

COMMITTEE AGAINST TORTURE

S. L. v. Sweden

Communication No. 150/1999

11 May 2001

VIEWS

*Submitted by : S.L. (name withheld)
[represented by counsel]*

Alleged victim: The author

State party: Sweden

Date of communication: 5 November 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 11 May 2001,

Having concluded its consideration of communication No. 150/1999, 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. S. L., an Iranian citizen currently residing in Sweden, where he is seeking refugee status. The author arrived in Sweden on 8 February 1998 and applied for asylum the following day. Mr. S. L. claims that he would risk torture upon return to the Islamic Republic of Iran and that his forced return to that country would therefore constitute a violation by Sweden of article 3 of the Convention. The author is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted communication No. 150/1999 to the State party on 18 November 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the

author to the Islamic Republic of Iran pending the consideration of his case by the Committee. In a submission dated 21 December 1999 the State party informed the Committee that the author would not be expelled to his country of origin while his communication was under consideration by the Committee.

The facts as submitted by the author

2.1 According to the author, he has never been politically active in the Islamic Republic of Iran. He was a respected Muslim of firm conviction who studied agronomics at Tehran University and who was financially well off from his own poultry farming business. In December 1988, having left university after a few years of study, the author was drafted and was eventually, at his own request, placed with the Sepah-Pasdarán in Tehran.

2.2 The author explains that in the early 1990s the Pasdarán (Iranian Revolutionary Guards) and the police were joined together, coming under the Ministry of the Interior. At the same time, a new security force body, the Sepah-Pasdarán, was created directly under the Supreme Commander, Ayatollah Khamenei, with the task to “protect the system, defend the values of Islam and the revolution”. There are also counter-intelligence units within the Sepah-Pasdarán with responsibility for internal control and surveillance of the rest of the Sepah-Pasdarán. The author was placed in the Tehran office of one of these units, where he soon gained everyone’s confidence and was appointed personal secretary to the commander of the office. As such he had access to all files and all cupboards, except one to which only the commander had the keys.

2.3 One day, the commander accidentally left his keys in the office when he left for a meeting. Out of curiosity, the author opened the “special cupboard” and found personal files containing information about immoral and criminal acts committed by well-known, highly respected individuals considered, not least by the author, as pillars of society. In his submission to the Committee, the author gives detailed information, including names of the individuals concerned and the nature of the crimes supposedly committed, including rape, illegal trade in arms, drug dealing and embezzlement.

2.4 The author took copies of the files and hid them in his home. He thought that if the allegations were forwarded to the right quarters, the individuals in question would be investigated, sentenced and punished properly. In February/March 1990, the author gave anonymous information to the Sepah-Pasdarán operational group, which resulted in a raid and the discovery of illegal weapons and ammunition. The author continued to submit anonymous information to the operational group which resulted in further raids. However, due to the influential status of the individuals involved, the discoveries were covered up and no arrests were made. Convinced that the allegations were true, the author also sent copies of the files to the office of Ayatollah Khamenei.

2.5 According to the author, the Sepah-Pasdarán must have become suspicious of him, because in April/May 1991, shortly after having finished his military service, the author was arrested and held in one of Sepah-Pasdarán’s secret prisons, the so called “No. 59”, for six months. According to one of the medical statements supporting the author’s claim, the author was subjected to torture and ill-treatment. He was handcuffed behind his knees, and with a stick placed between his upper

arms and thighs he was hung up to rotate, sometimes for hours. The author also claims that he received beatings with batons on the kneecaps and elbows. Although he was interrogated about the secret reports, the author denied everything, knowing that a confession would be the end of him. After six months, in November/December 1991, the author was transferred to a hospital for medical treatment and thereafter released on bail.

2.6 The author claims that after his release he was kept under close surveillance by the Sepah-Pasdaran. He was eventually asked to spy for the Sepah-Pasdaran on some of the leaders of the State-controlled farmers' cooperative in which he was active. He was also supposed to go with the cooperative to international fairs and report on the leaders' behaviour and contacts abroad and for this purpose the author had a passport issued. The author tried to keep the Sepah-Pasdaran satisfied by providing some information, but of limited interest. In August 1995, the Sepah-Pasdaran arrested him again and he was first brought to the Evin prison. The author had to leave samples of his handwriting, presumably to compare it with the writing on one of the envelopes in which he had sent anonymous information. According to the allegations, the author was again tortured and kept in solitary confinement for several months.

2.7 In June 1996 the author was brought to trial, convicted and sentenced to one year's imprisonment and a fine for check fraud, a verdict which the author presented to the Swedish immigration authorities. According to the author, the charges were fabricated. He was not represented by a lawyer during the trial and did not know any of the alleged plaintiffs. After the verdict, the author was transferred to Qasar prison, where he claims that conditions improved and although he was subjected to ill-treatment he was never tortured.

2.8 The author claims that he escaped from prison on 22 June 1997. His wife and a number of close friends arranged the flight, by reporting him to the prosecutor on false grounds. As a consequence the author was summoned and transported, together with two other prisoners, to the court in Kosh district, accompanied by two police officers and three soldiers. The guards were bribed by the author's wife and friends to allow him to escape.

2.9 After his escape, the author remained in hiding with friends in Karach. An influential friend of the author's family, with business contacts in Germany, arranged for the author to receive a tourist visa. The author already had a passport which he had been issued in 1991 (see para. 2.6). With the help of a smuggler the author left the Islamic Republic of Iran illegally via the Kurdish mountains to Turkey. From Ankara he went legally by air to Germany on his tourist visa and was thereafter taken by car to Sweden via Denmark.

2.10 The author entered Sweden on 8 February 1998 and applied for asylum the following day. The immigration authorities ordered his expulsion to Germany, in accordance with the Dublin Convention, but before the execution of the expulsion, the author escaped to Norway. From Norway he was returned to Sweden. He was again expelled from Sweden to Germany on 9 November 1998, but subsequently returned to Sweden due to the fact that he had been outside European Union territory since his initial arrival on German territory.

2.11 The Swedish Immigration Board rejected the author's asylum claim on 13 September 1999. The author's appeal was rejected by the Aliens Appeal Board on 4 November 1999.

The complaint

3.1 In view of his past experiences of imprisonment and torture, the author claims that there exist substantial grounds to believe that he would be subjected to torture if he were to be returned to the Islamic Republic of Iran. His forced return would therefore constitute a violation by Sweden of article 3 of the Convention.

3.2 In support of the claim, counsel provides several medical certificates. One of the certificates is from the Centre for Torture and Trauma Survivors in Stockholm, stating that the author suffers from a post-traumatic stress disorder and that both medical and psychological evidence indicate that the author has been subjected to torture with typical psychological effects as a result. In addition, a certificate from a psychiatrist states that the “circumstances, together with [the author’s] whole attitude and general appearance, indicate very strongly ... that he for a long time has been subjected to severe abuses and torture” and that the author is considered “completely trustworthy”.

The State party’s observations on admissibility and merits

4.1 By submission of 21 December 1999, the State party informs the Committee that, following the Committee’s request under rule 108, paragraph 9, of its rules of procedure, the Swedish Immigration Board decided to stay the expulsion order against the author while his communication is under consideration by the Committee.

4.2 By submission of 2 March 2000, the State party informs the Committee that it does not raise any objection as to the admissibility of the communication. It confirms the author’s account of the internal remedies exhausted.

4.3 With regard to the general situation of human rights in the Islamic Republic of Iran, the State party notes that although there are at present signs that Iranian society is undergoing changes that may entail improvements in the human rights field, the country is still reported to be a major abuser of human rights.

4.4 The State party further states that it refrains from making an evaluation of its own regarding whether or not the author has substantiated his claim that he would risk being tortured if expelled, and leaves it to the discretion of the Committee to determine whether the case reveals a violation of article 3 of the Convention. It notes that in its jurisprudence, the Committee has observed that past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention but that the aim of the Committee’s examination is to determine whether the author would at present be at risk of being subjected to torture if returned. The State party does not wish to question that the author has spent some time in prison, nor that he was at that time subjected to ill-treatment. Without making an assessment of its own, the State party reminds the Committee of the opinions put forward by the Swedish Immigration Board and the Aliens Appeal Board.

4.5 The Swedish Immigration Board rejected the author’s application for asylum on 13 September 1999, on the basis that the circumstances invoked by the author lacked credibility. The credibility of the author was questioned on the following grounds: (i) the fact that the author had not presented his Iranian passport or any other travel documents to the Swedish authorities; (ii)

that the author had not applied for asylum either in Germany or in Denmark, indicating that he could not have regarded his situation in his home country as particularly serious; (iii) the Board found it difficult to believe that the Iranian security police wanted someone they were suspicious of to act as a spy for them; (iv) the circumstances regarding the author's escape from prison were not considered credible; and finally (v) the Board questioned the authenticity of the judgement regarding check fraud submitted by the author.

4.6 The Aliens Appeals Board dismissed the author's appeal on 4 November 1999. The Board found no reason to question the author's identity, nor did it question that the author had been sentenced by a court in Tehran for check fraud in accordance with the submitted judgement, which the Swedish Embassy in Tehran had had examined by legal experts who concluded it was authentic. The Aliens Appeals Board does not rule out that the author had been deprived of his liberty while under suspicion for check fraud, nor that he had served a prison sentence for the said crime, or that he had been ill-treated during his imprisonment. In all other aspects, the Aliens Appeals Board questioned the credibility of the author on the same grounds as the Swedish Immigration Board and in the light of the submitted medical certificate which indicates that the author seems completely trustworthy.

4.7 The Swedish Embassy in Tehran further noted that check fraud cases are very common in the Islamic Republic of Iran and that at present there appears to be thousands of such cases pending before the courts in Tehran. The Embassy does not rule out the possibility that on the whole, the author has submitted reliable information in support of his reluctance to return to his country of origin. With regard to the author's passport, the Embassy states that the fact that a person has legal problems with the Iranian authorities does not necessarily mean that he is refused a passport, whereas he would normally not obtain an exit permit.

4.8 Finally, the State party points out that the author claims that the judgement concerning check fraud was presented to him in February or March 1996, after he had spent six months in prison. However, it appears from the judgement itself that it was given on 6 June 1996. The Aliens Appeals Board held the view that the author may have been found guilty of check fraud and served a prison sentence for that crime.

Counsel's comments

5.1 Counsel notes the immigration authorities' reference to the fact that the author had not presented his travel documents and that it therefore cannot be excluded that the author had destroyed his Iranian passport and that his exit from the Islamic Republic of Iran was legal. She further notes that the authorities do not find it credible that the author was issued a passport while under suspicion by the Iranian secret police. With regard to the first matter, counsel submits that rejection by the immigration authorities with the indication that the author may have destroyed his travel documents in bad faith is a common phrase automatically used to question the general veracity of a claim. With regard to the second, counsel reminds the Committee that the author has given a plausible explanation of why he was granted a passport despite being under surveillance (see para. 2.6).

5.2 With reference to the immigration authorities' argument that it does not seem likely that the secret police would use a person under surveillance to spy for them, counsel submits that it is

common knowledge that in dictatorships the secret police do force persons over whom they have a hold to work for them in different ways.

5.3 Counsel notes the contradictions with regard to the Swedish Immigration Board's and the Aliens Appeals Board's argumentation concerning the judgement for check fraud presented by the author. One of the main reasons for the Immigration Board's doubts as to the credibility of the author was that it questioned the authenticity of the judgement. When it was ascertained, through the Swedish Embassy in Tehran, that the judgement was in fact authentic, the Aliens Appeals Board in turn used the authenticity of the document as an argument against the author, indicating that the author had been imprisoned for check fraud and had not been persecuted on political grounds. Counsel submits that the use of false charges in suppressive States in general, and in the Islamic Republic of Iran in particular, is common to dispose of persons seen as a threat against the State and at the same time create an image of a legitimate rule of law. The Committee's attention is drawn to the fact that the author's account in this respect was considered not credible by the Aliens Appeals Board without giving any reason therefor. Counsel further points out that for the author, it was obvious that he had been judged on false charges, which was why he presented the verdict to the Swedish immigration authorities in the first place. No person would present a real verdict and expect to be granted asylum on that ground alone.

5.4 Counsel recalls that the Aliens Appeals Board does not question the fact that the author had been imprisoned in the Islamic Republic of Iran, nor that he was at that time subjected to torture and ill-treatment.

5.5 With regard to the author's escape, counsel points out that the author has given such a detailed description of the events that there should be no doubt about its veracity. Details were also given to the examining psychiatrist who in his medical certificate judged the author to be completely trustworthy.

5.6 The authorities question why the author did not apply for asylum in Germany if, as claimed, he feared persecution by the Iranian authorities. Counsel points out that the author has given a clear and plausible explanation of why he did not do so. The author would not have been able to get his passport renewed or a tourist visa for Germany if it had not been for a close and influential friend of the author's family with business contacts in Germany. The author was therefore determined not to seek asylum in Germany since doing so would likely compromise the friend. The author, like everyone else, was aware that immigration authorities in Germany and elsewhere take note of the sponsor of a person who seeks asylum after having been granted a tourist visa.

5.7 Finally, counsel points out that the transcripts of the one and only interrogation of the author by the Swedish immigration authorities is of poor quality. The interpretation and translation of the author's account are of a low standard and even the Swedish text is sometimes incomprehensible. According to the transcripts, the author did not seem to be allowed to tell his story and was constantly interrupted by provocative questions. The torture is not questioned. As an example of the poor translation, counsel points to an instance where "prosecutor" was replaced by "Chairman of the Court", thereby leading the Swedish Immigration Board initially to doubt the authenticity of the judgement.

Issues and proceedings before the Committee

6.1 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. 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 is further of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to the Islamic Republic of Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return 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.

6.3 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 Iran. 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 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 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.

6.4 The Committee has taken note of the arguments presented by the author and the State party and is of the opinion that it has not been given enough evidence by the author to conclude that the latter would run a personal, real and foreseeable risk of being tortured if returned to his country of origin.

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, considers that the author of the communication has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran and therefore concludes that the author's removal to the Islamic Republic of Iran would not constitute a breach by the State party under article 3 of the Convention.