

COMMITTEE AGAINST TORTURE

G.T. v. Switzerland

Communication No 137/1999

16 November 1999

CAT/C/23/D/137/1999

VIEWS

Submitted by: G.T. (name deleted) [represented by counsel]

Alleged victims: The author

State party: Switzerland

Date of communication: 27 May 1999

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

Meeting on 16 November 1999,

Having concluded its consideration of communication No. 137/1999, submitted to the Committee against Torture 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 and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. G.T., a Turkish citizen of Kurdish origin born in 1975 and currently residing in Switzerland, where he has applied for asylum. His application has been rejected and he alleges that his forced repatriation to Turkey would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 18 June 1999. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to

expel the author to Turkey while his communication was being considered. On 18 October 1999, the State party notified the Committee that measures had been taken to prevent the author from being returned to Turkey while his communication was pending before the Committee.

The facts as submitted by the author

2.1 The author comes from south-eastern Turkey; he was born on 25 November 1975 in Dogan Kööy, a village near Erzincan, and lived there until 1993. He states that at that time villagers were subjected to torture by the Turkish army and that young people were systematically arrested on suspicion of being partisans, resistance fighters or guerrillas, and tortured, especially in the village of Dogan Kööy, which, according to the author, was notorious for its links with the Kurdistan Workers' Party (PKK).

2.2 The author and his parents left this village when he was young to settle in Istanbul. As a student, he was very active in politics. As a supporter of the Youth Union of Kurdistan (YCK), the youth branch of the PKK, until 1992, the author took part in demonstrations, meetings and the distribution of pamphlets. He also collected money for the cause and helped to recruit new supporters.

2.3 On 29 May 1995, when he was about to be called up, the author left Turkey to join his brother, a Swiss citizen, in Switzerland. His departure was also prompted by his fear of having to do his military service. He submitted an application for asylum on 27 July 1995, but it was turned down on 3 November of the same year. On 29 April 1999, the Swiss Appeal Commission on Asylum Matters, in its ruling on his appeal, confirmed the initial decision to refuse asylum.

2.4 The author alleges that, since he settled in Switzerland, the police have made several visits to his parents' home in Istanbul because he was an active opponent of the Government and a deserter. After several visits, his parents were pressured into admitting to the police that the author had taken refuge in Switzerland and had applied for asylum there. As a result, the Turkish consulate in Geneva twice summoned his brother to the consulate so that the author could clarify his situation in Switzerland and the problem of his military service. The author made no response.

2.5 In addition to the facts noted above, the author cites problems that members of his family have had and that could be prejudicial to him if he returns. In this connection, he claims that two female and two male cousins who lived in his home village and who were politically active in the PKK guerrilla movement were killed in clashes with the Turkish army. The face of one of the two girls had been so badly disfigured that she could only be identified by a gold tooth.

Merits of the complaint

3.1 The author maintains that his forcible return to Turkey would constitute a violation by Switzerland of its obligations under the Convention since, in view of the reasons which prompted his departure from Turkey, there were substantial grounds for believing that he would be at risk of being tortured.

3.2 After giving a brief history of the Kurdish issue, the author stresses that torture is institutionalized in Turkey and that, according to Amnesty International, almost all of the 250,000

or so people arrested between 1980 and 1988 for political reasons were tortured. The author also recalls that, according to Amnesty International, 2,500 people were killed in 1996 alone, a year during which the state of emergency was in place without interruption. During a state of emergency, a person can be held in police custody for up to 10 days, including 4 days incommunicado. It is generally accepted that to hold a person incommunicado in this way is conducive to acts of torture. For example, a certain C.S., after deserting during his military service, has said he was subjected to extremely brutal treatment, such as having a truncheon inserted in his anus and receiving electrical shocks to the genitals.

3.3 Again according to Amnesty International, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment said in its second public statement on Turkey that torture was still widespread in the country and that new instruments of torture had been found in 1992 at police headquarters in Diyarbakir and Ankara, including one instrument for giving electric shocks and another for hanging a person up by the arms. Amnesty International also mentions the finding by the European Court of Human Rights that Turkish security forces were guilty of burning houses in a village in south-eastern Turkey.

3.4 With regard to military service, the author notes that, according to Amnesty International, Turkey does not recognize the right of conscientious objection and that there is no provision for alternative civilian service. Moreover, according to Denise Graf, cited by the author as one of the most knowledgeable people with respect to the situation of draft-evaders and those refusing to perform their military service in Turkey, Turkish soldiers of Kurdish origin are regularly sent to the provinces where a state of emergency has been declared. There is a real danger that soldiers of Kurdish origin who have to perform their military service in these regions will be subjected to ill-treatment, especially if they themselves, or a member of their family, have engaged in political activities.

3.5 The author believes that if he was sent back to Turkey he would be immediately arrested at Ankara airport and would have to admit he had applied for asylum in Switzerland for the various reasons described above. He would then be enlisted in the army and sent to the region he came from, where he would be subjected to ill-treatment and where he would have to inflict abuses on his own people. During his military service he would be tried for desertion and would have a sentence to serve at the end of his military service; he would be subjected to further ill-treatment while serving that sentence.

State party's observations on the admissibility and merits of the communication

4.1 The State party has not contested the admissibility of the communication and made its observations on the merits of the communication in a letter dated 20 December 1999.

4.2 The State party recalls that the Swiss Appeal Commission on Asylum Matters carried out a detailed examination of the author's allegations concerning the risk of persecution he would face if he ever returned to Turkey.

4.3 With regard to the risks linked to his desertion, the above-mentioned Commission noted first of all that the State party's asylum laws do not allow a person to be granted refugee status solely on the

basis of an aversion to military service or fear of combat. It must also be proven either that the punishment for draft evasion or desertion is totally disproportionate on grounds that would be a determining factor in asylum cases or that the deserter would be persecuted on the same grounds - in this case, for example, if the Turkish Government were to be conscripting certain groups of the population on the basis of political or similar criteria. According to the information available to the Commission, this is not the case in Turkey, where conscription is based solely on the conscript's nationality and birth. The Kurdish origins of the author would therefore not pose any risk of his being sent to the eastern front. Furthermore, the Commission noted that the author had produced no evidence that he was being sought by the Turkish authorities for that reason. The Commission recalls that it was only because he was asked when he made his application for asylum whether he had had any problems with the army that the author mentioned his refusal to do military service, while until then he had asserted that he had no other reasons for seeking asylum. At the time, moreover, the author was very evasive on the questions put to him with regard to his military service, which showed that he knew nothing of the recruitment procedure. Given the consequences of the act of desertion, this fact raises serious doubts about the truthfulness of the author's claims in this respect. Lastly, the Swiss Appeal Commission on Asylum Matters noted that, according to its information, sentences imposed on those refusing to perform their military service in Turkey were not disproportionate.

4.4 With regard to the author's political activities, the State party emphasizes that the same Commission found that there was insufficient evidence to support his statements, that he had never been arrested or charged for draft evasion and that he had already stated that he had left his country for the sole reason that he did not wish to serve in the Turkish army.

4.5 On the more general subject of persecution because of his Kurdish origins, the Swiss Appeal Commission on Asylum Matters noted that the author lived in western Turkey (Bursa and, later, Istanbul), where these problems were not very serious, or, at least, not more serious for the author than they were for the rest of the Kurdish population in that region.

4.6 In the context of article 3 of the Convention, the State party recalls that the risk of torture should be evaluated not only in the light of the general human rights situation in the country concerned but also in the light of factors relating to the author's own personality. The State party therefore stresses that there must be foreseeable, real and personal risk that the author will be tortured in the country to which he is returned.

4.7 The State party recalls that during its consideration of other communications from Turkish citizens, the Committee had stressed that the human rights situation in Turkey was disturbing, particularly for PKK militants, who were frequently tortured. However, in the cases where the Committee found there had been a violation of article 3 of the Convention, it had previously noted that the authors were politically active within the PKK or had been detained and tortured before their departure, or else that they had additional evidence to support their allegations. On the other hand, in the cases where the Committee had not found any violation, it had concluded that no legal action had ever been taken against the author for specific incidents or that legal action had not been taken against him but against members of his family, or else that after leaving Turkey, the author, or members of his family, had not been either intimidated or wanted by the police and had stopped collaborating with the PKK.

4.8 In the case in point, the State party first draws attention to earlier decisions of the Committee, according to which the risk of arrest is not on its own and in itself evidence of a risk of torture. The author must also prove that the act of desertion and his political activities give rise to a real risk of torture if he returns.

4.9 The State party emphasizes the length of time taken by the author to apply for asylum and considers that it is not consistent with the attitude of someone who fears he will be tortured if he returns to his country. In fact, it believes that the author only applied for asylum after being arrested by the Fribourg police on 8 July 1995 in order to avoid immediate deportation.

4.10 The above considerations have also led the State party to surmise that the author had not in fact left Turkey on 2 June 1995 as he claimed. The author's file reveals that he obtained a visa for Switzerland on 15 June 1992 but there is no entry in his passport to confirm that he returned to Turkey when this visa expired. In the circumstances, and in the light of information showing that passport controls upon entering Turkish territory are quite strict, the State party concludes that the author actually arrived on Swiss territory on 15 June 1992, not on 2 June 1995, and lived there illegally until he applied for asylum. The assertions that the author was working for the PKK in 1993 therefore have even less credibility, as he was probably living in Switzerland at the time.

4.11 The author's fear of arrest because of his political activities, particularly since some of his comrades who took part in the same demonstration had been arrested, is inconsistent with the author's own statements that they used code names when taking part in the demonstrations. It would follow that neither the author nor his comrades could in fact know each other's names.

4.12 The State party also stresses that the author cited in his communication three new arguments that he had never raised during his application for asylum, even though nothing prevented him from doing so. These arguments are that his home village was notorious for its links with the PKK, that the police allegedly searched his parents' home in Turkey and that two of his male and two of his female cousins were killed because of their activities within the PKK. Aside from the fact that it is surprising they were not raised earlier, these arguments do not prove that the risk of torture cited by the author exists, insofar as the author left his home village in 1990 and never talked of problems he may have had there in the various places where he lived afterwards. Likewise, in addition to the fact that there is no evidence to prove that members of his family were killed, the persecution and killing of some members of his family would not entitle the Committee, on the basis of its past practice, to conclude there is a risk of torture to the author.

4.13 With regard to the new documents produced by the author concerning his refusal to be drafted, the State party points out that the statement from the mayor of Calgi is of questionable value. Aside from the fact that this kind of statement is not within the prerogatives of a village mayor, the document contains no concrete indication of how its author obtained the information, which leads the State party to believe that it is a document of convenience. Moreover, it is doubtful whether this document was translated by the sworn translator of the Turkish consulate in Geneva when it was the latter that actually carried out the investigations to find it. The author's fears with regard to these investigations are inconsistent with this request for service. As for the letter from his brother that purports to confirm that the author received call-up papers on two occasions from the Turkish consulate in 1997 and 1998, the State party is not persuaded by the explanation that the brother

would have kept these papers if he had foreseen any problems for the author, since it was precisely at the time the papers were issued that the author was appealing against the decision of the Federal Office for Refugees. Moreover, there is an inconsistency surrounding the dates of the call-up papers given by the author and his brother; according to the former they date from 1995 and 1997 whereas according to the latter they date from between 1997 and 1998.

4.14 The State party further emphasizes that recruitment into the Turkish army is carried out solely on the basis of the nationality and birth of conscripts and that, in the light of the system used for registering the population in Turkey, it would be technically impossible to recruit on the basis of membership of an ethnic group. Nor would it be logical to systematically send Kurdish conscripts to south-eastern Turkey, since the Turkish Government requires absolutely loyal and reliable soldiers in that region. Lastly, the courts that are competent to deal with deserters have so far passed very lenient sentences on those refusing the draft.

Further comments by the author

5.1 By letter of 25 February 2000, the author commented on the State party's observations on the merits of the communication.

5.2 With regard to the decision of the Swiss Appeal Commission on Asylum Matters, the author gives as an example of a soldier being sent to the east to fight against other Kurds the case of Ali Peduk, cited by Denise Graf, who died in service in summer 1999 from as yet unknown causes.

5.3 With regard to the convocations to the consulate, the author maintains that it was indeed his brother who told him that he had been called up in Turkey and who had received the two convocations, which called on his brother to go to the Turkish consulate in Geneva to explain the author's situation. The consulate had, unfortunately, not kept copies of the convocations, which had been returned to Turkey after one month, in accordance with usual practice. Moreover, the author says he did specify "unless he was mistaken" when giving the dates of 1995 and 1997 for the convocations. The argument put forward by the State party on this point is therefore irrelevant.

5.4 The author recalls that in addition to the sentence of two to three years' imprisonment for draft-evaders, the latter are not released from their military service after serving the sentence; it is precisely this injustice that the author denounces.

5.5 The author reaffirms that his political activities consisted of taking part in demonstrations and meetings, distributing pamphlets, acting as a host and collecting money.

5.6 With respect to article 3 of the Convention, the author is afraid not only of the sentence for desertion and the torture he will suffer during that sentence but also of being sent to the front and the risk of being killed during a clash.

5.7 With regard to the time lapse between his arrival in Switzerland and his application for asylum, the author had already provided an explanation in his appeal to the Swiss Appeal Commission on Asylum Matters and had explained that the delay was unrelated to the reasons for his application. Also, the author's brother had suggested that he rest before submitting his application because he

was scared and stressed.

5.8 On the question of the date of his arrival in Switzerland, the author did not agree that the inspections on entry into Turkey were systematic. He also pointed out that he was 17 years old when he returned, so that there was nothing in his appearance to attract the attention of customs officers.

5.9 The author confirms the official nature of the statement by the mayor of Calgi and stresses that the consulate's interpreter is often asked to work as a translator in Fribourg and knows how to be discreet while respecting professional secrecy.

5.10 The author reiterates his belief that Kurdish draft-evaders are regularly sent to the south-eastern front to fight against other Kurds and on this point refers once again to the statements of Denise Graf.

5.11 Lastly, the author presents as new factors the fact that his father died in Bursa on 11 February 2000 and that because of his fears he had not wished to go to the funeral even though all his family would be there. Furthermore, some new developments in the conflict between the Turkish Government and the Kurds have convinced the author that the risks to his person are as great as ever. On the basis of various news stories, he draws particular attention to the abuses committed by Hezbollah against the Kurds and to the fact that the announcement by the PKK that it is giving up the armed struggle is mainly intended to save its leader's head. As proof that the conflict really is continuing, the author recalls that three Kurdish mayors have recently been arrested for their alleged links with the PKK.

Issues and proceedings before the Committee

6.1 Before considering any claims 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. In the case in point, the Committee also notes that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers the communication to be admissible. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of the State party under article 3 of the Convention not to expel or to return 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.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon his return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to

establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he 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 sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his return to that country. Other grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which includes the following:

"Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author 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).

6.5 In the present instance, the Committee notes that the State party draws attention to inconsistencies and contradictions in the author's account, casting doubt on the truthfulness of his allegations. It also takes note of the explanations provided by counsel in this respect.

6.6 From the information submitted by the author, the Committee observes that the events that prompted his departure from Turkey date back to 1995. However, the arguments put forward by the State party with regard to the actual date on which the author arrived in Switzerland have not led the author to produce any arguments that might sway the Committee or to produce evidence of his presence in Turkey during the disputed period.

6.7 The Committee also notes that the author has not provided any evidence of his membership of, or his activities in, the PKK or YCK.

6.8 Lastly, the Committee believes that the arguments put forward by the author with regard to his call-up are marred by inconsistencies, that the author's apparent inability to produce the alleged convocations issued by the Turkish consulate in Geneva is questionable and that the only document produced to back up this part of the communication contains nothing that might establish the truthfulness of his version of events.

6.9 On the basis of the above considerations, the Committee takes the view that the information before it does not show that there are substantial grounds for believing that the author will be personally at risk of being subjected to torture if he is sent back to Turkey.

6.10 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 State party's decision to return the author to Turkey does not constitute a breach of article 3 of the Convention.

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