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COMMITTEE AGAINST TORTURE
Thirty-second session
(3 – 21 May 2004)

DECISION

Communication No. 229/2003

Submitted by:	Mr. H. S. V. (represented by counsel, Mr. Bertil Malmlöf)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	24 April 2003 (initial submission)
Date of present decision:	12 May 2004

[ANNEX]

* Made public by decision of the Committee Against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-second session

Concerning

Communication No. 229/2003

Submitted by:	Mr. H. S. V. (represented by counsel, Mr. Bertil Malmlöf)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	24 April 2003 (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 12 May 2004,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The complainant is Mr. H. S. V., an Iranian national born in 1948, currently residing in Sweden and awaiting deportation to Iran. He claims that his forcible return to Iran would amount to 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 25 April 2001, the Committee forwarded the communication to the State party for comments, and requested, under Rule 108, paragraph 1, of the Committee's

rules of procedure, not to return the complainant to Iran while his complaint was under consideration by the Committee. The State party acceded to this request.

The facts as submitted:

2.1 The complainant was a high-ranking officer in the army of the former Shah of Persia. After the Iranian revolution in 1979, he fled to Turkey and subsequently lived in Bulgaria. Between 1993 and 1996, following the arrival of his wife and daughter in Sweden, he unsuccessfully submitted several applications for a residence permit to the Swedish authorities, before he was granted a temporary residence and work permit on 4 February 1997. On 1 June 1999, the complainant was granted a permanent residence permit.

2.2 By judgment of 17 March 2000, the District Court of Norrköping found the complainant guilty of several drug offenses and sentenced him to five years' imprisonment. It also ordered the complainant's expulsion from Sweden and prohibited him from returning to the country before 1 January 2015. The Court so decided after having sought an opinion from the Swedish Immigration Board, which concluded that no impediment to the enforcement of an expulsion order existed. The complainant did not appeal the judgment of the District Court.

2.3 The complainant began to serve his prison term on 6 April 2000; he was released on probation on 25 April 2003. During this period, the "Association for the Rights of Children to a Parent Sentenced to Expulsion" submitted two applications, requesting the Government to revoke the expulsion order against the complainant, under Chapter 7, Section 16 of the 1989 Aliens Act, on grounds of family unity; these requests were rejected on 25 October 2001 and 15 August 2002, respectively. On 24 April 2003, based on a risk assessment made by the Swedish Migration Board, the Government rejected a similar application submitted by the complainant.

The complaint:

3.1 The complainant claims that his forcible return to Iran would constitute a violation by Sweden of article 3 of the Convention, since he would run a high risk of

being arrested and subsequently tortured, or even executed, upon return to that country, given his past military functions, as well as the fact that he had expressed his political views in public.

3.2 In support of his claim, he submits that, according to Amnesty International and other international human rights organizations, persecution, arbitrary arrests, torture and ill-treatment, unfair and sometimes secret trials, imprisonment and capital punishment of political opponents frequently occur in Iran.

3.3 The complainant submits that he has no relatives and friends, nor any place to stay in Iran, and that he had not returned to that country during the 21 years since his departure. All his family and friends live in Sweden, including his three children, whom he might not see again, given that he will be 67 years old in 2015.

3.4 The complainant claims that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that he has exhausted domestic remedies.

The State party's observations on admissibility:

4.1 On 13 June 2003, the State party challenged the admissibility of the communication on grounds of non-exhaustion of domestic remedies and lack of substantiation of the complainant's allegations.

4.2 The State party describes relevant domestic legislation[1] as follows: Expulsion on account of a criminal offence constitutes a special sanction for offences, and can be ordered by the court if a convict has been sentenced to a more severe sanction than a fine and if it may be assumed, on the basis of the nature of the offence and other circumstances, that he/she will continue to commit criminal offences in Sweden, or if the offence is so serious that the convict's expulsion is warranted. When considering whether or not an alien should be expelled, the court must consider his or her family circumstances, the period that he or she has resided in Sweden and the question of

[1] Reference is made, in particular, to chapter 4 of the Swedish Aliens Act (1989).

whether there are impediments to the enforcement of the expulsion order, such as the existence of reasonable grounds for believing he/she would be in danger of being subjected to capital punishment, torture or other inhuman or degrading treatment or punishment upon return to his/her country of origin. The decision of the court of first instance is subject to appeal (and further appeal to the Supreme Court, if leave to appeal has been granted). Pursuant to Chapter 7, Section 16 of the Aliens Act, the Government may revoke, partly or entirely, a judgment or order for expulsion on account of a criminal offence and grant a temporary residence or work permit, based on circumstances that did not exist at the time of the expulsion order.

4.3 The State party submits that the complainant did not exhaust domestic remedies because he did not appeal the judgment of the District Court of 17 March 2000. Rather, he declared his satisfaction with the judgment, regarding both his prison term and the expulsion order, one day prior to the deadline for lodging an appeal; he thus expressly waived his right to appeal.

4.4 By reference to a decision of the European Commission of Human Rights in a similar case[2], the State party argues that an appeal to the Court of Appeal, (as well as a potential further appeal to the Supreme Court), would have been an effective and reasonably expeditious remedy, which cannot be replaced by the extraordinary remedy under Chapter 7, Section 16 of the Aliens Act. The complainant did not show that his alleged risk of being tortured and sentenced to death upon return to Iran could not have been raised in the criminal appellate, rather than extraordinary, proceedings.

4.5 The State party argues that, in any event, the complainant failed to substantiate his alleged risk of torture upon return to Iran, for purposes of admissibility. It concludes that the communication is manifestly unfounded and therefore inadmissible under article 22 of the Convention, as well as rule 107 (b), of the Committee's revised Rules of Procedure.[3]

Complainant's comments on the State party's submissions:

[2] European Commission of Human Rights, Decision on the admissibility of Application No. 36800/97 (*Heidari v. Sweden*).

[3] The State party refers to Communication No. 216/2002, Decision on admissibility adopted on 2 May 2003, at para. 6.2.

5.1 On 29 June 2003, the complainant, in his comments on the State party's observations, submits that he did not appeal the judgment of the District Court, because the State prosecutor had warned him that, in such case, he would appeal the verdict acquitting the complainant's wife, who initially had also been charged with drug offenses, and that there was a high risk of her not being acquitted on appeal. Since the complainant did not want to risk the future of his wife and children, he felt compelled to waive his right to lodge an appeal, which in any event was not likely to succeed.

5.2 The complainant reiterates his arguments about the personal risks that he would run, and the general human rights situation in Iran. He argues that the State party would not be able to guarantee his safety if he were to be returned to that country.

Additional submission by State party and complainant's futher comments:

6.1 On 23 September 2003, the State party rejects as unsubstantiated the complainant's allegation regarding the circumstances under which he waived his right to appeal the judgment of the District Court of Norrköping, and reiterates that the communication is inadmissible, under article 22, paragraph 5 (b) of the Convention, for non-exhaustion of domestic remedies and, in any event, under article 22, paragraph 2, of the Convention, as being manifestly unfounded.

6.2 The State party submits a translation of a statement by the state prosecutor in the complainant's case, to the effect that he never discussed his intention in relation to a possible appeal against the judgment of the District Court with the complainant, given that: (a) the complainant did not speak Swedish; (b) he never contacts defence counsel to reveal his intentions with regard to a possible appeal; (c) although he cannot rule out that counsel for the complainant contacted him to find out whether he would consider appealing independently, he does not remember any such contact; (d) he was content with the judgment and expulsion order against the complainant and, upon reflection, decided not to appeal the acquittal of the complainant's wife: and (e) it would have been impossible for him to appeal the acquittal of the complainant's

wife, if the complainant had waited until the last day of the three-week period for lodging an appeal against the sentence and expulsion, as no additional week was available to the prosecution to file a cross-appeal in cases of acquittal.

7. In a submission of 9 October 2003, the complainant reiterates his argument in paragraph 5.1 above and submits that it was probably his lawyer who informed him of the prosecutor's intention to appeal his wife's acquittal if he appealed his sentence. Although his lawyer did not remember whether he had contacted the prosecutor on the issue, the prosecutor himself had not excluded that possibility in his statement to the Committee.

Issues and proceedings before the Committee:

8.1 Before considering any claim 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.

8.2 The Committee has noted the State party's objection that the communication is inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to exhaust domestic remedies. It has also taken note of the explanation provided by the complainant, and challenged by the State party, that his failure to appeal his sentence was explained by the fact that the prosecutor had warned him that he would appeal his wife's acquittal, should he, the complainant, appeal against his sentence and the expulsion order of the District Court.

8.3 However, the Committee need not pronounce itself on whether the complainant was required to exhaust domestic remedies in the circumstances of the case, as his claim that he would be at a risk of being subjected to torture upon return to Iran because of his employment with the army of the Shah prior to the Iranian revolution in 1979 is pure speculation and fails to rise to the basic level of substantiation required for purposes of admissibility, in the absence of any corroborating evidence. The Committee thus concludes, in accordance with article 22

of the Convention, and rule 107 (b), of its revised Rules of Procedure, that the communication is manifestly unfounded[4] and thus inadmissible.

9. Accordingly, the Committee decides:

a) that the communication 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.]

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[4] *Cf.* Communication No. 216/2002, *H. I. A. v. Sweden*, Decision on admissibility adopted on 2 May 2003, at para. 6.2.