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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 690/2015*, **

Communication submitted by:	E.A. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	20 July 2015 (initial submission)
Date of adoption of decision:	11 August 2017
Subject matter:	Non-refoulement; prevention of torture
Substantive issue:	Deportation to Lebanon
Procedural issue:	Lack of substantiation
Articles of the Convention:	3 and 22

Background

1.1 The complainant is E.A., a Lebanese national born in 1992. He sought asylum in Sweden but his application was rejected and he risks deportation to Lebanon. He claims that his deportation would put him under the risk of torture or other forms of inhuman or degrading treatment by Lebanese authorities and would constitute a violation by Sweden of article 3 of the Convention.

1.2 On 27 July 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant while the complaint was being considered.

The facts as presented by the complainant

2.1 The complainant is a homosexual man born in the southern part of Lebanon who now lives in Sweden. Since 2013, he has had a Swedish same-sex partner. While his mother has accepted his sexual orientation, his father, who lives in Israel, does not know about it and, the complainant claims, would never accept it. The complainant and his mother decided not to inform his father or other relatives about his sexual orientation. However, a friend of the complainant saw him with his boyfriend and revealed the information to his relatives in Lebanon. The Lebanese authorities also know about his sexual orientation. The complainant's story has been in the newspapers in Sweden and, although the articles did not

* Adopted by the Committee at its sixty-first session (24 July-11 August 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

reveal his name, the Lebanese embassy there informed him that they knew the articles referred to him.

2.2 The complainant came to Sweden with his mother and two sisters in 2006, when he was a minor. The family applied for asylum on the ground of his father's involvement in fighting for the Government of Israel. Their claim was rejected in 2007 by the Migration Agency and in 2008 by the Migration Court. On 9 March 2013, the day the expulsion order became statute-barred, the complainant applied again for asylum on the grounds that he was a homosexual man and as such was at risk of being detained and tortured by police and would be at risk of ill-treatment by his relatives if returned to Lebanon. The complainant's request for asylum was rejected on 17 September 2014 by the Migration Agency. His appeal was rejected on 17 December 2014 by the Migration Court. On 16 February 2016, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final.

The complaint

3. The complainant claims that article 534 of the Lebanese Criminal Code criminalizes "unnatural sexual intercourse", which is punishable by up to one year of imprisonment. In practice, homosexual relations fall under that law. The complainant states that homosexual men arrested under article 534 are abused by the police in detention. He alleges that, if deported to Lebanon, he would be at a risk of torture or other forms of inhuman or degrading treatment from the police. He would risk honour-related violence or killing by his relatives and would not be able to turn for protection to the authorities.

State party's observations on admissibility and the merits

4.1 In its observations dated 14 March 2016, the State party submits that the communication should be considered inadmissible as manifestly unfounded. Should the Committee find the communication admissible, the State party submits that there will be no violation of article 3 of the Convention if the complainant is returned to Lebanon.

4.2 The State party notes that the well-founded fear of persecution due to sexual orientation constitutes part of the asylum criteria according to the Swedish Aliens Act, both when the risk is posed by the authorities or when the authorities fail to afford sufficient protection from persecution by private individuals. On 15 October 2015, the Migration Agency issued its latest general legal positions to guide and facilitate the assessment of lesbian, gay, bisexual and transgender-related cases, which are processed by specialists trained in that area.

4.3 On the facts of the case, the State party provides detailed information concerning several asylum and residence proceedings initiated by the complainant before the domestic authorities. The State party further assesses the complainant's claims by addressing two conditions established by the Committee in its jurisprudence: the general human rights situation in Lebanon and the personal risk for the complainant to be subjected to torture, following his return.

4.4 Regarding the general human rights situation, the State party submits that there is no consistent pattern of gross, flagrant or mass violations of human rights in Lebanon. According to the Country Report on Human Rights Practices for 2014 by the United States Department of State,[1] article 534 of the Lebanese Criminal Code is rarely applied and, when applied, it often results in a fine. It was reported that the number of cases of harassment of lesbian, gay, bisexual and transgender activists had recently decreased and that, in 2009, an important judgment had been delivered stating that the homosexual acts were not unnatural because they were consensual. The report stated that other judges had later made similar decisions. According to the report, with reference to the non-governmental organization Helem, there had been fewer than 10 prosecutions under article 534 of the Criminal Code in 2010. According to the statement from the Swedish embassy in Amman, there were no ongoing trials under that article in 2013. The State party concludes

[1] Available from www.state.gov/j/drl/rls/hrrpt/2014humanrightsreport/index.htm?year=2014&dlid=236610#wrapper.

that the current human rights situation in Lebanon, including as regards human rights of lesbian, gay, bisexual and transgender persons, does not in itself suffice to establish that the forced removal of the complainant would breach State party's obligations under article 3 of the Convention. Accordingly, there is a need for the complainant to show that he would be personally at risk of being subjected to treatment in violation of article 3 of the Convention.

4.5 As to the personal risk upon return, the complainant raised before the Committee the same claims that have been considered by the domestic authorities, namely, that he risks being subjected to torture, inhuman or degrading treatment or punishment by Lebanese authorities, as well as by his family, owing to his sexual orientation, if returned to his country of origin. The State party points out that several provisions of the Aliens Act reflect the same principles as article 3 of the Convention. The State party also notes that the Migration Agency and the Migration Court conducted a thorough examination of the case, having sufficient information to ensure a well-informed, transparent and reasonable assessment of the complainant's protection needs. In that regard, the State party refers to paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3, in which the Committee stated that it was for the courts of the States parties to the Convention and not for the Committee to evaluate the facts and evidence in a particular case, unless it could be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The State party submits that there is no reason to consider that in the present case the decisions of the domestic authorities were inadequate, arbitrary or amounted to a denial of justice.

4.6 The State party notes that the complainant's new claim for asylum was considered despite being submitted at a late stage, when he had a duty of either leaving Sweden or re-applying for asylum. Regarding the alleged threat from his father and relatives, apart from his own assumption that his relatives might have become aware of his sexual orientation, the complainant had not submitted any evidence of a concrete and individual threat towards him other than the general situation for lesbian, gay, bisexual and transgender persons. His father had lived in Israel for many years, yet the complainant made no mention any previous instances of violence from him. The complainant has personally not lived in Lebanon since he was a minor and has never suffered any past mistreatment in his country of origin. Now he is an independent and educated adult and there is no evidence in the case to substantiate that any of his relatives would pose a real threat to him that would amount to treatment under article 3 of the Convention.

4.7 As for the threat from the authorities, the State party notes that, although lesbian, gay, bisexual and transgender persons are a vulnerable group in Lebanon, article 534 of the Criminal Code is rarely applied and is not in itself sufficient to constitute a real and personal risk for the complainant being subjected to the treatment in breach of article 3 of the Convention, especially since there is no evidence that the authorities are actively persecuting homosexuals. The State party concludes that the complainant's claims are not based on grounds that go beyond a mere theory or suspicion and that his return to Lebanon would not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 In his comments to the State party's observations dated 29 August 2016, the complainant claims that, according to many reliable sources, article 534 of the Criminal Code is still applied in practice to arrest and torture homosexuals and that he therefore faces an individual threat. He claims that the State party has not presented any real and substantial evidence supporting the position that article 534 of the Criminal Code would not be applied in practice today. Even if the prison term is substituted with a fine, it constitutes a criminal record, which is often requested to have access to jobs, services, etc., and which thus increases risk of social discrimination. Despite the efforts in the country to make lesbian, gay, bisexual and transgender persons more accepted, being a homosexual in Lebanon is still a risk. The complainant concludes that, because the law criminalizing homosexual relations is applied in Lebanon, he will be personally at a foreseeable and real risk of being subjected to torture if returned there. He will not be able to live openly with

his sexuality without having to face a well-grounded fear of being arrested, subjected to anal examinations, imprisoned and tortured in prison.

5.2 As for the threat from his relatives, the complainant maintains that the State party has accepted as a fact that they know about his homosexuality. They are conservative people and homosexuality is deeply stigmatized in Lebanon. Many lesbian, gay, bisexual and transgender persons in Lebanon are subjected to physical and mental violence by their families and some become victims of honour crimes and domestic violence. Therefore, there is a strong probability that he will be persecuted by his family. It is impossible to prove more than this.

Additional submissions by the parties

6. On 18 November 2016 and 15 May 2017, the State party reiterated its initial position presented in the observations of 14 March 2016 that the general situation in Lebanon does not warrant protection measures towards the complainant and that the complainant has failed to establish a personal risk of treatment in violation of article 3 of the Convention upon his return.

7.1 The complainant submitted his additional comments to the State party's observations on 15 December 2016 claiming that, in view of the many human rights reports referred to in his previous submissions, there is obvious and general risk for every homosexual person to be persecuted and tortured in Lebanon, and that he, as a homosexual man, therefore faces a well-founded fear of persecution upon return. The information provided earlier about social rejection of homosexuals and the fact that the relatives of the complainant are aware of his sexual orientation is sufficient to conclude that there is a risk that he will be persecuted by his family if returned to Lebanon.

7.2 On 26 January 2017, the complainant submitted a new report dated 29 November 2016 by the Swedish Migration Agency on cases concerning lesbian, gay, bisexual and transgender persons in Lebanon, and claimed that the report proves that article 534 of the Criminal Code had been used to a greater extent in 2016, that people had been kept in detention only because they were suspected of being homosexual, and that anal examinations were still performed. The complainant also produced in support of his claims a statement by the former president of the Swedish Federation for Lesbian, Bisexual, Transgender and Queer Rights, who represented him in the domestic proceedings, dated 3 January 2017, and a certificate from the Swedish Red Cross psychotherapist, dated 16 January 2017, in which it was stated that the complainant suffered from a complex post-traumatic stress disorder owing to the uncertainty surrounding his situation and the unfair decisions by the authorities in his case. The complainant stated that the domestic authorities had insisted he contact the Lebanese embassy to request a passport for his residence permit proceedings. The embassy had been unable to issue a passport for him, but now he was certainly registered by the Lebanese authorities and, according to him, "the information on his situation is probably reported to the Security Service of Lebanon".

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

8.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible for lack of substantiation. The Committee however considers that the arguments before it raise substantive issues under article 3 of the Convention that should be

dealt with on the merits and not on admissibility considerations alone. As the Committee finds no further obstacles to admissibility, it declares the present complaint admissible.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 In the present case, the issue before the Committee is whether the return of the complainant to Lebanon would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Lebanon.

9.4 In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

9.5 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[2] The Committee also recalls that, although under the terms of its general comment No. 1 it is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9),[3] while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

9.6 The Committee refers to the concluding observations on the initial report of Lebanon dated 30 May 2017, where it expressed concern over isolated incidents of ill-treatment of men suspected of being homosexual who had been held in custody by Internal Security Forces officers.[4] At the same time, the Committee notes that the reported incidents cannot be viewed as constituting a general and widespread practice towards homosexual men. It also notes that, in 2015 and in 2016, 76 arrests per year were made under article 534 of the Criminal Code.[5] While expressing its concern over the existence of a provision that enables criminal prosecution of homosexuals, the Committee is not able to conclude, from the information before it, that every homosexual man in Lebanon is a target of persecution by the authorities.

[2] See for example, communication No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

[3] See, for example, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[4] See CAT/C/LBN/CO/1, para. 14.

[5] See Helem shadow report submitted to the Human Rights Committee entitled "Human Rights Violations against Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) individuals in Lebanon" (April 2017). Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fLBN%2f27152&Lang=en.

9.7 The Committee notes the complainant's allegations that, because his relatives are aware that he is homosexual, he will be in danger of honour-related violence with no means of seeking protection from the authorities. In that regard, the Committee observes that, although the complainant claims that his relatives have known about his sexual orientation at least since 2013, he did not provide information about any concrete threats from his family and relatives. The Committee also notes the complainant's claim that the authorities know about his sexual orientation from the embassy staff, and that they will persecute him upon return to Lebanon. The Committee thus finds that the complainant's allegations that he would be at a personal risk of treatment contrary to article 3 of the Convention are hypothetical and do not go beyond mere theory or suspicion. The Committee concludes that the complainant has not discharged the burden of presenting an arguable case according to the Committee's general comment No. 1.

10. In the light of the considerations above, and on the basis of all the information submitted by the complainant, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, decides that the complainant's removal to Lebanon by the State party would not constitute a breach of article 3 of the Convention.