



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 – 31 October 2006

DECISION

Communication No. 1438/2005

Submitted by: Hamid Reza Taghi Khadje (represented by
counsel, Pieter Bogaers)

Alleged victim: The author

State party: The Netherlands

Date of communication: 14 October 2005 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted
to the State party on 21 November 2005

Date of decision: 31 October 2006

Subject matter: asylum

Procedural issue: non-substantiation of claim

Substantive issues: prohibition of torture and cruel, inhuman or degrading treatment,
prohibition of arbitrary arrest or detention, unfair "suit at law", right to peaceful assembly, right
to join trade unions

Article of the Covenant: 7, 9, 14, 21 and 22

Article of the Optional Protocol: 2

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eighty-eighth session

concerning

Communication No. 1438/2005*

Submitted by: Hamid Reza Taghi Khadje (represented by
counsel, Pieter Bogaers)

Alleged victim: The author

State party: The Netherlands

Date of communication: 14 October 2005 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 October 2006

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication dated 14 October 2005 is Hamid Reza Taghi Khadje, born on 1 April 1976, an Iranian citizen currently residing in the Netherlands. He claims to be a victim of violations by the Netherlands of articles 7, 9, 14, 21 and 22 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Netherlands on 11 March 1979. He is represented by counsel, Pieter Bogaers.

1.2 On 15 March 2006, the Special Rapporteur for New Communications, on behalf of the Committee, determined that the admissibility of this case should be considered separately from the merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

Facts as presented by the author

2.1 The author became politically active in Iran after his military service in 1998. In May 1999, he obtained employment at the Electricity Department of the Oil Refinery in Abadan, where he met Mr. Farid Marefioun, a member of the Labour Union. He began attending their meetings and met the leaders of the Labour Union, whose aim was to fight for workers and inform them about their rights. The Labour Union was also opposed to the privatization of the Oil Refinery. He explains that the Labour Union is not per se illegal, but that it must toe the party line or face legal consequences. On behalf of the workers employed at the Oil Refinery, he brought problems to the attention of the management. As a result, he was ordered to stop these activities.

2.2 On 1 June 2000, two leaders of the Labour Union were arrested after a general strike in Abadan. The author participated in a sit-in strike on that day at the oil refinery, requesting the release of the two leaders. Those responsible for maintaining order intervened to end the strike and the author hit some of the officials. In the ensuing chaos, he managed to escape arrest and fled the city. In the meantime, he heard that the authorities were looking for him and his brother Mohammad was arrested. He left Iran for the Netherlands on 21 June 2000. His sister Mahnaz also fled to the Netherlands with her husband. His brother was allegedly detained for six months to a year. While he was detained, his mother was harassed by Iranian agents who searched her house. He was released some time between July 2002 and January 2003. Since then, he has had to report to the police station once a month and to provide information about the whereabouts of the author.

2.3 A first asylum application was lodged on 31 July 2000. It was rejected by the Ministry of Justice on 1 June 2001. The author's appeal to the District Court of The Hague was rejected on 18 September 2002. A further appeal to the Administrative Jurisdiction Division of the Council of State (Raad van State) was rejected on 1 November 2002. A second asylum application was lodged on 1 May 2003 and rejected on 2 May 2003. The author appealed, but the decision was confirmed by the District Court of The Hague on 28 May 2003. A further appeal to the Administrative Jurisdiction Division of the Council of State was dismissed on 27 June 2003, since no new facts or circumstances had emerged.

The complaint

3.1 The author claims a violation of article 7 of the Covenant, because he is still wanted by the Iranian government and because upon his return, he would be subjected to torture or to cruel, inhuman and degrading treatment or punishment. He claims a violation of article 9, because he would be subjected to arbitrary arrest or detention. He also claims violations of articles 21 and 22, because he will be denied the right of peaceful assembly and the right to join trade unions.

3.2 With regard to article 14, the author argues that as it appears from the domestic judicial decisions, the State party has not fulfilled its obligations to conduct a thorough investigation into the facts. He recalls that in the decision on his first asylum application, it was held against him that he had failed to provide evidence of his identity. When he subsequently submitted identity papers in support of his second asylum application, the assessment of his credibility remained unchanged. He also argues that the State party has started a pilot programme to expel Iranians

who have exhausted all legal remedies, and that he is at risk of being expelled by force to Iran at any moment, even though no deportation order has in fact been issued.

State party's observations on the admissibility of the communication

4.1 By note verbale of 5 January 2006, the State party challenged the admissibility of the communication, arguing that the author failed to complain in the domestic proceedings about alleged violations of articles 9, 21 and 22, thereby denying the national courts the opportunity to respond to those complaints. It considers that the author has thus not exhausted domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol.

4.2 By note verbale of 8 March 2006, the State party also challenged the admissibility of the complaints based on articles 7 and 14. Firstly, it points out that the author had ample opportunity to defend his case before the national courts, and recalls that the denial of his first asylum application was judged on the merits by the District Court of The Hague on 18 September 2002. The Court concluded that his claim that, if returned to Iran, he would face a real risk of being subjected to ill-treatment, was unsubstantiated. His appeal against this judgement was rejected by the Council of State. Similarly, the appeal against the denial of his second asylum application was declared unfounded by the District Court of The Hague. This decision was again upheld on appeal by the Council of State. The State party thus considers that the national authorities have carried out a thorough investigation into the facts of the case. Secondly, the State party recalls that the right to complain to the Committee is not intended to provide an opportunity for consideration of complaints *in abstracto* about national legislation and practice.¹ It considers that the author has not submitted any specific complaints about the asylum proceedings, let alone substantiated them.

Authors' comments

5. By letter dated 1 May 2006, the author reiterates that he did not fail to complain about violations of articles 9, 21 and 22 in the domestic proceedings. He recalls that he explained during the asylum procedure how he had cooperated with the Labour Union, how he had to sign a declaration to stop his trade union activities, and how he escaped arbitrary arrest. He reiterates his general remarks about the Dutch asylum procedures.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

¹ See Communication No. 35/1978, *Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Views adopted on 9 April 1981, para.9.2.

6.3 As to the claims that the State party would violate article 7, article 9, article 21 and article 22, if the author was returned to Iran knowing that he is likely to be subjected to cruel, inhuman or degrading treatment or arbitrary detention, upon his arrival, and that his rights to peaceful assembly and the right to join trade unions will be denied, the Committee notes that no order has in fact been made for his forcible return to Iran. It is not an inevitable consequence of a failed application for asylum that a deportation will take place.² In these circumstances, the Committee need not determine whether the proceedings relating to the author's asylum application fell within the scope of application of article 14 (determination of rights and duties in a suit at law).³ It accordingly concludes that these claims are inadmissible as insufficiently substantiated under article 2 of the Optional Protocol.

7. Accordingly, the Committee decides:

- (a) that the communication is inadmissible under article 2 of the Optional Protocol;
- (b) that this decision be transmitted to the State party and the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

² See Communication No.1204/2003, *Booteh v. The Netherlands*, Inadmissibility decision adopted on 30 March 2005, para.6.2.

³ See Communication No.1051/2002, *Ahani v. Canada*, Views adopted on 29 March 2004, para.10.5; and Communication No.1302/2004, *Khan v. Canada*, Inadmissibility decision adopted on 25 July 2006, para.5.3.