

## COMMITTEE AGAINST TORTURE

### S.M.R. and M.M.R. v. Sweden

Communication No 103/1998

5 May 1999

CAT/C/22/D/103/1998

### VIEWS

*Submitted by* : S.M.R. and M.M.R. (Names withheld) [represented by counsel]

*Alleged victim*: The authors

*State party*: Sweden

*Date of communication*: 5 November 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 5 May 1999,

Having concluded its consideration of communication No. 103/1998, 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 authors of the communication, their counsel and the State party,

Adopts its

### **Views under article 22, paragraph 7, of the Convention**

1. The authors of the communication are S.M.R., her husband M.M.R. and their two children. The authors are Iranian citizens currently residing in Sweden, where they are seeking refugee status. S.M.R. and M.M.R. claim that they would risk imprisonment and torture upon return to the Islamic Republic of Iran and that their forced return to that country would therefore constitute a violation by Sweden of the Convention. They are represented by counsel.

## The facts as presented by the authors

2.1. The authors state that S.M.R. has been an active member of the illegal organization the Mujahedin. Because of her political activities she has been imprisoned twice by the Iranian authorities. She was first arrested in 1982 and spent four years in the Evin-Ghezelhesar prison. She was released in May 1986 when the authorities revised old sentences. About the time of her release the Mujahedin launched a military offensive, and she was arrested again in August 1986 together with other activists who were seen as threats by the Iranian authorities. She was released in May 1990 due to lack of evidence, but she had to report regularly to the authorities for the following six months.

2.2 S.M.R. was ill-treated and tortured in prison, especially during her first imprisonment. She states that she was beaten on the soles of her feet and that she was flogged on two occasions. As a result of the flogging she was unconscious and suffered renal haemorrhage. She was treated in a hospital for two days before she was sent back to prison. She also states that she was subjected to a fake execution.

2.3 In 1991 S.M.R. resumed her work for the Mujahedin. She was a member of a group of four politically active women who produced leaflets for the Mujahedin in her home, where they met three times a week. The reason why the women always met in S.M.R.'s home was that her husband, because of his profession, had a typewriter which the women used to produce the leaflets. The authors state, however, that M.M.R. was unaware of the political activities of his wife.

2.4 S.M.R. and her children arrived in Sweden on 21 July 1995 on a valid passport, to attend the marriage of a relative. She states that at that time she intended to return to Iran. While in Sweden she learned that her husband, who was not politically active, had been arrested by the Iranian security police in August 1995 and interrogated about the political activities of his wife. The police had informed him that the other women belonging to the political group in which S.M.R. was active had been arrested and that one of the women had revealed his wife's identity. The police had also searched the family's house and confiscated the typewriter which had been used to produce the leaflets. S.M.R. decided not to return to Iran, where she claims she risks being imprisoned and tortured again.

2.5 S.M.R. and her two children applied for asylum on 30 November 1995. Her application was rejected by the National Immigration Board on 30 January 1996. On 25 November 1996, the Aliens Appeal Board turned down her appeal. Following an application by S.M.R., the Aliens Appeal Board decided, on 5 March 1997, not to expel her pending its decision regarding the asylum claim of her husband.

2.6 After leaving Iran illegally with the help of smugglers, M.M.R. arrived in Sweden on 6 November 1996 and immediately applied for asylum. He was later told by his mother in Iran that the Swedish police had informed the Iranian authorities about his illegal departure from the country. He would now risk imprisonment upon his return to Iran.

2.7 The National Immigration Board rejected M.M.R.'s asylum claim on 23 April 1997. On 27 October 1997, the Aliens Appeal Board dismissed his appeal. Following the rejection of M.M.R.'s

asylum claim, the Aliens Appeal Board cancelled the stay of the deportation order against S.M.R. and her children.

### The complaint

3.1 In view of the fact that S.M.R. has previously been imprisoned and tortured, and that her recent political activities have become known to the Iranian Government, the authors claim that there exist substantial grounds for believing that she, her husband and their children would be subjected to torture if they were returned to Iran. Their forced return would therefore constitute a violation by Sweden of the Convention.

3.2 The authors draw the attention of the Committee to the fact that neither the National Immigration Board nor the Aliens Appeal Board has questioned that S.M.R. had been active in the Mujahedin organization and that she had previously been imprisoned and tortured.

### Observations by the State party

4.1 By its submission of 21 April 1998, the State party informed the Committee that, following the Committee's request under rule 108, paragraph 9, of its rules of procedure, the National Immigration Board had decided to stay the expulsion order against the authors while their communication is under consideration by the Committee.

4.2 The State party explained the domestic procedure applicable to the determination of refugee status. It stressed that, in accordance with the Aliens Act, an alien may never be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment, nor to a country where he/she is not protected from being sent on to a country where he/she would be in such danger. An alien who is refused entry can reapply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion.

4.5 Regarding the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international instance of investigation or settlement. The State party explains that the authors can at any time file a new application for re-examination of their case with the Aliens Appeal Board, based on new factual circumstances. Finally, the State party contends that, with reference to what it says concerning the merits of the case, the communication should be considered inadmissible as incompatible with the provisions of the Convention.

4.6 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the cases of Mutombo v. Switzerland<sup>1</sup> and Tapia Paez v. Sweden<sup>2</sup>, and the criteria established by the Committee with respect to article 3 of the Convention, first, that a person must personally be at risk of being subjected to torture and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.7 The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual being subjected to torture as a foreseeable and necessary consequence of return. The State party recalls that the mere possibility that a person will be subjected to torture in his or her country of origin is not sufficient grounds for his or her return to be incompatible with article 3 of the Convention.

4.8 The State party is aware of human rights violations taking place in the Islamic Republic of Iran, including extrajudicial and summary executions and disappearances, as well as widespread use of torture and other degrading treatment.

4.9 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture if returned to Iran, the State party relies on the evaluation of the facts and evidence made by the National Immigration Board and the Aliens Appeal Board. Neither found any reason to question that S.M.R. had been politically active for the Mujahedin and that she had been imprisoned in the 1980s. However, the Swedish authorities have found that some elements provided by the authors regarding S.M.R.'s recent political activities and the circumstances relating to her departure from Iran raise doubts as to their credibility.

4.10 In its decision of 30 January 1996, the National Immigration Board noted that S.M.R. had been released from prison in 1990 for lack of evidence. As to her political activities after her release, the Board found it unlikely that the political group she claimed she was a member of held meetings and produced leaflets three times a week in her house without her husband's knowledge. The Board also found it improbable that she was wanted by the Iranian authorities because a typewriter had been found in her home. As to the circumstances of her departure from Iran, the Board noted that S.M.R. had been able to obtain a national passport in 1993 and that she had left Iran legally. This is an additional indication that she was not of interest to the Iranian authorities. In addition, the Board pointed out that she had waited four months in Sweden before applying for asylum.

4.11 On 25 November 1996 the Aliens Appeal Board rejected the appeal of S.M.R. and her children, adding to the findings of the National Immigration Board that she had not applied for asylum until three months after she allegedly learned that the authorities were looking for her in Iran. In the Board's view, her explanation that she did not, until that point, realize the proportions of the authorities' interest in her was not convincing. The Board stated that the delay alone gave reason to doubt her need of protection in Sweden. The Board further stated that not only had S.M.R. been able to obtain a national passport in 1993, but she had also been able to leave the country several times, which shows that she was not of particular interest to the Iranian authorities. The Board further found not credible her statement that she had travelled to the Syrian Arab Republic at the request of the authorities in order to prove that she was a true Muslim. The Board considered that this was rather an attempt to explain the departure stamps in her passport.

4.12 M.M.R.'s application for asylum was rejected by the National Immigration Board on 23 April 1997. The Board noted that his grounds for requesting asylum were connected to his wife's political

activities in Iran, activities which had not been considered of such nature as to justify her protection in Sweden. M.M.R.'s claim that he risked imprisonment for having left Iran without a visa was not regarded as grounds for granting him protection.

4.13 The Aliens Appeal Board turned down his appeal on 27 October 1997. The Board noted that in September 1996, after the alleged detention in August 1995, he obtained a valid passport and permission to leave the country. Therefore, the Board concluded, he was not at that time of special interest to the Iranian authorities. The Board also noted that, when entering Sweden, he had stated that he had not experienced any problems of a political nature in Iran.

4.14 The State party reiterates that it does not question S.M.R.'s statement in respect of imprisonment and ill-treatment in the past. What is called into question is whether S.M.R. has been politically active since 1991 in the manner claimed by her and therefore at risk of being tortured if she returns to Iran at this time. In this context, the State party points out several circumstances and elements in the authors' account which give rise to doubts as to S.M.R.'s alleged political activities during recent years.

4.15 Firstly, the State party asserts that, according to reliable information available to the Government, the Mujahedin has for many years been operating from outside Iran only. Production and distribution of leaflets for the Mujahedin within Iran consequently does not occur. Due to this circumstance alone, S.M.R.'s statement concerning her political activities is not credible.

4.16 The State party also underlines the findings of the National Immigration Board and the Aliens Appeal Board as to the authors' possession of passports. S.M.R. was in possession of a valid national passport and visa when entering Sweden. She obtained a passport in 1993 and had, according to the stamps in it, left Iran on several occasions before travelling to Sweden. In the initial investigation following her application for asylum, S.M.R. stated that she had turned in her passport to the authorities in 1995 in order to have her youngest child registered in it. She further stated that when she applied for a new passport she was requested by the authorities to travel to Syria in order to prove that she was a true Muslim. The State party finds, in accordance with the findings of the Boards, that this statement is not credible but rather a construction devised to explain the departure stamps in her passport. These circumstances contradict the assertion that she was of special interest to the Iranian authorities at the time of her departure. The State party also underlines the facts that M.M.R., after he had allegedly been detained in August 1995, stayed in Iran for more than a year, that he had obtained a valid passport and that he declared, when entering Sweden, that he did not have any problems of a political character in Iran.

4.17 Finally, the State party draws the attention of the Committee to the fact that S.M.R. has not been able to give any reasonable explanation as to why she waited for more than four months before applying for asylum in Sweden. The State party maintains that her explanation is not convincing, especially as she alleged that her husband was arrested two weeks after her arrival in Sweden.

4.18 In the State party's view the decisive element in this case, in making the risk assessment under article 3 of the Convention, is the credibility that can be attached to the statements made by the authors of the communication. In view of the circumstances recounted above, the State party considers that S.M.R. and M.M.R. have not substantiated the claim that they would run any

particular personal risk of being detained and tortured if they were to return to Iran.

4.19 The State party concludes that, in the circumstances of the present case, the authors' return to Iran would not have the foreseeable and necessary consequence of exposing them to a real risk of torture. An enforcement of the expulsion order against the authors would therefore not constitute a violation of article 3 of the Convention.

#### Counsel's comments

5.1 Counsel recalls that the State party does not in any way question that S.M.R. has been imprisoned and tortured in the past. He also points out that the State party is aware of the serious human rights violations occurring in Iran, including the widespread use of torture, and concludes that there are substantial risks that S.M.R. would face torture again if returned to Iran.

5.2 Counsel further argues that the act of deporting a person to a country to which she fears to return owing to having previously been tortured, is in itself an act of torture or other cruel, inhuman or degrading treatment or punishment.

5.3 Finally, counsel refers to a certificate submitted by a psychiatrist at the Swedish Red Cross centre for tortured refugees in Stockholm, according to which S.M.R.'s statements regarding imprisonment and torture clearly are based on her own personal experiences. The psychiatrist further states that in his view, S.M.R.'s account of how, after her release from prison in 1990, she pursued her political activities and her fear of being persecuted by the Iranian authorities are credible and genuine.

#### The Committee's decision on admissibility

6.1 At its twenty-first session the Committee considered the admissibility of the communication. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement, and considered that all available domestic remedies had been exhausted in view of the fact that no new circumstances existed on the basis of which the authors could file a new application with the Aliens Appeal Board. Accordingly, it decided that the communication was admissible.

6.2 The Committee noted the information given by the State party that the Immigration Board had stayed the enforcement of the expulsion order against the authors, pending the Committee's final decision on the communication.

6.3 The Committee further noted that both the State party and the author's counsel had provided observations on the merits of the communication, and that the State party had requested the Committee, if it were to find the communication admissible, to proceed to the examination of the merits of the communication. Nevertheless, the Committee considered that the information before it was not sufficient to enable it to adopt its Views at that stage. Accordingly, it decided to request both parties to make additional submissions within three months, with a view to examining the merits of the communication at the Committee's twenty-second session.

6.4 In particular, the Committee decided to request from the authors' counsel additional information about the nature of S.M.R.'s political activities after 1990 and the current situation of the other members of the political group to which she belonged. Likewise, the Committee requested clarifications from the State party and the authors' counsel as to the circumstances relating to the authors' departure from Iran and entry into Sweden, as well as their obtaining of passports. Clarifications were also requested regarding the authors' statement that Swedish police authorities had informed the Iranian authorities about the illegal departure of M.M.R. from Iran.

6.5 Under rule 110, paragraph 3, of the rules of procedure, the Committee further requested the State party not to return the authors to Iran while their communication is under consideration by the Committee.

#### Additional information submitted by the State party

7.1 In response to the Committee's request regarding the circumstances of the authors' departure from Iran, entry into Sweden and obtaining of passports, the State party submits that the information it provided is based on the authors' own statements to Swedish immigration authorities. S.M.R.'s passport was issued on 10 May 1993 with validity until 10 May 1996. She applied for a visa in January 1995 in order for her and her two children to visit her brother in Sweden. They were granted entry visas valid for 30 days with departure from Sweden not later than 17 September 1995. She arrived in Sweden on 21 July 1995.

7.2 S.M.R. has stated that she obtained her passport without difficulty. In March 1995 she returned it to the authorities in order to have her youngest child registered on it. After being informed that her name resembled the name of a person who was not permitted to leave the country, she was requested to report to the prosecution authority. The prosecution authority discovered that her name was miswritten and decided not to return her passport to her. When she applied for a new passport the authorities made it a condition that she first travel to Syria. The trip was arranged by the authorities as a test in order to prove that she was a true Muslim supporting the regime. The authorities made it an additional condition that she turn in the certificate of registration of title of her house before the trip. Her passport was returned a week before she travelled to Syria with her husband and children.

7.3 The State party maintains that S.M.R.'s statement concerning her trip to Syria is not credible, but rather an attempt to explain the departure stamps in her passport. It notes that her husband has not mentioned anything about a trip to Syria, nor has he mentioned anything about a passport he must have been in possession of in order to travel to Syria.

7.4 According to reliable sources, a valid passport and an exit visa are required in order to be allowed to leave Iran. Persons convicted of a serious crime or under suspicion of such a crime or under surveillance for other reasons are not allowed to leave the country. Since S.M.R. had no difficulties in obtaining a passport as well as a visa and leaving the country, it is unlikely that she was of any special interest to the Iranian authorities at the time of her departure. On the other hand, her husband, who was allegedly arrested and interrogated, was released after a week and stayed in Iran for more than a year thereafter. Further, he further obtained a valid passport, issued on 30 September 1996, and a permit to leave Iran. Obviously, the Iranian authorities had no special interest

in him either at the time of his departure in 1996.

7.5 M.M.R. arrived in Sweden without an entry visa. In the initial interrogation following his application for asylum he stated that he had obtained his passport without any difficulties, that he had not experienced any problems of a political nature in Iran and that his intention was to reunite with his wife and children. He also stated that he had not applied for an entry visa because he was convinced that he would not obtain one. Therefore, he paid a smuggler who bought him a ticket and helped him to pass through the gates at the airport in Tehran.

7.6 The State party contests M.M.R.'s statement that the Swedish police informed the Iranian authorities about his illegal departure from Iran. However, due to M.M.R.'s lack of a valid entry visa, the Swedish police authorities informed Iran Air of his arrival in Sweden. That was done in accordance with provisions of the Aliens Act aimed at inducing carriers to make thorough checks of passengers' travel documents in order to avoid their arrival in Sweden undocumented.

7.7 The State party has obtained information according to which a person who returns to Iran after leaving the country illegally risks a fine and can be taken into custody for three days at the most. The State party has, however, no information indicating that Iranian citizens who have been expelled from Sweden have been subjected to ill-treatment upon their return to Iran. The State party calls into question whether the Iranian authorities would consider M.M.R.'s departure as illegal, in view of the fact that he was holding a valid passport, he passed the departure controls and was allowed to travel by Iran Air.

7.8 Finally, the State party indicates that the enforcement of the expulsion order against the authors has been stayed pending the Committee's final decision on the matter.

#### Additional information submitted by counsel

8.1 In response to the Committee's request for clarifications regarding the nature of S.M.R.'s political activities after 1990, counsel states that she was in charge of typing texts that she received from the leader of her group. Once typed, the texts were copied and distributed by others in the form of leaflets. The group had four members and they met two or three times a week when M.M.R. was not at home. These activities continued until S.M.R. left Iran. When she left for Sweden her intention was to return and continue her political activities. While in Sweden S.M.R. has continued to work for her organization by participating in administrative tasks and the preparation of a newspaper. She has also taken part in demonstrations.

8.2 S.M.R. has had no contacts with the members of her group in Iran. She has nevertheless been informed by her organization that they have been arrested and that the leader was sentenced to 10 years of imprisonment. When M.M.R. was arrested he was shown a picture of the leader and asked if he recognized her. The other members of the group were not mentioned to him.

8.3 As to the clarifications concerning S.M.R.'s passport, counsel states that she applied for a passport three years after her release from prison. She had no intention of using it but she wanted to check whether it was possible for her to obtain one. According to the law, she should have been interrogated at court after her application. In fact she was not, and the passport was sent to her within

24 hours. When S.M.R. requested to have her child registered in the passport the authorities found that she was not entitled to have one and was forbidden to leave the country. She had to go to a court, where she was questioned about her activities and her reasons for leaving the country. She replied that she wanted to attend her brother's wedding. She was then told that somebody had to be responsible for her and that her first trip abroad had to be to an Islamic country. For that reason she travelled to Syria with her husband and child. In order to obtain a permit to leave for Sweden she had to put up the family's house as guarantee of her return.

8.4 M.M.R. obtained his passport without difficulty. He had not had any problems with the authorities for a long time. He was arrested and released after one to two weeks, since he had not committed any crime. At that time he did not believe that his wife was in Sweden; he therefore suggested that the authorities ask the travel agent where she had gone. Upon his leaving the country he paid a Pakistani citizen to help him to enter the plane without being checked. The airline is responsible for checking that passengers have valid visas; this might be the reason why the Swedish authorities contacted the Iranian authorities. Iranian revolutionary guards visited M.M.R.'s mother and asked her about his leaving the country without a visa. She replied that she did not know anything about it.

#### Examination of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the forced return of the authors to 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/she would be in danger of being subjected to torture.

9.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the authors 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 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 individuals concerned would be personally at risk of being subjected to torture in the country to which they 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.

9.4 In the case under consideration the Committee notes the State party's statement that the risk of torture should be a "foreseeable and necessary consequence" of an individual's return. In this respect the Committee recalls its previous jurisprudence .

----- that the requirement of necessity and predictability should be interpreted in the light of its general comment 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. 6).

9.5 The Committee does not share the view of the National Immigration Board that it is unlikely that S.M.R. held regular meetings at her home without her husband's knowledge. Furthermore, the Committee has no reasons to question S.M.R.'s credibility regarding her past experiences of detention, her political activities and the way in which she obtained a passport. However the Committee considers, on the basis of the information provided, that the political activities that S.M.R. claims to have carried out after 1991, inside and outside Iran, are not of such a nature as to conclude that she risks being tortured upon her return. The Committee notes, in particular, that after M.M.R.'s release he was not further questioned about his wife's activities and whereabouts, neither was he molested by the Iranian authorities. Moreover, there is no indication that an arrest order has been issued against S.M.R. Counsel submits that the other members of her group were arrested and that the head of the group was sentenced to imprisonment. No information is provided, however, as to the grounds for her conviction and there is no indication that the women were subjected to torture or ill-treatment.

9.6 The Committee further considers that the fact that M.M.R. left Iran without a visa to enter Sweden does not constitute an additional argument to conclude that the authors risk being tortured if they return to Iran. No evidence has been provided to the Committee that such an act is punished in Iran with imprisonment, let alone torture.

9.7 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Iran, but recalls that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

9.8 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the authors run a personal risk of being tortured if they return to Iran.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the authors to Iran would not constitute a breach of article 3 of the Convention.

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

## Notes

- 1 Communication No. 13/1993 (CAT/C/12/D/13/1993), Views adopted on 27 April 1994.
- 2 Communication No. 39/1996 (CAT/C/18/39/1996), Views adopted on 7 May 1997.
- 3/ Communication No. 101/1997 (CAT/C/21/D/101/1997), Views adopted on 20 November 1998.