

Annex*

DECISION BY THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT - FIFTEENTH SESSION

Communication No. 23/1995

Submitted by: Comisión Española de Ayuda al Refugiado

Alleged victim: X (Name deleted)

State party: Spain

Date of communication: 20 January 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 15 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is the Spanish Refugee Aid Commission [Comisión Española de Ayuda al Refugiado (C.E.A.R.)] on behalf of X, an Algerian citizen born on 20 February 1958. It is alleged that he suffered a violation of article 3 of the Convention against Torture by Spain in being deported to Algeria on 24 November 1994.

The facts as submitted by the author

2.1 On 15 November 1993, X entered Spanish territory through the town of Melilla, travelling on a false French passport. He was detained by the police and stated that he wished to travel to Germany. On 16 December 1993 he was brought before a court on a charge of falsification of documents and was provisionally released.

2.2 On 11 January 1994, X applied for asylum, stating that he was a member of the outlawed Front Islamique du Salut (FIS) in Sidi Bel-Abbes, that security forces had come to his house to look for him, and that he feared being sentenced to death if detained.

* Published by decision of the Committee against Torture.

2.3 On 3 October 1994, X's request for recognition as a refugee was rejected by the Minister of Justice and he was ordered to leave the country within 15 days. On 13 October 1994, X applied to the Audiencia Nacional for a review of the decision and suspension of the expulsion order. On 9 November 1994, X addressed a letter to the Minister of Justice asking, if his presence in Spain was to be found undesirable, to be sent to a third country.

2.4 On the night of 22 to 23 November 1994, X was arrested by the police at his residence and at 11 a.m. on 23 November 1994 he was put on board an aircraft bound for Malaga and Madrid, whence he would be expelled to Algeria. C.E.A.R. states that, despite numerous attempts, it has been unable to obtain information on X's whereabouts since 23 November 1994.

2.5 C.E.A.R. states that the question has not been submitted to any other procedure of international investigation or settlement, and that X has exhausted all available remedies.

The complaint

3. C.E.A.R. claims that the Spanish authorities have violated article 3 of the Convention by sending X back to Algeria even though he was an FIS member. It is said that the Spanish authorities did not take into account the existence in Algeria of a consistent pattern of gross, flagrant or mass violations of human rights. Reference is made to news reports of continuing human rights violations in Algeria.

Submissions from the State party

4.1 In its submissions dated 30 June, 6 October and 13 October 1995, the State party rejects the allegations by C.E.A.R. as incorrect and inaccurate. It is claimed that X illegally entered Spanish territory on 14 November 1993, crossing the wire near the Beni-Enzar frontier. He had previously left Algeria and crossed Morocco. On 15 November he was arrested as he sought to take ship from Melilla to the Iberian peninsula using a false French passport. He did not at that time state that his intention was to seek political asylum but that he wished to work in Germany. That statement, made in the presence of a lawyer and with the help of an interpreter, was made after he had been informed of his rights, at which time he announced his wish to report his detention to the Algerian consulate.

4.2 The communication omits to mention that there was an expulsion hearing in the presence of a lawyer and with the assistance of an interpreter. X was explicitly informed that he had 10 days during which to submit his claims. The State party emphasizes that X made absolutely no claims during the expulsion hearings - inexplicable behaviour in an individual fearing persecution or torture in his own country.

4.3 On 15 December, a month after his detention, X was ordered to be expelled but the order was not put into effect because legal proceedings were still pending. On 16 December the criminal court passed judgement and X was released. X made no application for asylum in Spain until 11 January 1994, eight weeks after entering Spanish territory, when the expulsion was about to

be enforced. Then, for the first time, he claimed to belong to the Front Islamique du Salut. He presented a certificate bearing neither date nor place of issue; it was examined by the State party's experts, who expressed doubts as to its authenticity. X claimed, but produced no evidence, that the Algerian government authorities had "decided to arrest him" and, somewhat contradictorily, that he had been "convicted of a political crime", without explaining what crime or when or by what court he had been convicted.

4.4 Following the submission of the application for asylum, X was allowed 15 days to submit his claims and submit such documents and substantiating evidence as he saw fit. He did not do so. His application was communicated to the representative of the United Nations High Commissioner for Refugees in Spain, who made no report, oral or written, on the proceedings.

4.5 Almost eight months later, on 31 August 1994, the application for asylum was denied in view of the lack of documentation supporting X's case. On 3 October 1994, X was notified that he must leave Spanish territory within 15 days. When he failed to comply with the departure order, permission to expel him was sought from Criminal Court No. 2 in Melilla, which granted permission on 27 October 1994; the expulsion was carried out on 24 November 1994 in accordance with an order from the General Directorate of State Security endorsed by the competent court, and X was put on a plane to Algeria.

5.1 Regarding the admissibility of the communication, the State party maintains that throughout his time in Spain X adduced no "substantial grounds for believing that he would be in danger of being subjected to torture" if he was expelled.

5.2 The State party also challenges the authority of the C.E.A.R. to represent X before the Committee, inasmuch as the certificate presented only covers representation of X in administrative matters in Spain and does not give C.E.A.R. blanket authority to submit a communication under article 22 of the Convention against Torture.

Observations by counsel for the author

6.1 In his observations dated 11 September and 9 November 1995, counsel for C.E.A.R. confirms his authority to act on behalf of X, who is said to have contacted C.E.A.R. on 16 December 1993 and been advised by lawyers Arias Herrera and Pellicer Rodríguez. Counsel for C.E.A.R. confirms his authorization to represent X and sends a copy of a certificate dated 14 November 1994.

6.2 On the facts, C.E.A.R. repeats that X fears persecution in his home country because he is a member of FIS.

Issues and proceedings before the Committee

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

7.2 Although the accompanying mandate does not specifically mention application to the Committee, in this case the explanations provided by C.E.A.R. for its representation of X are accepted.

7.3 The Committee has examined the representations made by C.E.A.R. to the Spanish authorities regarding the asylum proceedings and to the Committee under article 22 of the Convention. It points out that its authority does not extend to a determination of whether or not the claimant is entitled to asylum under the national laws of a country, or can invoke the protection of the Geneva Convention relating to the Status of Refugees. Under article 3 of the Convention, the Committee must decide whether expulsion or extradition might expose an individual to the risk of being tortured.

7.4 The Committee notes that throughout a year of proceedings in Spain, X's representatives based their arguments solely on asylum and did not invoke the right protected by article 3 of the Convention. Nor did they present the Committee with serious grounds for believing that X risked being tortured if he was expelled to Algeria. It is not alleged that X was detained or tortured in Algeria before leaving for Morocco and Spain; it is not indicated precisely what he did in FIS to justify his fear of being tortured. 1/ On the contrary, X said in his first statement to the Melilla authorities, with a lawyer and interpreter present, that his intention was to seek work in Germany, and the truthfulness of that statement was not questioned during the asylum proceedings in Spain.

7.5 The Committee concludes that the communication on behalf of X has not been sufficiently justified as regards the claimed violation of article 3 of the Convention 2/ but is rather a matter of political asylum, making the communication incompatible with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and the State party.

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

Notes

1/ In the Committee's rulings on communications No. 13/1993 (Mutombo v. Switzerland) and No. 15/1994 (Khan v. Canada), both authors alleged and submitted medical evidence and other documents to demonstrate that they had been detained and tortured before fleeing their respective countries.

2/ Compare decisions in cases No. 17/1994 (X v. Switzerland) and No. 18/1994 (X v. Switzerland), which were declared inadmissible on 17 November 1994.
