

COMMITTEE AGAINST TORTURE

Korban v. Sweden

Communication No 88/1997

16 November 1998

CAT/C/21/D/88/1997

VIEWS

Submitted by: Avedes Hamayak Korban [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: June 1997

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

Meeting on 16 November 1998,

Having concluded its consideration of communication No. 88/1997, submitted to the Committee 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, her counsel and the State party,

Adopts its

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Mr. Avedes Hamayak Korban, an Iraqi citizen born in 1940, currently residing in Sweden where he is seeking asylum. He claims that his forced return to Iraq would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

Facts as presented by the author

2.1 The author was a resident of Kuwait since October 1967. He states that, because of his opposition to the Iraqi regime, he stayed in Kuwait as a refugee after the Gulf war. However, because of his nationality, he was imprisoned on three occasions, tortured, in particular through electric shocks, and finally deported to Iraq on 22 September 1991. Upon arrival at the border he was arrested and transferred to Baghdad, where he was interrogated at the headquarters of the Iraqi intelligence services. Later on he was released on bail and ordered to report daily to the government representative in his neighbourhood, as he was suspected of being an informer for the Kuwaiti authorities on the grounds that he did not leave Kuwait when the Iraqi army withdrew. He states that he managed to leave the country with his family through bribes and arrived in Jordan, his wife's country of nationality.

2.2 In Jordan he was refused a residence permit in November 1991 and was only given a six-month temporary visa. When that visa expired he had to pay one dinar for each day he remained in the country. He states that he tried unsuccessfully to obtain permanent residence. In 1993 he went back to Iraq to visit his dying mother and was first kept in detention for 14 days and then under house arrest, having to report to the government representative every day. According to the author, this representative advised him to leave Iraq since his safety in the country was at risk. He went back to Jordan where he remained, without a residence permit, until June 1994. He arrived in Sweden via Turkey on 13 June 1994. His son lives in Sweden where he obtained a permanent residence permit after having deserted from Iraqi military service during the Gulf war. The author alleges that, according to Iraqi law, he is considered responsible for his son's defection, and for that reason as well his situation in Iraq would be difficult. The author's wife and daughters are apparently still living in Jordan.

2.3 On 26 September 1994 the Swedish Immigration Board decided to reject the author's application for a residence permit and ordered his expulsion to Jordan. The Board found that the author's connections with Jordan constituted substantial grounds to assume that he would be received in that country and that there was no danger for him to be sent from Jordan to Iraq. The Aliens Appeals Board, sharing the opinion of the Swedish Immigration Board, dismissed the author's appeal on 11 September 1996. In 1997 the author lodged three new applications which were all rejected by the Aliens Appeals Board.

The complaint

3.1 The author claims that his return to Iraq would constitute a violation of article 3 of the Convention against Torture by Sweden, since there are risks that he would be arrested and subjected to torture in that country. He also claims that, not having a residence permit in Jordan, it is unsafe for him to return to that country from which he fears to be sent back to Iraq since the Jordan police work closely with the Iraqi authorities.

3.2 In support of his claim the author provides the Committee with copies of two letters dated 20 December 1994 and 17 October 1996 in which the Office of the United Nations High Commissioner for Refugees (UNHCR) informed the Swedish Aliens Appeals Board

that foreigners married to Jordanian women did not enjoy any preferential treatment when applying for residence permits in Jordan and that marriage to a Jordanian citizen was not grounds for being granted residency in Jordan; special authorization had to be obtained from the Ministry of Interior. He also provided copy of a letter dated 27 March 1997 in which UNHCR informed the Advice Bureau for Asylum Seekers and Refugees in Stockholm about cases of Iraqis denied entry or readmission into Jordan upon being returned from Sweden and Denmark.

State party's observations

4.1 On 16 September 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel or deport the author to Jordan or Iraq while his communication was under consideration by the Committee.

4.2 In its submission to the Committee the State party indicates that the author applied from Jordan for a visa to Sweden in September 1993 and that in his application he stated that he had permission to stay in Jordan. The application was rejected by the Swedish Immigration Board on 14 December 1993. He then entered Sweden on 13 June 1994 and applied for asylum on the following day, claiming that he did not dare to stay in Jordan as he feared that, due to the presence of the Iraqi security police in that country, he might be sent back to Iraq where he risked being persecuted.

4.3 The Swedish Immigration Board and the Aliens Appeals Board dismissed his applications and ordered his expulsion to Jordan. However, following the Committee's request not to expel the author to Iraq or Jordan while his communication was under consideration by the Committee, the Swedish Immigration Board decided on 24 September 1997 to stay the enforcement of its decision until further notice, pending the Committee's final decision in the matter.

4.4 With respect to the admissibility of the communication, the State party submits that the author can at any time lodge a new application for re-examination of the case, provided that new circumstances are adduced that could call for a different decision. However, it does not raise any objection to the admissibility.

4.5 As for the merits, the State party contends that, in determining whether the forced return of the author would constitute a breach of article 3 of the Convention, the following issues should be examined: (a) the general situation of human rights in Jordan and Iraq; (b) the general situation of Iraqi refugees in Jordan; and (c) the author's personal risk of being subjected to torture in Jordan or after having being deported from Jordan to Iraq.

4.6 Regarding the general situation of human rights in Jordan, the State party finds no grounds for asserting that there exists in Jordan a consistent pattern of gross, flagrant or mass violations of human rights. Such pattern, however, seems to exist in Iraq. In view of that, Iraqi nationals are normally not expelled from Sweden to their country of origin, unless the immigration authorities find that there are objections to their presence in Sweden from the

point of view of security.

4.7 As for the general situation of Iraqi refugees in Jordan, the State party refers to two letters submitted to the Aliens Appeals Board on 28 October 1996 and 22 September 1997 respectively, in which Amnesty International expresses concern for the security of Iraqi nationals who are returned from Sweden to Jordan. According to Amnesty, Iraqi citizens are usually granted a temporary residence permit of up to six months and after that they have to pay a daily fee to be able to stay in Jordan. Those who cannot pay the fee or who are found without a valid passport are put in custody while awaiting deportation. There are several cases known to Amnesty International of Iraqis being detained and tortured in Iraq after deportation from Jordan.

4.8 The State party also refers to the contents of the above-mentioned letter of 27 March 1997 from UNHCR to the Advice Bureau for Asylum Seekers and Refugees. In addition, it mentions the latest annual report on Jordan of the United States Department of State, according to which since 1991 thousands of Iraqis have sought asylum in Jordan, where they have been given assistance by UNHCR. The report mentions, however, two cases of forced expulsion of Iraqis to Iraq in 1997.

4.9 According to information received through diplomatic channels by the State party, although Jordan has not ratified the 1951 Convention relating to the Status of Refugees it has expressed its willingness to follow the principles contained in that Convention and the Jordanian authorities seem to have a particular understanding for the difficult situation of the Iraqis. In spite of that, Iraqis who return from Europe are not welcome. Even though the Jordanian authorities claim that Iraqis are only sent back to Iraq with their voluntary written approval, it cannot be ruled out that some Iraqis have been sent to Iraq against their will. Although Jordan can be characterized as a rather safe country for Iraqi refugees, their situation may change from time to time depending on the political situation. The relations between Jordan and Iraq have recently been "normalized", and this may affect the situation of Iraqi refugees. According to UNHCR, if an Iraqi is returned to Jordan after expulsion from Sweden and it is known to the Jordanian authorities that he has been staying in Sweden, he will probably be expelled also from Jordan. Most member States of the European Union do not seem to regard Jordan as a safe third country for Iraqi citizens.

4.10 The State party indicates that the information referred to in the previous paragraph was not available to the Swedish Immigration Board and the Aliens Appeals Board when they made their decisions concerning the author's application for asylum. It can be inferred from it, however, that Iraqi refugees in Jordan, in particular those who have been returned to Jordan from a European country, are not entirely protected from being deported to Iraq.

4.11 With regard to the personal risk of being subjected to torture, the State party notes that the author has not expressed any fear with respect to Jordan. As for Iraq, in view of the human rights situation in that country and taking into consideration, inter alia, the escape of the author's son from military service and the treatment that the author allegedly received from the Iraqi police during his stays in Iraq after leaving Kuwait, it can be said that substantial grounds exist for believing that, if returned to Iraq, the author would be in danger

of being subjected to torture. The question that remains to be considered is whether the author would run a real risk of being deported to Iraq from Jordan. The State party abstains from making an evaluation of its own.

4.12 In a further submission dated 6 November 1998 the State party stated that Jordan and UNHCR had recently agreed on a Memorandum of Understanding regarding the rights of refugees in Jordan. The Memorandum contains the same definition of refugee as appears in article 1 of the 1951 Geneva Convention, confirming the principle of non-refoulement regarding citizens of a third country who have been recognized as refugees by UNHCR. Thus, the Memorandum is an additional sign of Jordan's willingness to follow the principles contained in the Geneva Convention. There are also other signs of increasing cooperation between Jordanian authorities and UNHCR and of a wider understanding for the situation of Iraqi refugees.

Counsel's comments

5.1 In her comments to the State party's submission counsel stresses that the author's last application for asylum was rejected on 28 August 1997. By then, the Swedish authorities had enough reliable information at their disposal to consider that Jordan would not be a safe country for the author, since he would be at risk of being deported to Iraq and subjected to torture in that country.

5.2 With respect to the observations made by the State party on 6 November 1998 counsel submits copy of a letter from the UNHCR dated 11 November 1998 in which she is informed that although UNHCR considers the signature of the Memorandum of Understanding as a very positive development it does not alter UNHCR's view that Jordan is not a safe country of asylum for Iraqi nationals. First, the Memorandum retains an important time limitation. According to its article 5 a refugee should receive legal status and UNHCR would endeavour to find recognized refugees a durable solution be it repatriation to the country of origin or resettlement in a third country. The sojourn of recognized refugees should not exceed six months. Secondly, the Jordanian authorities do not apply the Memorandum to deportees from third countries. Their practice with regard to Iraqi nationals deported back to Jordan from third countries is either to allow their departure to Iraq or to allow them to travel to any third country of their choice, including the country of deportation.

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 also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Iraq or Jordan 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 would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Iraq. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, 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 return to that country; specific grounds must exist 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 cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee is aware of the serious human rights situation in Iraq and considers that the author's history of detention in that country as well as the possibility of his being held responsible for his son's defection from the army should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee also considers that the presentation of the facts by the author do not raise significant doubts as to the general veracity of his claims and notes that the State party has not expressed doubts in this respect either. In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Iraq.

6.5 The Committee notes that the Swedish immigration authorities had ordered the author's expulsion to Jordan and that the State party abstains from making an evaluation of the risk that the author will be deported to Iraq from Jordan. It appears from the parties' submissions, however, that such risk cannot be excluded, in view of the assessment made by different sources, including UNHCR, based on reports indicating that some Iraqis have been sent by the Jordanian authorities to Iraq against their will, that marriage to a Jordanian woman does not guarantee a residence permit in Jordan and that this situation has not improved after the signature of a Memorandum of Understanding between the UNHCR and the Jordanian authorities regarding the rights of refugees in Jordan. The State party itself has recognized that Iraqi citizens who are refugees in Jordan, in particular those who have been returned to Jordan from a European country, are not entirely protected from being deported to Iraq.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning the author to Iraq. It also has an obligation to refrain from forcibly returning the author to Jordan, in view of the risk he would run of being expelled from that country to Iraq. In this respect the

Committee refers to paragraph 2 of its general comment on the implementation of article 3 of the Convention in the context of article 22, according to which "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited". Furthermore, the Committee notes that although Jordan is a party to the Convention, it has not made the declaration under article 22. As a result, the author would not have the possibility of submitting a new communication to the Committee if he was threatened with deportation from Jordan to Iraq.

[Done in English, French, Russian and Spanish, the English text being the original version.]