

COMMITTEE AGAINST TORTURE

M. V. v. The Netherlands

Communication No. 201/2002

2 May 2003

CAT/C/30/D/201/2002

VIEWS

Submitted by: M. V. (represented by counsel)

Alleged victim: M. V.

State Party: Netherlands

Date of complaint: 31 January 2002

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

Meeting on 2 May 2003,

Having concluded its consideration of complaint No. 201/2002, submitted to the Committee against Torture by Mr. M. V. 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 complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Mr. M. V., a Turkish national of Kurdish ethnic origin, born on 1 January 1963, currently present in the Netherlands and awaiting deportation to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Netherlands 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 31 January 2002, the Committee forwarded the complaint to the State party for comments and requested, under Rule 108 of the Committee's rules of procedure, not to expel the complainant to Turkey while his complaint was under consideration by the Committee. The State party acceded to this request

Facts

2.1 The complainant states that he and his wife are related to PKK leader Abdullah Öcalan, who also comes from his home town, Ömerli, in the Kurdish part of Turkey. The complainant's grandfather is a nephew of Abdullah Öcalan's mother. The grandmother of the complainant's wife is a sister of Abdullah Öcalan's father. He contends that he belongs to a politically active family and that he himself is so active.

2.2 In 1997, the complainant joined the pro-Kurdish HADEP political party. He also collected information for a human rights organization, IHD, about alleged human rights abuses by Turkish authorities. He alleges that he was arrested several times and ill-treated in connection with these activities, and that the Turkish authorities sought information from him concerning the PKK, HADEP and IHD. In May 1998 (after also being approached in 1993 and 1995), he was allegedly threatened with death if he did not provide this information. His family was also threatened with harm if he escaped. Thereafter, he left his home village, departed Turkey by truck on 11 June 1998 and arrived in the Netherlands on 17 June 1998, where he alleges he continued his political activities. 1/

2.3 On 18 June 1998, the complainant requested asylum and residence. After an interview had taken place in the presence of an interpreter, the Secretary of Justice decided, on 8 February 2000, that his request for asylum was manifestly unfounded and, further, denied his request for residence on humanitarian grounds.

2.4 On 7 March 2000, the complainant lodged an objection to this decision, supplying his grounds of objection on 24 March 2000. On 6 July 2000, he requested an injunction to prevent his expulsion. On 24 July 2001, the Hague District Court rejected the request for an injunction and declared the objection ill-founded. The Court found, inter alia, that there was no indication that article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which has been interpreted to proscribe extradition to a country where an individual would face torture) would be violated in the complainant's case, as the complainant had not shown that he in fact belonged to any categories of persons (such as PKK-activists) who might be exposed to a higher risk to harassment or intimidation or worse on the part of the Turkish authorities.

The Complaint

3.1 The complainant contends that there are substantial grounds to believe his removal to Turkey would result in torture or other forms of ill-treatment and would therefore violate article 3 of the Convention in light of the following factors: his political and human rights activities in Turkey, his

alleged arrests and ill-treatment, his political activities in the Netherlands, his family relationship to Abdullah Öcalan, and the problems of his family. 2/

3.2 The complainant refers to a variety of reports for in support of his proposition that conditions in Turkey reveal a consistent pattern of gross, flagrant or mass violations of human rights. These emanate from human rights organizations, 3/ newspapers 4/ and a human rights commission of the Turkish Parliament. 5/

3.3 The complainant states that the same matter has not been submitted for examination under another procedure of international investigation or settlement. The State party's observations on admissibility and merits

4.1 By letter of 29 March 2002, the State party advised that it had no objection to the admissibility of the communication. By letter of 31 July 2002, it disputed the merits of the communication, arguing that in the light of the national procedure followed, the Turkish human rights situation, the complainant's personal circumstances and the compatibility of the proposed expulsion with article 3 of the Convention, there are no grounds to fear that the author would be subjected to torture.

4.2 The State party recalls the procedure applied to the complainant. Aliens are admitted if they satisfy the requirements of the 1951 Convention relating to the status of refugees, if article 3 of the European Convention so mandates, or if compelling humanitarian circumstances so require. Asylum seekers are promptly notified of their right to legal and other assistance. A first interview takes place as soon as possible after arrival, and does not concern the grounds for departure. A second interview

(with legal advice and interpretation available) focuses on these reasons. The applicant (and counsel) may correct, or add to, the record of this interview. The decision on the application considers regular official country reports compiled by the Ministry of Foreign Affairs, which also draw on reports of non-governmental organizations.

4.3 A notice of objection may be lodged against a negative decision, upon which a decision is made as to whether the applicant may remain in the State party pending the outcome of the objection proceedings. If denied the ability to remain, an injunction may be sought from the District Court. The Court may simultaneously decide on the notice of objection and the injunction. Applicants arguing that expulsion would remove them to a country where a well-founded fear of persecution on the basis of political or religious beliefs, their nationality or membership of a particular race or social group exists, may not be removed without special instructions from the Minister of Justice.

4.4 On the current situation in Turkey, the State party notes that this situation and the Kurdish position in particular are constantly monitored by the Government, and play a role in the decisions of the Secretary of Justice in individual cases. It points out that after the reported death in April 1999 of an asylum seeker deported to Turkey, the Secretary of Justice directed that all deportations of Kurds to Turkey be suspended pending investigation. In December 1999, following an official investigation by the Ministry of Foreign Affairs, the Secretary decided to resume these deportations. This decision was upheld in March 2000 by the Hague District Court.

4.5 The State party reviews recent country reports: on 3 September 1997, the Minister found that Kurds are not as such subject to persecution within the meaning of the Refugee Convention. They are also free to move internally in the event of difficulties, unless suspected of active espousal of the Kurdish cause. On 17 September 1999, the Minister found noticeable improvements, particularly in the light of focused international attention, with the main human rights issues in Kurdish areas being restrictions on freedoms of expression, association and assembly. The ability to seek better personal and economic circumstances elsewhere in Turkey remained open if necessary. On 13 December 2000, the Minister found certain positive trends, with Kurds substantially less at risk of involvement in military conflict, with growing confidence in return and reconstruction. Pressures on the pro-Kurdish party HADEP had diminished, and political dialogue was opening. On 4 May 2001, the Minister again refers to freedoms of expression, association and assembly, while noting that Kurds are not persecuted simply by virtue of their ethnicity. From the most recent report of 29 January 2002, it can be inferred that there are have been no major changes since.

4.6 As to the compatibility of the complainant's projected return with article 3, the State party refers to the Committee's jurisprudence that the complainant must show a foreseeable, real and personal risk of torture beyond a mere possibility, and that specific grounds beyond the existence of a consistent pattern of gross violations must exist. Applying these principles to the complainant's case, the State party argues, in the light of the Committee's recent jurisprudence 6/ and the above-mentioned country reports, that the general situation in Turkey is not such as to automatically place any Kurd at risk.

4.7 Concerning the complainant's family ties and alleged political activities, the State party argues that no plausible case has been made that the complainant faces torture in Turkey on these grounds. In the most recent country report of 29 January 2002, the Minister points out that there are countless Turkish citizens with PKK family members without this relationship causing any significant problems. While relatives of prominent PKK members may be subject to extra scrutiny from the authorities and probably live under a certain amount of pressure, they cannot be said to have been persecuted on account of their family ties with PKK leaders.

4.8 The State party adds that the complainant divorced his wife on 3 January 2002, so that those family ties no longer exist.

4.9 Concerning the complainant's allegation that he was arrested three times on account of HADEP membership, the State party points out that he was unconditionally released and free to continue his activities on each occasion, suggesting that the authorities do not have serious objections to the complainant. Indeed, the complainant himself states that he did not flee for these reasons, and thus no plausible case can be made for any risk of torture on this basis.

4.10 Moreover, in terms of the complainant's fear of adverse consequences based on his refusal to supply the authorities with information, the State party points out that after he refused such requests five times between 1993 and 1998, at no point did he suffer adversely. After he left his village, his brothers were interrogated about his whereabouts, but were released unconditionally thereafter. No evidence has been presented of any problems to other relatives after his departure.

4.11 The State party concludes that no plausible, much less substantial, case has been made for the contention that the complainant would personally and presently be subjected to treatment incompatible with article 3 of the Convention. Accordingly, his removal should be permitted to proceed.

Complainant's Comments on the State Party's Submissions

5.1 By letter of 14 October 2002, the complainant responded, arguing that the State party did not contest the complainant's credibility. As to his divorce, he states that it is not just his wife, but also he himself, who is related to Abdullah Öcalan. In any event, the "guilt by association" deriving from a nine-year marriage did not disappear with divorce. He points out that he is not one of the countless Turkish citizens who have one or more PKK members in their family, but is related personally and through his ex-wife to the movement's leader himself. Second, the country report of 29 January 2002 states that relatives of PKK members can reckon with increased interest from the authorities, an interest that is in proportion to the degree of relationship or the position in the PKK of the suspected family member (unless the authorities consider that there are in fact no links).

5.2 Responding to the State party's comment that he was released unconditionally after each arrest, the complainant states that the fact of his re-arrest showed that he could not continue his activities without problem. These arrests and ill-treatment showed that the authorities did have "serious objections" to him, even though he did not flee at the time. The complainant argues that the State party has not considered available information on the allegedly deteriorating position of HADEP and IHD members.

5.3 As to the State party's contention that previous threats to the complainant had not resulted in harm to him, the complainant states that he took the last threat before his flight seriously, as another IHD activist had been killed and the military was positioned close to his house. In any event, death threats from the authorities are in themselves serious, and the human rights situation in Turkey does not suggest the contrary. Rather, such threats should be seen as a policy of an intimidation which can be qualified as "a psychological form of forbidden ill-treatment".

5.4 Concerning the release of his brothers after his escape, the complainant contends that the very fact of their arrests shows that he is not a person in whom the authorities have no interest. In any event, their release does not conclusively show that there is no risk for the complainant in the event of his return.

5.5 As to a reference in the 29 January 2002 country report that relatives of HADEP members are not pursued on the basis of political orientation, the complainant refers to the earlier 13 December 2000 country report to the effect that, in the case of PKK activists and sympathizers, there are reliable indications that mistreatment and/or torture occurs not seldomly upon return. Returnees have their prior criminal history checked by the authorities upon return to the receiving country, and the complainant argues that the authorities' previous interest in him would have them further

investigate him upon his return.

Issues and Proceedings Before the Committee

6.1 Before considering any claims contained in a complaint, 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 further notes that the State party concedes that domestic remedies have been exhausted.

6.2 To the extent that the complainant suggests that such ill-treatment as he might face in Turkey falls within article 3 of the Convention (see paras 3.1 and 5.3), the Committee notes that the scope of article 3 extends only to torture and does not encompass treatment that falls short of that serious threshold. Those parts of the complaint, therefore, are inadmissible *ratione materiae* as falling outside the scope of article 3. With respect to the complainant's claim under article 3 of the Convention, concerning torture, the Committee does not identify further obstacles to the admissibility of the complaint, and accordingly proceeds with the consideration of the merits.

7.1 The issue before the Committee is whether removal of the complainant to Turkey would violate the State party's obligation 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 or she would be in danger of being subjected to torture.

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Turkey. In assessing such risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that 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; additional grounds must exist to show 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.

7.3 In the present case, the Committee observes that, based on the information before it, the political activity that the complainant engaged in was confined to (unspecified) involvement with the political party HADEP and the IHD organisation, including the collection of information, and the complainant himself stated that he did not flee for these reasons. There is no suggestion that he was active or involved with the PKK. Nor has the complainant detailed in any manner his political activities in the Netherlands, and how that might strengthen his claim under article 3. Given some

measure of documented progress in the human rights situation in Turkey since the complainant's departure in 1998, and the well-known development of the apprehension by Turkish authorities of the PKK leadership, the Committee considers that the complainant has failed to establish that either his past sporadic contact with the authorities, which did not include any allegation of torture, or his family ties of some distance with the PKK leadership, are such that there are substantial grounds for believing that any interest the authorities would take in him at the present time would amount to torture.

8. 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 the complainant has not substantiated his claim that he would be subjected to torture upon return to Turkey and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

[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.]

Notes

1/ No further details are supplied as to these activities.

2/ No further details are supplied on these problems.

3/ Amnesty International "Endemic torture must end immediately" (8 Nov 2001) ; "Annual report on Turkey" (1999, 2000 and 2001); Human Rights Watch "World report" (2000 and 2001); Human Rights Association of Turkey "Human rights violations in Turkey" (21 Nov 2001); Pro Asyl "Von Deutschland in den türkischen Folterkeller: Zur Rückkehrgefährdung von Kurdinnen und Kurden" (June 2000); Schweizerische Flüchtlingshilfe "Türkei: Zur aktuellen Situation in Mai 2001" (June 2001).

4/ De Volkskrant "Opstelster Turks rapport over martelen aangeklaagd" (26 July 2001); NRC Handelsblad "Auteur van Turks Martelboek vertelt: 'Van gevangenen 90 procent gemarteld'" (21 November 2001).

5/ This report is not supplied: according to the complainant, it found facilities of torture in visits in 1998 and 2000, with a former chairwoman of the commission contending that 90% of prisoners are subjected to ill-treatment.

6/ SL v Sweden Case No 150/1999, Views adopted on 11 May 2001; MBB v Sweden Case No 104/1998, Views adopted on 21 June 1999; SMR v Sweden Case No 103/1998, Views adopted on 11 June 1999.

