



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

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COMMITTEE AGAINST TORTURE
Twenty-eighth session
29 April-17 May 2002

DECISION

Complaint No. 146/1999

Complainant: Ms. E.T.B.
Represented by: Let Bosnia Live, a non-governmental organization
State party: Denmark
Date of submission: 9 August 1999
Date of decision: 30 April 2002

* 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**

Twenty-eighth session

Concerning**

Complaint No. 146/1999

Complainant: Ms. E.T.B.

Represented by: Let Bosnia Live, a non-governmental organization

State party: Denmark

Date of submission: 9 August 1999

Date of decision: 30 April 2002

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

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 146/1999, 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 complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

* The following members of the Committee participated in the examination of the case: Mr. Peter Thomas Burns, Mr. Guibril Camara, Mr. Sayed Kassem El Masry, Ms. Felice Gaer, Sr. Alejandro Gonzalez Poblete, Mr. Andreas Mavrommatis, Mr. Fernando Mariño Menendez, Mr. Alexander M. Yakovlev, Mr. Yu Mengjia.

** Pursuant to Rule 103, paragraph 1 (c), Mr Ole Vedel Rasmussen did not participate in the consideration of the complaint.

Decision

1.1 The complainant is E.T.B., a Georgian citizen, born on 19 March 1974, on behalf of herself and her two minor children, all three currently residing in Denmark at the Danish Red Cross Centre for Refugees, where the complainant seeks asylum for the family. The complainant claims that her return to Georgia after dismissal of her refugee claim would constitute a violation of article 3 of the Convention by Denmark. She is represented by the organization Let Bosnia Live.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication No. 146/1999 to the State party on 11 October 1999. Pursuant to rule 108 of the Committee's rules of procedure, the State party was requested not to expel the complainant to Georgia pending the consideration of her case by the Committee. In a submission dated 10 December 1999, the State party informed the Committee that it had decided to comply with the Committee's request not to expel the complainant and her children while their complaint is under consideration by the Committee.

The facts as submitted

2.1 The complainant is a widow with two minor children, all Georgian citizens of Mengrel ethnic origin. In Georgia she and her deceased husband, M.B., were working for the former Georgian President, Gamsakhurdia (also a Mengrel), and his political party, the Zviadists, and for the Mengrel cause in Georgia. The complainant has been a member of the Zviadists since mid-1992, and started nursing wounded Zviadists after she became a nurse in 1993. Her husband and her father were fighting for the Mengrel partisan army.

2.2 On 19 November 1993, the complainant was arrested together with 30 other women, among them her mother, while participating in an illegal demonstration of about 1,500 persons in her home city Zugditi, against the Shevardnadze Government. All the arrested women received a collective death penalty sentence. The prison guards beat them frequently, and five of the women were executed. Prison guards raped two of her co-prisoners before they executed them. One of the guards sexually mistreated and raped the complainant, and she expected to be killed afterwards like her co-prisoners. However, shortly afterwards, on 31 December 1993, Mengrel partisans attacked the Zugditi prison and liberated all political prisoners. The complainant's father was among the attacking partisans. After being released, the complainant moved with her family to Gegetjkori. Meanwhile, the complainant's husband lived in a Mengrel partisan camp in the forest nearby. On 18 August 1994 he was wounded and captured by the Georgian army, and thereafter executed.

2.3 On 3 February 1996, the complainant, her two children and her mother left Georgia illegally, by boat to Poland and hidden in a truck to Denmark. They arrived in Denmark on 12 February 1996. They went immediately to the police and requested asylum. A year later, the complainant's father also arrived in Denmark and requested asylum, after a long stay at a hospital in the Caucasus Mountains. He was not aware that his family was already residing in Denmark.

2.4 The Danish Immigration Service rejected the complainant's application for asylum on 22 May 1998. On 31 July 1998 her then counsel appealed to the Refugee Board. The application was rejected on 4 August 1998, and the complainant was ordered to leave Denmark on 19 August 1998. Two applications to reopen the complainant's case, submitted on 17 August and on 29 October 1998/1 December 1998, were refused by the Refugee Board on 23 September 1998 and 26 January 1999 respectively.

2.5 In the Refugee Board decision of 4 August 1998's grounds for rejection, the Board considered that the attack of the prison on 31 December 1993, if it really happened, would have been mentioned in the background material available on Georgia, and that the complainant's father would have mentioned this attack in his own application for asylum, which he did not do. Even if basing its decision on the complainant's story, the Board did not consider that the complainant would be persecuted if returned to Georgia. They referred to information received from the UNHCR regarding that Gamsakhurdia partisans are not persecuted only because they have supported Gamsakhurdia.

2.6 In the application of 29 October 1998, counsel requested a reopening of the complainant's asylum case, in the light of new information he had received. This information contained two new documents, including a death certificate for her husband and a declaration from 10 of her neighbours in Gegetjkori, confirming that the complainant had been threatened and persecuted by unknown persons, who also killed their dog, leaving it in front of their door as a warning vendetta. Furthermore, counsel refers to media reports of new outbreaks between Zwiadists and government forces. Counsel also submitted Amnesty International's "Concerns for Georgia", October 1996, including information about torture and ill-treatment of political prisoners. In the letter of 1 December 1998, he submitted the complainant's Medical Record dating from her arrival in 1996 and describing her experiences of being subjected to torture.

2.7 On 22 February 1999, counsel requested reopening of the case on the basis of two reports from 1997 and 1998, from The International Helsinki Federation, describing serious human rights violations in Georgia. In response to the Refugee Board's grounds for rejection, he contended that the reports show that freedom of expression is restricted in Georgia, and that it was only in the authorities' interest that the attack of the Zugdidi prison and escape of prisoners was not published through local media. Furthermore, although the reports do not describe the demonstration on 19 November 1993, they refer to several similar demonstrations in the periods prior to and following the demonstration of 19 November 1993. He also submitted that the complainant's description of the prison conditions is consistent with the reports. On 8 March, the Refugee Board rejected the application.

2.8 In May 1999, counsel directed letters about the complainant to 18 members of the Danish Parliament, requesting that they address the Minister of the Interior and ask that the complainant obtain a residence permit for humanitarian reasons. Seven members of the Parliament contacted the Minister, who in turn referred the case to the Refugee Board, which rejected the request.

The complaint

3. Counsel claims that the complainant fears that if returned to Georgia, she will be arrested, tortured and killed for her participation in the Mengrel political organization Zwiadists, the demonstration that took place on 19 November 1993, and the effect of her deceased husband's participation in the Mengrel army. Counsel adds that there exists a consistent pattern of human rights violations by Georgian authorities, in particular against political opponents, who risk torture and ill-treatment in prison, and there is overwhelming reason to believe that the complainant will be subjected to torture or other inhuman treatment if returned to Georgia.

State party observations on admissibility and the merits

4.1 In its note verbale of 10 December 1999, the State party submits its observations to the admissibility and the merits of the case. The State party submits that the complainant has failed to establish a prima facie case for purposes of admissibility of the petition, and that the case therefore should be declared inadmissible.

4.2 The State party contends that the Refugee Board has considered all aspects of the case, taking into account the State party's obligations under the Convention, and that no further information submitted to the Committee against Torture may reveal that the complainant risks torture if returned to Georgia. It points out that the Committee is not an appellate but a monitoring body, and that the complainant is using the Committee to obtain a renewed assessment of her case.

4.3 Concerning the assessment whether there are substantial grounds for believing that the complainant will be in danger of being subjected to torture if returned to Georgia, the State party refers to the Refugee Board decisions in their entirety. The State party emphasizes that according to background information available, only high-ranking or high profile members of the Zwiadists are being persecuted, and the complainant did not belong to this group. With reference to the Committee's jurisprudence in *I.O.A. v. Sweden*,¹ and *N.P. v. Australia*,² the State party argues that it is important whether information about the recipient country supports the complainant's allegations that she risks being subjected to torture. Furthermore, the State party refers to *X v. Switzerland*,³ where the Committee emphasized that the applicant "does not belong to a political, professional or social group targeted by the authorities for repression and torture".

4.4 The State party reiterates that the Refugee Board did not accept the complainant's story that she had been liberated from detention through an armed attack, mainly because there were no references to such an action in their background material. Although the complainant claimed that her father took part in the attack, he did not mention the attack in his application for asylum. In this context, the State party refers to the Committee decision in *H.D v. Switzerland*⁴ where the Committee takes into account whether the complainant's presentation of the facts are considered well attested and credible.

4.5 Moreover, the Refugee Board found that even if the detention had taken place, they did not consider that the complainant risked persecution and torture if returned to Georgia. According to the State party, this assessment corresponds with the Committee's jurisprudence in *A.L.N v. Switzerland and X, Y and Z v. Sweden*.⁵

4.6 The State party emphasizes that there is no objective evidence to support the complainant's claim that she has been subjected to torture,⁶ nor has it been established that she is wanted by Georgian authorities.⁷ The State party emphasizes that after her liberation, the complainant moved to the Gegetjkori region and resumed her political activities, but that she has not alleged any problems with the authorities while she resided there,⁸ and that the events that motivated her departure date relatively far back in time.⁹

4.7 The Refugee Board did not attach importance to the declaration of the complainant's neighbours, explaining that the authorities persecuted her family by visiting and threatening them, as this allegation was submitted at a later stage in the asylum proceedings and had not been mentioned in her previous statements. The State party refers to the Committee's practice that if a complainant changes his or her account during the processing of the asylum application, it is important that a logical explanation be given for doing so.¹⁰

4.8 The State party also considers it to be consistent with the Committee's jurisprudence, that due weight be given to the fact that the Convention against Torture entered into force for Georgia on 25 November 1994.

The complainant's comments on the State party's observations

5.1 In a letter of 7 February 2000, counsel refers to the Committee's jurisprudence in *E.A. v. Switzerland*¹¹ stating that it is sufficient that "'substantial grounds' in article 3 require more than a mere possibility of torture but do not need to be highly likely to occur to satisfy that provision's conditions", and contends that the complainant fulfils this condition.

5.2 Regarding the State party's argument that the complainant's father did not mention in his asylum application that he participated in the liberation of prisoners, among them the complainant, this is explained by his general scepticism towards authorities and his mental situation subsequent to his partisan life.

5.3 Furthermore, the complainant cannot document that she has been subjected to torture, including rape, as she has not undergone a medical examination in this regard. Her reluctance to submit this information to the Danish authorities is explainable by the trauma of such experiences. Counsel quotes the Committee's jurisprudence in *Kisoki v. Sweden*¹² that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims".

5.4 Counsel submits that although Georgia has ratified the Convention, it is apparent that, in view of the ongoing persecutions of political opponents, Georgia is not observing its obligations under the Convention.

5.5 Counsel attaches a letter from the Refugee Board saying that the Board has decided to reopen the complainant's case because of information that she, if returned to Georgia, risks deportation to Abkhasia. However, counsel submits in a further letter of 1 February 2002, that the Refugee Board's decision of 24 January 2002 was unfavourable to the complainant. It appears from the Refugee Board's decision that upon a general request from the State party, UNHCR responded that Georgian citizens upon return do not risk deportation to Abkhasia.

Decision concerning admissibility and examination of the merits

6. Before considering any claim 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. The Committee notes that the State party has objected to the admissibility of the communication on the ground that the complainant has failed to establish a prima facie case for the purpose of admissibility. Considering the complainant's submissions regarding her membership with the Zviadists since mid-1992, her participation in different aspects of their work, her alleged experiences of being subjected to torture, compared with the existing situation of persecution of political opponents in Georgia, the Committee finds that the complainant's allegations have surmounted the threshold of admissibility, and the Committee therefore proceeds with the examination of the merits of the communication.

7. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Georgia. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

8. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he or she would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his or her country; additional grounds must exist in order to conclude that the person concerned is personally at risk.

9. In the present case, therefore, the Committee has to determine whether the expulsion of the complainant to Georgia would have the foreseeable consequence of exposing her to a real and personal risk of being arrested and tortured.

10. The State party has pointed to inconsistencies in the complainant's statements, which in its opinion cast doubt on the veracity of her allegations. The Committee reaffirms its jurisprudence that torture victims cannot be expected to recall entirely consistent facts relating to events of extreme trauma. But they must be prepared to advance such evidence as there is in support of such a claim. The political activities that the complainant claims to have carried out since she became a member of the Zviadists, are not of such a nature as to conclude that she risks being tortured upon her return. Nor does any of the information provided reveal that the complainant risks being subjected to torture because of her husband's partisan work and execution by the governmental forces. This view is further supported by the fact that the complainant was not the object of interest by Georgian authorities after she was released from detention in 1993, and until she left the country in 1996. In this respect, the Committee does not attach importance to the neighbours' declaration stating that the complainant was persecuted while residing in Gegetjkori from 1994 to her departure in 1996, since she did not submit this allegation until 29 October 1998, more than two and a half years after she lodged her initial application for asylum.

11. On the basis of the above considerations, the Committee considers that the complainant has not substantiated her claim that she risks being subjected to torture upon return to Georgia.

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, concludes that the removal of the complainant to Georgia would not constitute a breach of article 3 of the Convention.

Notes

¹ Complaint No. 65/1997 of 6 May 1998, paragraph 14.5.

² Complaint No. 106/1998 of 3 June 1999, paragraph 6.5.

³ Complaint No. 38/1995 of 9 May 1997, paragraph 10.5.

⁴ Complaint No. 112/1998 of 3 June 1999, paragraph 6.4, see similar statement in *Seid Mortesa Aemei v. Switzerland* Complaint No. 34/1995 of 29 May 1997, paragraph 9.6.

⁵ Complaint No 90/1997 of 19 May 1998, paragraph 8.3, and Complaint No. 61/1996 of 6 May 1998, paragraph 11.2.

⁶ Reference is made to Complaint No. 65/1997, paragraph 14.3.

⁷ Reference is made to Complaint No. 94/1997 of 20 May 1998, *K.N. v. Switzerland*, paragraph 10.3 and 10.4.

⁸ Reference is made to Complaint No. 112/1998, paragraph 6.5.

⁹ Reference is made to Complaint No 27/1995 of 28 April 1997, *X v. Switzerland*, paragraph 11.3.

¹⁰ Reference is made to Complaints Nos. 97/1997 of 12 November 1998, *Orhan Ayas v. Sweden*, paragraph 6.5, 106/1998, paragraph 6.6, and 104/1998 of 21 June 1998, *MBB v. Sweden*, paragraph 6.6.

¹¹ Complaint No. 28/1995 of 10 November 1997, paragraph 11.3.

¹² Complaint No. 41/1996 of 8 May 1996, paragraph 9.3.
