

## COMMITTEE AGAINST TORTURE

### X and Y v. The Netherlands

Communication No 31/1995

20 November 1995

CAT/C/15/D/31/1995

### ADMISSIBILITY

*Submitted by: Mr. X and Mrs. Y (names deleted) [represented by counsel]*

*Alleged victims: The authors*

*State party: The Netherlands*

*Date of communication: 19 September 1995*

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

Meeting on 20 November 1995,

Adopts the following:

#### **Decision on admissibility**

1. The authors of the communication are Mr. X and Mrs. Y, Georgian citizens, currently residing in the Netherlands. They claim to be victims of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Netherlands. They are represented by counsel.

#### Facts as submitted

2.1 The authors married in 1991 and a child was born in 1992. In January 1993, X began a homosexual relationship and became a member of an organization to promote rights for homosexuals and bisexuals. Y states that she was not aware of her husband's activities.

2.2 In July 1994, after X had spoken in a meeting of this organization, his house was

ransacked by four armed militia men, wearing military uniforms. They mishandled X and threatened his wife and son. The authors reported the incident to the police, but state that the police refused to write in the report the real reason for the attack. The police opened an inquiry, but in the end the case was filed for lack of evidence.

2.3 The authors state that in September 1994, their child was kidnapped from his day nursery, allegedly by four men in military uniforms. In the evening X and Y received a telephone call, informing them that their son would be killed unless they left the country. Subsequently, the authors arranged for airplane tickets to Germany, their son was returned to them and they left the country. Two days after their arrival in Germany, the authors and their son entered the Netherlands and requested recognition as refugees.

2.4 On 3 November 1994, their request was rejected by the Secretary of Justice and they were ordered to leave the country. On 2 February 1995, the authors' appeal against the refusal to grant them a residence permit was declared inadmissible. On 18 July 1995, the court in The Hague rejected the authors' request for an order to stay their expulsion. Since no appeal possibility is said to exist against the court's decision, the authors claim that they have exhausted all available domestic remedies.

2.5 It appears from the enclosures that the authors were no longer in possession of their passports when they entered the Netherlands. The documents further show that the Netherlands authorities were of the opinion that the authors' story lacked credibility, *inter alia*, because X did not mention in the first hearing his activities in support for sexual liberty and his wife had no knowledge about his bisexuality; further, it was noted that the authors had never reported the abduction of their son to the local authorities, so that it cannot be said that the authorities failed to give them protection; nor did the authorities find any indication that the alleged intimidation of the authors' family was linked with X's activities. In this respect it is noted that the assault in July 1994 was reported in the police report as a robbery and that there is no indication that the alleged abduction of the authors' son was related to X's activities or that State authorities were involved. Furthermore, the authors were able to leave Georgia with a valid passport, justifying the conclusion that the authors had not negatively attracted the attention of the Georgian authorities. In arriving at his decision the Netherlands Secretary of Justice also based himself on information from the Ministry of Foreign Affairs that there was no active prosecution policy in Georgia against homosexuals.

### The complaint

3. The authors claim that they fear for their life if they are to return to Georgia. In this context, they state that X's boyfriend was found killed and that X's parents were assaulted by militia men at their home in October 1994, allegedly because they were looking for X, that his father was abducted and found injured on 15 February 1995 and died on 16 February 1995. They further refer to a report by the Internationale Gesellschaft für Menschenrechte in which it is stated that killings are a common measure of repression in Georgia.

### Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

4.2 The Committee notes that the facts as submitted by the authors relate to a claim of asylum but that no evidence has been adduced that the authors could be personally at risk of being subjected to torture if returned to Georgia. The Committee considers that no substantiation of a claim under article 3 of the Convention has been presented and that the communication is therefore inadmissible under article 22, paragraph 2, of the Convention.

5. The Committee against Torture decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors and, for information, to the State party.

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