

COMMITTEE AGAINST TORTURE

H. K. H. v. Sweden

Communication No. 204/2002

19 November 2002

CAT/C/29/D/204/2002

VIEWS

Submitted by: Mr. H. K. H. (represented by counsel)

Alleged victim: Mr. H. K. H.

State party: Sweden

Date of complaint: 26 March 2002

Date of present decision: 19 November 2002

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

Meeting on 19 November 2002,

Having concluded its consideration of complaint No. 204/2002, submitted to the Committee against Torture by Mr. H. K. H. 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 complaint, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Mr. H. K. H., a citizen of Iran, currently awaiting deportation from Sweden. He claims that his removal to Iran 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 8 April 2002, the Committee forwarded the complaint to the State party for comments and requested, under Rule 108, paragraph 1 of the Committee's rules of procedure, not to return the complainant to Iran while his petition was under consideration by the Committee. The State party acceded to this request.

The facts as submitted by the complainant

2.1 While living in Iran, the complainant belonged to and worked for the political organization Cherikhaj Fadai Schalq. The complainant alleges that he was arrested several times between 1983 and 1988 as a suspect for illegal political activities. In or around September 1989, he alleges that he accidentally killed a revolutionary guard in the following circumstances. The complainant was having a relationship with a girl of Armenian origin. On taking a walk together in a park in central Tehran, they met a group of revolutionary guards. These guards "interfered" with the complainant and his girlfriend because she wore a Christian cross around her neck. The guards threw acid at his girlfriend's face. When one of the guards threatened the complainant with a knife, the complainant managed to grab the knife and stab the guard. He and his girlfriend then fled.

2.2 After this incident, the complainant hid at different places around Tehran. During this period in hiding, he was informed that the guard had died from his wounds and that his girlfriend had committed suicide. He was also informed that some of his relatives' houses had been searched. On 26 October 1989, the complainant succeeded in leaving Iran illegally and arrived in Sweden, where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such). On 17 September 1990, the Migration Board rejected the complainant's application as he had given contradictory information about his political activities. The complainant appealed his decision to the Aliens Appeals Board which rejected his application for similar reasons and refused to grant him refugee status. He was later granted a residence permit on the basis of a general amnesty for asylum applicants.

2.3 According to the complainant, his mother was murdered in 1996. In his view, it is likely that the murder was a consequence of his actions. One of his brothers, committed suicide in 1996 and another brother was killed in 2000. His two other brothers fled Iran and were granted asylum in Canada. The complainant also alleges that he received oral information that he has been sentenced to death in Iran. A representative of the Revolutionary Guard had told the complainant's mother about the verdict before her death.

2.4 In 1994, the complainant was prosecuted for drug smuggling. He was sentenced to 10 years' imprisonment and ordered deported, as he was considered a danger to the public. The complainant failed in his efforts to appeal his case to the Appellation Court for Middle Sweden and then the Supreme Court. The complainant alleges that his need for protection was not considered through this court procedure. The National Board of Corrections Institutions reduced the complainant's sentence so that he would be released on 8 March 2002.

2.5 On 10 January 2002, the complainant lodged an application with the Government arguing that the Court's decision to expel him from Sweden should be revoked as he had the same need of protection as he had previously maintained in his claim to the Migration Board. In addition, he claimed that the contradictions in the information he had supplied to the Migration Board were related to the fact that he was suffering from the effects of torture which he had suffered during his arrests and interrogations in Iran.¹/ Although the author provided information on further documents taken into account by the Government in assessing the complainant's case, this information was provided to the author under the Swedish Secrecy Act and, at the complainant's request, is not provided herein.

2.6 [In assessing his application, the Government requested the Migration Board and the Swedish Embassy in Teheran to give their views on particular issues. The Migration Board replied that the complainant had provided no new information. According to the complainant, the Embassy provided the following information: that there is no possibility of confirming or denying the possibility that there are any charges against the complainant in Iran, as the Revolutionary Court refused to cooperate; that the complainant's story about the incident in the park was likely as such events were frequently reported; that the punishment for murdering a guard is a capital sentence; and that it is only the victim's relatives who can pardon the convicted.] (The complainant was provided with this information from the Ministry of Justice on the condition that although it may be provided to the Committee it is subject to secrecy under the Swedish Secrecy Act. Counsel was requested to clarify whether this information could be put in the decision for publication. Counsel responded that he could get no clear answer from the Ministry of Justice and that the Committee should make the final decision as to what to do with the information. The State party has already provided this information, although interpreted slightly differently, but as we have no clear instructions from counsel this information should be deleted from the final decision.)

2.7 In a decision dated 21 March 2002, the Government decided that there was no reasonable risk that the complainant would be subjected to torture if returned to Iran. On 10 April 2002, the complainant was released from custody by decision of the Minister of Justice, who decided to stay the enforcement of the complainant's expulsion until further notice.

2.8 According to the complainant, the use of torture is common in Iran. Police, the Revolutionary Guard and other Security Services frequently practise grave forms of torture, with various methods during investigations. Torture is also used in the prison system after a verdict. In this regard, the complainant refers to reports from UNOHCHR's Special Rapporteur for Iran the Secretary-General's Special Representative on Iran, the United States State Department's Country Reports on Human Rights's report and Amnesty International's report. Even the Iranian Parliament itself, he states, has found that torture and excess of violence are used in Iranian prisons.

The complaint

3.1 The complainant claims that there are substantial grounds for believing that he would be in danger of being subjected to torture on return to Iran and, therefore, Sweden would be violating article 3 of the Convention if he were returned there. The complainant acknowledges that he provided the Swedish authorities with contradictory information on his involvement in political activities but argues that this was

due to the psychiatric effects of torture. In addition, he argues that he never provided contradictory information on the incident surrounding the guards in the park and that this is his main argument for believing that he will suffer torture if returned to Iran. He claims that this makes him an enemy of the State and the punishment for such an act, whether it is accidental or not, is capital punishment.

3.2 The complainant emphasizes that he is not claiming that the risk of execution would amount to a violation of article 3, but contends that because of the nature of the crime he would surely be subjected to torture prior to execution, possibly with the intention of extracting information from him on his membership of illegal organizations. The complainant also claims that the incidents which occurred in his family, including the fact that two of his close relatives were murdered and two of his brothers were forced to seek asylum abroad, corroborate the fact that the authorities were looking for him and as he could not be found took its revenge on his family.

3.3 The complainant claims that all domestic remedies have been exhausted and that this complaint has not been submitted for examination under any other procedure of international investigation or settlement.

The State party's submission on the admissibility and merits of the complaint

4.1 By letter of 18 June 2002, the State party made its submission on the admissibility and merits of the complaint. On admissibility, the State party contends that the complainant's claim that he is at risk of being tortured, upon return to Iran, lacks the minimum substantiation that would render the complaint compatible with article 22 of the Convention.^{2/}

4.2 On the merits, the State party recalls 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 that a person would be in danger of being subjected to torture upon his return to that country and the individual must show that he/she faces a foreseeable, real and personal risk of being tortured. The State party argues that it follows from these principles that it rests primarily with the complainant to collect and present evidence in support of his or her account.

4.3 The State party argues that several provisions of the Aliens Act reflect the same rights in article 3, paragraph 1 of the Convention. In this context, it states that the complainant's case has been assessed by the Migration Board in 1990 and 1994, by the Aliens Appeal Board in 1992 and by both the Migration Board and the Government in 2002. Moreover, the issue of impediments to expulsion was assessed by two Swedish courts. It argues that the complainant's claim before the Committee that the issue of his protection was not brought up during the criminal proceedings is untrue. On the issue of expulsion, the court took note of the fact that the complainant had been living with a Swedish woman for four years, with whom he had had a child born in November 1993. However, it found that the crimes for which he had been found guilty were of the utmost severity as they were a danger both to individuals and to society at large. Moreover, it found that these crimes were on a large scale and had been in progress for a relatively long time. In an overall assessment, the court concluded that there were exceptional grounds for the complainant's expulsion. The District Court also based its view on an opinion provided by the Migration Board indicating that there were no impediments to his expulsion.

4.4 The State party also confirms that in examining whether the Government should cancel the expulsion order, it sought the opinion of the Migration Board and the Swedish Embassy in Tehran. The Embassy submitted two sets of information but the State party claims that only one set was submitted to the Committee by the complainant. According to the State party, the Embassy provided the following information. Its overall view was that it was unlikely that the complainant had been convicted in absentia. However, providing that the claim to have killed a revolutionary guard was true, he could have been prosecuted either before one of the Islamic revolutionary courts or before a public court. If sentenced before a public court the judgement would have been served on him or his family. If heard in a revolutionary court he would have no proof that any judgement was served on him. The prescribed sentence for having killed a guard in Iran is the death penalty. Although the revolutionary court would probably not have considered the circumstances of his case sufficiently mitigating to exclude such a sentence, if heard in the public court he could have been successful with the argument that he acted in self-defence. The incident in the park as described by the complainant was credible as similar incidents had been reported to the Embassy. The Embassy could make a formal request to the Iranian authorities on whether the complainant had been convicted in absentia, but felt that this may not lead anywhere or may involve a risk that the complainant be considered "guilty by association".

4.5 The State party contends that the complainant's account of events contains a number of inconsistencies and shortcomings. Although the State party is aware of the Committee's view that complete accuracy seldom can be expected from victims of torture, it considers that these must be held against him in an assessment of his credibility. The State party notes the complainant's argument that the contradictions in his account of events related to the fact that he allegedly suffers from the after-effects of torture. It notes, however, that the complainant did not mention that he had been tortured (or twice attempted to take his life while in prison) until his appeal to the Aliens Appeals Board. Thus, he did not mention it either in the interviews before the Migration Board or in his additional observations to the Migration Board, which were drafted with the assistance of his counsel.

4.6 The State party also notes that at no time during the proceedings did the complainant provide any details regarding the alleged torture. In the State party's view, the one medical report (issued 23 May 1990) submitted in this case does not afford any support for the allegation that the complainant suffers from post-traumatic stress disorder. Neither does it contain information to the effect that during the medical examination scars were found on his lips and in his oral cavities. The State party is therefore of the opinion that the reference to his alleged experiences of torture does not suffice as an explanation for the inconsistencies of his account of events.

4.7 On the issue of the complainant's involvement in political activities, the State party notes that he has not submitted any evidence of these activities or of his claim that the Iranian authorities were aware of his activities. The State party argues that this lack of evidence should be noted particularly in view of the fact that during the asylum proceedings the complainant provided clearly conflicting information regarding whether or not he had been politically active in Iran. Furthermore, he submitted different information regarding both the reasons for the arrests and the length of time of the arrests that were allegedly consequences of these activities. If the Committee decides to accept the complainant's statements on this issue, the State party argues that the complainant claimed only to be a supporter and not a member of the

organization Cherikhaj Fadai Schalg and his activities appear to have been "low key" in nature and extent. For these reasons he would never have been more than a minor interest to the Iranian authorities. Therefore, in the State party's view it is unlikely that the incident in the park was prompted by the complainant's political background as argued by him in his Migration Board application in 1990.

4.8 On the issue of the complainant's account of the incident with the guards in 1989, the State party submits that the complainant altered his version of events in several important respects. Inconsistencies are to be found in respect of the time, place and reason for the alleged attack, as well as the course of events and the consequences thereof. In particular, the State party highlights the new facts, submitted in the complainant's application to the Government on 10 January 2002, that his girlfriend was with him at the time of the incident and that the guards threw acid on her face. He also mentioned in that application, for the first time, that he had actually killed the guard with the knife and that his girlfriend had committed suicide and he admitted that he was aware of these facts when he left Iran.

4.9 The State party also notes that new circumstances regarding this incident, and not mentioned previously to the Swedish authorities, were submitted to the Committee, including the contention that the knife hit the guard's body rather than his face, that his girlfriend was with him at the time of the incident and that it was she and not the complainant who was wearing the crucifix. In addition, the State party submits that the claim that the guard pushed the complainant into a shop window, thereby causing him severe injuries, appears for some unknown reason to have been withdrawn between the asylum proceedings and the proceedings concerning expulsion.

4.10 On the issue of the complainant's departure from Iran, the State party submits that the complainant modified his account of events, firstly claiming that his father organized the departure with a smuggler and then that he himself contacted the smuggler. In addition, during his interviews with the Migration Board, on 26 October 1989 and 13 November 1989, he said that he left Iran through the Iranian seaport of Bandar-E-Abbas and used his military certificate and driver's licence to identify himself during the trip from Tehran to Bandar-E-Abbas. However, later in the proceedings he claimed to have left Iran through Turkey and used false documents to leave the country. For this reason, and the fact that the complainant has provided no documentary proof to support his claims in relation to the journey, the State party argues that it cannot be excluded that he left Iran legally. Considering that the complainant claims to have been wanted by the Iranian authorities for one month at the date of departure, it is questionable whether he would have succeeded in leaving the country had he used his certificate and driver's licence. According to the State party, this may explain why the complainant later submitted that he used false documents to exit the country.

4.11 On the issue of the death of the complainant's mother, the State party submits that the complainant contradicted himself firstly by stating that she died at the end of 1990 due to heart problems and then that she was murdered in 1996 as a consequence of her son's actions. The complainant has provided no explanation in this regard.

4.12 Finally, the State party submits that the complainant changed his position with regard to the indictment against him in Sweden. In the District Court, he pleaded guilty but in the Court of Appeal renounced the statement he had made earlier. In the State party's view, this gives reason to seriously call into question his

claim that there is a death sentence against him in Iran. In this regard, the State party submits that there is no indication that an arrest order has been issued against the complainant. It also refers again to the opinion of the Swedish Embassy in Tehran, that it is not likely that the complainant would have been convicted and sentenced in absentia, as he has claimed. According to the State party, all these contradictions made by the complainant raise serious doubts about the general veracity of his claim.

Comments by the complainant

5.1 The complainant contests the State party's argument that the complaint is inadmissible and submits that the facts of the case are very different from those to which the Committee previously found inadmissible for want of substantiation.

5.2 The complainant agrees that the Aliens Act reflects the rights protected in article 3, paragraph 2 of the Convention but argues that the issue is how the State party applies that law and refers to the fact that the Committee has previously found violations against Sweden of article 3 on nine occasions.

5.3 The complainant argues that the information provided by the Migration Board to the District Court advising that there are no impediments to the complainant's expulsion to Iran, is a standard response from the Migration Board when a case has already been rejected by the Migration Board and Aliens Appeals Board. He argues that the Migration Board in no deeper sense considered all aspects of the risks to which the complainant might be exposed if returned to Iran. In fact, he argues that in the written judgement of the District Court the expulsion matters concerning the complainant only cover half a page and deal only with the complainant's relationship with his wife and daughter and finds that expulsion is necessary because of the serious nature of the crime committed by the complainant. Nothing is mentioned, in the judgement concerning the risk to the complainant if he were returned to Iran. He also argues that the Court of Appeal judgement gives no indication that it considered the risk connected to his expulsion.

5.4 On the issue of the complainant having previously suffered torture in Iran, he argues that the reason he did not mention it until relatively late in the procedure must be seen in the light of what is known of the psychological effect of torture and should not be used against him. He argues that, in previous cases, the Committee found that it would not necessarily expect a victim of torture to declare spontaneously that he/she had been subjected to such suffering and particularly that it could not expect this type of information to be provided in a coherent and consistent manner. The complainant reiterates that he suffers from post-traumatic stress disorder and adds that after receiving the Government's negative decision in March 2002, he became so desperate that he had to be brought to a psychiatric clinic for medical care.

5.5 With respect to the complainant's political activities, he concedes that such activities were "low key" but considered sufficiently dangerous for the Iranian authorities to detain him, even if he was subsequently released. He submits that he worked for the organization Cherikhaj Fadai Schalgh but did refer earlier to working for Mohaheddin. According to the complainant, as these organizations worked very closely together the difference was small. He submits that the incident in the park was linked to his political activities, as the guards had recognized the complainant. He argues that if returned to Iran the authorities will review their files and investigate the connection between the incident in the park and his links with

political groups. The complainant admits that he gave different information on where the incident with the guards occurred but that both locations were very near to one another. The complainant also admits that he was unable to mention the exact date of this incident but that he did inform the Swedish authorities on three occasions that it occurred in September 1989. He also submits that the information provided by him on arrival in Sweden may have been unclear as he just completed a long and unsafe journey and experienced traumatizing events.

5.6 With respect to his girlfriend's involvement in the incident in the park, the complainant admits that he didn't explicitly mention that his girlfriend was with him during the incident in the park, but did mention their relationship. He does recall mentioning to his lawyer that corrosive acid had been thrown at her but he submits that he could be mistaken on this point. He claims that he did not become aware that the guard had died and that his girlfriend had committed suicide until after the asylum process and therefore did not mention this fact during the process. Furthermore, the complainant submits that he did not mention that he had been pushed into a shop window by the guards in his application to the Government but that this does not mean that his statement contradicted those previously made.

5.7 On the issue of the contradictory statements made by the complainant on his departure from Sweden, the complainant confirms that he passed through the Iranian-Turkey border but that he lied at the outset as he wished to protect the smuggler. With respect to the circumstances of his mother's death, the complainant says that the original statement he made was a misunderstanding and that he has since provided information to the Government proving that his mother was assassinated in 1996. The complainant also submits that even if it is unusual that someone would be convicted to capital punishment in his absence it is not impossible. He also states that it is possible that, although his mother told him that he had been sentenced to capital punishment in his absence, she could have misunderstood the message received from the guards.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, 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 the exhaustion of domestic remedies is not contested by the State party. The State party submits that the complainant has not substantiated his case for the purposes of admissibility but the Committee is of the view that sufficient information has been provided to consider this complaint on the merits. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to a consideration of the merits.

Consideration of the merits

6.2 The Committee must decide whether the forced return of the complainant to Iran 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, in conformity with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Iran as per paragraph 2.8, 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. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee notes that the main reason the complainant fears a personal risk of torture if returned to Iran is because he allegedly killed a guard in a park in Tehran prior to his departure. The complainant admits that he provided inconsistent information to the State party on his alleged involvement in political activities, which he attributes to the effects of torture, but argues that he was never inconsistent in describing the incident in the park. The Committee notes that the complainant has provided a medical report which indicates that he has marks on his body, but does not support the allegation that he suffers from post traumatic stress disorder resulting from being subjected to torture. Indeed, the Committee notes the State party's argument that the complainant did not mention any instances of torture until the appeal to the Aliens Appeal Board and even then provided no details of the alleged torture. Neither has the complainant provided details of any torture in his submission to the Committee. Consequently, the Committee finds it difficult to believe that inconsistencies in the information provided to the State party and to the Committee resulted from the effects of torture. In addition, and contrary to the complainant's claim, the Committee notes that the complainant was inconsistent in his description of the incident in the park including his failure to mention his girlfriend's presence until his application to the Government in 2002. The Committee also observes that the complainant has failed to sufficiently explain many other inconsistencies in his claim including the circumstances of his mother's death, and his departure from Iran, which raise doubts with the Committee as to his credibility. In light of the foregoing, and while recognising the ongoing widespread violations of human rights in Iran, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured 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 complainant's removal to Iran by the State party would not constitute a breach of article 3 of the Convention.

Notes

1/ The complainant provided a medical report, dated 23 May 1996, indicating that he had scars on his

body alleged to have been caused by cigarette burns and whipping. The complainant provided no details of the alleged torture.

2/ The State party refers to the case of *Y. v. Switzerland*, case No. 18/1994, Views adopted on 17 November 1994.