



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

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Committee against Torture

Forty-sixth session

9 May–3 June 2011

Decision

Communication No. 375/2009

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| <i>Submitted by:</i> | T.D. (represented by counsel, Tarig Hassan) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Switzerland |
| <i>Date of complaint:</i> | 10 March 2009 (initial submission) |
| <i>Date of decision:</i> | 26 May 2011 |
| <i>Subject matter:</i> | Deportation from Switzerland to Ethiopia, risk of torture and cruel, inhuman or degrading treatment |
| <i>Procedural issues:</i> | None |
| <i>Substantive issues:</i> | Risk of torture after deportation; risk of cruel, inhuman or degrading treatment or punishment after deportation |
| <i>Articles of the Convention:</i> | 3 |

[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 (forty-sixth session)

concerning

Communication No. 375/2009

Submitted by: T.D. (represented by counsel, Tarig Hassan)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 10 March 2009 (initial submission)

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

Meeting on 26 May 2011,

Having concluded its consideration of complaint No. 375/2009, submitted to the Committee against Torture by T.D. 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, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, T.D., is an Ethiopian national born in 1973 who faces deportation from Switzerland to his country of origin. He claims that such a measure would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel, Tarig Hassan.

1.2 On 16 March 2009, the Committee brought the complaint to the attention of the State party, in accordance with article 22, paragraph 3, of the Convention, and, pursuant to rule 108 of its rules of procedure, requested the State party not to deport the complainant to Ethiopia while the case was under consideration.

1.3 On 27 May 2009, the State party transmitted its observations on the merits of the case.

The facts as submitted by the complainant

2.1 The complainant is an Ethiopian national who claims he had to leave his country of origin to go to Switzerland for political reasons on 7 November 2003. On 19 November 2003, he applied for asylum. On 15 November 2004, the Federal Office for Refugees (ODR, which has since been replaced by the Federal Office for Migration) rejected his

application. The Federal Office for Refugees did not find credible the complainant's claims that he had been arrested by security officers and detained for six months in 2003 for being a member of Oromo Neetsaanet Gymbaar, and that he was wanted for the same reason. On 27 January 2005, the Swiss Asylum Review Board dismissed his appeal against the decision of the Federal Office for Refugees.

2.2 Despite this negative ruling and the concomitant order to leave Switzerland, the complainant remained in Switzerland. It was while living there that he became politically active, and he claims to be a founder member of the opposition party Kinijit/CUDP Switzerland (Coalition for Unity and Democracy Party). He adds that he holds a key position in the party, as one of its representatives in the canton of Zurich. The complainant stresses that CUDP members in Ethiopia are the victims of regular clampdowns and persecution by the authorities. He also says that he has been involved in organizing many demonstrations and meetings of the Ethiopian opposition in Switzerland and that many photographs of him at such demonstrations have been published on political websites or in newspapers.

2.3 On 29 November 2006, the complainant made a second application for asylum, this time on the basis of his political activities in Switzerland. He was questioned by the Federal Office for Migration (ODM) on 10 December 2008 about the new grounds for his asylum application. On 17 December 2008, the Federal Office for Migration rejected this application and ordered him to leave Switzerland. The complainant appealed against this decision to the Federal Administrative Tribunal, which dismissed his appeal on 12 February 2009. The complainant was given until 24 March 2009 to leave Switzerland. In its decision, the Federal Administrative Tribunal basically found that the complainant's political activities, including those as a CUDP cantonal representative, left him in no danger of being seen as a threat to the regime in place. Echoing the conclusions of the Federal Office for Migration, the Tribunal considered that the Ethiopian regime only monitored and recorded the political activities of its "hard-core" opponents, which did not include the complainant. It considered that in his role as a CUDP cantonal representative he attended and helped organize only a limited number of demonstrations. According to the Tribunal, many Ethiopians in Switzerland are CUDP cantonal representatives, and the Ethiopian authorities are aware that asylum-seekers step up their political activities deliberately when their asylum application is turned down. Moreover, the Tribunal saw no evidence that the Ethiopian authorities had opened any proceedings against the complainant on account of his political activities in Switzerland. In conclusion, the Tribunal found that the complainant did not meet the conditions to be granted refugee status, and that he was not at risk of being subjected to torture if returned.

2.4 The complainant, however, maintains that his role in planning and organizing such events for CUDP, and his role as a founder member of that party, shows that he is highly placed in the opposition movement, which leaves him particularly vulnerable to repression by the Ethiopian security forces. He stresses that the Federal Administrative Tribunal was wrong to attribute so little weight to his position as a CUDP cantonal representative, pointing out that this organization is not represented in every canton and that he is therefore one of a minority of opponents in that position. He also points out that when he was interviewed on 10 December 2008 about the new grounds for his asylum application, he was only briefly questioned and the Federal Office for Migration did not properly check the nature and scope of his political activities. He repeats that the political activities of the Ethiopian community in exile are meticulously monitored and recorded, and affirms that in the circumstances he would be at risk of arrest and torture if returned to Ethiopia.

The complaint

3.1 The complainant claims that his deportation from Switzerland to Ethiopia would be a violation of article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture on his return.

State party's observations on the merits

4.1 On 27 May 2009, the State party submitted its observations on the merits of the complaint. It states that the complainant has not established that he personally faced a real and foreseeable risk of torture if returned to Ethiopia. Referring to the Committee's general comment No. 1,¹ the State party notes that the opposition has had more seats in Parliament since the elections in Ethiopia in May and August 2005. Although arbitrary arrests and detention, particularly of members of opposition parties, are still common, and despite the fact that Ethiopia does not have an independent justice system, merely being a supporter or member of an opposition party does not in itself entail a risk of persecution. It is different for persons who hold key high-profile positions in an opposition party. The State party takes the view that members of the Oromo Liberation Front or the Ogaden National Liberation Front are at risk of persecution, but that other opposition groups such as the Coalition for Unity and Democracy (CUD), also known abroad as Kinijit or CUDP, should be considered on a case-by-case basis.

4.2 As regards surveillance of political activities carried out in exile, the State party is of the view that Ethiopian diplomatic and consular missions abroad do not have the resources to systematically monitor the political activities of the opposition. Therefore only active or important representatives of opposition movements are at risk of being identified and registered, and thus of being persecuted if returned. The same applies to organizations or activists who advocate or engage in violent action. According to the State party, the Ethiopian authorities focus their attention above all on individuals who fit a certain profile because of their political activism as holders of particular posts, and so represent a danger to the current regime. The State party adds that the Ethiopian authorities are aware that many failed asylum-seekers, like the complainant, engage in political activities when their asylum application is definitively turned down.

4.3 In the specific case of the complainant, the State party notes that he does not claim to have been tortured, arrested or detained by the Ethiopian authorities. No criminal proceedings have been taken out against him. With reference to the conclusions of the former Federal Office for Refugees (now the Federal Office for Migration) and the Swiss Asylum Review Board, the State party adds that the complainant has not credibly demonstrated that he was politically active in Ethiopia. As for his political activities in Switzerland since his arrival in 2003, his involvement in organizing CUDP demonstrations against the current Ethiopian Government and his membership of Kinijit/CUDP, these are the kind of activities engaged in by most politically active Ethiopians in Switzerland. His role as a cantonal representative of the party does not entail greater responsibility. As he was not known to the authorities before he left Ethiopia, these authorities have no reason to monitor and record his current activities in Switzerland.

4.4 The State party disputes the complainant's claim that his political activities were not carefully scrutinized in his interview with the Federal Office for Migration on 10 December 2008. In accordance with the applicable procedure, he took cognizance of and agreed with the statements of his representatives and said he had nothing to add to those statements.

¹ General comment No. 1, A/53/44, annex IX (21 November 1997). The State party also refers to communications No. 94/1997, *K.N. v. Switzerland* (Views adopted on 19 May 1998) and No. 100/1997, *J.U.A. v. Switzerland* (Views adopted on 10 November 1998).

Moreover, the procedure requires that he then be asked about his political activities since his last written statement, and after this the complainant must again confirm that he has nothing new to add. According to the State party, under this procedure, both the Federal Office for Migration and the Federal Administrative Tribunal rightly concluded, after a detailed examination of the case, that the complainant ran no risk of being tortured or subjected to inhuman or degrading treatment if returned.

Complainant's comments on the State party's submission

5.1 On 22 June 2009, the complainant reiterated that he would be at risk of being tortured if returned to Ethiopia, since the Ethiopian authorities closely monitored and recorded the activities of political opponents abroad. According to the complainant, the Federal Administrative Tribunal itself acknowledged, in its decision in his case, that political opponents abroad were under surveillance.² He reiterates that he has an unmistakable political profile and adds that he mentioned in his first asylum application that he had been a member of Oromo Neetsaanet Gymbaar (ONEG) for several years in Ethiopia.

5.2 The complainant points out that worldwide demonstrations against the current Ethiopian regime had been held in January, March and May 2009. The Swiss section of CUDP had been involved in organizing these activities, in partnership with the Kinijit international movement. He adds that the Swiss section of CUDP is part of a global movement of opposition to the current Ethiopian regime. This raises its profile and makes it an organization seen as a threat by the regime.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, 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.

6.2 In the absence of any other obstacle to the admissibility of the communication, the Committee proceeds to its consideration on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered this complaint in the light of all information made available to it by the parties.

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would constitute a violation of the State party's obligation 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 would be in danger of being subjected to torture.

7.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Ethiopia, the Committee

² Without giving a reference, the complainant also mentions another decision of the Federal Administrative Tribunal in which he says the Tribunal granted refugee status to an Ethiopian national who worked for the Ethiopian Human Rights Council before leaving the country and who had also been an active CUDP cantonal representative. Refugee status did not appear to have been granted to this individual solely on the basis of his political activities in Switzerland.

must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

7.4 The Committee recalls its general comment on the implementation of article 3, that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a “foreseeable, real and personal” risk.³ Moreover, the Committee specifies in its general comment that it is pertinent to know if the complainant engaged in political activity within or outside the State concerned which would appear to make him “particularly vulnerable” to the risk of being tortured.⁴

7.5 In assessing the risk of torture in the present case, and even though these claims were not submitted to the Committee, it should be noted that the complainant told judicial bodies of the State party that he had been arrested by security officers and detained for six months for being a member of Oromo Neetsaanet Gymbaar. He also says that he was subsequently wanted by the police. He does not say he was tortured during his detention or at any other time. He has told the Committee that he is personally at risk of being tortured in Ethiopia if returned there because of his political activities since he arrived in the State party, particularly his political activities in Kinijit/CUDP, for which he is a representative of the canton of Zurich. He says that he helps organize demonstrations by that movement against the current Ethiopian regime, that he takes part in them and that many photographs showing him at such demonstrations have been published on political websites or in newspapers. For this reason, the complainant believes it highly likely that he has attracted the attention of the Ethiopian authorities who monitor the activities of political opponents abroad, and that they see him as a threat to internal security in Ethiopia.

7.6 The Committee has a duty to take account of the actual human rights situation in Ethiopia, having noted that it continues to give grounds for concern in some respects, as witnessed by reports on the arbitrary detention and repression of members of opposition parties and human rights defenders.⁵ However, the Committee recalls that the existence of a 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 on return to that country; additional grounds must be adduced to show that the individual concerned would be *personally* at risk. In this respect, the Committee notes that various authorities in the State party did examine the facts and evidence produced by the complainant in his second asylum application, and which he submitted to the Committee.

7.7 While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to findings of fact that are made by organs of the State party concerned.⁶ In the present case, the Committee has noted the State party’s analysis that merely being a supporter or member of an opposition

³ See the Committee’s general comment No. 1 (footnote 8 above) and communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.

⁴ General comment No. 1 (footnote 8 above), para. 8 (e).

⁵ See, for example, the compilation prepared by the Office of the United Nations High Commissioner for Human Rights for the universal periodic review of Ethiopia, A/HRC/WG.6/6/ETH/2 (18 September 2009), para. 23 et seq.

⁶ General comment No. 1 (see footnote 8 above), para. 9.

party does not in itself entail a risk of persecution, with the exception of two specific parties, the Oromo Liberation Front and the Ogaden National Liberation Front. The Committee has also noted the State party's argument, to which it attaches the necessary weight, that the profile of each complainant must be considered on a case-by-case basis in the light of the full set of circumstances in order to establish that he would be particularly at risk of persecution or torture if returned.

7.8 The Committee notes that the State party has acknowledged and taken into account the fact that the Ethiopian authorities may be monitoring the activities of opponents in exile. However, it has established that the decisive factor in assessing the risk of torture on return is whether the person occupies a position of particular responsibility in a movement opposing the regime and thus poses a threat to it. The Committee also attaches the necessary weight to the State party's argument that, in view of the actual activities of a [CUDP] cantonal representative, simply holding this position does not mean that the person concerned can be considered a threat to the Ethiopian Government, so that it is unlikely that the complainant's activities will have attracted the attention of the authorities.

7.9 The Committee also notes that, although the complainant says that he was arrested and detained in 2003 and was subsequently wanted by the police, he does not claim to have been subjected to any threats, intimidation or other form of pressure from the Ethiopian authorities. He has not reported that any judicial proceedings were opened against him, or produced any evidence, such as an arrest warrant or wanted notice, to support his claims that he was wanted and thus would be subjected to treatment in violation of article 3 of the Convention if returned. Reaffirming that it is normally for the complainant to present an arguable case,⁷ the Committee is of the view that, on the basis of all the information submitted to it, the complainant has not provided sufficient evidence to allow it to consider that his return to Ethiopia would put him at a real, present and personal risk of being subjected to torture, as required under article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian, as part of the Committee's annual report to the General Assembly.]

⁷ See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, Views adopted 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, Views adopted 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, Views adopted 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, Views adopted 11 May 2001, para. 6.3.