



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

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COMMITTEE AGAINST TORTURE

Thirty-second session

3 - 21 May 2004

DECISION

Communication No. 135/1999

Submitted by: S.G. (represented by counsel, Ms. Mariette Timmer)

Alleged victim: Complainant

State party: Netherlands

Date of complaint: 19 July 1999

Date of the decision: 12 May 2004

[ANNEX]

* Made public by decision of the Committee against Torture.

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-second session

Concerning

Communication No. 135/1999

Submitted by: S.G. (represented by counsel, Ms. Mariette Timmer)

Alleged victim: Complainant

State party: Netherlands

Date of complaint: 19 July 1999

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

Meeting on 12 May 2004,

Having concluded its consideration of complaint No. 135/1999, submitted to the Committee against Torture by S.G. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

Draft Views under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is S.G, a Turkish national born in 1965, currently residing in the Netherlands and awaiting deportation to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 18 August 1999 the Committee transmitted the complaint to the State party; pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Turkey, pending consideration of his case by the Committee. By note dated 13 October 1999, the State party acceded to this request.

Facts as submitted by the complainant

2.1 The complainant is a Turkish national of Kurdish ethnic origin from the city of Batman in eastern Turkey. In 1993 he became a supporter of the National Liberation Front of Kurdistan (ERNK), the political wing of the PKK. In 1994 the complainant became a member of the People's Democratic Party (HADEP). He participated in meetings, and collected money and food for Kurds who were forced¹ to leave their villages and relocate to Batman.

2.2 On 19 March 1995, the complainant was arrested with 7 others, for reasons unspecified, and detained for 15 days. During this time he claims to have been subjected to torture on several occasions, which left scars on his back and left leg.²

2.3 On 10 May 1997, the complainant was arrested by four policemen whilst on his way to a meeting of the Turkish Human Rights Association (IHD). He was blindfolded and taken to a field, where the policemen threatened to kill him if he did not become a police informer and provided them with names of PKK, ERNK and HADEP sympathizers. The complainant was frightened and agreed to cooperate, upon which he was released. He then went into hiding, and fled to Istanbul on 14 May 1997. From there, he left Turkey for the Netherlands on 29 May 1997, with a false passport.

2.4 After arriving in the Netherlands, the complainant learned from his father that the authorities had been looking for him, that the family house was under police observation, and that his father had been questioned by the police about his son's

¹ No details are provided.

² Reference is made to a very brief medical report in Dutch (un-translated), which is again referred to in the complainant's comments on the State party submissions. There, a description of the medical report is provided in English (see p3 of that document, under heading 'Ad 2&3').

whereabouts on several occasions.³ He also learned that the police had asked his father in writing for information about his son's whereabouts.

2.5 On 29 May 1997, the complainant applied for asylum in the Netherlands. This was rejected by the Secretary of the Ministry of Justice on 13 August 1997. On 25 August 1997, the complainant requested the Secretary of Justice to review his decision, but this was declined on 29 September 1997. An appeal against the refusal of the Secretary to grant asylum was dismissed by the District Court of The Hague on 23 July 1998. Thereafter, the complainant left the Netherlands for Denmark,⁴ and applied for asylum in that country.⁵

2.6 The complainant left Denmark on 14 February 1999 and returned to the Netherlands on 15 February 1999. Shortly afterwards,⁶ he participated in a demonstration against the role of the Greek government in the arrest of Abdullah Ocalan, resulting in the occupation of the Greek ambassador's residence in The Hague by approximately 200 Kurds, including the complainant. The occupation received considerable international attention. The Turkish media described the occupation as a 'PKK activity', and labeled the participants as 'terrorists'. After the occupation ended, the complainant was arrested in connection with his involvement in the occupation, and on 20 February 1999, he was placed in alien detention, and subsequently prosecuted.⁷

2.7 On 23 February 1999, whilst in alien detention, the complainant filed a second application for asylum with the Dutch authorities. On 19 March 1999, the Secretary of Justice held the application for asylum to be inadmissible.⁸ An appeal from this decision to the District Court of The Hague was rejected on 7 May 1999.

2.8 The complainant claims that, in addition to his participation in the occupation of the Greek ambassador's residence in The Hague, he participated in other Kurdish political activities. In the Netherlands he took part in: meetings in The Hague and in

³ In the State party response, it appears that the complainant had told the immigration officials that his father had been arrested. This is not referred to in the initial communication.

⁴ No date is provided.

⁵ No details are provided.

⁶ No date is provided.

⁷ There are no details of the charges, or of any conviction or sentence.

⁸ No details are provided.

Arnhem in 1997;⁹ a ‘celebration’ on 15 August 1997 in Middelburg; the ‘Newroz celebration’ on 21 March 1998 in Middelburg; the International Labour Day celebration on 1 May 1998 in Rotterdam; and the ‘Mazlum Dogan’ Youth festivals in 1998 in several Dutch cities. In Denmark, he participated in meetings in Copenhagen where unspecified leaflets were handed out, and in what he describes as ‘different “Abdullah Ocalan related” activities’.¹⁰ He also refers to his participation in several ‘Kurdish activities’ in Germany, France and Belgium.

2.9 The complainant refers to the general human rights situation in Turkey, and in particular to reports from a number of non-governmental organizations and governments concerning the practice of torture in Turkey. He refers to the reports of Amnesty International and Human Rights Watch published in 1999, which indicated that torture in Turkey was ‘commonplace’ and ‘widespread’. Reference is made to a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment dated 23 February 1999, which refers to a visit by that body to Turkey in 1997 and notes that the existence and extent of the problem of torture in Turkey had been established beyond doubt. In particular, the author refers to a 1999 report by the Swiss Refugee Assistance Association (*Schweizerische Flüchtlingshilfe*), which describes the ‘deteriorating human rights situation in Turkey due to the arrest of the PKK leader Abdullah Ocalan’, and notes that groups at risk of torture upon return to Turkey included members and sympathizers of HADEP, and persons involved with illegal parties and organizations.

The Complaint

3. The complainant claims that he would be at risk of being tortured if he were returned to Turkey, and that his return would constitute a violation of article 3 of the Convention. The risk of torture is said to arise from the fact that he is a young Kurd who was previously tortured in Turkey, and that he has engaged in political activities both inside and outside Turkey. In this regard, he claims that there is a real risk that his involvement in the occupation of the Greek ambassador’s residence in the Hague is known to the Turkish authorities.

⁹ No details are provided.

¹⁰ No details are provided.

The State party's observations on admissibility and merit

4.1 By note dated 13 October 1999, the State party advised that it did not object to the admissibility of the complaint; its observations on the merits of the complaint were transmitted by note of 18 February 2000.

4.2 The State party contends that the expulsion of the complainant would not violate article 3 of the Convention. It describes the legal processes by which an application for refugee status in the Netherlands may be made, and how administrative and judicial appeals may be pursued. The relevant legislative framework for the admission and expulsion of aliens is set out in the Aliens Act, and related regulations. Asylum seekers are interviewed twice by the immigration authorities, and on the second occasion the focus is on the person's reasons for leaving the country of origin. Legal counsel may attend the interviews. The asylum seeker receives a copy of a report made after the interviews, and has two days to submit corrections or additions to the report. A decision is then made by an official of the Immigration and Naturalization Service (IND) on behalf of the State Secretary for Justice. If the application is denied, the applicant may lodge an objection, in which case the application will be reviewed by the IND. In certain cases it must consult the Advisory Committee on Aliens Affairs (ACV). A recommendation is made to the State Secretary for Justice, who decides on the objection. If the objection is dismissed, an appeal can be lodged with the District Court.

4.3 The State party recalls that its Ministry of Foreign Affairs periodically issues country reports on the situation in countries of origin to assist the IND in its assessment of asylum applications. When compiling these reports, the Minister makes use of published sources and reports by non-governmental organizations, as well as reports by Dutch diplomatic representations. In its report of 17 September 1999, the Minister noted that, although the human rights situation in Turkey was 'clearly deficient', increased international monitoring had led to an improvement in a number of fields. It stated that many human rights abuses were related to the 'Kurdish question', and that they consisted mostly of restrictions on the right to freedom of expression and assembly. The report noted that Kurds suffering from persecution could in general settle elsewhere in Turkey, and that in most European countries the

situation in Turkey was not regarded as constituting grounds for not returning rejected asylum seekers to that country.

4.4 The State party emphasizes that the human rights situation in Turkey receives continued attention from the Dutch government, and that in July 1999, influenced by reports of the death of a former asylum seeker who was expelled to Turkey in April 1999, it suspended the expulsion of Kurds to Turkey. By letter of 8 December 1999, the State Secretary for Justice stated that, on the basis of investigations conducted by the Ministry of Foreign Affairs, it had been decided to resume expulsions.¹¹

4.5 In relation to the petitioner's personal circumstances, the State party summarizes the information provided by the complainant to the IND during the first and second interviews, relating to his activities in Turkey and his treatment by the Turkish authorities. It notes that, in his decisions of 13 August and 29 September 1997, the State Secretary for Justice concluded that the complainant was not a refugee and that he did not face a genuine risk of being subjected to inhuman treatment within the meaning of article 3 of the European Convention on Human Rights in the event of his return. The Hague District Court dismissed the complainant's appeal on 23 July 1998. The complainant's second asylum application was rejected on 19 March 1999, and this decision was upheld on appeal by the Hague District Court on 7 May 1999. The State party remarks that, following proceedings by the author to challenge his alien detention, the detention order against him was withdrawn with effect from 1 September 1999.

4.6 The State party observes that the existence of a consistent pattern of gross violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon being returned to that country; specific grounds must exist indicating that the individual concerned would be personally at risk.¹² The individual must face a real, foreseeable and personal risk of being tortured in the country to which he is to be returned.¹³ In light of the State party's own country reports, the general situation in

¹¹ No details are provided of the form or results of the investigation.

¹² Reference is made to the Views of the Committee concerning communication No 91/1997, *A. v The Netherlands*, 13 November 1998, and communication No 28/1995, *E.A. v Switzerland*, 10 November 1997.

¹³ Reference is made to the Committee's General Comment on article 3.

Turkey is not such as to believe that persons from Turkey, including Kurds, are in general danger of being subjected to torture.

4.7 The State party contends that the political activities in which the author claims to have been involved in Turkey do not suggest that he would be the object of the Turkish authorities' particular attention. These activities were marginal in nature, such as collecting money. The author had not claimed to know other members of the ERNK, or that he had any special function within the group. His involvement with HADEP consisted only of attending meetings. He had not demonstrated that, through these activities, he had come to the special notice of the Turkish authorities. Thus, the authorities, having learned of his membership of HADEP in March 1995, released him unconditionally in April 1995.¹⁴

4.8 The State party notes that the complainant had made conflicting statements about the circumstances of his arrest on 10 May 1997. First, the State party's country reports indicated that all local branches of the IHD, to one of which the complainant had allegedly been traveling when arrested, had been closed. The complainant was unable to provide details of the whereabouts of the IHD office. Secondly, he gave conflicting accounts of the timing of the various events on the night of 10 May 1997 – he claimed he was held until midnight, and, after a two hour car journey, was questioned for a further two hours. This was inconsistent with his claim that he was later dropped off in his home town at 2:30am. The State party further considers it implausible, as appears to transpire from the author's account, that a person identified by the authorities as a potential informer would not immediately be asked for names of PPK and HADEP members. It concludes from the fact that the authorities did not specifically instruct him about his tasks as an informer and left him alone in the days following 10 May 1997, that they did not regard him as an important opposition figure. In his second interview with the IND, the complainant stated that he was only a passive member of HEDAP, and did not know any active members of ERNK. The State party thus does not consider that the author is regarded by the Turkish authorities as a significant Kurdish opposition figure. The State party adds that the police request to the complainant's father for information about the complainant's whereabouts did not suggest anything untoward, and that the information from the

¹⁴ This was not referred to in the initial communication, although it is possible that it is referred to in the attachments to the communication, which are Dutch.

father about the authorities' interest in his son's whereabouts is unreliable in any event, because the father cannot be considered an objective source of information in relation to his son's complaint.

4.9 In relation to the complainants' political activities outside Turkey, the State party notes that no evidence was presented to substantiate these, and in any event, the activities cited are not significant. It rejects as unfounded the assertion that there is a real risk of these activities being known to the Turkish authorities. As to the complainant's involvement in the occupation of the Greek ambassador's residence in The Hague, the criminal proceedings against the complaint were dropped for lack of evidence. Even if the complainant's involvement in this incident was known to the Turkish authorities, it was not sufficiently dissident in nature to cause them to target him.

4.10 The State party notes that the mistreatment¹⁵ allegedly suffered by the complainant while under arrest in March 1995 is not of overriding relevance to the question at hand. The fact that a complainant has previously been subjected to torture is only one of the considerations identified by the Committee's General Comment as relevant to the consideration of a claim under article 3. The State party contends that the past mistreatment of the complainant, following a police raid that was not aimed at him personally, does not suggest that the author runs a personal risk of torture if returned to that country. Further, the torture allegedly suffered by the complainant in 1995 cannot be described as 'recent'. Finally, following his release in April 1995, he experienced no difficulties with the authorities until 1997. In light of the above, the State party considers that there is no question of a violation of article 3 and that the complaint is unfounded.

The complainant's comments on the State party's observations

5.1 In his comments on the State party's observations, dated 5 January 2003, the complainant challenges the State party's doubts about his credibility. He affirms that not all local branches of the IHD had been closed at the time of his arrest in May 1997, and that such branches were both closed and opened regularly at that time. As

¹⁵ Whilst note explained in the complainant's communication, the State party notes that the complainant was allegedly soaked in cold water, and beaten with fists, sticks and knives.

to the discrepancies in the timing of the events of 10 May 1997, he states that the times given to the Dutch authorities were estimates only, and that he was very frightened at the time of the incident, which impaired his perception. He further states that he cannot be asked to account for the reasons why the Turkish authorities did not demand names from him prior to releasing him. Finally, he notes that the authenticity of the police 'summons' to his father for information about his whereabouts had not been contested by the State party.

5.2 The complainant contends that Turkey is a state with a consistent pattern of human rights abuses, that he was tortured in the past by Turkish police,¹⁶ that he was engaged in political and other activities inside and outside Turkey which make him particularly vulnerable to a risk of torture upon his return, and that the accounts of his experiences are consistent. The Committee should therefore conclude that the return of the complainant to Turkey would constitute a violation of article 3 of the Convention.

Issues before the Committee

6.1 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. 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 considered under another procedure of international investigation or settlement, and that no obstacle to admissibility arises in this regard. The Committee notes that the State party does not object to the admissibility of the complaint. As the Committee sees no further obstacles to the admissibility of the communication, it declares the complaint admissible and proceeds to its consideration on the merits.

6.2 The Committee must determine whether the forced return of the complainant to Turkey would violate the State party's obligations under article 3, paragraph 1 of the Convention not to expel or return (*'refouler'*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account

¹⁶ Note: he states here that he was tortured in both 1995 and 1997, although the initial complaint refers only to 1995. Presumably, the torture referred to from 1997 relates to the authorities allegedly threatening to kill him if he did not agree to act as an informer.

all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim is to establish whether the individual concerned would be at personal risk of torture in the country to which he or she would be returned. In accordance with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not of itself constitute sufficient grounds for determining whether the person in question would be at risk of being subjected to torture upon return to that country. Nor does the absence of such a situation mean that a person cannot be considered at risk of being subjected to torture.

6.3 The Committee recalls its General Comment on article 3, which states that the Committee must assess whether there are 'substantial grounds for believing that the author would be in danger of torture' if returned, and that the risk of torture 'must be assessed on grounds that go beyond mere theory or suspicion'. The risk involved need not be 'highly probable', but it must be 'personal and present'.¹⁷ In this regard, in previous decisions, the Committee has consistently determined that the risk of torture must be 'foreseeable, real and personal.'¹⁸

6.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been detained and tortured previously by the Turkish authorities. However, the alleged acts of torture occurred in 1995. The Committee notes that, in accordance with its General Comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the recent past. The incidents referred to took place 9 years ago, a lapse of time which cannot be described as recent.

6.5 The Committee must also consider whether the complainant has engaged in any political or other activity within or outside his own country which would make him particularly vulnerable to any risk of torture upon return to Turkey. In relation to his activities inside Turkey, the complainant's political activities included collecting money and food for displaced Kurdish villagers. Although he claims to have been

¹⁷ General Comment No1, Sixteenth Session (1996).

¹⁸ Views of the Committee on Communication No 204/2002, H.K.H. v Sweden, adopted 28 November 2002.

detained on two occasions, the complainant does not establish that he was in fact, or was regarded by the Turkish authorities as, a significant Kurdish opposition figure. Nor does he allege to have had any special role within the relevant organizations. As to his activities abroad, the complainant has listed instances of participation in political activities and meetings. Some of these are referred to in very general terms, although particular reference is made to the complainant's participation in the occupation of the Greek ambassador's residence in the Hague in 1999. However, it has not been established that the Turkish authorities are aware of the complainant's participation in this event or any of the other matters referred to. The Committee notes in this regard that proceedings against the author in connection with the occupation of the residence in the Hague were discontinued for lack of evidence. Nor has it been established that, if the Turkish authorities were indeed aware of these actions, this would place the complainant at particular risk of torture upon his return to Turkey.

6.6 The relevant evidence regarding the complainant's history in Turkey, together with his activities inside and outside Turkey, has been considered by the Dutch authorities. The Committee is not in a position to challenge their findings of fact, nor to resolve the question of whether there were inconsistencies in the complainant's account. Consistent with the Committee's case law, due weight must be accorded to findings of fact made by government authorities.

6.7. In light of the foregoing, the Committee finds that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured in the event of his return to Turkey, within the meaning of article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Turkey would not constitute a breach of article 3 of the Convention.

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