



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2005

DECISION

Communication No. 1204/2003

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|---------------------------------------|---|
| <u>Submitted by:</u> | S. B. (represented by counsel, Mr. Bogaers of Bos-Veterman) |
| <u>Alleged victim:</u> | The author |
| <u>State party:</u> | The Netherlands |
| <u>Date of initial communication:</u> | 18 June 2002 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 (old rule 91) decision, transmitted to the State party on 7 October 2003 (not issued in document form) |
| <u>Date of decision:</u> | 30 March 2005 |

* Made public by decision of the Human Rights Committee.

** Due to technical reasons re-issued in English and Spanish only.

Subject matter: Possible harm to author in the event of return to country of origin

Procedural issues: None

Substantive issues: Unfair asylum hearing

Articles of the Covenant: 7, 9 and 16

Articles of the Optional Protocol: 2

[ANNEX]

ANNEX
DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-third session

concerning

Communication No. 1204/2003**

Submitted by: S. B. (represented by counsel, Mr. Bogaers of Bos-Veterman)

Alleged victim: The author

State party: The Netherlands

Date of initial communication: 18 June 2002 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2005

Adopts the following:

Decision on admissibility

1.1 The author of the communication is S. B., an Iranian citizen, born on 12 July 1970, currently residing in the Netherlands. She claims to be a victim of violations of articles 7, 9 and 16, of the International Covenant on Civil and Political Rights, by the Netherlands. She is represented by counsel: Mr Bogaers of Bos-Veterman, Van As & De Vries, lawyers, a Dutch law firm.

1.2 On 5 January 2004, the Special Rapporteur for New Communications, on behalf of the Committee, ruled that the admissibility of this case should be considered separately from the merits.

Factual background

2.1 The author is from a politically active family. Her father is alleged to have been a member of the Tudeh-party and was imprisoned for five years during the Shah's reign, and for two years

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

when Ayatollah Khomeini was in power. Her brother and sister were also politically active and had to flee from Iran. They were granted refugee status in the Netherlands.

2.2 In 1989, the author started working for the Kavosh Institute in Teheran. The cultural board of the Institute was engaged in many political activities against the regime, such as the publication and distribution of pamphlets, forbidden books, bulletins, and magazines. The author participated in these activities by typing pamphlets and texts for magazines in the house of Dr. Reza Baharani, a member of the Iranian Writer's Council in Teheran. In April 1993, the Institute was raided by the police, but nothing was found. After this incident, the author decided to go back to her home town of Roudsar.

2.3 In Roudsar, the author and another woman published pamphlets and wrote letters about the situation of women in Iran, and encouraged other women to become involved in their activities. On 24 July 1994, the author and some other women were arrested by the police in the author's house. They were taken to Sepah prison, where the author was allegedly beaten until she fell unconscious. She was held in isolation for four weeks, interrogated day and night, and beaten. She was not given medication she needed to treat her asthma. She was held in this prison until 14 April 1995, when she was to be transferred to another prison. During her transfer, she managed to escape, as her father had bribed the guards; she left Iran on 10 March 1996.

2.4 On 11 March 1996, the author arrived in the Netherlands. On 28 March 1996, she applied for refugee status and a residence permit. On 1 August 1996, her application was denied by the State Secretary of Justice. On 10 September 1997, her objection against this decision was dismissed.

2.5 On 6 October 1997, the author appealed to the District Court of S'-Gravenhage. On 31 July 2000, the District Court dismissed her appeal, considering that she had failed to show a fear of persecution within the meaning of refugee law. The decision was based on the finding that the author's account was vague, contradictory and/or inconsistent, and was not supported by the evidence presented by her in court.

2.6 On 30 July 2002, in a further communication to the Committee, the author argued that the judgment of 31 July 2000 was final and that she could be expelled at any moment. However, on 11 August 2003, she informed the Committee through her counsel that, although she had no right to stay in the Netherlands, no deportation order had, in fact, been issued. Indeed, she stated that "the Dutch authorities don't follow an active policy of refoulement. The Netherlands let people bleed to death".,.

The complaint

3.1 The author claims to be a victim of a violation of articles 7 and 9 of the Covenant, since, on account of her previous detention in Iran on the basis of her political activities, she would be in imminent danger of being arrested and detained if returned to Iran, where she would be subjected to torture or cruel, inhuman or degrading treatment or punishment. She alleges that she is still being sought by the Iranian authorities.

3.2 In respect of the procedure before the Dutch immigration authorities, the author complains that the interpreter was impolite and deliberately incorrectly translated a number of her statements. The immigration officer allegedly could not concentrate properly because of a pain in his knee, and the first lawyer who represented her did not give her enough time to tell her

full story, while the second one met her too briefly. She claims that no translator was present during the District Court hearing of 22 July 1999 and that the contradictions the court found in her story are attributable to problems of interpretation. She challenges the court's finding that a certain document by the Iranian authorities was not authentic.

3.3 Lastly, the author claims that her situation in the Netherlands violates article 16 of the Covenant, given that she is not allowed to stay in the country nor is she expelled. Thus, she is treated *de facto* as a non-person before the law.

The State party's submission on admissibility and the author's comments thereon

4.1 On 4 December 2003, the State party submitted its observations on the admissibility of the communication. As to the author's claim under article 7, the State party submits that the author makes a number of unspecified critical comments about the Dutch asylum proceedings. In this context, it submits that in domestic proceedings, the author failed to submit specific objections against the nature of the asylum proceedings, thereby denying the competent authorities the opportunity to respond to those objections. It argues that the author has not exhausted domestic remedies. Secondly, it observes that the right to file an individual complaint is not intended to provide an opportunity for complaints *in abstracto* concerning national legislation and practice.

4.2 As to the allegation of a violation of article 9, on the basis that the author's detention in Iran for nine months was unlawful, the State party submits that this detention and any alleged violation connected with it, did not take place within the jurisdiction of the Netherlands and is not therefore attributable to the State party.

5.1 On 23 December 2003, the author responded to the State party's observations on admissibility. She challenged its view that the complaint amounts to an *actio popularis* and reiterates her claim that her expulsion to Iran would expose her to a real risk of violation of her rights under the Covenant, and that in assessing her complaint the Dutch authorities unfairly concluded that her claims were insufficiently substantiated. In this regard, she requests the Committee to read the analysis of the asylum procedure and background to her case.

5.2 On the issue of exhaustion of domestic remedies, the author states that no further remedies are available. She refers to a statement in a letter to her lawyer from the Ministry of Justice, which states that "Now the decision is definite, I don't see any room to reconsider your case".

5.3 Concerning the alleged violation of article 9, the author claims that the State party has deliberately misinterpreted her claim, that because she was already a victim of unlawful detention in Iran, she has serious grounds to fear that such detention "or worse" will fall upon her if forceably returned to Iran. In this sense, she claims that the State party would be responsible for a repetition of such unlawful detention.

5.4 The author provides a copy of a letter, dated 19 January 2004, from Amnesty International, which states that if the author is removed to Iran, she would be exposed to a real risk of a violation of her rights under articles 7 and 9 of the Covenant, and highlights alleged inadequacies in the asylum procedure in the Netherlands, including alleged inadequacies in how the author's own case was decided.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As to the claim that the State party would violate articles 7 and 9 if it were to return the author to Iran knowing full well that it is likely that she would be subjected to arbitrary detention or other unlawful treatment upon her arrival, the Committee notes that the author does not expect to be forcibly returned to Iran. It further notes that apart from asking it to review the Dutch asylum procedure, the author's claims relate to procedural irregularities (see para. 3.2), which the domestic courts have not had an opportunity to address. The Committee therefore considers this claim is inadmissible as unsubstantiated within the meaning of article 2 of the Optional Protocol.

6.3 As to the alleged violation of article 16, the Committee finds that the author has not shown how the State party's refusal to grant her a residence permit while at the same time failing to deport her, amounts to a violation of article 16. The Committee therefore considers this claim inadmissible under article 2 of the Optional Protocol.

7. Accordingly, the Committee decides:

- (a) that the communication is inadmissible under article 2 of the Optional Protocol;
- (b) that this decision be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
