

**D. (name deleted) v. France, Communication No. 45/1996,
U.N. Doc. CAT/C/19/D/45/1996 (1997).**

Communication No. 45/1996

Submitted by: D. (name deleted) (represented by AFIDRA)

Alleged victim: The author

State party: France

Date of communication: 13 December 1995

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

Meeting on 10 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is D., a citizen of the Democratic Republic of the Congo (formerly Zaire), born on 25 May 1959, currently residing in France. He is represented by the Association pour la formation, l'insertion et le développement rural en Afrique (AFIDRA).

Facts submitted by the author

2. The Association states that D. is a member of the Union pour la démocratie et le Progrès Social and participated in activities for that party in Zaire, such as printing leaflets and posters. On 13 February 1990, he was arrested by the Division Spéciale Présidentielle (Special Presidential Division) on the grounds of a breach of public order. He was held for three months in prison without being tried or brought before a judge, and was subjected to ill-treatment by his prison warders. The author states that after his family intervened he was provisionally released on 20 May 1990 and told to report to the police once a month. However, in his request to the Office Français de Protection des réfugiés et Apatrides (French Office for the Protection of Refugees and Stateless People) on 16 August 1990, D. stated that he had escaped from prison on 20 May 1990, and a "wanted" notice confirming this statement is enclosed by the author.

2.2 It is submitted that, following the massacres of students at Lubumbashi in May 1990, D. was again suspected of printing leaflets, and decided to leave the country with a false passport and visa. He entered France through Belgium on 1 August 1990.

2.3 On 16 August 1990, D. filed a request for refugee status, which was turned down by the Office Francais de Protection des Réfugiés et Apatriades on 24 August 1990, on the grounds that the alleged facts and risk of persecution were not sufficiently substantiated. His appeal was then rejected by the Commission de Recours des Réfugiés (Commission of Appeal in Refugee Matters) on 22 February 1991. As a result, his application for a residence permit was refused by the police authorities of Paris on 2 May 1991, and D. was ordered to leave France by 2 June 1991. Despite this, he apparently stayed in France.

2.4 On 15 July 1993, D. filed a further request on the grounds of his father's alleged murder in Zaire on 10 July 1993, which was rejected by the Office Francais des Réfugiés, et Apatriades. His appeal was again rejected on 17 December 1993 by Commission de Recours des Réfugiés, on the grounds that there were no new facts, since he had stated that the political situation in Zaire had not changed. It is submitted that D. was unable to file an appeal against this decision with the Conseil d'Etat, because he was not provided with legal aid.

2.5 Following an order of escort to the frontier (*arrêté de reconduite à la frontière*), D. was arrested in 1994 during an identity check and kept for 48 hours in custody and 6 days in detention. He then had to be released because there was no flight available for his deportation to Zaire. D. claims that he only heard of the order of escort to the frontier when he was already under arrest. In this connection, it is submitted that the order apparently had been sent by registered mail, and that the French post office does not hand over mail to foreigners without residence permits. It is further stated that no arrest warrant was shown to D., although he had requested it in order to appeal against his arrest. It is submitted that it was for that reason that D. was not able to appeal against the order of escort to the frontier or against his arrest.

The complaint

3. D. says that he fears for his life if forced to return to the Democratic Republic of the Congo.

State party's observations on the admissibility of the communication

4.1 By submission of 29 April 1997, the State party argues that the communication is inadmissible because domestic remedies had not been exhausted.

4.2 The State party explains that any foreigner whose appeal has been definitively rejected by the Commission de Recours des Réfugiés is requested to leave French territory within a month of being notified of the decision. The decision is notified by registered letter with acknowledgement of receipt delivered to the address given by the person concerned. If the person is not at home when the postal official delivers the letter, a notice is left at the address informing the person that the letter may be collected at the post office indicated on the notice. According to the State party, the postal administration, contrary to the author's allegations, usually hands over the letter if the recipient can show proof of identity, and is not responsible for judging the validity of the residence permit shown, with respect to its expiry. The summons to leave the territory states that the person concerned has 15 days to submit comments, especially regarding any risks he may be exposed to in the event of returning to his country of origin.

4.3 The State party argues that several appeal procedures were available to D., and that he did not use them. According to the State party, he was entitled to submit an application for judicial review to the Conseil d'Etat against the Commission's decisions of 28 February 1991 and 17 December 1993. Secondly, he could have requested the cancellation of the summons to leave French territory before the administrative court.

4.4 Lastly, the State party points out that D. did not appeal against the order of escort to the frontier dated 25 November 1991. The State party says that the law allows a specific appeal against orders of escort to the frontier to be lodged before the judge for escort to the frontier of the administrative court with territorial jurisdiction. Such appeal must be lodged within 24 hours of the order being notified. On hearing the appeal, the judge has 48 hours to issue a ruling, during which time proceedings are suspended. When the appeal has been submitted, the judge must, where appropriate, entertain the complaint that the person concerned runs the risk of being subjected to torture or to inhuman and degrading treatment in the event of a return to the country of origin, in conformity either with international rules, or with rules of domestic law.

The author's comments

5.1 In his comments on the State party's observations, the author alleges that many post offices will not hand over registered mail to persons without a residence permit who show only a passport or a residence permit which has expired, even though they have no legal authority to decide whether a

residence permit is valid or not. According to the author, some post offices even go so far as to call the police if a foreigner appears without a residence permit.

5.2 As for the appeal for judicial review, the author explains that this appeal is admissible only on legal grounds, and must be submitted by a lawyer. The author also maintains that decisions of the Conseil d'Etat suffer considerable delays and do not have the effect of suspending proceedings.

5.3 With regard to the order of escort to the frontier, the author claims that he never received the summons and was first acquainted with it only when questioned by police. He claims that by the time he had been informed by the police, it was too late to appeal, since appeals have to be lodged within 24 hours of notification.

Issues and proceedings before the Committee

6.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted. That rule does not apply, however, if it is established that remedies have been or might be unreasonably prolonged or that they are unlikely to bring effective relief to the alleged victim. In the present case, the author acknowledged that he had not exhausted all available remedies provided for under French law –before the Conseil d'Etat against the decision of the Commission de Recours des Réfugiés, before the administrative court against the order to leave the territory, or before the administrative tribunal against the order of escort to the frontier. The reasons given by the author do not show that such appeals were unlikely to succeed. The Committee therefore finds that the conditions stipulated in article 22, paragraph 5 (b), of the Convention have not been met.

7. The Committee therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be notified to the author of the communication and to the State party.

[Done in French (original version), and translated into English, Spanish and Russian.]

