

## COMMITTEE AGAINST TORTURE

### Y v. Switzerland

Communication No. 18/1994

17 November 1994

### ADMISSIBILITY

*Submitted by: Y [name deleted] [represented by counsel]*

*Alleged victim: The author*

*State party: Switzerland*

*Date of communication: 16 September 1994*

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

Meeting on 17 November 1994,

Adopts the following:

#### **Decision on admissibility**

1. The author of the communication is Y, a Zairian citizen, currently residing in Switzerland. He claims to be a victim of a violation by the Swiss authorities of article 3 of the Convention against Torture. He is represented by counsel.

The facts as submitted by the author:

2.1 The author, who was born in 1963, lived in the north of Zaire, until 1983. His father was arrested in 1968 for political reasons and kept in detention for five years, until his death in 1973. In 1983, the author moved for professional reasons to another town, where he lived with an older cousin. After President Mobutu, on 24 April 1990, had announced the end of the one-party system, the author joined the **Union pour la démocratie et le progrès social** (UDPS), the opposition party. On 30 April 1990, the UDPS organized a peaceful demonstration in Kinshasa, which was violently dispersed by the police. Many more clashes between members of the opposition movement and government forces followed, and in June

1990, the author was arrested together with other demonstrators, after having participated in a demonstration against the Government.

2.2 The author submits that he was kept in detention in a prison camp. He was allegedly ill treated, beaten and threatened. After a month, the author was transferred to the military offices in town. He then managed to escape with the help of a military officer, who was of the same ethnic background as the author. After having been in hiding in a village, with friends of his cousin, he boarded an Air Zaire plane for Rome, with a false passport which had been furnished by his cousin. After arrival in Italy, he sent the passport back to his cousin, as agreed. Some Africans in Rome helped him cross the border with Switzerland, where he arrived in late August 1990.

2.3 Upon arrival in Switzerland, the author requested recognition as a refugee. In July 1992, the **Office fédéral des réfugiés** rejected his request, because the demonstration of June 1990, during which the author allegedly was arrested, had never been reported; this gave rise to doubts about the authenticity of the author's account. The author's appeal was rejected by the **Commission suisse de recours en matière d'asile et de renvoi** in May 1994. The Commission considered that the author's story had little credibility, given *inter alia* the fact that he had not been able to describe in detail his place of detention and that he had not furnished any documentary evidence in support of his personal claim. The author was ordered to leave Switzerland before or on 30 August 1994, failing which he would be returned to Zaire.

2.4 In January 1994, the author was joined by his daughter, who was born in Zaire in 1987. In Switzerland, the author began a relationship with Ms. Y; a daughter was born in June 1994. Because of the birth, the expulsion was deferred to the end of September 1994.

#### The complaint:

3.1 The author argues that the political situation in Zaire has not improved and that President Mobutu continues to terrorize the country. His family members still in Zaire have informed him that the human rights situation in the country is bad and that there is practically no political opposition left. The author submits that he fears for his security, and points out that at least one asylum seeker, who had been returned by Belgium to Zaire in April 1990, had been arrested upon return and beaten, and subsequently disappeared. The author also states that his cousin has told him not to return to Zaire, because of the risks involved.

3.2 The author claims that his forced return to Zaire would be in violation of article 3 of the Convention. In this context, he refers to the Committee's Views in communication No. 13/1993, Mutombo v. Switzerland, where the Committee concluded that a consistent pattern of gross, flagrant or mass violations of human rights existed in Zaire. The author argues that his family background as well as his personal experience as a political opponent in Zaire, make it predictable that he will be arrested upon arrival in Zaire, and consequently be subjected to maltreatment and torture. In this context, he submits that an article recently published in Zaire attributed certain political opinions to him.

3.3 Pending the Committee's decision on the merits of his communication, the author requests the Committee to request Switzerland, under rule 108, paragraph 9, of the Committee's rules of procedure, not to implement the expulsion order against him.

3.4 It is stated that the same matter has not been submitted to any other procedure of international investigation or settlement.

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee has examined the claims submitted by the author and observes that his account lacks the minimum substantiation that would render the communication compatible with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. The Committee against Torture therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the author and his counsel and, for information, to the State party.

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