



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

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COMMITTEE AGAINST TORTURE
Thirty-second session
(3 – 21 May 2004)

DECISION

Communication No. 182/2001

Submitted by: Mr. A.I. (represented by counsel, Mr. Hans Peter Roth)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 5 March 2001 (initial submission)

Date of the decision: 12May 2004

[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

Thirty-second session

Concerning

Communication No. 182/2001

Submitted by: Mr. A.I. (represented by counsel, Mr. Hans Peter Roth)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 5 March 2001 (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 12 May 2004,

Having concluded its consideration of complaint No. 182/2001, submitted to the Committee against Torture by Mr. A. I. 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 complaint, his counsel and the State party,

Adopts the following:

Decision of the Committee Against Torture under article 22 of the Convention

1.1 The complainant is A. I., a Sri Lankan national of Tamil origin, born in 1977, currently residing in Switzerland, and awaiting his deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would amount to a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 25 April 2001, the Committee forwarded the communication to the State party for comments. The Committee notes that the State party decided, of its own

motion, not to return the complainant to Sri Lanka while his case is pending before the Committee.

The facts as submitted by the complainant:

2.1 The complainant is from Chankanai in the North of Sri Lanka. In July 1995, he and his family fled the hostilities between combatants in the civil war, and temporarily stayed in a refugee camp near Navaly. During the bombing of a Catholic church in Navaly by the Sri Lankan Air Force, he witnessed the killing of numerous refugees who had sought shelter in that church, including some of his remote relatives. The complainant and his family subsequently went to the then LTTE¹-controlled Chavakachcheri, where his younger brother, S., joined the LTTE.

2.2 In January 1996, the complainant and his mother traveled to Colombo to make arrangements for his departure from Sri Lanka. Following a bomb attack on a bank in Colombo, in which a neighbour was involved, the complainant and his mother were arrested by security forces on 31 January 1996, and detained at the Pettah police station. On 8 and 16 February 1996, the complainant was visited by a delegation of the International Committee of the Red Cross (ICRC) and, on 22 February 1996, he and his mother were released from detention upon payment of a bribe.

2.3 On 30 March 1996, the complainant was arrested during an identity check by an army patrol that brought him to Welikade prison, where he was interrogated about his connection with the LTTE. After his release on 1 January 1997, he was returned to Chankanai. Meanwhile, his younger brother had died, on 18 July 1996, during an LTTE attack against an army camp near Mullaitivu.

2.4 Following his return to Chankanai, the complainant and his second brother, T., were arrested six or seven times, between April and June 1997, by militia of the EPRLF² and TELO³. They were taken to a camp near Puttur, where they were interrogated about their links with the LTTE. During interrogation, they were allegedly beaten; in one case, they received blows with an iron chain and were burnt on their back with a hot piece of iron, in order to extract a confession. In July 1997, T. was once again arrested by militia; he has disappeared since.

2.5 Thereafter, the complainant returned to Colombo, from where he left for Switzerland via Turkey and Italy on 22 August 1997, using a false passport.

2.6 On 26 August 1997, the complainant applied for political asylum in Switzerland. Following interviews by the Federal Office for Refugees (BFF) on 26 August 1997 and 22 April 1998, and by the alien police on 14 October 1997, the BFF rejected his asylum application on 28 October 1998, at the same time ordering him to leave the country by 15 January 1999. The order was based on the following grounds: (a) the lack of credibility of his claims concerning his detention at Welikade prison and the alleged disappearance of his second brother, T., as well as inconsistencies in the description of his and his brother's ill-treatment at the hands of the EPRLF/TELO; (b) the absence of a sufficient link, in time and substance, between his detention at the

¹ Liberation Tigers of Tamil Elam.

² Eelam People's Revolutionary Liberation Front.

³ Tamil Eelam Liberation Organization.

Pettah police station from 31 January to 22 February 1996 and his departure from Sri Lanka on 22 August 1997; and (c) the absence of a sufficiently substantiated risk of torture upon return to Sri Lanka, where the complainant would be able to resettle in areas not affected by the hostilities between the parties to the conflict.

2.7 On 30 November 1998, the complainant lodged an appeal with the Swiss Asylum Review Commission (ARK) and subsequently submitted two medical reports, dated 6 January and 5 September 1999, confirming that he suffers from post-traumatic stress disorder. By submission of 10 October 1999, the BFF maintained its position, arguing that the complainant could receive adequate therapeutic treatment at the Family Rehabilitation Centre in Colombo or at one of its 12 branch offices in Sri Lanka. Moreover, it noted a contradiction between the medical report of 6 January 1999, which referred to the complainant having been detained for 14 days in Colombo prior to his arrest on 31 January 1996, and the complainant's failure to raise this point during the interviews.

2.8 On 30 November 2000, the ARK dismissed the complainant's appeal. It endorsed the findings of the BFF and added the following grounds: (a) that none of the complainant's alleged arrests resulted in criminal proceedings against him, for collaboration with the LTTE; (b) that the fact that the complainant was twice detained in Colombo was irrelevant for his asylum application; (c) that, even if the complainant suffered from post-traumatic stress disorder, he had failed to substantiate that this was the result of persecution by the Sri Lankan authorities; (d) that the complainant had failed to submit reliable documents to prove his identity; and (e) that the complainant's deportation to Sri Lanka would not constitute an unreasonable hardship, in the absence of sufficient grounds for believing that he would be subjected to torture, and given that his family continued to live in the northern Province (Tellipalai) and that adequate treatment for his post-traumatic stress disorder would be available in Sri Lanka.

2.9 The BFF thereafter set a new deadline for the complainant to leave Switzerland by 5 February 2001.

The complaint:

3.1 The complainant claims that his forcible return to Sri Lanka would constitute a violation by Switzerland of article 3 of the Convention, since there are substantial grounds for believing that, as a young Tamil who was repeatedly arrested and interrogated by the authorities and militia groups, and whose brother was known to be an LTTE member, he would be subjected to torture upon return to Sri Lanka.

3.2 He submits that the Sri Lankan security forces carry out daily raids and street inspections against Tamils, who can be arrested for up to 18 months, under the Prevention of Terrorism Act (PTA) without an arrest warrant and without being informed of the charges against them. Under the Emergency Regulations (ER) supplementing the PTA, this period may repeatedly be prolonged for 90 days by a judicial commission whose decisions are not subject to appeal. During this time, detainees are frequently interrogated about their contacts with the LTTE, and are often subjected to torture, ill-treatment or even extra-judicial execution.

3.3 By reference to several reports on the human rights situation in Sri Lanka, the complainant claims that the risk of torture for Tamils has not diminished significantly in recent years.

3.4 The complainant submits that no clear distinction between governmental and non-governmental persecution, as envisaged in the Swiss Political Asylum Act, can be made in civil war situations such as in Sri Lanka, which were often characterized by either the total absence of control or its simultaneous exercise by different groups in certain areas. Thus, in certain parts of the country, Tamil militia such as the EPRLF or the TELO persecuted LTTE supporters in close cooperation with the Sri Lankan army, and frequently tortured suspects in their own prison camps. Such treatment was therefore equivalent to State persecution.

3.5 The complainant argues that because of his post-traumatic stress disorder, a sequel of his torture in the EPRLF/TELO camp, as well as his experience related to the bombing of the church in Navaly, he is likely to display uncontrolled reactions in situations of danger such as raids and street inspections, which would further increase his risk of arrest and torture by the Sri Lankan police.

3.6 The complainant claims that politically persecuted refugees are frequently without papers and that he has sufficiently proven his identity, with a photocopy of his identity card and his birth certificate. He could not be expected to obtain a passport or a new identity card by presenting himself to Sri Lankan authorities.

3.7 The complainant claims that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that he has exhausted domestic remedies. In particular, he claims that an extraordinary appeal to the ARK would be futile in the absence of fresh evidence.

The State party's observations on admissibility and merits:

4.1 On 8 June 2001, the State party conceded that the communication is admissible; on 29 November 2001, it submitted its observations on the merits. It endorses the arguments of the Federal Office for Refugees and the Asylum Review Commission in the complainant's case, and concludes that the complainant has failed to substantiate a real and personal risk of being subjected to torture, in the event of his return to Sri Lanka.

4.2 The State party argues that the complainant failed to submit any new elements which would justify a challenge of the decisions of the BFF and the ARK. Similarly, the evidence presented during domestic asylum proceedings (i.e. press articles, a letter from his mother and a ICRC identity card) was insufficient to substantiate his allegations of past persecution, or a future risk of torture in Sri Lanka. The medical reports confirming his post-traumatic stress disorder were based on his own account and ignored other possible, and more likely, causes for these symptoms.

4.3 While conceding that the complainant was detained at the Pettah police station in Colombo from 31 January to 22 February 1996, the State party considers this detention irrelevant for his claim that he is at risk of torture upon his return to Sri

Lanka. Likewise, no such risk could be inferred from the frequent identity controls and arrests of Tamils in Sri Lanka.

4.4 The State party submits that the fact that no criminal proceedings were instituted against the complainant shows that he is not personally at risk of being tortured by the Sri Lankan security forces. For the State party, the EPRLF and TELO militia, if at all active in the Chankanai area in 1997, never showed an interest in the complainant's own activities, but allegedly tortured him to extract information about the LTTE connection of his deceased brother, S.

4.5 Lastly, the State party argues that the complainant could prove, if returned to Sri Lanka, that he lived in Switzerland from 1997 onwards, thereby dispelling any suspicion of having collaborated with the LTTE during that time.

Complainant's comments on the State party's submissions

5.1 On 22 December 2003, in his comments on the State party's merits submission, counsel argues that contradictions in the complainant's statements before the Swiss authorities resulted from a "loss of reality". Traumatized persons often experience difficulties in remembering the details and chronology of their history.

5.2 The complainant challenges that the EPRLF/TELO had no longer been active in the Chankanai region between April and June 1997, on the basis that the State party had failed to cite any verifiable reference for this contention.

5.3 The complainant rejects the State party's argument that he did not sufficiently corroborate his claims. Thus, his deceased brother's LTTE membership was a documented fact and sufficient ground for believing that the Sri Lankan authorities would hold him in suspicion. Moreover, acts of torture were generally concealed by the responsible State organs, with the result that evidence was frequently unavailable.

5.4 The complainant argues that, instead of discrediting the psychiatric reports submitted by him, the State party should have sought the medical opinion of a State examiner. While not proving his allegations, the existing reports of January and September 1999 at least confirmed that his posttraumatic stress disorder was the direct result of past experiences of torture.

5.5 Lastly, the complainant submits that numerous incidents of torture and ill-treatment in Sri Lankan prisons were reported in 2003 and that, despite ongoing peace negotiations, respect for the rule of law is still not ensured in Sri Lanka.

Issues and proceedings before the Committee

6.1 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. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has conceded that the communication is admissible.

It therefore considers that the communication is admissible and proceeds to its examination on the merits of the case.

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (article 3, paragraph 2, of the Convention).

6.3 The Committee notes from recent reports on the human rights situation in Sri Lanka that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and complaints of torture are often not dealt with effectively by the police, judicial officers and doctors. However, the Committee equally notes the conclusion of a formal cease-fire agreement between the Government and the LTTE in February 2002. While recent political developments and changes in Government may have created impediments to the effective pursuit of the ongoing peace process, it remains that the process itself has not been abandoned. The Committee further recalls that, after conducting its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture was not systematic in the State party.⁴ The Committee finally notes that a large number of Tamil refugees have returned to Sri Lanka in recent years.

6.4 The Committee recalls, however, that the aim of its examination is to determine whether the complainant would personally risk torture in the country to which he would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainant would be in danger of being subjected to torture upon his return to Sri Lanka. Additional grounds must be adduced to show that he would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainant cannot be considered to be in danger of being subjected to torture in the specific circumstances of his case.

6.5 As regards the personal risk the complainant would run to be subjected to torture at the hand of the Sri Lankan security forces, the Committee has noted his claim that he was tortured, in 1997, by the EPRLF and TELO, which had operated in cooperation with the Sri Lankan army. Even if these allegations were assumed to be true, the Committee considers that it does not necessarily follow that the complainant would presently be at risk of being subjected to torture again, given the ongoing peace process in Sri Lanka and the fact that many Tamil refugees have to that country in recent years.

6.6 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled reactions in stressful situations, thereby increasing the risk of his arrest by the Sri Lankan police, the Committee observes that the absence of any

⁴ Report A/57/44, Chapter IV.B, at para. 181.

criminal proceedings against the complainant in the past, as well as his low political profile, can in turn be adduced as factors likely to lower any risk of serious consequences, should he be arrested again.

6.7 The Committee considers it unlikely that the Sri Lankan authorities, or the militia groups allegedly acting with their consent or acquiescence, remain interested in the LTTE involvement of the complainant's younger brother, who died almost eight years ago.

6.8 With regard to the question of whether the complainant would be able to receive adequate psychiatric treatment for his post-traumatic stress disorder in Sri Lanka, the Committee recalls that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention, which could be attributed to the State party itself.⁵

6.9 The Committee therefore is of the view that the complainant has not adduced sufficient grounds which would lead the Committee to conclude that he would run a substantial, present and personal risk of torture if returned to Sri Lanka.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

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

⁵ See Communication No. 186/2001, *K. K. v. Switzerland*, Decision adopted on 11 November 2003, at para. 6.8.