

COMMITTEE AGAINST TORTURE

Karoui v. Sweden

Complaint No. 185/2001

8 May 2002

VIEWS

Complainant: Mr. Chedli Ben Ahmed Karoui

State party concerned: Sweden

Date of submission of communication: 25 June 2001

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

Meeting on 8 May 2002,

Having concluded its consideration of communication No. 185/2001, 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 author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

Views

1.1 The complainant is Mr. Chedli Ben Ahmed Karoui, a Tunisian citizen, born on 10 November 1963, currently residing in Sweden, where he seeks asylum. He claims that his return to Tunisia after dismissal of his refugee claim would constitute a violation of article 3 of the Convention by Sweden. He is 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 17 July 2001. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Tunisia while his communication is under consideration by the Committee. In a submission dated 12 September 2001,

the State party informed the Committee that it had decided to defer the expulsion order against him, and consequently to stay the expulsion order against Mr. Karoui's wife and daughter.

The facts as submitted

2.1 Mr. Karoui grew up in the town of Jendouba, north-west of the capital Tunis. He attended high school, where he became interested in philosophical and political issues, especially in the Islamic movement. He has been an active member of the Islamic Al-Nahdha Movement since 1981. Later on, he became responsible for the cultural and ideological teaching within the organization in his neighbourhood.

2.2 Because of his affiliation with Al-Nahdha, he was expelled from school in 1979. His family supported his continued studies in a private school. In 1981, he was detained for 1 month and 10 days, and interrogated about his political activities, and more specifically about the demonstrations he had participated in. However, still being a minor, he was released without penalty. This was the first of a total of seven arrests between 1981 and 1996.

2.3 In 1983, he was detained for one month, before being sentenced to six months in prison for participating in demonstrations against the Government. He was also expelled from school because of the allegations made against him. When released, he was unemployed and relied upon the financial support of his family. In 1984, he was arrested and sentenced to two and a half years in prison for affiliating with Al-Nahdha and participating in demonstrations. In 1986, he was again arrested and detained for six months under the accusations of having produced and distributed leaflets against the Government. As the accusations were not proved, he was released without conviction.

2.4 Mr. Karoui tried to leave for Algeria in order to continue his studies, but his passport was confiscated, and he was prohibited from leaving the country as well as taking up employment in Tunisia. In spite of this prohibition, he took up casual work for shorter periods. In November 1987, when the President Ben Ali was elected, the tensions in Tunisia were eased for a while before the repression hardened again. Although wanted for his participation in demonstrations against the United States of America's involvement in the Gulf War, he managed to travel illegally to Algeria in the end of 1990, in order to continue his studies. He returned to Tunisia once in June 1991, when his father became ill, but returned to Algeria at the end of the year after obtaining a Tunisian passport. He pursued his studies until the end of 1992.

2.5 In 1992 he was expelled to Tunisia together with 11 other Tunisians affiliated with Islamic movements. In Tunisia, they were kept in pre-trial detention for two and a half months. He and three other prisoners managed to escape while awaiting trial. He fled to Algeria again, where he applied for asylum on 8 September 1992. The application was rejected in December 1992, and he was again sent to Tunisia in 1993.

2.6 Upon return to Tunisia, he was arrested, and sentenced to one and a half years in prison for being a member of an illegal organization, and for having participated in demonstrations and agitation. According to the complainant, he was maltreated and tortured during every detention, but even more so during the last one, including hitting in his right leg with a baton causing a fracture and permanent

pains, pouring of water over him while he was handcuffed, removing hair from his body, and burning his body with cigarettes.

2.7 When he married an Algerian woman in December 1994, he planned to abandon political activity. He worked for a construction company from 1 March 1996 to 30 June 1999. However, in 1996, he was again accused of anti-governmental activity, after refusing to participate in meetings called by the local leader of the governmental party. He was arrested and sentenced to one and a half years in prison. He was released in January 1997, due to demonstrations and international pressure to ease the repression. Subsequent to his detention, he had to report to the police every day. From 1998, the reporting frequency was changed to once a week and it was still in effect when he left Tunisia.

2.8 In the summer of 1999, he was informed that several members of Al-Nahdha whom he knew had been arrested; therefore he decided to escape the country. He obtained a passport through contact and bribes, and a visa for Sweden to visit his cousin, and left for Sweden on 7 August 1999. He arrived in Sweden on the same day, and destroyed his passport immediately after arrival. Before applying for asylum on 24 August 1999, he awaited documents and proof from Tunisia. Whilst in Sweden he was summoned for trial in Tunisia for 15 September 1999, and he was sentenced to eight years in prison in absentia, for attempts of agitation, disturbing the public order and collecting funds. The complainant submitted a fax copy of a certificate from the Jendouba court dated 18 February 2000, confirming these alleged facts. The police came to search his house in Tunisia several times, and once detained his wife for three days. Subsequently, his wife had a miscarriage. After he left for Sweden, his wife went to Algeria since she was under the constant pressure of Tunisian authorities, and in January 2000 his wife and daughter travelled to Sweden.

2.9 On 4 January 2000, the Swedish Immigration Board rejected his application, and ordered his expulsion to Tunisia. The reasons for rejection were mainly that the Board doubted his credibility, since he had destroyed his passport when arriving in Sweden, and he had waited 17 days before applying for asylum. Furthermore, the Board noted that in spite of the strict controls at Tunisian airports, he was able to leave through a Tunisian airport in his own name. The Board therefore considered it unlikely that he was wanted by Tunisian authorities. The Board also noted that there were several discrepancies in the information provided by him, i.e. about the length of time he was employed, when he was first tortured, and the length of the sentence he was convicted to in 1996. It also noted that meanwhile he informed the Swedish Immigration authorities in an interview on 25 August, that he had a case pending before a Tunisian court.

2.10 Counsel contests the Swedish Immigration Board's reasons for rejection. First, counsel contends that Mr. Karoui destroyed his passport to protect the person who helped him leave Tunisia, and that he awaited further documentation before applying for asylum. Secondly, Mr. Karoui was able to leave Tunisia on a passport in his own name, because the person who helped him arranged for the passport without registering his name. Counsel also contends that Mr. Karoui was sentenced to one and a half years in prison in 1993, but that because of a general amnesty, his sentence was reduced to one year as stated in the certificate from the Tunisian Ministry of Foreign Affairs. With regard to the Immigration authorities' doubts about the authenticity of the notice of trial, counsel states that these are pre-printed forms containing only the information relevant in each situation. This does not

imply that a form lacking some information is unauthentic.

2.11 Mr. Karoui appealed the decision to the Refugee Appeals Board, which rejected his application on 28 September 2000. He attached a declaration by Mr. Rashid Ghannouchi, chairman of Al-Nahdha movement and the Al-Nahdha Party of Tunisia of 18 July 2000, to his appeal. The chairman stated that Mr. Karoui is an active member of the movement, that Algerian authorities deported him in 1993 to Tunisia, where he was subjected to arrest, ill-treatment and interrogation, that he has been sentenced to eight years' imprisonment in absentia after he left Tunisia for Sweden, that his parents have been subjected to numerous interrogations and harassment, that his wife has been arrested, harassed and tortured, and that his daughter suffers psychologically because of this.

2.12 The Refugee Appeals Board confirmed the reasons for rejection given by the Swedish Immigration Board, and added that the political activities performed by the complainant, date far back in time, and that the political organization he supported was dissolved in 1992. The Board also noted that the complainant's political activities were of minor character and at a low level within the organization. Furthermore, the Board disregarded the declarations submitted by the chairman of the Al-Nahdha Movement and the Al-Nahdha Party, since it had been informed that the chairman had submitted similar declarations in other cases where he had no knowledge of the persons he supported. It also noted that while Al-Nahdha was dissolved in 1992, the chairman's letter dated from year 2000.

2.13 A further application for a review by the Refugee Appeals Board was rejected on 17 April 2001. Although Mr. Karoui attached several new documents to his latest application, including medico-legal reports, support letters from Amnesty International and a friend, the Refugee Board doubted his credibility, for the reasons given in its previous decision. The medico-legal report from a specialist in legal medicine at the Center of Torture- and Trauma Wounded, Karolinska Hospital, of 14 February 2001, describes a scar on Mr. Karoui's finger, allegedly caused by someone burning him with a cigarette, a 1 by 1 cm pigmented area on his right shoulder and pains when touched 5 cm below this area, allegedly caused by beatings with batons, and a painful, defectively healed fracture on his right foot, allegedly caused by beating with a baton. The medico-legal evaluation from the same specialist of 6 March 2001, concluded that his physical symptoms correspond to the alleged torture, and that it is probable that he was subjected to torture. He also submitted a Psychiatric evaluation by a specialist in General Psychiatry at the Center of Torture- and Trauma Wounded, Karolinska Hospital, of 2 February 2001, stating that he has objective symptoms of PTSD, and that it is highly probable that he is telling the truth regarding allegations of torture, etc.

2.14 The attached testimony before a notarius publicus in Germany, of a friend who was expelled from Algeria and tortured upon arrival in Tunisia with him, read that Mr. Karoui had been submitted to torture. A letter from the Association des Victimes de la Torture en Tunisia supports the credibility of this friend. Finally, he submitted a letter from Amnesty International, Swedish division, dated 30 March 2001, referring to the situation in Tunisia where members of Al-Nahdha are persecuted and tortured, even if they are only sympathizing with Al-Nahdha. They refer to the case A v. The Netherlands,¹ where the Committee confirmed these findings. Amnesty International also confirms that it has received information about how persons have left the Tunisian airports with the help of persons present there, and that this method of escape was used in particular during the mid-1990s. They point out that Mr. Karoui's description of the expulsion from Algeria to Tunisia in 1993

corresponds with the information available from several sources, about how Tunisian asylum-seekers in Algeria in 1993 were returned to Tunisia where they were reportedly arrested and tortured by Tunisian authorities. Through the UNHCR, Amnesty International has received information that the Algerian authorities rejected Mr. Karoui's application for asylum in 1992. Their conclusion is that Mr. Karoui could risk torture upon return to Tunisia.

The complaint

3. Mr. Karoui submits that, if returned to Tunisia, he will be arrested and tortured for his participation in the former Al-Nahdha Party, and in this connection, for agitation, disturbing the public order and collection of funds. He adds that there exists a consistent pattern of human rights violations by Tunisian authorities, in particular against political opponents. Mr. Karoui's removal to Tunisia would therefore entail a high risk of being subjected to torture and thus entail a violation of article 3 of the Convention.

State party observations on admissibility

4. In its note verbale of 12 September 2001, the State party submits that it does not wish to raise objections as far as the question of admissibility is concerned.

State party observations on the merits

5.1 In its note verbale of 11 January 2002, the State party submits its observations on the merits of the case.

5.2 The State party reiterates the Committee's jurisprudence in e.g. *S.M.R. and M.M.R. v. Sweden*,² that there must exist additional grounds to the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country, indicating that the individual concerned would be personally at risk of being subjected to torture upon return to that country.

5.3 Regarding the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country, the State party notes that although Tunisia has accepted the Committee's competence to receive and examine individual complaints under article 22 of the Convention, the Committee in its consideration of the report submitted by Tunisia, in 1997, expressed concern over the wide gap that exists between law and practice with regard to the protection of human rights in the country, and in particular over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces.

5.4 In respect of Mr. Karoui's allegation that he is personally at risk of being subjected to torture if returned to Tunisia, the State party draws attention to the fact that several provisions in the Aliens Act reflect the same principle as laid down in the Convention article 3. Thus the Swedish Immigration authorities applies the same kind of test when considering the application for asylum under the Aliens Act as the Committee applies when examining a complaint under the Convention.

5.5 The State party stresses that it is primarily up to the complainant to collect and present

evidence in support of his or her account, cf. *S.L. v. Sweden*.³ While reiterating the Swedish Immigration authorities' reasoning, it is the State party's opinion that Mr. Karoui has not been able to substantiate his claim that he would be in danger of being subjected to torture if returned to Tunisia. The reasons for rejection of his application for asylum cast doubt over his credibility, as do the fact that when spending some time preparing for the journey to Sweden, he did not provide any explanation why he did not bring with him from Tunisia at least some documentation that he intended to invoke before the Swedish Immigration authorities. Furthermore, since he stated that his Tunisian passport was confiscated in 1986, but he was able to obtain a new passport before going to Algeria in 1991, he may as well have used a legal passport when travelling to Sweden. However, by destroying his passport, he has prevented the Swedish authorities from examining documentation vital to the assessment of his right to protection.

5.6 Upon entering Sweden, Mr. Karoui was carrying a visa issued by the Swedish Embassy in Tunisia, which he obtained on wrongful grounds, by stating that since 1 March 1996 he had a permanent senior position at the construction company where he was employed. He submitted a certificate allegedly signed by his employer on 30 June 1999, stating that he was still employed with the company. This information should, according to the State party, be compared with his information to the Immigration Board that he had not worked at all since he had spent seven years in prison, and later that he had a job as an assistant for a private company since 1997.

5.7 The State party also explains that Mr. Karoui stated during the proceedings that he left Tunisia because some people he knew and who also supported Al-Nahdha, had been arrested in June/July 1999, and he feared being arrested himself. His application for a visa to Sweden was granted on 2 July 1999, yet he did not leave until 7 August 1999. No explanation has been provided for this delay, and although he was still under duty to report every week to the police, he was not arrested during this period.

5.8 With regard to the certificate of conviction in absentia of 18 February 2000, the State party notes that the sentence is considerably longer than the alleged previous sentences the complainant allegedly received, yet he does not appear to have appealed against it or provided any explanation for not doing so. It is also noted that the certificate of the conviction contains no information about the date of the alleged crimes, of the fact that Mr. Karoui was convicted in absentia, nor of the relevant provisions of applicable law, that the document has not been signed, and that it has only been submitted as a fax copy. These shortcomings give, in absence of a convincing explanation, reason to doubt also the authenticity of this document. In this context, the State party also points out that Mr. Karoui has not furnished a copy of the judgement itself, although it was delivered more than two years ago, and he should have submitted it, considering that his lawyer and brother in Tunisia have assisted him in obtaining other documentation from the Tunisian courts regarding the 1996 and 1999 judgements.

5.9 With respect to the alleged torture, the State party recalls that Mr. Karoui only mentioned that he had been subjected to torture on other occasions than in 1993, upon a direct question from his counsel, and that the medico-legal reports only report of one mark on his finger deriving from a burning cigarette, although he has alleged that he was burned all over his body. The State party reiterates the Committee's jurisprudence, that past torture is one of the elements to be taken into

account when examining a claim under article 3, but that the aim of the examination is to find whether the individual risks being subjected to torture now, if returned to his home country, cf. X, Y and Z v. Sweden.⁴

5.10 Finally, with regard to the judgement of 15 September 1999, the State party refers to the Committee's jurisprudence, that a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention, cf. I.A.O. v. Sweden.⁵ It also refers to the case A.S. v. Sweden,⁶ and concludes that Mr. Karoui has failed to provide sufficient reliable information for the burden of proof to shift.

The complainant's comments on the State party's observations

6.1 In a letter of 15 March 2000, Mr. Karoui contests to the State party's contention that it is primarily upon him to collect and present evidence in support of his or her account. He refers to the Committee's jurisprudence in *Kisoki v. Sweden*⁷ that complete accuracy is seldom to be expected from victims of torture.

6.2 Furthermore, in order to explain the 36-day delay between the date Mr. Karoui was granted a visa for Sweden, and his actual departure, counsel submits that he needed this time to secretly prepare his departure, meanwhile he was hiding out with relatives and friends.

6.3 With regard to his knowledge of the coming trial before the summons had been issued, counsel explains this by his experience with arrests and political persecution. He allegedly assumed he would be arrested since one of the members of his workgroup within the Movement had been arrested previously. The increased sentence of eight years compared to his previous sentences is explained by the intensification of the persecution of political opponents in Tunisia.

Decision concerning admissibility and examination of the merits

7. Before considering any claim 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 notes that the State party has not objected to the admissibility of the communication, and proceeds therefore to the examination of the merits of the case.

8. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to Tunisia. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. Furthermore, the Committee has to determine whether the expulsion of Mr. Karoui to Tunisia would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured, especially in view of an *in absentia* judgement against him.

9. The Committee refers to its consideration of the report submitted by Tunisia, in 1997, where it expressed concern over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces. Later human rights reports from reliable sources suggest that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the Al-Nahdha Movement, still exist in Tunisia.

10. The Committee notes the State party's arguments that the inconsistencies in the information provided by the complainant in the asylum process in Sweden cast doubts on the veracity of his claim. However, the Committee attaches importance to the explanations for these inconsistencies given by the complainant, and reiterates its jurisprudence that complete accuracy is seldom to be expected from victims of torture. The Committee finds it impossible to verify the authenticity of some of the documents provided by the complainant. However, in view of the substantive reliable documentation he has provided, including medical records, a support letter from Amnesty International, Sweden, and an attestation from the Al-Nahdha chairman, the complainant should be given the benefit of the doubt, since he has provided sufficient reliable information for the burden of proof to shift. The Committee attaches importance to the medico-legal reports of past torture, and an assessment of the risk that the complainant may be subjected to torture if he is returned to Tunisia and detained, pursuant to the judgement of 15 September 1999, or consequent to his record of being a member of the Al-Nahdha and a political opponent to the existing Government in Tunisia.

11. In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Tunisia.

12. 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 removal of Mr. Karoui to Tunisia would constitute a breach of article 3 of the Convention.

Notes

¹ Case No. 91/1997 of 13 November 1998.

² Case No. 103/1998 of 5 May 1999, para. 9.3.

³ Case No. 150/1999 of 11 May 2001, para. 6.4.

⁴ Case No. 61/1996 of 6 May 1998, para. 11.2.

⁵ Case No. 65/1997 of 6 May 1998, para. 14.5.

⁶ Case No. 149/1999 of 24 November 2000, para. 8.5.

⁷ Case No. 41/1996 of 8 May 1996, para. 9.3.