F.B. vs the Netherlands

Communication submitted to the

Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Facts

• FB is a **Guinea** national (born on 1987), lives in the Netherlands
• FB belongs to the **Peul** (Fula or Pular) ethnic group

• In **2001** at the age of 13 she was forced to undergo **female genital mutilation (FGM)** by her step-grandmother with whom she lived with
• She left school and was forced to sell water and corn
• On **5 Aug 2003** (when FB was 16 yrs old), she was forced to **marry** her step-grandmother’s brother, because his then-wife had not given birth to any children. FB claimed that her step-grandmother’s brother sexually abused her

• In **Oct 2003**, FB **arrived in the Netherlands** with the help of a travel agent. Upon her arrival she was forced to have sex with the travel agent; she managed to escape after one week and reported the incident to the police
Facts

• 3 Asylum applications in the Netherlands
  ➢ 20 Oct 2003
    ❖ feared to be forced to continue the marriage with her step-grandmother’s brother
  ➢ 11 August 2008
    ❖ feared to be forced to continue the marriage with her step-grandmother’s brother
    ❖ feared to be subjected to further FGM
  ➢ 25 July 2013
    ❖ forced to undergo FGM
    ❖ forced to marry an old man when she was in Guinea
    ❖ feared to be forced to undergo FGM again after undergoing reconstructive genital surgery in the Netherlands
      • In April 2013 - complainant underwent reconstructive genital surgery in the Netherlands
  ➢ 1 Aug 2013 – 3rd asylum request was DENIED
  ➢ 16 January 2014, the Section of Administrative Law of the Council of State declared her request for higher appeal manifestly ill-founded
Facts

• Regional Court of the Hague (6 Sept 2013) agreed with the ruling of the Regional Court of Utrecht (29 Oct 2009)

- Complainant did not make it plausible that she could not have pleaded her fear of FGM earlier
- Complainant had insufficiently made her argument with documentation that she did not belong to the group of 5% of women who could skip from FGM
- Complainants allegations were too speculative and uncertain to assume that there was a realistic and foreseeable risk of torture if returned to Guinea
  - Fact that she was a victim of FGM was not sufficient to conclude that she would be a victim again
  - Potential perpetrators not aware of the restorative surgery she underwent
Facts

- 12 June 2014 complainant submitted a communication to the Committee against Torture concerning violation of CAT art 3 by the Netherlands

CAT, Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.
ISSUE

• Several pertinent points to note that are highlighted in the case before the CAT:
  • 2010 complainant added to her submissions that she was further at risk from FGM
    • The state responded that this was speculation
    • Complainant further rebutted this as arbitrary speculation
  • 2013 complainant actually went forward with reconstructive surgery
  • Art 3 ‘...gross, flagrant or mass violations of human rights...’
Merits [Before CAT]

• No Challenge to Admissibility
• State party only partly rebutted the individual person report
  • Asserted complainants ethnicity, personal status and prevalence of FGM
  • Personal components lacking credibility were location, school etc
• State party submissions on FGM prevalence
• Surgeon submitted that complainant now appeared FGM free
  • CAT further interpreted the figures:
    • 96% overall FGM
    • 1.2% FGM in women over 14 is subject to the previous figure
    • Failure to take account of other family members wishes other than the mother, complainants single woman status, non-FGM appearance
Committee’s Decision (Views)

20 November 2015 – the Committee against Torture adopted its decision (views) on the complaint

- Concluded that the complainant’s removal to Guinea by the State party would constitute a breach of article 3 of the Convention
- State Party, has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where she runs a real risk of being expelled or returned to Guinea
- Invites the State party to inform the Committee, within 90 days from the date of transmittal of the decision, of the steps it has taken concerning the Committee’s observations
Comments

• Art 3 [Refoulement] CAT is wider in scope than Art 33 [Refoulement] CRSR:

• Article 33 prohibition of expulsion or return (“refoulement”)

• 1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

• 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.
Comments

• The Decision was made on the state parties own submissions regarding FGM

• Potential for personal report to not be accurate due to method in which it was done?

• Was it Right [Under the CRSR]? Is the complainant a member of a PSG? Matter of Acosta [1985 US]? 2002 UNHCR Guidelines?

• Was it Right [Under the CAT]?

• Was it Fair?
Comments

• Committee puts substantial weight on individual personal risks, facts and specific circumstances
  • General Comment no. 1 (1997) in the interpretation of art. 3 in the context of art. 22 of CAT
    • Author (of communication) must establish that he/she will be in danger of being tortured... and such danger is **personal** and **present**
    • Pertinent information to be considered include
      • **After-effects of torture**
      • Factual inconsistencies in the claim of the author – if there are, are they relevant?
        • F.B. case – Committee focused on the issue of FGM
          Although the State party’s investigations concluded that ‘the information provided by her about her and her family’s circumstances in Guinea was incorrect, the Committee considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation...’