

COMMITTEE AGAINST TORTURE

H.B. H., T.N. T., H.J. H., H.O. H., H.R. H. and H.G. H. v. Switzerland

Communication No 192/2001

29 April 2003

CAT/C/30/D/192/2001

VIEWS

Submitted by: H.B. H., T.N. T., H.J. H., H.O. H., H.R. H. and H.G. H. (represented by counsel, Peter Bozli)

Alleged victims: The complainants

State party: Switzerland

Date of submission: 15 October 2001

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

Meeting on 29 April 2003,

Having considered communication No. 192/2001, submitted to the Committee against Torture by H.B. H., T.N. T., H.J. H., H.O. H., H.R. H. and H.G. H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainants, their counsel and the State party,

Adopts the following decision:

DECISION UNDER ARTICLE 22, PARAGRAPH 7, OF THE CONVENTION

1.1 The complainants, Mr. H.B. H., his wife, Mrs. T.N. T., and their children H.J. H., H.O. H., H.R. H.

and H.G. H. - are Syrian nationals of Kurdish origin. They are currently in Switzerland, where they submitted an application for asylum. The application was rejected, and the complainants maintain that their return to Syria would constitute a violation by Switzerland of article 3 of the Convention against Torture. They have therefore asked the Committee to deal with the case as a matter of urgency, as they were facing imminent expulsion when they submitted their complaint. They are represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 20 November 2001. At the same time the Committee, acting in accordance with rule 108, paragraph 1, of its rules of procedure, requested the State party not to expel the complainants to Syria while their complaint was under consideration.

The facts as presented by the complainants

2.1 The complainant states that he was arrested while performing his compulsory military service owing to his refusal to join the ruling Baath party. He claims to have been imprisoned in Tadmur prison from 1 November 1987 to 31 March 1988, and to have been ill-treated.

2.2 He also states that he has been a committed Yekiti party sympathizer since 1992, and that he became a member of the party in 1995. In this connection he explains that he has distributed pamphlets and newspapers and taken part in party meetings. He asserts that on 5 November 1996 the Syrian political security service accused him of handing out prohibited leaflets and arrested him, before releasing him owing to lack of evidence on 20 November 1996.

2.3 The complainant explains that on 18 July 1998 a meeting attended by some 45 to 50 people, including senior officials of the Yekiti party, was held at his home in Al Qamishli. He states that at the meeting he roundly criticized government policy. He goes on to say that he then hid at his sister's home, on the advice of the organizer of the meeting, as he feared being punished by the authorities for his remarks. He claims that shortly after the meeting members of the Syrian security service went to his home to look for him. The complainant affirms that over the next few days he heard that the security forces had reportedly made several attempts to arrest him. He states that he first hid at his sister's home in Al Qamishli, then at his uncle's home, near to the border with Turkey. He further states that there he met up with his family, which had meanwhile also fled Al Qamishli. The complainants indicate that they left Syria together, in early August 1998, and crossed Turkey en route to Switzerland.

2.4 Mr. H. affirms that, after he had fled, he remained in contact with organizations of party exiles in Europe. He also states that he took part in a demonstration against the Syrian regime in the spring of 2000 in Geneva.

2.5 The complainants applied for asylum in Switzerland on 17 August 1998; the application was rejected on 21 January 1999. The Swiss Asylum Appeal Commission (CRA), ruling on the appeal submitted by the complainants on 20 February 2001, confirmed the initial decision to reject the application on 11 April 2001. In a letter dated 23 April 2001 the complainants were given a deadline for departure of 23 July 2001.

2.6 On the basis of a new document intended to demonstrate that the fear of persecution cited was well founded - an internal memorandum from the Al Hasakah political security division, dated 21 August 1998, addressed to the Al Qamishli political security division for the arrest of Mr. H. for prohibited political propaganda on behalf of the Kurdish cause - the complainant, on 21 June 2001, submitted to the CRA an application for review of the decision of 11 April 2001. By an interlocutory decision of 28 June 2001 the CRA rejected a request for the applications for review to have suspensive effect and for expulsion to be deferred.

2.7 In a letter dated 27 August 2001 a copy of a judgement of 20 May 1999 by an Al Hasakah court sentencing Mr. H. to three years' imprisonment for belonging to a prohibited organization was sent to the CRA. The Commission did not consider it appropriate to overturn its interlocutory decision.

2.8 On 31 August 2001 a report from the Swiss section, Berne, of Amnesty International was sent to the CRA; the report concluded that the complainants would very probably be imprisoned, interrogated under torture and subjected to arbitrary detention if they returned to Syria. The CRA did not change its original decision.

2.9 A letter dated 18 September 2001 providing confirmation of the risk to the complainants - a letter of support from the Western Kurdistan Association - was sent to the CRA. In a letter dated 19 September 2001 the CRA reiterated its rejection of the request for the application for review to have suspensive effect and for expulsion to be deferred.

2.10 The complainants state that they have exhausted domestic remedies. They specify that although the application for review has not yet been the subject of a judgement on the merits, the expulsion decision has been enforceable since 23 July 2001.

The complaint

3.1 The complainants claim that there is a real risk that they will be subjected to torture if they are expelled to Syria.

3.2 To substantiate this fear, they recall their various submissions to the Swiss authorities, in particular the Amnesty International report, which, in their view, has not been taken at its true value, and the copy of the judgement of the Syrian court, which has not been accepted as evidence by the authorities. They stress that, having left their country three years earlier, they would very probably, should they return, have to justify their stay abroad. They claim they would be subjected to intensive interrogation by the authority authorizing departures and issuing passports. They would be likely to be arrested by one of the Syrian secret services as they are Kurds and have links with the Yekiti party. The complainants assert that this cannot have escaped the notice of the Syrian authorities, particularly since they took part in a demonstration in Geneva. Accordingly, the complainants maintain that there is every reason to believe that they would be interrogated under torture regarding their relationships and contacts abroad as well as their activities.

State party's observations on admissibility and merits

4.1 In a letter dated 10 January 2001 the State party indicated that it was not contesting admissibility. The State party noted that on 25 June 2001 the complainants had submitted an application for review to the CRA, and that in a decision of 12 December 2001 it had been rejected.

4.2 In a letter dated 20 May 2002 the State party formulated its observations on the merits of the complaint.

4.3 With regard to the allegations of past ill-treatment and torture suffered by the complainant, the State party notes that the sole content of the file is the statement by Mr. H. claiming that he was ill-treated during his imprisonment from 1 November 1987 to 31 March 1988 in Tadmur prison. According to the State party, despite the specific questions put to him on this matter in his examination by the Swiss authorities in connection with his request for asylum, the complainant was unable to give more details. To the question: "How were you tortured?", he replied: "The first thing they do is torture you with a tyre. They put you in the tyre and thrash you. I was given only a piece of bread and some cold tea. We were not allowed to look in the mirror for five months. Visits were not authorized. My family did not know where I was." **(1)** The State party takes the view that the complainant is speaking, in very general terms, of a method of torture which is apparently used, but without explicitly stating that he himself was tortured in that way. Moreover, he gives no details of the precise circumstances of the ill-treatment undergone, for example, the number of people who supposedly ill-treated him, or the frequency, place and purpose. According to the State party, this lack of specificity and detail casts considerable doubt on the credibility of the ill-treatment suffered by the complainant during his military service.

4.4 However, according to the State party, had the complainant actually suffered ill-treatment in the past it would not be relevant to a determination in the current proceedings. Since the ill-treatment had allegedly taken place more than 10 years before the complainant left Syria, the requirement for the ill-treatment to have been in the recent past in order to evidence the risk of being subjected to torture within the meaning of article 3 of the Convention - as provided for in the Committee's General Comment No. 1 - has clearly not been met. The State party adds that the same is true a fortiori for the complainant's wife, since she has never alleged ill-treatment by State organs.

4.5 With regard to his political activities in Syria, the complainant has provided, in the context of national asylum proceedings, certificates dated 1 October 1998 and 12 March 1999 attesting to his membership in the Yekiti party. However, when questioned about the party in the asylum proceedings, he was, somewhat surprisingly, able to give only very general information on the aims of the party of which he claimed to be a member in a position of responsibility. Moreover, he had only very approximate knowledge of the party structure, particularly of its executive bodies. He cited the secretary of the party as its supreme organ, whereas information from reliable sources in possession of the Swiss asylum authorities indicates that the congress, which the complainant did not even refer to, is the supreme decision-making body in the Yekiti party. **(2)** According to the State party, since all members of the Yekiti party had to serve an apprenticeship before their formal admission to the party, the information supplied by the complainant regarding the purposes and structure of the party were far too vague for his membership claim to be credible. Thus the asylum authorities concluded that the complainant was not connected with the Yekiti party as he maintained. In the view of the State party, the two membership certificates were irrelevant, since

the documents had no official standing and had, the Swiss authorities considered, based on their experience and knowledge, been prepared so readily that they could only be considered as documents provided as an accommodation.

4.6 As evidence of his close links with the Yekiti party and his commitment to it, the complainant makes allegations which are not seen as credible by the State party. Firstly, the assertion that a secret meeting of some 50 people took place at the complainant's home is scarcely believable. The State party observes that if the complainant was under such close surveillance by the Syrian security forces as he claims, he would not have been able to have held such a big meeting at his home without attracting the attention of the security forces. Neither, in the view of the State party, is the complainant's assertion credible that after the meeting he had hidden for a week at his sister's home in the same town, where he supposedly learned that the security forces were conducting an intensive search for him. In the view of the State party there can be no doubt that had the security forces wished to arrest the complainant they would not have looked for him only at his home but would also have searched the home of his sister, who lived in the same locality. Similarly, the State party asserts that it is difficult to imagine how the complainant, supposedly being actively sought, would have been able to prepare an escape for himself and his family while in hiding at his sister's home.

4.7 During the CRA review proceedings, the complainant produced a document from the Al Hasakah security division dated 21 August 1998 (see paragraph 2.6). He stated that an acquaintance of his family, living in Syria and with good relations with secret service milieu, had obtained the document by bribery. Subsequently the document was supposedly brought through Germany by another acquaintance as a Polaroid photograph, and from there sent to Switzerland by post. According to the State party, as the CRA stated in its decision of 12 December 2001, it is inconceivable that the complainant could have taken possession of the document, which was not addressed to him personally and which he himself described as an internal memorandum. For the State party, the complainant's explanations of how this Syrian security service document supposedly reached him in Switzerland are extremely vague and unconvincing. In fact, none of the individuals who supposedly helped to obtain the document is mentioned by name. Moreover, the links between these individuals and the complainant are not made clear. In addition, no information is given about the bribery referred to, and, lastly, there is no explanation of why the document had to transit Germany before reaching the complainant in Switzerland. In view of these inconsistencies the State party takes the view that the document is bogus. Further, in his communication to the Committee, the complainant makes no claim that would contradict that interpretation. Lastly, according to the State party, it is to say the least strange that the complainant acquired the document, which dates from 1998, and included it in his file only after the Federal Office for Refugees (OFR) and the Swiss Asylum Appeal Commission (CRA) had rejected his asylum application. It is thus highly probable that the document was prepared for the sole purpose of constituting new evidence that would allow review proceedings to be initiated.

4.8 Also in the CRA review proceedings, the complainant produced a copy of a judgement of 20 May 1999 by an Al Hasakah court sentencing him to three years' imprisonment for belonging to a prohibited organization (see paragraph 2.7). Contrary to the complainant's assertions (see paragraph 3.2), the State party affirms that the CRA, in its review decision of 12 December 2001, examined all the documents submitted by Mr. H., including the judgement of 20 May 1999, (3) and rightly considered that the latter

document was bogus, for the following reasons:

(a) Firstly, its content does not correspond to the statements by the complainant and his wife. The complainants never cited in the asylum proceedings the imprisonment from 1 to 16 June 1998 mentioned in the judgement. In the examination proceedings on 21 December 1998 the complainant referred only to imprisonment during his military service in 1987 and further imprisonment in 1996. To the specific question of whether he had been arrested or imprisoned on other occasions, the complainant said that he had not. **(4)** The complainant's wife, when questioned, also never mentioned any imprisonment of her husband in June 1998. Rather, she stated that her husband's most recent arrest had been on 5 November 1996; **(5)**

(b) Secondly, the sentence of three years referred to in the judgement exceeds the penalty under Syrian law for the offence for which the complainant was allegedly sentenced;

(c) Further, the judgement contradicts the security service internal memorandum dated 28 August 1998 produced by the complainant. It is scarcely credible that, despite being suspected of having founded a secret organization, the complainant was detained for only two weeks and released on 16 June 1998, only to be sought by the security service for the same offence two months later. Given the seriousness of the offence of founding a secret organization, the release referred to in the judgement appears more than doubtful. It is, moreover, surprising that the complainant was sentenced in absentia only on 20 May 1999, that is approximately one year after the Syrian authorities became aware of his subversive activities;

(d) Lastly, the complainant claims that an official at the court which sentenced him was bribed to make a copy of the judgement. The copy produced by the complainant is, however, of such poor quality that it could hardly be a copy of an original judgement, but at most a copy of a document already copied several times previously.

4.9 In view of these contradictions and inconsistencies, the State party asserts that the copy of the judgement is clearly bogus.

4.10 Regarding the complainant's political activities outside Syria (para. 2.4), the State party considers that, contrary to the assertion by the complainants, the photograph of the complainants at a demonstration for Kurdish rights in front of the Permanent Mission of Syria in Geneva proved neither that they took part in the demonstration nor that they engaged in any political activity in Switzerland. The photograph merely shows that the complainants were present in a location at which a political demonstration took place, leaving open the question of what demonstration it was. In particular, it does not show what role the complainants played in the demonstration; their position some way from individuals holding a sign, and the fact that they were surrounded by young children, suggest, rather, that the complainants were simply spectators at the demonstration. In any event, in the view of the State party, it could not be concluded from the photograph that the complainants were politically active in Switzerland, and that as a result they risked punishment if returned to Syria.

4.11 Regarding the Amnesty International report of 3 July 2001 (see paragraph 2.8), the State party observes that at the beginning of the report that organization made it clear that the report made no

judgement as to the risks run by the complainants owing to their activities prior to their flight, since it was not in a position to undertake the necessary investigations. According to Amnesty International, the risk of undergoing ill-treatment in the event of return to Syria was supposedly based on the complainant's links with the Yekiti party (6) and his activities in Syria. (7) In the view of the State party these conclusions are questionable since, as previously stated, the close links with the Yekiti party and the danger supposedly incurred by the complainants owing to political activity abroad (8) have not been established in any way. Regarding measures to which persons returning to Syria after a stay abroad might be subjected, namely interrogations by various State bodies, and beatings of persons under interrogation, (9) the State party emphasizes that these facts are mentioned in general and that the Amnesty International report does not show that the complainants personally ran a particular and serious risk of undergoing ill-treatment in the event of return to their country. With regard to the situation of Kurds in Syria and the arrests to which they are subject, (10) Amnesty International acknowledges that people have been arrested not because of their Kurdish origin, but because of their political activities. Thus, according to the State party, the complainants' assertion that they risked, in the event of return to Syria, being ill-treated or tortured because of their Kurdish origin is baseless. Furthermore, the State party maintains that information in possession of the Swiss Government indicates that a lengthy stay abroad in connection with an asylum application does not, in and of itself, lead to prosecution on political grounds or to particular problems on returning to Syria. Thus, referring to the Committee's jurisprudence, (11) the State party concludes that the condition sine qua non of a "personal" risk of being subjected to ill-treatment is not present in this case.

4.12 Regarding the particular situation of Mrs. T., the State party observes that throughout the proceedings only Mr. H. adduced reasons which could substantiate - were they well-founded - the view that it would be unacceptable for him to return to Syria. In contrast, there is no claim that Mrs. T. was politically active in Syria or elsewhere or that she was arrested or ill-treated. In this connection the State party recalls that article 3 of the Convention does not guarantee, in the Committee's practice, family reunion if only one of its members can demonstrate genuine and serious risk of being subjected to ill-treatment. Accordingly, the State party concludes that the return of Mrs. T. would in no way violate the Convention.

4.13 Regarding the credibility of the information provided by the complainants, the State party considers that the many contradictions identified in the complainant's statements (in particular regarding his so-called political activities) make them incredible. The State party particularly wishes to point out that throughout the domestic proceedings the complainants have produced a number of documents, not of their own accord at the beginning of the proceedings, but only as a result of negative decisions taken by the Swiss authorities against them. Thus, the complainants produced the photograph showing them in Geneva in the spring of 2000 only after having received the CRA decision of 12 April 2001. The same is true of the Syrian security forces document of 21 August 1998 and the Syrian criminal judgement of 20 May 1999. The State party maintains that this behaviour suggests that the complainants "produced" certain evidence only once they had realized that their allegations were not achieving the desired effect on the competent national authorities.

Complainants' comments on the State party's observations

5.1 In a letter dated 23 October 2002 the complainants stated that they have no comments in addition to those made in their original complaint.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It 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. It also notes that the State party has not contested admissibility. It therefore considers that the complaint is admissible. As both the State party and the complainants have provided observations on the merits of the complaint, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the return of the complainants to Syria would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to a 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, whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture if they were returned to Syria. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, 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. 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 the country. There must be other grounds indicating 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 might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its General Comment No. 1 on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 299).

6.5 In this case the Committee notes that the State party draws attention to blatant inconsistencies and contradictions in the accounts and submissions by the complainants, casting doubt on the veracity of their allegations. It also takes note of the information supplied in this regard by the complainants.

6.6 Regarding the allegations of ill-treatment and torture in Syria, the Committee notes that only Mr. H. states that he suffered such treatment while imprisoned in Tadmur prison between 1 November 1987 and 31 March 1988, and that he remained in the country undisturbed until his departure in 1998.

6.7 Regarding the complainants' political activities, the Committee notes, firstly, that only Mr. H. reports such an involvement in Syria. Secondly, in view of the complainants' contradictions and inconsistencies and the serious doubts as to the authenticity of the internal memorandum from the Syrian security service of 21 August 1998 and of the Al Hasakah court judgement of 20 May 1999, the Committee considers that the complainant has not established, either in his statements or by means of the documents produced, his active membership in the Yekiti party and opposition to the Syrian authorities. Lastly, the Committee considers that the complainants have not shown involvement in opposition political activities in Switzerland.

6.8 The Committee considers that the above-mentioned documents were produced by the complainants only in response to decisions by the Swiss authorities to reject their application for asylum, and that the complainants have failed to offer any coherent explanation of the delay in making submissions.

6.9 Regarding the 2001 Amnesty International report, in addition to the contradictions pointed out by the State party concerning the conclusions drawn regarding the complainants' political activities in Syria, the Committee notes that the information relating to measures that might affect persons returning to Syria after a long stay abroad is invoked in general terms without being linked in a relevant manner to the specific cases of the complainants, and is contradicted by the information transmitted by the State party, in submissions which the complainants have not subsequently contested. It is also apparent that the Kurdish origin of the complainants would not in itself constitute a reason for ill-treatment or torture in Syria.

6.10. Lastly, the Committee notes that the complainant, Mrs. T., has submitted no arguments as to the risk of her being subjected to ill-treatment in the event of return to Syria.

6.11 Consequently the Committee considers that the complainants have not demonstrated the existence of serious grounds suggesting that their return to Syria would expose them to real, specific and personal risk of torture.

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 returning the complainants to Syria would not constitute a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, French being the original language. Will also be issued in Arabic and Chinese in the Committee's annual report to the General Assembly.]

Notes

1. Transcript of examination of complainant by canton of Zurich Immigration Police, 21 December 1998.
2. Ibid.

3. CRA review decision, 21 December 2001, p. 7.
4. Statements by complainant, verbatim record of examination by canton of Zurich Immigration Police, 21 December 1998, p. 10.
5. Statement by complainant, verbatim record of examination at Kreuzlingen Reception Centre, 20 August 1998, p. 4.
6. Report, chaps. 5.8, 5.10 and 5.11.
7. Report, chap. 5, "Situation in the event of return of Mr. H. and Mrs. T."
8. Report, chap. 5.10.
9. Report, pp. 4-6.
10. Report, chap. 3.
11. Kioski v. Sweden, complaint No. 41/1996, para. 9.4.