



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

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COMMITTEE AGAINST TORTURE
Thirty-seventh session
(6-24 November 2006)

DECISION

Communication No. 280/2005

Submitted by: Gamal El Rgeig (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 15 September 2005 (initial submission)

Date of present decision: 15 November 2006

Subject matter: Expulsion of complainant to a country where he is likely to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

Substantive issues: Risk of torture if expelled; risk of cruel, inhuman or degrading punishment or treatment if expelled

Procedural issue: None

Article of the Convention: 3

[ANNEX]

* Made public by decision of the Committee against Torture.

** Reissued for technical reasons.

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-seventh session

concerning

Communication No. 280/2005

Submitted by: Gamal El Rgeig (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 15 September 2005 (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 15 November 2006,

Having concluded its consideration of communication No. 280/2005, submitted by Gamal El Rgeig under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture:

1.1 The complainant is Gamal El Rgeig, a Libyan national born in 1969, currently residing in Switzerland where he submitted an application for asylum on 10 June 2003; the application was rejected on 5 March 2004. He claims that his deportation to the Libyan Arab Jamahiriya would constitute a violation by Switzerland of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 16 September 2005, in accordance with rule 108, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur for new complaints and interim measures, requested the State party to suspend the expulsion of the complainant while his complaint was being considered. In a note verbale dated 27 October 2005, the State party informed the Committee that it acceded to this request.

The facts as submitted by the complainant

2.1 In February 1989, the complainant was arrested for his “political activities” and was held at the Abu Salim prison for six years, without ever having been accused or tried. He claims that, during his detention, he was repeatedly subjected to ill-treatment and acts of torture.

2.2 The complainant was released in 1995 and allegedly continued to be harassed by the security forces. He claims to have been summoned regularly to the security office where he was threatened and tortured and, in 2000, State agents allegedly burst into his home to confiscate his computer. He alleges that, following that incident, he was arrested and tortured on several occasions. The last arrest took place in 2002, and on that occasion the acts of torture were more severe.

2.3 In March 2003, he learned that one of his friends, who had been imprisoned at the same time as the complainant and for the same reasons, had been sent to prison again because his name appeared on a list. The complainant concluded that his name also appeared on that list. Following these events, the complainant left the Libyan Arab Jamahiriya for Egypt, where he claims to have obtained an Italian visa through “an acquaintance” at the Italian Embassy. He arrived in Italy, and from there proceeded to Switzerland. On 10 June 2003, upon his arrival in Switzerland, he filed an application for asylum and produced official documents indicating that he had been imprisoned for six years, as well as one of the summonses, dated December 1997, that he had received after his release.

2.4 The complainant states that he continued his political activities in Switzerland, where he maintained contact with various organizations and associations campaigning for human rights in the Libyan Arab Jamahiriya. He claims that he received two letters from his family informing him that the security forces had come looking for him on several occasions and that they had threatened members of his family. Following those events, his family was forced to move.

2.5 On 5 March 2004, the complainant’s application for asylum was rejected by the Federal Office for Refugees, now the Federal Office for Migration, which ordered his expulsion from Swiss territory by 30 April 2004. The complainant notes that the Federal Office for Refugees acknowledged that he had been imprisoned without trial, but concluded that it had not been established that he had been tortured and persecuted after his release in 1995. On 5 April 2004, the complainant lodged an appeal against this decision and, on 7 July 2004, the Swiss Asylum Review Board rejected the appeal, considering that there were many factual inconsistencies in the complainant’s allegations and that his presentation of the facts was not believable. The Commission therefore upheld the decision of the Federal Office for Refugees, ordering the complainant’s return under threat of expulsion.

2.6 On 8 September 2005, the Geneva Police Commissioner issued an order for the administrative detention of the complainant. On 9 September 2005, the Cantonal Aliens Appeal Board (*Commission cantonale de recours en matière de police des étrangers*) upheld the order for the complainant’s detention for a period of one month, that is, until 8 October 2005. On 19 September 2005, the complainant appealed to the Geneva Administrative Tribunal against the decision of the Geneva Cantonal Aliens Appeal Board of 9 September 2005, which upheld the order for his administrative detention. Attached to his appeal to the Administrative Tribunal were letters in support of his application for asylum from non-governmental organizations that

deal with the Libyan Arab Jamahiriya and political refugees in Switzerland. The complainant was released on an unspecified date, and on 27 September 2006, the Administrative Tribunal decided to strike his appeal from the list of cases, since it was no longer necessary.¹

The complaint

3. According to the complainant, the Federal Office for Refugees acknowledged that he had been imprisoned for six years without trial but considered that he had not succeeded in proving that he had been persecuted between 1995 and 2003, whereas it had been impossible to adduce the evidence to that effect. The Swiss authorities had apparently not examined the recent reports published by various international observers concerning cases of detention and torture in the Libyan Arab Jamahiriya. The complainant maintains that there are substantial grounds for believing that he would be subjected to torture if he were returned to the Libyan Arab Jamahiriya and that, consequently, his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

State party's observations on the merits

4.1 In a note verbale dated 27 October 2005, the State party declared that it did not contest the admissibility of the complaint, and on 16 March 2006, it submitted its observations on the merits. With regard to the effectiveness of the appeal to the Administrative Tribunal of Geneva Canton, the State party observes that the sole subject of that procedure was the lawfulness of the administrative detention, and that it did not affect the binding nature of the decision of the Federal Office for Migration ordering the complainant's expulsion. The State party concludes that the appeal to the Administrative Tribunal can therefore not be deemed effective, and recalls that it has not contested the admissibility of the complaint.

4.2 The State party emphasizes that the complainant does not adduce any relevant new evidence that would enable him to challenge the decision of the Asylum Review Board. It notes that, following a thorough examination of the complainant's allegations, the Board, like the Federal Office for Migration, was not convinced that the complainant ran a serious risk of being persecuted if he was returned to the Libyan Arab Jamahiriya.

4.3 Having recalled the Committee's jurisprudence and its general comment No. 1 on the implementation of article 3, the State party endorses the grounds cited by the Asylum Review Board substantiating its decisions to reject the complainant's application for asylum and to uphold his expulsion. It recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".

4.4 The State party maintains that, since the complainant was released on 2 March 1995, there is no temporal link between the complainant's detention and his flight in 2003; this was allegedly confirmed by the complainant during his registration hearing on 13 June 2003. At the hearing, the complainant confirmed that he had not had any problem with the authorities after his release and had left the Libyan Arab Jamahiriya because he had been unable to find work there.

He added that he was “afraid of going back to prison”. These assertions apparently contradict the statements made by the complainant during his cantonal hearing, where he claimed that he had been continually persecuted after his release in 1995 owing to his dissemination of ideas relating to freedom of expression and a multiparty system. Even if the complainant later changed the reasons for his flight by referring to persistent harassment and ill-treatment because of his political convictions, the situation of dissidents in the Libyan Arab Jamahiriya does not in itself make it possible to conclude that he is likely to be subjected to torture on return to his country. The State party adds that the complainant has not provided the least shred of evidence that would make it possible to conclude that the security forces had continued to harass or maltreat him after his release. The 1997 summons instructing the complainant to report to the El Barak security office cannot alter this conclusion.

4.5 The State party recalls that the complainant not only remained in the Libyan Arab Jamahiriya for eight years after his release but also that he returned after a trip to Egypt in 2001. On that occasion, in spite of the fact that the complainant, according to his own allegations, had been forbidden to travel by the authorities, no proceedings were instituted against him, although the authorities had stamped his passport on his departure and return to the country. The State party also finds it surprising that the complainant had been able to obtain a passport without any difficulty in August 1998.

4.6 The State party notes that there were a number of inconsistencies in the supporting documents from non-governmental organizations attached to the complainant’s appeal to the Asylum Review Board and that, in particular, contrary to the statements made by the complainant during the cantonal hearing to the effect that he had always worked alone, some of these documents maintain that he had been active in political groups. For the most part, these documents mention only that the complainant had been imprisoned between 1989 and 1995.

4.7 The State party also takes note of the two letters from members of the complainant’s family, dated 5 March 2004 and 6 June 2005, in which they claimed that they were being harassed by the security forces and felt forced to move. It notes that the complainant himself had never felt such a need. The State party finds it surprising that the complainant did not inform the Asylum Review Board of the existence of the letter of 5 March 2004 when he submitted further observations concerning his appeal.

4.8 The State party concludes that the application is completely unfounded and requests the Rapporteur for new complaints and interim measures to lift the interim measures and the Committee to consider the complaint at its earliest convenience.

Comments by the complainant on the State party’s observations

5.1 The complainant notes that the appeal lodged with the Geneva Administrative Tribunal has been withdrawn because it is no longer necessary following his release.

5.2 He reiterates the facts, particularly his detention for six years in the Libyan Arab Jamahiriya and the torture to which he was subjected. He refers to a medical certificate issued in April 2006 by a physician of the Geneva University Hospitals who specializes in the treatment of victims of torture and war attesting to the existence of physical and psychological after-effects that are consistent with the complainant’s allegations.

5.3 The complainant recalls that, in Switzerland, he continued to take part in activities to promote human rights in the Libyan Arab Jamahiriya and participated in a public demonstration, and that the Libyan services in Geneva closely monitor this type of activity. He claims that he was continually questioned about his actions when he was still in the Libyan Arab Jamahiriya and that his actions in Switzerland were clearly under surveillance. Moreover, he states that his family is regularly questioned about his activities and whereabouts. The complainant refers to a letter dated 5 March 2004 from a friend who visited his family in the Libyan Arab Jamahiriya and who claimed that they were being harassed by the security forces, and advised him not to return home. He refers to a detailed report of the Swiss section of Amnesty International on the deportation of Libyan asylum-seekers to their country of origin.

5.4 The complainant submits the following documents: the decision of the Geneva Administrative Tribunal of 26 September 2005; an attestation from the Libyan internal security service dated 17 May 2003; a copy of a letter from his friend dated 5 March 2004; attestations of support from Libyan non-governmental organizations, as well as copies of several reports of international non-governmental organizations; and the observations and recommendations of the Committee against Torture on reports submitted by the Libyan Arab Jamahiriya in 1999 and 2005.

5.5 With regard to the alleged factual inconsistencies, the complainant denies that they have any bearing on the merits of the case. He claims that his only error is to have stated, at the time of his first interview in Switzerland, that he had left the Libyan Arab Jamahiriya because he could not find any work there. He had felt very ill at ease during that interview and had not been able to express himself clearly. Moreover, he had not really understood what was taking place and what was expected of him: he had been constantly encouraged to be brief. He had nevertheless added that he had always lived in fear in the Libyan Arab Jamahiriya. As can be ascertained from the reports of several international and non-governmental organizations, the situation in the Libyan Arab Jamahiriya has not improved. The complainant considers that, insofar as he had been tortured and persecuted when he lived in the Libyan Arab Jamahiriya, where his family continues to be threatened, and in view of the fact that he is under surveillance in Switzerland, he will again be subjected to torture if he is expelled.

Issues and proceedings before the Committee

Consideration of admissibility

6. Before considering any claim contained in a communication, the Committee 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 State party has not contested admissibility. The Committee therefore considers that the complaint is admissible.

Consideration of the merits

7.1 With regard to the merits, the Committee must rule on whether the return of the complainant to the Libyan Arab Jamahiriya would constitute a violation of the obligation of the

State party, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.2 The Committee must determine, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he was returned to the Libyan Arab Jamahiriya. In order to take such a decision, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, 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. The Committee recalls its established jurisprudence whereby the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights 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.² Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, 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.

7.3 The Committee recalls its general comment No. 1 on the implementation of article 3, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he or she were returned to the country concerned, and that the existence of such a risk 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 danger must be personal and present. It also notes that the State party contends that there is no temporal link between the complainant's detention and his flight from the country, and that the complainant's statements contain many inconsistencies and contradictions. It takes note of the information supplied by the complainant in that regard, particularly that he had been ill at ease during his first interview, as well as the documents supporting his application for asylum in Switzerland.

7.4 Nevertheless, and leaving aside his past activities, the complainant has submitted to the Committee in connection with this communication attestations from organizations of Libyan refugees in Europe indicating the support he has provided to their organizations, as well as his earlier political activities before he left the Libyan Arab Jamahiriya, and his relations with opposition religious movements which are banned in the Libyan Arab Jamahiriya and whose members are persecuted. The complainant has also referred to meetings with representatives of the Libyan consular authorities in Geneva, who had objected to his having lodged a request for political asylum. Lastly, he has submitted a copy of a medical certificate dated 24 April 2006 in which a specialist in post-traumatic disorders from a Geneva hospital identified a causal link between the complainant's bodily injuries, his psychological state and the ill-treatment he described at the time of his medical examination. According to this doctor, in his present psychological state, the complainant does not appear capable of coping with a forcible return to the Libyan Arab Jamahiriya, and such coercive action would entail a definite risk to his health. The State party has made no comments in this regard. In the specific circumstance of this case, and in particular in the light of the findings in the above-mentioned medical report on the presence of serious after-effects of the acts of torture inflicted on the complainant, his political activities subsequent to his departure from the Libyan Arab Jamahiriya (as described in

paragraphs 2.4 and 5.3 above), and the persistent reports concerning the treatment generally meted out to such activists when they are forcibly returned to the Libyan Arab Jamahiriya, the Committee considers that the State party has not presented to it sufficiently convincing arguments to demonstrate a complete absence of risk that the complainant would be exposed to torture if he were to be forcibly returned to the Libyan Arab Jamahiriya.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention.

9. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

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

Notes

¹ On this subject, see also paragraph 5.1 of this decision.

² See, for example, *S.S.H. v. Switzerland*, communication No. 254/2004, decision adopted on 15 November 2005, para. 6.3.
