that it is of the view that the author has not substantiated that he is in any danger of being tortured should he return to

Ethiopia.

5.2 As regards domestic procedures, the State party acknowledges that the author's application for asylum was dismissed on 27 October 1992 as "manifestly abusive" by the Minister of Public Order, on the basis that his claim could not be founded on the 1951 Convention relating to the Status of Refugees, and that no appeal from this decision was available. On humanitarian grounds, the Minister did not order the expulsion of the author but instead laid down a period of one month within which the author was to leave Greece for a country of his choice.

5.3 The State party notes that on 3 January 1991 the author entered Greece secretly from Turkey, assisted by an illegal migrant traffic network, and did not apply for asylum at that time. Three months later, he registered with the migration programme with a view to emigrating to Canada. A year and a half later, on 3 September 1992, the author applied for asylum in Greece on the pretext that he opposed his country's regime. However, in this application he made no mention of the change in Government in his home country, despite the fact that the change had occurred since his departure from Ethiopia.

Comments by the author

6.1 In his comments on the State party's submission, the author concedes that he has not been deported but states that, as a victim of torture and a political refugee, he has a right to asylum. He expresses the fear that he could be deported at any time.

6.2 The author explains, reiterating the claims made earlier (see para. 2.7 above), that he was not able to apply immediately for asylum because of "bureaucratic circumstances". He further explains that upon entry to Greece, he had no plans to emigrate to Canada. However, following his request for asylum in Greece, he was told that he could not stay in Greece and would be deported unless he transferred to a third country of his choice. Thus he was obliged to name a third country and named Canada. He denies registering for the migration programme to Canada after three months in Greece.

6.3 The author reiterates that he escaped from his own country and was then deported from Turkey, being left at the Greek border. He did not attempt to enter Greece in secret or seek the assistance of an "illegal migrant traffic network". With regard to the situation in his home country, he submits that he would be in grave danger if returned to Ethiopia, citing an Amnesty International report of April 1995 on the human rights violations of the transitional Government there.

The Committee's admissibility decision

7.1 At its seventeenth session, the Committee considered the admissibility of the communication. It ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement. The Committee was further of the opinion that all domestic remedies available to the author had been exhausted, as required

by article 22, paragraph 5 (b). The Committee found that no other obstacles to the admissibility of the communication existed.

7.2 In order to facilitate its examination of the merits of the communication, the Committee requested the author to provide more precise and detailed information to substantiate his fear that he personally would be in danger of being subjected to torture should he return to Ethiopia at that time. Further, the Committee requested the State party to provide information on the possible consequences for the author of non-compliance with the request of the Minister of Public Order that he leave the country.

8. Accordingly, on 14 November 1996, the Committee decided that the communication was admissible.

Author's observations

9.1 By his submission of 28 January 1997, the author reiterates that he was in prison from 5 November to 6 December 1988 and again from 28 June 1989 onwards. The second time he was accused of collaborating with the OLF. He states that this accusation still stands, since the OLF is also in opposition to the current Government. He adds that the OLF accuses him of being a Government spy.

9.2 For the above reasons, he states that he would be in serious danger if he were to return to Ethiopia. He refers to an Amnesty International report of July 1996 which shows that the human rights situation in Ethiopia is still unacceptable.

State party's observations

10.1 By its submission of 8 March 1997, the State party reiterates that the author has not been expelled from the country, and clarifies that he remains in Greece for humanitarian reasons. The State party thus argues that article 3 of the Convention has not been violated.

10.2 The State party acknowledges that, at the time, no appeal was available to an asylum seeker whose request was rejected as abusive, but states that the non-availability of an appeal as such does not constitute a violation of the Convention. The State party adds that the law has since been amended.

10.3 The State party further points out that an individual always has the possibility of lodging an appeal with the Council of State concerning the legality of any administrative decision.

Issues and proceedings before the Committee

11.1 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.

11.2 Under article 3 of the Convention, the Committee is required to decide whether an expulsion, return or extradition of an individual would breach the obligation of a State party not to expose that individual to the danger of being subjected to torture. The Committee cannot determine whether or not the claimant is entitled to asylum under the national laws of a country, or can invoke the protection of the 1951 Convention relating to the Status of Refugees.

11.3 In the instant case, the Committee notes that the State party has not ordered the author's expulsion, return or extradition to Ethiopia and has stated that the author remains in Greece for humanitarian reasons. It also appears from the State party's submission that, were the authorities to order his deportation at a later stage, the author would have an appeal possibility against such decision. The Committee is therefore of the opinion that the facts before it do not show any violation of the Convention by Greece.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

1/ Regular reference is made to "the kebele" without any explanation. It would appear that "kebele" stands for "local representative".

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