

COMMITTEE AGAINST TORTURE

Z. T. v. Norway

Communication No. 127/1999

19 November 1999

CAT/C/23/D/127/1999

ADMISSIBILITY

Submitted by: Z. T. (name withheld) [represented by counsel]

Alleged victim: The author

State party: Norway

Date of communication: 25 January 1998

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

Meeting on 19 November 1999,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. Z. T., an Ethiopian national at present residing in Norway, where his request for asylum has been denied and he risks deportation. He claims that he would risk imprisonment and torture upon return to Ethiopia and that his forced return to that country would therefore constitute a violation by Norway of article 3 of the Convention. The author is represented by the Rådgivningsgruppen (The Advisory Group), a non-governmental refugee and human rights organization.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 5 February 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the author to Ethiopia pending the consideration of his case by the Committee.

The facts as presented by the author

2.1 The author states that he is of Amharic ethnic origin born in Jinka where his father was a judge. During his high school in Addis Ababa, the author participated in several demonstrations against Haile Selassie and in favour of Col. Mengistu. When Mengistu came to power in February 1977, youths, including the author, were sent to rural areas as part of a literacy campaign. Disappointed with the regime, the author came into contact with the Ethiopian People's Revolutionary Party (EPRP) and started to work for it.

2.2 According to the author, the EPRP started to organize resistance against the Mengistu regime by calling students and youth back from the rural areas to Addis Ababa. In 1977 the conflicts between the various political groups resulted in the so-called "Red Terror", the brutal eradication of all opposition to the governing Provincial Military Administrative Council (PMAC) and random killings. An estimated 100,000 people were killed. The author, who had been distributing pamphlets and putting up posters in Addis Ababa on behalf of the EPRP, was arrested and taken to a concentration camp, together with thousands of other youth, where he was held for one year between 1980 and 1981. While in the camp he was subjected to fake executions and brainwashing, the so-called "baptism by Mengistu". According to the author, the "Red Terror" ended when the regime was convinced that the leaders of the EPRP were all dead. Many political prisoners, including the author, were then set free.

2.3 After his release he went underground and continued his work for the EPRP. The author states that the Mengistu regime carefully followed the movements of previous political prisoners to suppress a revival of the opposition. In 1986/87, the author was arrested in a mass arrest and taken to "Kerchele" prison, where he was imprisoned for four years. According to the author, the prisoners were forced to walk around naked and were subjected to ill-treatment in the form of regular beatings with clubs. While imprisoned, he suffered from tuberculosis.

2.4 In May 1991, the Mengistu regime fell and the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power. According to the author, the prison guards fled in panic and the prisoners left. Once free, the author tried to get in touch with members of the EPRP, but all his contacts were gone. He then started to work for the Southern Ethiopian Peoples Democratic Coalition (SEPDC), a new coalition of 14 regional and national political opposition parties. The author worked as a messenger for one of the leaders, Alemu Abera, in Awasa. In February 1995 he was on his way to deliver a message to Mr. Alemu when he was caught by the police.

2.5 The author states that he was kept in detention for 24 hours in Awasa and then transferred to the central prison, "Meakelawi Eser Bete", in Addis Ababa. After three days, he was taken to "Kerchele" prison where he was kept for one year and seven months. He was never tried or had contact with a lawyer. The treatment in prison was similar to what the author had experienced during his first imprisonment. He says that he was taken to the torture room and threatened that he would be shot if he did not cooperate. He believes that the only reason he was not severely tortured like many other prisoners was that he was already in a weak physical condition. While in prison he further developed epilepsy.

2.6 The author, who had previously worked as a technician, was made responsible for certain repairs

in prison. On 5 October 1996 he managed to escape when he was taken to the house of one of the high-ranking guards to make some repairs. Through a friend, the author managed to get the necessary papers to leave the country and requested asylum in Norway on 8 October 1996.

2.7 On 18 June 1997 the Directorate of Immigration turned down his application for asylum, mainly on the basis of a verification report by the Norwegian Embassy in Nairobi, on the basis of contradictory information said to have been given by the author and his mother and chronological discrepancies in his story. He appealed on 3 July 1997. The appeal was rejected by the Ministry of Justice on 29 December 1997 on the same grounds. On 5 January 1998, a request for reconsideration was made which received a negative decision from the Ministry of Justice on 25 August 1998.

2.8 According to the author, his right to free legal assistance had been exhausted and the Advisory Group agreed to take his case on a voluntary basis. On 1 and 9 September 1998, the Advisory Group made additional requests for reconsideration and deferred execution of the expulsion decision, which were rejected on 16 September 1999. The author has submitted to the Committee, in this regard, copies of 16 pieces of correspondence between the Advisory Group and the Ministry of Justice, including a medical certificate from a psychiatric nurse indicating that the author suffers from post-traumatic stress syndrome. The date of expulsion was finally set for 21 January 1999.

2.9 The author states that all the inconsistencies regarding dates referred to by the Norwegian authorities can be explained by the fact that during the initial interrogation he agreed to be questioned in English, not having been informed that he had the right to have an Amharic interpreter present. He states that since the difference in years between the Ethiopian and Norwegian calendar is approximately eight years, when he tried to calculate the time in Norwegian terms and translate this into English, several dates became confused. The situation was further complicated by the fact that in Ethiopia the day starts at the equivalent of 6 o'clock in the morning in Norway. That meant that when the author said "2 o'clock" , for instance, it should be interpreted as "8 o'clock".

2.10 The author further states that during the interrogation he referred to the Southern Ethiopian People's Democratic Coalition (SEPDC) as the "Southern People's Political Organization" (SPPO), which does not exist. He claims that the error was due to the fact that he only knew the name of the organization in Amharic. However, he gave the correct name of the leader of the SEPDC, who was one of his contact persons.

2.11 Finally, the author provided a detailed explanation regarding the discrepancies between his statements and the information provided by his mother to the representative of the Norwegian Embassy in Nairobi.

The complaint

3. The author argues that he would be in danger of being imprisoned again and tortured if he were to return to Ethiopia. He says that during the asylum procedure, the immigration authorities did not seriously examine the merits of his asylum claim and did not pay enough attention to his political activities and his history of detention.

State party's observations on admissibility

4.1 By its submission of 31 March 1999, the State party challenges the admissibility of the communication owing to the failure to exhaust domestic remedies, and asks the Committee to withdraw its request under rule 108, paragraph 9, of its rules of procedure.

4.2 The State party submits that applications for political asylum are dealt with in the first administrative instance by the Directorate of Immigration, while a possible administrative appeal is decided by the Ministry of Justice. As soon as a person submits an application for asylum, an attorney is appointed. Thus, at the time he gives his first statement to the immigration authorities, the applicant has free legal representation.

4.3 Following the usual practice the author was informed that: (a) he was obliged to give the authorities all relevant information as thoroughly as possible, (b) additional information could be supplied later, but that could weaken the trustworthiness of the application, and (c) the civil servants and interpreters dealing with his application were under a duty to observe secrecy. The author's application underwent detailed scrutiny both in the Directorate of Immigration and on appeal by the Ministry of Justice. However, it was turned down by both instances and the author was asked to leave Norway.

4.4 The State party submits that as a general rule, the absence of any contrary provision, the legality of an administrative act may be challenged in Norwegian courts. Thus, asylum-seekers who find their applications for political asylum turned down by the administration have the possibility of filing an application before Norwegian courts for judicial review and thereby have the legality of the rejection examined. Such an application is not subject to leave by the courts; neither is an application for injunction.

4.5 A party concerned may apply to the courts for an injunction, asking the court to order the administration to defer the deportation of the asylum-seeker. According to the Enforcement of Judgements Act 1992, an order for injunction may be granted if the plaintiff (a) demonstrates that the challenged decision probably will be annulled by the court when the main case is to be adjudicated, and (b) shows sufficient reasons for requesting an injunction, i.e. that an injunction is necessary to avoid serious damage or harm if the expulsion were enforced without the court having had the opportunity to adjudicate in the main case. Where the contested decision is a denial of asylum status the second requirement in practice merges with the first requirement which means that in an asylum case an application for injunction depends on whether or not the plaintiff can demonstrate that the challenged decision probably will be annulled by the court in the subsequent main case.

4.6 The author says under part 1 of his communication that a case concerning the legality of the decision denying him asylum in Norway only "theoretically" may be taken to Norwegian courts. This seems to indicate that he regards the domestic remedies as not in practice having been accessible to him. The Government contends that practice in Norway clearly shows otherwise: since 1987 more than 150 cases concerning the legality of decisions denying asylum have been brought before Norwegian courts. A majority of these cases included a request for injunction.

4.7 The State party notes that the author's last argument in connection with the admissibility question concerns his financial situation. It is argued that he will not be able to afford to go to court. In that

regard, the Government would point out that even if that were the case, it cannot serve to remove the requirement of article 22 (5) (b) of the Convention. The wording of the provision is clear and is not open for this defence. Secondly, the author is in fact represented before the Committee.

4.8 The Government further states that the national courts fill a crucial function in the protection of human rights. International supervision in its various forms is secondary. The international bodies are in cases like the present one less well placed than national courts to assess evidence. This is especially so when it concerns hearing of parties and witnesses on questions of reliability and truthfulness. In court oral testimony will be subject to examination by both parties, and possibly by the court itself. Such a procedure is not undertaken by the Committee. The facts of the case as they emerge from the documents are complex and detailed. Details have to be understood in the light of oral testimony presented in court. The requirement that domestic remedies be exhausted is therefore even more compelling. The Committee ought not to shortcut the case by considering the merits of the communication.

4.9 In conclusion, the State party submits that the author has not brought his case before Norwegian courts, either as an application for annulment or in the form of an application for injunction. His case would have been tried by Norwegian courts had he brought the case, since the courts have the authority to try both questions of fact and questions of law (i.e. the application of the Convention).

Counsel's comments

5.1 With reference to the State party's comments about the author's financial situation and the fact that he is being represented before the Committee, counsel points out that she has no legal background and that she represents the author on a voluntary basis.

5.2 Counsel further states that according to information available to her, the provisions mentioned by the State party regarding legal aid and assistance to all asylum-seekers are limited to five hours for the administrative application and three hours in case of a request for reconsideration. In case of a final negative administrative decision, the appointed lawyer withdraws from the case and the asylum-seeker no longer has any right to free legal representation. In the case under consideration the lawyer finalized her work in August 1998, once the Minister of Justice adopted his decision. Hiring a lawyer would cost more than what the author, living in a centre for asylum-seekers and with no right to a work permit, receives from the State to cover his living expenses for 1-2 years. In some cases, non-governmental organizations manage to raise money for the purpose of hiring lawyers for asylum-seekers, but this was not possible in the author's case.

5.3 It is further pointed out that although the State party states that asylum-seekers have successfully brought their cases before Norwegian courts, statistics show that the majority of the cases receive negative decisions. Counsel draws the attention of the Committee to, inter alia, a case where an asylum-seeker from Kenya was expelled in March 1998, before his case had been examined by the courts and while his request for injunction was still pending. On his return to Kenya, the asylum-seeker was allegedly ill-treated. The case was not brought before the court until February 1999. Although unable to attend his own court case the plaintiff was nevertheless obliged to pay the legal expenses.

5.4 In light of the State party's argument that oral testimony presented in court is essential to fully assess a case, counsel points out that the author has on several occasions expressed his willingness to give an oral account before the Ministry of Justice, but he was never granted audience. With reference to all the above, counsel concludes that all available domestic remedies have been exhausted and that the communication should therefore be declared admissible.

Additional information submitted by the State party

6.1 By an additional submission dated 29 October 1999, the State party informs the Committee that according to the Immigration Act, an asylum-seeker has right to free legal advice in relation to the administrative proceedings. This right is limited to five hours of a lawyer's time in relation to the application in the first administrative instance and an additional three hours on administrative appeal. These limits are based on an evaluation of what is needed to ensure proper assistance. It is possible to apply for an extension of such assistance.

6.2 As to the proceedings before the courts, an application for free legal aid is to be made to the County Governor in accordance with the Legal Aid Act No.35 of 13 June 1998. In order to be eligible for legal aid the applicant's income must not exceed a certain limit; this is normally the case for asylum-seekers, even if they are receiving employment income in addition to the benefits granted by the State. If legal aid is granted, the aid covers counsel's fees in whole or in part. In addition, the aid covers court fees and other costs related to the proceedings, such as the cost of an interpreter. The State party also notes that those granted free legal aid in court proceedings must themselves pay a part of the total costs, consisting of a moderate fixed basis fee amounting to approximately 45 US dollars, and an additional share of 25 per cent of the total financial cost. However, the State party points out that this amount shall not be paid if the person concerned has an income below a certain threshold.

6.3 The State party states that it does not know whether the author has applied for free legal aid in connection with contemplated court proceedings, but the fact that free legal aid is not granted unconditionally when an applicant brings an administrative appeal before the courts, cannot exempt the author from the requirement to exhaust domestic remedies.

Issues and proceedings before the Committee

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

7.2 The Committee notes that the State party challenges the admissibility of the communication on the grounds that all available and effective domestic remedies have not been exhausted. It further notes that the legality of an administrative act may be challenged in Norwegian courts, and asylum-seekers who find their applications for political asylum turned down by the Directorate of Immigration and on appeal by the Ministry of Justice have the opportunity to request judicial review before Norwegian courts.

7.3 The Committee notes that according to information available to it, the author has not initiated any proceedings to seek judicial review of the decision rejecting his application for asylum. Noting

also the author's information about the financial implications of seeking such review, the Committee recalls that legal aid for court proceedings can be sought, but that there is no information indicating that this has been done in the case under consideration.

7.4 However, in the light of other similar cases brought to its attention and in view of the limited hours of free legal assistance available for asylum-seekers for administrative proceedings, the Committee recommends to the State party to undertake measures to ensure that asylum-seekers are duly informed about all domestic remedies available to them, in particular the possibility of judicial review before the courts and the opportunity of being granted legal aid for such recourse.

7.5 The Committee notes the author's claim about the likely outcome were the case to be brought before a court. It considers, nevertheless, that the author has not presented enough substantial information to support the belief that such remedy would be unreasonably prolonged or unlikely to bring effective relief. In the circumstances, the Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee therefore decides:

- (a) That the communication as it stands is inadmissible;
- (b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;
- (c) That this decision shall be communicated to the State party and the author.

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