

COMMITTEE AGAINST TORTURE

M. K. O. v The Netherlands

Communication No. 134/1999

9 May 2001

VIEWS

*Submitted by: M. K. O. (name withheld)
[represented by counsel]*

Alleged victim: The author

State party: Netherlands

Date of communication: 25 May 1999

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

Meeting on 9 May 2001,

Having concluded its consideration of communication No. 134/1999, 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 author of the communication is Mr. M. K. O., born in 1970 and a Turkish national of Kurdish origin, currently residing in the Netherlands. The author applied for refugee status in the Netherlands on 22 June 1997. His application was rejected. He claims that his deportation to Turkey would expose him to a risk of torture and constitute therefore a violation by the State party of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 26 May 1999 and requested it to provide observations on the admissibility and merits of the communication. The State party was also requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, to defer the removal of the author to

Turkey while his communication was under its consideration.

The facts as presented by the author

2.1 The author comes from a village located in the region of Tunceli, Turkish Kurdistan, where for many years there has been a war between the Turkish army and the Kurds. He claims to have been urged several times by the Turkish military to become a village guard, which he always refused.

2.2 The author alleges that as a village guard he would have to kill Kurds and Alevis, his own people. Because of this refusal, he was very often ill-treated. He was beaten on several occasions by the Turkish militaries. During the winter, the author and other Kurds were forced to stand barefoot in the snow for hours. The author suffers from a kidney ailment as a result. Sometimes he and other Kurds were threatened with death and their food supplies stopped by the Turkish military. The author also alleges that he was arrested on several occasions and taken to the forest or the mountains where he was tortured.

2.3 When the author's neighbours were arrested for giving food to the guerrillas, he decided to leave Turkey because he was afraid of being arrested for the same reason. He arrived in the Netherlands on 21 June 1997 and applied for refugee status the same day. His request was turned down on 22 August 1997.

2.4 After two unsuccessful appeals to the Ministry of Justice and to the court, on 22 February 1999, the author made a second application for refugee status, which was also rejected as were the subsequent appeals. The date of 26 May 1999 was set for his removal to Turkey.

2.5 The author is an active member of the Kurdish Union in The Hague and in various Kurdish activities. He has run in marathons for the Kurds in the Netherlands and Germany, and has been seen with his Kurdish music band, Zylan several times on MED-TV, a Kurdish television station in Europe which can also be seen in Turkey and which was recently forbidden. On 16 February 1999, he was arrested in the Netherlands along with 300 other Kurds during a demonstration against Abdullah Öcalan's extradition to Turkey. Since then, he has remained in detention because he does not have a residence permit.

The complaint

3. The author alleges that he will be at serious risk of torture if he is removed to Turkey and that the removal decision is therefore a violation of article 3 of the Convention.

State party's observations on the admissibility and merits

4.1 In a submission dated 6 December 1999, the State party transmitted to the Committee its observations on the merits of the communication. In its communication it did not raise any objections with regard to the admissibility of the communication and made a summary of the facts of the case and of the national procedure, as well as of the various arguments made by the author.

4.2 In relation to the merits, the State party considers that not all Kurds from Turkey can be granted asylum and that the author has to prove a personal risk of torture, which he failed to do. Although the State party does not dispute the ethnic origin of the author, it states that the latter was unconvincing on this issue during the asylum procedure; it therefore rejects the allegation by the author that the investigation into his ethnic origin was not conducted with sufficient care.

4.3 The State party maintains that the author has not proved that he would attract special attention from the Turkish authorities because he expressly said that he had never been arrested and had never had any problem despite having helped the PKK. It was only during the appeal phase of the asylum procedure that the author told the Dutch authorities that he was once arrested by three soldiers in civilian clothes. The author has never furnished a clear explanation for this contradiction.

4.4 The discrimination and degrading treatment to which the author has allegedly been subjected do not necessarily lead to the conclusion that he should be recognized as a refugee because, although daily life for Kurds in south-eastern Turkey is probably not easy, it is not intolerable and “such treatment probably takes place in the large Kurdish community with a certain amount of arbitrariness”.

4.5 Even accepting that the author has had problems with Turkish soldiers does not imply that he would risk such treatment again throughout Turkey. Indeed, the author travelled to Istanbul in 1996 and had no problems. He is therefore free to resettle in another part of Turkey.

4.6 Regarding the author’s activities in the Netherlands, the State party considers that the fact of being a member of the band Zylan, of having appeared on MED-TV with his band several times, of having attended PKK celebrations, of having competed in marathons as a Kurd and of having participated in a demonstration in support of Abdullah Öcalan and having been arrested during this demonstration do not constitute significant opposition activities and are therefore not of such a nature as to attract the attention of the Turkish authorities. Even his arrest after the demonstration is not significant in this regard because he was arrested along with many other persons.

4.7 In the State party’s opinion, there is no element in the author’s escape from Turkey or in his activities in the Netherlands that provides substantial grounds for believing that he faces a personal risk of being tortured if he were to be returned in Turkey.

Counsel comments

5.1 In a submission of 26 January 2000, counsel for the author made her comments on the observations of the State party.

5.2 With regard to the Kurdish origin of the author, counsel makes a few remarks in order to explain the confusion that may have emerged during the various interviews. Nevertheless, the ethnic origin of the author is no longer disputed by the State party. Counsel also notes that PKK does not have a membership system for security reasons, which partly explains why the author was not a “member” of any organization.

5.3 Counsel argues that the problems faced by the author while he was in Turkey would indeed

draw the attention of the Turkish authorities if the author returned to his country. She also notes that it is usual for more information to become available towards the end of the procedure because more questions are asked and because the author, with only a primary-school education, may have had some difficulties in understanding questions at the beginning of the procedure. Counsel also argues that people applying for refugee status as soon as they arrive in the State party do not have sufficient time to reflect on their declarations and are subjected to a significant number of obligations during the first weeks of the procedure, which may sometimes lead to confusion.

5.4 Concerning Tunceli, the region of origin of the author, counsel contends that life there has indeed become intolerable and, because the place is a symbol of Kurdish resistance, notes that any person from this area would encounter problems throughout Turkey; this implies that the author could not easily resettle in another part of Turkey. Counsel quotes in this regard the Dutch Foreign Minister who stated that the fact of refusing to be a village guard is interpreted as implicit support for the PKK.

5.5 With regard to the demonstration that took place in The Hague on 17 February 1999, counsel mentions that A. Kisaoglu, a Kurd of Dutch nationality, was arrested in Turkey a few days after the demonstration and badly tortured for five days. According to counsel, the Turkish authorities arrested him because they were informed that his son had been arrested during the demonstration in The Hague. However, it appeared later that this was not the case. Counsel considers that this incident demonstrates that the Turkish authorities can obtain information about political events related to the Kurdish question that occur outside Turkey and subsequent arrests or detentions, which raises the possibility of cooperation between the Turkish and Dutch security services.

5.6 Moreover, concerning the author's other activities in the Netherlands, counsel refers to several statements from the Dutch Foreign Ministry according to which MED-TV is considered by the Turkish authorities to be the voice of PKK and that Kurdish music is sometimes forbidden, two elements that would certainly constitute satisfactory reasons for the Turkish authorities to arrest the author upon his arrival in Turkey.

5.7 Relying on various other cases, counsel underlines that a significant number of Kurds who have been repatriated from the State party to Turkey and whose whereabouts could be monitored have been detained and tortured by the Turkish authorities.

5.8 Finally, to the extent that the author stated from the outset of the asylum procedure that he had been tortured, counsel deplores the State party's failure to take steps to assess the medical profile of the author, which it had many opportunities to do.

Additional Comments by the State party

6.1 In a submission dated 6 September 2000, the State party made additional comments on the observations of the author.

6.2 The State party first draws the attention of the Committee to the fact that it no longer disputes the Kurdish origin of the author.

6.3 The State party further notes that there has been some confusion and mistranslation on the part of counsel of the words “torture” and other “ill-treatment”, the latter using both terms indifferently.

6.4 The State party still considers that the author has not furnished a convincing explanation as to the reasons why he neglected to mention some elements of his story during the first part of the asylum procedure.

6.5 The State party also firmly rejects the allegations of counsel that the State party has given information to the Turkish authorities concerning the persons detained after the pro-Kurd demonstration.

6.6 In respect of the statement from the Dutch Foreign Ministry on the subject of MED-TV, the State party notes that counsel has cited sentences out of their context and gives the full text of the statements.

6.7 The State party emphasizes that it has given continued attention to the situation of Kurds in Turkey. This is illustrated by the fact that the State party suspended the expulsion of Kurds to Turkey after it had been informed of the death in Turkey of a former Kurdish asylum-seeker in the Netherlands. Following the inquiry into this case and four other cases, to which counsel was presumably referring, the State party noted that the persons concerned had not experienced particular problems with the Turkish authorities after their return. These conclusions were endorsed by the judiciary of the State party, and the Government lifted the suspension on expulsions.

6.8 Finally, the State party considers that the author also has had ample time to obtain medical documents confirming the treatment to which he claims he was subjected.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Committee 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.

7.2 The Committee also notes that all available domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. The Committee finds therefore that the communication is admissible. The State party and the author have both made observations on the merits of the communication and the Committee therefore proceeds to examine the merits.

7.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the

determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to 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 a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, 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.

7.4 The Committee notes the arguments developed by both parties and considers that the author has not given any satisfactory explanation for the contradictions between his different statements to the Dutch immigration authorities. It notes that he fulfilled his military obligation without any appreciable problems and finds that he has not demonstrated that his later activities in the Netherlands could draw the attention of the Turkish authorities to the extent that he would risk being tortured were he removed to Turkey.

7.5 The Committee concludes that the author has not furnished sufficient evidence to substantiate his claim that he would run a personal, real and foreseeable risk of being tortured if he were sent back to his country of origin.

8. As a consequence, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading treatment or punishment, is of the view that the facts as found by the Committee do not constitute a breach of article 3 of the Convention.