

COMMITTEE AGAINST TORTURE

B. M. v. Sweden

30 April 2002

Communication No. 179/2001

CAT/C/28/D/179/2001

VIEWS

Complainant: B. M. (name withheld)

Represented by: Counsel, Juristfirma Madelaine Seidlitz, Stockholm

State party: Sweden

Date of Complaint: 23 March 2001

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

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 179/2001, submitted to the Committee against Torture 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 author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The complainant is B.M., a citizen of Tunisia, currently awaiting deportation in Sweden. He claims that his removal to Tunisia would constitute a violation by Sweden 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 11 April 2001, the Committee forwarded the complaint to the State party for comments and requested, under rule 108 of the Committee's rules of procedure, not to return the complainant to Tunisia while his complaint was under consideration by the Committee. The State party acceded to

this request.

Facts as presented by the complainant

2.1 The complainant lived and worked in Saudi Arabia from 1983 to 1998. During this period, he was very active in the Muslim community, holding religious discussions with other Muslims and collecting money for the poor and for the families of imprisoned members of the Al-Nadha Party in Tunisia. The complainant is not a member of that party but an active supporter. He states that all Muslim organizations in Tunisia are considered to be working politically against the Tunisian regime, including the Al-Nadha Party.

2.2 In 1989, 1990 and 1992, while the complainant was still residing in Saudi Arabia, he made several visits to Tunisia. His first visit in 1989 was to arrange his marriage contract. He was arrested at the airport, detained and interrogated in prison and then brought before the "Al-Kassabah" court where he was forced to sign a confession stating that he adhered to Wahhabism, which is the interpretation of Islam practised in Saudi Arabia. The complainant was allegedly tortured during the interrogation.

2.3 In 1990, the complainant entered Tunisia again in order to marry. He was again arrested at the airport, interrogated, accused again of being a Wahhabi and then released. In 1992, the complainant and his wife went to Tunisia together. They were arrested at the airport and interrogated about the complainant's activities and religious ideas. He was again accused of being a Wahhabi and of collecting money for the families of men imprisoned for activities against the Tunisian regime. After interrogation they were released, but a travel ban was issued. A few days later, uniformed and civilian police forcibly entered the house where they were staying. The police forcibly removed the veil of the complainant's wife, and beat the complainant. The couple were brought to a camp where they were interrogated separately for approximately three hours and then released after the complainant signed a confession stating that he had adopted the Wahhabi ideas and had forced his wife to wear a veil. On their release, the couple was helped by a friend of the complainant's to leave the country and return to Saudi Arabia.

2.4 On his return to Saudi Arabia in 1992, the complainant continued with his activities in the Muslim community. In July of that year, he also received a new passport at the Tunisian Embassy in Riyadh. In 1993 a "secret decree" was issued in Tunisia, which forbade Tunisian embassies from issuing or renewing passports without consulting the Tunisian Ministry of Internal Affairs. For wanted persons, the embassies could only issue a laissez-passer for a journey back to Tunisia.

2.5 In 1996, the complainant received information that he and other Tunisians were being monitored by the Tunisian Embassy. He was also told that another Tunisian who lived in Saudi Arabia and whom he used to meet for religious discussions had been arrested and imprisoned when he was visiting Tunisia on vacation.

2.6 In 1997, another Tunisian who worked on the same type of activities as the complainant was refused an extension of his passport by the Tunisian Embassy in Riyadh. He later left Saudi Arabia and went to Switzerland. On 1 August 1997, the complainant applied for asylum in Switzerland, but

since he had no proof of the risk he would be facing upon return to Tunisia, and because he wished to live in Saudi Arabia, he withdrew his application and returned to Saudi Arabia.

2.7 On 27 July 1997 the complainant's passport expired. He applied for an extension at the Tunisian Embassy in Riyadh but was refused on 9 November 1997 for "administrative reasons". The complainant believes that his passport was not extended because he is wanted by the Tunisian authorities. He then tried, with the help of friends, to obtain a Saudi Arabian passport but failed. The complainant knew that if he stayed in Saudi Arabia without a valid passport he would be forcibly returned to Tunisia where he would be arrested, imprisoned, and most probably subjected to torture. He persuaded a contact in Saudi Arabia to make false stamps to extend his passport. With the help of friends he obtained a business visa with which he entered Sweden on 26 March 1998.

2.8 Since his arrival in Sweden the complainant has been involved in activities in the mosque and gives lectures on Islam. He is convinced that the Tunisian authorities are aware of these activities. His wife returned to Tunisia from Saudi Arabia. She was subjected to different kinds of harassment and was finally "forced" to divorce the complainant. On 14 May 1999, the complainant married a Swedish citizen of Tunisian origin. The couple have since divorced but have a daughter together.

2.9 On 1 March 1999, the complainant's application for asylum and a residence permit was turned down by the Swedish Immigration Board. He appealed the decision to the Aliens Appeals Board. On 28 September 2000, his appeal was refused.

2.10 In February 2001, the complainant then made a second application for asylum and a residence permit to the Aliens Appeals Board. His second application was also refused although he submitted the false stamps he had bought in Saudi Arabia to extend his passport, a second letter from the Chairman of the Al-Nadha certifying his personal knowledge of the complainant and referring to the likelihood of his being subjected to torture if deported to Tunisia, and a letter from UNHCR stating the following, "UNHCR has no reasons to doubt the genuineness of the above attestation [certificate from the Chairman of Al-Nadha]. In light of this, and considering that members of the Al-Nadha Party still risk persecution in Tunisia, we would advise against the return of the applicant to Tunisia."

2.11 On 6 March, the complainant submitted a third application for consideration by the Aliens Appeals Board. The complainant included a letter from Amnesty International, Sweden and the United States Department of State country report describing the general human rights situation in Tunisia. The letter from Amnesty also states that in the opinion of the organization the complainant would be at risk of torture if returned to Tunisia because of his involvement with Al-Nadha. On 19 March 2001, the Aliens Board rejected his application, stating that the complainant had referred to the same information as in his previous applications.

2.12 The complainant says that the general human rights situation in Tunisia is very bad. Thousands of persons are imprisoned for their religious and/or political beliefs. He refers to different reports by Amnesty International according to which there is a high risk of persecution for members and sympathizers of Al-Nadha.

The complaint

3.1 The complainant claims that due to his involvement with Al-Nadha, the fact that he was previously arrested and interrogated by the Tunisian authorities, and the existence of a consistent pattern of gross violations of human rights, there are substantial grounds for believing that he would be in danger of being subjected to torture on return to Tunisia and, therefore, Sweden would be violating article 3 of the Convention if he were returned there.

3.2 The complainant states that the Immigration Board's decision not to grant him asylum was based on an incorrect assessment of the evidence before it and that very important information provided by the complainant, including the letters from the Chairman of Al-Nadha, the letter from UNHCR and information from Amnesty International, all of which specifically referred to the risk that the complainant would be subjected to torture, were not taken into account in forming its decision.

The State party's observations on admissibility and merits and the complainant's comments thereon

4.1 The State party raises no objection to the admissibility of the petition. On 8 October 2001, the State party submitted its comments on the merits of the petition. The State party explains that when the Immigration Board rejected the complainant's application for asylum and a residence permit, it also ordered his expulsion either to Tunisia or to Saudi Arabia.

4.2 The State party submits that it is primarily upon the complainant to collect and present evidence in support of his claim.¹ Furthermore, it is of the view that the competent national authority conducting the asylum hearing is in the best position to judge the general veracity of the complainant's case and consequently great importance must be attached to its assessment. The State party submits that the complainant has not substantiated his claim that he would run a personal, real and foreseeable risk of being tortured if returned to Tunisia.

4.3 On the complainant's claim to have been intimidated by the police on account of his political and religious beliefs in 1989, 1990 and 1992, the State party submits that neither of the incidents in 1989 or 1990 prevented his from returning to the country. Yet the incident in 1989 appears to have entailed the most serious violation of his rights. The State party highlights that in this regard the complainant has provided no details of the abuse, no information about the possible after-effects and no evidence to support his claim, and refers in this connection to the Committee's general comment on the implementation of article 3 of the Convention.² The State party also adds that although the complainant was already at this time accused, inter alia, of providing financial support to families of persons imprisoned for activities against the regime, he was never convicted as a result of the allegations made against him. On the contrary, and according to the complainant himself, in 1989 the court issued a certificate stating that he was not wanted by the authorities. The State party submits that with regard to the two other occasions when the complainant claims to have been interrogated, he makes no claim of being tortured, and in this regard the State party notes that a risk of detention is not sufficient to justify the protection of article 3 of the Convention, and refers to *I.A.O. v. Sweden*.³

4.4 The State party submits that the claim of having been monitored by the Tunisian authorities ever since his arrival in Saudi Arabia has not been substantiated and that there is nothing to indicate that they knew of his activities in Saudi Arabia or showed any particular interest in him at any other time

between 1992 and 1997. In this context, the complainant has not claimed that other Tunisians who participated in the activities for which the authorities allegedly wanted to arrest him were tortured.⁴ In addition, the State party notes that he was granted a new passport by the Tunisian Embassy in July 1992 and appears to have had contact with the Embassy without ever receiving any indications that he was wanted by the Tunisian authorities or was requested to return to Tunisia.

4.5 In the light of the above, the State party submits that the complainant's claim that in 1997 he was denied an extension of his passport on the grounds that he was wanted for arrest by Tunisian authorities appears doubtful. As for the existence of a decree in 1993 prohibiting the issuance of passports to wanted Tunisian citizens, the State party has received no information to confirm this. The State party notes that the Embassy's refusal to issue the complainant a new passport was "for administrative reasons", and he has not demonstrated that there might have been any other reasons.

4.6 The State party also refers to two claims made by the complainant during the immigration proceedings: firstly, that he had received letters from his wife in which she referred to intimidation by the police after her return to Tunisia; secondly, that he had received information that his father had been interrogated by the police about his whereabouts in 1994. On the first issue, the State party notes that the complainant has not submitted any details of the circumstances surrounding the alleged harassment, nor has he submitted the letters or given any reason for not doing so. On the second issue, the State party submits that the documents provided as evidence were examined by the Aliens Appeals Board in its first decision and for several reasons considered not to be genuine.

4.7 With respect to the second letter from the Chairman of Al-Nadha, the State party submits that "given the assessment regarding the first certificate, the reliability of the second can be put in question". The Aliens Appeals Board had decided that the first letter had been issued without the Chairman's personal knowledge of the complainant.

4.8 With respect to the letter from UNHCR, the State party submits that it appears to have been based solely on the certificate by the Chairman of Al-Nadha and, although the State party believes the certificate to be genuine, its reliability does not appear to have been assessed by UNHCR in terms of a "foreseeable, real and personal risk" test.

4.9 With respect to the letter from Amnesty International Sweden, the State party submits, firstly, that it is not possible to tell from the letter what facts the complainant submitted to that organization; thus, it cannot be ruled out that there may be significant differences in content and detail between the information available to the immigration authorities and the information available to Amnesty International. Secondly, there is nothing in the note to indicate that Amnesty International had made any assessment of the credibility of the complainant's statement of facts. Neither is there anything to suggest that the assessment was made against the criterion of "foreseeable, real and personal risk". The State party is therefore of the view that the conclusion proposed in the letter can only be of limited significance in assessing the case at hand. In addition, the State party submits that reports from, among others, Amnesty International in fact form part of the material available to the Swedish immigration authorities in their decision-making process.

4.10 On the complainant's suggestion that in addition to the Al-Nadha association he risks arrest and

torture for having entered Sweden with a fraudulent Tunisian passport, the State party responds that, firstly, the Board was of the opinion that the complainant had not falsified his passport. Secondly, there is nothing to indicate that, even if the complainant were charged in Tunisia with falsifying his passport, he would necessarily be subjected to ill-treatment or torture. Thirdly, no information has been provided to indicate that the Tunisian authorities would know if the complainant were in possession of an illegal passport.

4.11 In light of all the above arguments, the State party doubts the general veracity of the complainant's claims. In its view the complainant should not be granted the benefit of the doubt, without providing additional details and evidence.⁵

4.12 The State party does not deny that the human rights situation generally in Tunisia is "far from ideal", and makes reference to the Amnesty International report of 2001 and the United States Department of State Country Report on Human Rights Practices for 2000. It leaves it up to the Committee to decide whether this constitutes a consistent pattern of gross, flagrant and mass violations of human rights.

4.13 With respect to a possible expulsion to Saudi Arabia, the State party notes that the complainant has not claimed that he is wanted there or would be subject to arrest and torture there. However, the State party submits that the complainant must prove that there is also a foreseeable, real and personal risk that he would be returned from Saudi Arabia to Tunisia, where he claims he would be tortured. According to the State party, foreigners are allowed to reside and work in Saudi Arabia provided that they are sponsored by a citizen or a domestic business and have a valid residence permit. The complainant lived in Saudi Arabia for 15 years and therefore must have had some kind of sponsor. The State party submits that the complainant has provided no information to indicate that his Saudi residence permit would not be extended if he were returned to Saudi Arabia, nor that the Saudi authorities would hand him over to the Tunisian authorities. In fact, he was granted permission to return there within six months of his departure.

4.14 In response to the State party's submission, the complainant contests the version of the facts submitted by the State party. With respect to the State party's response to the letter from Amnesty International, the complainant refers to a further letter provided by Amnesty International, dated 23 November 2001, in which it confirms that the information it relied on in the assessment of the complainant's case was that "provided in the inquiry made by and the decisions taken by the Swedish immigration authorities". Amnesty also stated that it "has indeed made its risk-assessment against the criterion of 'foreseeable, real and personal', as the organization on numerous occasions has reported abuses against members and sympathizers of Al-Nadha, as well as against other people accused of supporting the group". Amnesty International emphasizes, with reference to the Swedish authorities' decisions, that even individuals with a weak link to Al-Nadha have been subjected to persecution in Tunisia.

4.15 With respect to the information provided by UNHCR, the complainant states that the office had provided two letters in which it states its clear position that *all* Al-Nadha members risk persecution. This statement goes even further than evaluating individual risk.

4.16 As to the letters from the Chairman of Al-Nadha, the complainant notes that the second letter makes it clear that he has personal knowledge of the complainant. Indeed, the State party itself states that it has no reason to doubt that the certificate is genuine.

Issues and proceedings before the Committee

5.1 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. In this respect 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 examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds no further obstacles to the admissibility of the communication. Thus, the Committee proceeds to a consideration of the merits.

5.2 The Committee must decide whether the forced return of the complainant to Tunisia would violate the State party's obligation, 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 order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

5.3 The Committee notes the complainant's argument that there is a foreseeable risk that he will be tortured if deported to Tunisia because of his involvement with Al-Nadha and the fact that he was previously interrogated and tortured by the Tunisian authorities. The Committee takes note of the information provided by Amnesty International but observes that the complainant does not contest that he was not a member of Al-Nadha nor involved in any political activity, but merely involved in work of a humanitarian nature. In addition, the Committee notes that the complainant has not provided any evidence of having been tortured by the Tunisian authorities and has not alleged any other circumstances which would appear to make him particularly vulnerable to the risk of being tortured. This consideration is further supported by the fact that the author, although allegedly tortured in Tunisia in 1989, returned to Tunisia in 1990 without being subjected to torture. For the above-mentioned reasons, the Committee finds that the complainant has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Tunisia and that such danger is personal and present.

6. 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 complainant's removal to Tunisia would not constitute a breach by the State party of article 3 of the Convention.

Notes

¹ The State party refers to *S.L. v. Sweden*, complaint No. 150/1999, Decision adopted on 11 May 2001.

² *Official Records of the General Assembly, Fifty-third session, Supplement No. 44 (A/53/44)*, annex IX, para. 8 (c).

³ Case No. 65/1997.

⁴ The State party refers to *J.U.A. v. Switzerland*, case No. 100/1997, Decision adopted on 10 November 1998.

⁵ The State party refers to *A.S. v. Sweden*, case No. 149/1999, Decision adopted on 24 November 2000.