

COMMITTEE AGAINST TORTURE

H. I. A. v . Sweden

Communication No. 216/2002

2 May 2003

CAT/C/30/D/216/2002

ADMISSIBILITY

Submitted by: H.I.A. (represented by counsel)

Alleged victim: H.I.A.

State Party: Sweden

Date of complaint: 2 August 2002 (initial submission)

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

Meeting on 2 May 2003,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The complainant is Mr. H.I.A., a Jordanian national, born on 14 December 1952, currently residing in Sweden and awaiting deportation to Jordan. He claims that his forcible return to Jordan 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 29 August 2002, the Committee forwarded the complaint to the State party for comments.

Facts

2.1 The complainant was born and raised in Nablus (West Bank), where he lived until 1971. That year

the Palestinian Liberation Organisation (PLO) 1/ imprisoned him for being an Israeli spy and traitor for a total of nine months in two locations in Lebanon, before being freed by an (unspecified) Court 36. He alleges that he was tortured and beaten during his detention. After traveling to Syria, he was again imprisoned by the PLO for the same reasons (apparently in Syria), and released by an (unspecified) Court 34.

2.2 Following his release, the complainant lived in the United Arab Emirates (UAE) for 23 years. In 1995, he allegedly wanted to sell land in Netanya, Israel, that he had inherited from his mother, but he was unable to conclude the sale as Israeli law prescribed that the transaction would have to take place in either Israel or Jordan, allegedly neither countries to which he could travel. He contends that he rejected a PLO request to buy the land at a low price, was threatened that he could not sell it elsewhere and labeled a traitor.

2.3 Upon return to the UAE after an attempt, in 1996, to sell the land in Lithuania, he was arrested and detained for three months for rent arrears approximating US\$3,000. He contends that the real reason for his arrest was □political□, and that after his employer learnt of his efforts to sell the land, his contract was not renewed. The complainant contends that the UAE intelligence service then became aware that the PLO considered him a traitor, and his residence permit was withdrawn.

2.4 As he did not want to return to Jordan for fear of persecution, the complainant left the UAE in 1998 for Lithuania. He married a Lithuanian woman and was granted a residence permit. On 6 November 1999, his residence permit expired and was not prolonged because his wife, from whom he had separated, was opposed to the renewal. On 17 December 1999, the complainant traveled to Sweden and applied for asylum on 20 December 1999. Attempting to prolong his passport, the complainant□s (Jordanian) lawyer informed him that the Jordanian security services requested his and his children□s presence in the country in order to do so. His children and their mother reside in Damascus, Syria, on expired passports, and they allegedly cannot travel to Jordan to renew them.

2.5 On 17 April 2001, the State party□s Migration Board denied the complainant□s application. The Aliens Appeals Board rejected his appeal on 24 April 2002. A further application (based upon factual circumstances that had not previously been examined by the authorities) was rejected on 3 June 2002.

The complaint

3.1 The complainant contends that due to his continued efforts to sell land and his refusal to co-operate with the PLO, he is regarded as disloyal to the Palestinian cause, and is at personal risk of being subjected to torture in Jordan. He also fears that, as there is allegedly close co-operation between the Jordanian authorities and the PLO, he may possibly be handed over to the PLO. He cites reports of non-governmental organizations in support of the proposition that both Jordan and the Palestinian Authority are engaged in gross, flagrant and mass violations of human rights. 2/

3.2 The complainant states that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

The State party's observations on admissibility and merits

4.1 By letter of 18 November 2002, the State party contested the admissibility and merits of the complaint, pointing out, as to the facts, that while in Lithuania, the complainant applied on 30 November 1998 to its Embassy in Vilnius for a 3 week visa in December 1998. At the time, he held a Jordanian passport valid until February 2000. His visa application was rejected on 3 December 1998, but he entered Sweden on 17 December 1999 with a forged Lithuanian passport.

4.2 During the complainant's first interview with the Immigration Board, he stated that he had gone to Lithuania to contact Jewish connections with a view to selling the land. There, an "Arab mafia" had allegedly threatened his life because he wanted to sell land to Jews. Family members in Amman, Jordan, had done likewise. He also came to Sweden as he wanted to invest in Swedish business and make his living that way.

4.3 At subsequent interviews, he stated that in 1975 the Jordanian authorities refused for one year to renew his passport. After family intervention, it was renewed allegedly only on condition that he would not return. Thereafter, it was renewed every fifth year several times, until in Lithuania, the "Arab mafia" took his passport when he purchased a forged Lithuanian passport. In Sweden, he intended to contact Jews for the purpose of selling his land, and he could no longer obtain a Jordanian passport as his efforts to sell the land were known. He had never been politically active.

4.4 The Migration Board, in rejecting his applications for asylum and a residence permit, found *inter alia* that he had not invoked any reason apart from financial reasons to sell the land he had inherited. The fact that he was able to obtain extensions of his passport while allegedly being wanted by the Jordanian security service was contradictory. Moreover, he was found not guilty both times he was tried in the early 1970s. Accordingly, he had not substantiated that he risked persecution as a refugee, or was otherwise in need of protection.

4.5 The Aliens Appeals Board, in turn, found that the complainant had not justified any fear of being in an exposed position in his own country, and observed that his arrests by the PLO had taken place some 30 years previously. The claim that his land dealings implied great risks in Jordan was pure speculation. Moreover, it was relevant that he could prolong his Jordanian passport on several occasions without difficulty. He thus had not substantiated that Jordanian authorities or others in that country were interested in him on grounds such as political opinion. The Board referred to the Committee's jurisprudence that the burden of proof was not high in alleged torture cases, complete evidence in clear support of such a claim being rare. The risk of torture upon return, while having to be more than a theoretical possibility or mere suspicion, did not have to be highly probable. Applying these standards, the Board found that there did not exist substantial grounds to believe he would in fact face torture in the event of a return to Jordan, or even a real risk thereof. In support of his subsequent application, the complainant supplied a declaration from his lawyer that the Jordanian authorities had refused to renew his passport and had instead referred him to the security service.

4.6 As to the admissibility of the case, the State party argues that the complaint is inadmissible under article 22, paragraph 2, of the Convention, for lacking the minimum substantiation required of an alleged breach of article 3. The State party refers, for this conclusion, to the Committee's jurisprudence 3/ and its arguments on the merits, set out below.

4.7 As to the merits, the State party outlines the salient features of its asylum law, as applicable to the complainant. Under the asylum legislation, an alien is entitled to a residence permit (and a ban on removal) if he has a well-founded fear (i) of sentence of death or corporal punishment in the State of origin, (ii) of being subjected to torture or other inhuman or degrading treatment or punishment, or (iii) of persecution. The Migration Board (at first instance) must hold an oral hearing with the asylum seeker, and the Aliens Appeal Board does so if this would benefit the proceedings before it. After refusal, a new application advancing factual circumstances not previously considered may be brought, in which the same grounds as above provide entitlement to a residence permit, or where enforcement of the expulsion would be contrary to requirements of humanity.

4.8 The State party refers to the Committee's constant jurisprudence that while it takes into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations in the country in question, it is ultimately the individual concerned who must show a *personal* risk of being subjected to torture. Concerning the general situation in Jordan, the State party points out that, while not ideal, certain improvements have taken place in the last few years. In 2001, steps were taken to strengthen the judiciary's independence, and there were neither reports of arbitrary/unlawful deprivation of life by State agents nor of politically-motivated disappearances, nor of political prisoners. The law provides provides prisoners with the right to counsel and to humane treatment. Most prisons meet international standards, and, with some exceptions, the ICRC is permitted unrestricted access to prisoners and facilities, including those of the General Intelligence Directorate. In 1999, the government also formally granted UNHCR access, while local human rights monitors are allowed to visit prisons. The Government does not routinely use forced exile. Jordan is a party to several major human rights instruments, including, since 13 November 1991, the Convention against Torture.

4.9 As to whether the complainant faces a personal risk of torture, the State party points out that the Swedish authorities apply the test contained in article 3 of the Convention, as well as the Committee's interpretation, as shown, by the Appeals Board decision in particular. The national authority conducting the interviews is in a particularly good position to assess the credibility of the complainant's statements. In this case, the Migration Board took its decision after three interviews totaling 5.5 hours, which, taken together with the facts and documentation of the case, ensured that it had a solid basis for making its assessment regarding the complainant's need for protection.

4.11 The State party argues that, as a consequence, great weight must be attached to the decisions of its authorities, and refers the Committee to their decisions. It recalls that the complainant claims that he risks torture upon expulsion to the country of his nationality as a consequence of his efforts to sell land allegedly inherited by him, and his refusal to co-operate with the PLO. He claims he is considered a traitor by the PLO, and that the PLO has an excellent relationship with the Jordanian authorities who may torture him or possibly hand him over to the PLO. In response, the State party observes that at his

initial interview, the complainant only referred to land problems, making no mention of having been ill-treated by the PLO as an alleged spy. Instead, he claimed to have been threatened by a Lithuanian "Arab mafia" and his own family in Jordan. From the information submitted by the complainant himself, he seems to have come to Sweden in order to sell the land in Israel and invest the proceeds in Sweden. In the State party's view, his asylum application was primarily motivated by economic interests, which are not in themselves grounds for which protection under the Convention is afforded.

4.12 As to whether any risk of torture currently exists, the complainant's alleged torture at the hands of the PLO (an issue not initially raised) occurred some 30 years ago, a fact which must by now be deemed to lack relevance. Nor has the complainant in any way substantiated, beyond mere statements, that he was arrested and tortured by the PLO in Lebanon and Syria. While he claimed he had only been in Jordan once for a short period, Jordan remains his country of nationality (with a large Palestinian population) and a wish not to reside there cannot *ipso facto* confer entitlement to protection in another country.

4.13 The State party observes that the complainant also stated that he had held a Jordanian passport for 20 consecutive years until it was taken from him by an "Arab mafia" in return for the forged passport. The complainant stated that it was renewed, every fifth year, even though Jordanian intelligence allegedly knew even then of his imprisonment in the 1970s and the accusation of spying for Israel. These circumstances relating to the complainant's passport undermine the credibility of his claims.

4.14 The State party notes that at no time (including in the complaint) has the complainant claimed that he had been politically active or that he had worked in any way against Jordan or the Palestinian cause. Nor has he submitted to the Committee any information substantiating his claim that he will be "persecuted and tortured by the Jordanians and possibly handed over to the PLO". The State party thus maintains that the complainant's assertions about the consequences of his efforts to sell the land allegedly inherited by him amount to no more than mere theory and suspicion..

4.15 Taking these circumstances in their totality, the State party submits that the complainant has failed to show that there is a foreseeable, real and personal risk of torture in the event of his return to Jordan, and accordingly there is no issue arising under article 3 of the Convention.

Complainant's comments on the State party's submissions

5.1 By letter of 30 December 2002, the complainant responds to the State party's submissions, contending that the reason he was arrested in Lebanon in 1971 was that the Israeli intelligence service recruited him prior to his departure to study in Lebanon. He alleges he was arrested after a week and identified by a Palestinian official, related to his mother's first husband, who had been in Nablus prison when the complainant was in contact with Israeli intelligence authorities located in the same building.

5.2 From 1995 until 1997, transactions concerning land in Israel could be, and were, undertaken in Jordan. The complainant argues that if he is returned to Jordan, he would be accused of seeking asylum in Sweden, and selling land in Israel. The spying issue could also be re-opened, which could result in

a long prison sentence during which he could be mistreated by other inmates. If he is released upon his return, he could be pursued by Palestinian organizations in Jordan. He argues that Yasser Arafat himself could reopen his case.

5.3 Finally, he alleges that the State party wishes to deport him as a matter of convenience, as his is a political case connected with both Israel and the Palestinian Authority.

Issues and proceedings before the Committee

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. 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 further notes the State party's acknowledgment that domestic remedies have been exhausted.

6.2 As to the State party's argument that the complaint is inadmissible for incompatibility with the provisions of the Convention, the Committee considers that the part of the complaint concerning the alleged possibility of being handed over to Palestinian authorities is mere speculation on the complainant's part. The Committee observes that the possibility of any such handover, let alone any consequences that might follow, have not been substantiated in any form. Similarly, the complainant's claims with respect to Jordan plainly fail to rise to the basic level of substantiation required for purposes of admissibility. As a result, the Committee considers, in accordance with article 22 of the Convention and Rule 107(b) of its revised Rules of Procedure, that the complaint is manifestly unfounded, and thus inadmissible.

7. Accordingly, the Committee decides:

- a) that the complaint is inadmissible;
- b) that this decision shall be communicated to the State party and to the complainant.

[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.]

Notes

1/ The complainant refers to the "PLO" (except for one reference to the Palestinian Authority) throughout the complaint.

2/ Extract from (apparently) Human Rights Watch □ Torture and physical abuse by the security forces □ (unspecified/undated weblink); Amnesty International □ Human rights in the Middle East: Reports: Jordan □ (www.amnesty-volunteer.org/usa/mideast/reports/jordan.html; according to the webpage, it was last updated on 4 January 1998); Amnesty International □ Jordan: An absence of safeguards □ (web.amnesty.org/802568F7005C4453/0/DE839FE5F4399ED18025690000692C42?Open; 1 November 1998).

3/ See, for example, Y v Switzerland Case No 18/1994, Views adopted on 17 November 1994.