

COMMITTEE AGAINST TORTURE

H. O. V. Sweden

13 November 2001

Communication No 178/2001

CAT/C/27/D/178/2001

VIEWS

Submitted by: H. O. (name withheld) [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 11 January 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 13 November 2001,

Having concluded its consideration of communication No. 178/2001, 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.

1.1 The author of the communication is H. O., an Iranian citizen, born on 18 March 1973, currently residing in Sweden where he seeks asylum. He claims that his return to the Islamic Republic of Iran 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

communication No. 178/2001 to the State party on 23 January 2001. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the petitioner to Iran pending the consideration of his case by the Committee. In a submission dated 20 March 2001, the State party informed the Committee that the Swedish Migration Board decided, on 24 January 2001, to stay the enforcement of the expulsion order.

The facts as submitted

2.1 Counsel submits that the petitioner, who is Kurdish by descent and comes from the city of Sanandaj, started in 1990 to take part in political activities on behalf of the interests of the Kurdish people directed against the Iranian authorities. These activities included turning the photos of the Ayatollah the wrong side around and encouraging students at his school to take part in demonstrations. In February 1994 the petitioner allegedly was arrested and accused of distributing leaflets at his school and writing slogans against the regime. He states that he was interrogated for two days, and then tortured by methods such as beating on the bottom of the feet. After two months' detention, the petitioner was released. He then discovered that he had been expelled from his school. He has lately been working as a taxi driver. After his release, the petitioner stopped his political activities for fear of persecution.

2.2. On 22 February 1999, demonstrations officially sanctioned by the Government were held in Sanandaj to protest against the arrest by the Government of Turkey of Kurdish Workers Party leader Abdullah Oçalan in Nairobi. The petitioner states that the Government's intention was to turn the Kurdish people against the Governments of the United States of America and Israel.

2.3 The petitioner and about 15 of his friends planned to use the demonstrations to express their opinions on the injustices suffered by the Kurdish people in Iran. They prepared posters and leaflets with anti-Iranian and pro-Kurdistan slogans. After they started the demonstrations, thousands of people joined in and began to shout anti-Government slogans, while the petitioner and his friends handed out posters and leaflets. The military and Revolutionary Guards opened fire at the demonstrators, and many were arrested. The petitioner's friend, Jamil, was shot and the petitioner ran away. He considered it too risky to return to his family, so he hid in a friend's house for 13 days. While hidden, the petitioner was informed that Revolutionary Guards had arrested his father and brother. The petitioner left to stay with a relative in Ourmiyeh, where he stayed for 24 days. Another relative provided him with a passport under a false name, and an exit visa. The petitioner travelled to Van and Istanbul in Turkey, and after 20 days took a plane to Sweden.

2.4 The petitioner entered Sweden on 21 April 1999 and applied for asylum the following day. Upon arrival, the petitioner carried neither passport nor identification document. The Swedish Migration Board held an initial interview with the petitioner on 22 April 1999, lasting about one hour. A fuller interview took place on 20 May, lasting for about four hours. On 8 September 1999, the Swedish Migration Board rejected the petitioner's application for asylum. The Board found that the petitioner's statements were not credible and that the petitioner had not proved that he risked persecution if he returned to Iran.

2.5 The petitioner appealed to the Aliens Appeals Board, explaining that he carried no identification

documents when arriving in Sweden because he had been forced to give the documents to the smuggler that brought him there, and that Iranian authorities twice had made inquiries about him at his family's house. On 11 August 2000, the Aliens Appeals Board rejected his application for asylum.

2.6 On 1 September 2000, the petitioner lodged a new application for asylum and a residence permit with the Aliens Appeals Board. The petitioner submitted further information, stating that his father and brother had been released from detention and that the Iranian authorities had made further inquiries about his whereabouts. He referred to an appeal from the Iranian Refugee Council of Stockholm that expressed concerns about his security should he be deported to Iran. Finally, he invoked humanitarian reasons for a residence permit based upon a statement from a psychiatrist affirming that he suffered from post-traumatic stress disorder, acute depression, strong memories of previous torture and was suicidal. Again, on 5 October 2000, the Aliens Appeals Board rejected his application.

2.7 On 7 November 2000, the petitioner lodged a new application with the Aliens Appeals Board, and submitted information that was intended to clarify the information he had provided at the earlier stages of his case, together with a new statement from a psychiatrist about his post-traumatic stress disorder and the serious risk of suicide. The Aliens Appeals Board rejected the application on 12 December 2000.

The complaint

3. Counsel claims that the petitioner fears that if returned to Iran, he will be arrested for his participation in the anti-Government demonstrations in Sanandaj in February 1999. He also considers it plausible that the Iranian authorities will consider his case in the context of his previous activities in the early 1990s, and conclude that he is working for Kurdish independence and against the Iranian authorities which, from the regime's point of view, is a serious political crime and treated accordingly. Counsel adds that there exists a consistent pattern of human rights violations by Iranian authorities, in particular against political and religious opponents, and there is overwhelming reason to believe that the petitioner will be subjected to torture or other inhuman treatments if returned to Iran.

State party observations on admissibility

4. In its observations of 29 March 2001, the State party does not contest the admissibility of the communication, as domestic remedies were exhausted with the Aliens Appeals Board's decision of 5 October 2000. However, the State party points out that the petitioner, under chapter 2, section 5b, of the Aliens Act, may lodge a new request for a resident permit with the Aliens Appeals Board at any time, provided that new circumstances are adduced that could call for a different decision.

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

5. In a letter of 24 April 2001, counsel reiterates the points made in his initial communication. He further notes that his main objection to the migration authorities' action in the case is their incorrect

application of chapter 8, sections 1 and 2, of the Aliens Act.

State party's observations on the merits

6.1 In its observations of 21 June 2001, the State party submits information on the merits of the case.

6.2 The State party refers to the criteria established by article 3 of the Convention and by the Committee: first, that the general situation of human rights in a country must be taken into account; and second, that the individual concerned must personally be at risk of being subjected to torture, including that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

6.3 With regard to the first criterion, the State party notes that although there are indications that Iranian society is undergoing changes that may bring about improvements in the human rights field, the Government of the Islamic Republic is still reported to be a major abuser of human rights.

6.4 In respect of the second criterion, the State party contests that there is a foreseeable, real and personal risk that the petitioner will be subjected to torture if returned to Iran. It points out that the alleged factual inconsistencies and shortcomings in the petitioner's account raise serious doubts as to his credibility and the accuracy of the events he has recounted. The State party refers to the requirements contained in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1992), paragraph 205 of which states that the applicant should:

"(i) Tell the truth and assist the examiner to the full in establishing the facts of his case;

(ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence."

6.5 In this regard, the State party states that the petitioner has provided no evidence whatsoever in support of his claim that he, his father and brother have been arrested, nor has he provided a certificate or the like concerning his discontinued schooling, or precise information regarding where he was being detained or the detention and release of his brother and father.

6.6 Furthermore, the State party notes that the petitioner stated before the Swedish Migration Board that if he were returned he would be held responsible for arranging the demonstration in Sanandaj. However, upon learning that the Swedish authorities considered this proposition improbable, he stated that he participated, but did not arrange, the demonstration. The State party in this context also refers to the petitioner's statement that 20 people were killed during the Sanandaj demonstration, whereas reports stated that approximately 20 people were killed in demonstrations at that time over the whole country.

6.7 Regarding the question of how the petitioner thought the Iranian authorities knew about his

participation in the demonstration, he replied before the Swedish Migration Board that he thought he had been filmed from a helicopter. The State submits that it is unlikely that a person in a moving crowd of thousands of people can be identified in this way. When presented with this statement, the petitioner added other ways in which he might have been identified.

6.8 The State party states that the petitioner gave contradictory information about where his father and brother were detained, saying at first that they were detained in Ourmia, and then in Sanandaj. He also changed his account in regard to the name of the friend that was shot during the demonstrations in 1999. According to the State party, the author has also been inconsistent about whether his family was politically active. Before the Swedish Migration Board, the petitioner stated that apart from his dead brother, the family had not been politically active, whereas in his communication to the Committee he stated that the family had been politically active for years. Furthermore, the State party refers to the petitioner's statements before the Swedish Migration Board that at first his passport was destroyed in Turkey, and later that he returned his false passport to the smuggler who assisted him in travelling to Sweden.

6.9 With regard to the diagnosis of post-traumatic stress disorder, the State party finds that it is of importance to the overall assessment of the petitioner's credibility. It notes that the underlying medical documentation seems to be based solely on statements given by the petitioner. The petitioner allegedly carries no physical evidence of the alleged torture and, according to himself, there were no visible injuries or need for medical attention at the time of the alleged beating. In addition, the petitioner's mental problems were mentioned either at the previous hearings, or in the application to the Swedish Migration Board, or in the first appeal to the Appeals Board.

6.10 On the basis of the above, the State party doubts the petitioner's account on several points, and therefore his general credibility. With reference to communication No. 149/1999, *A.S. v. Sweden*, the State party considers that the petitioner has not provided sufficient information for the burden of proof to shift.

6.11 Thus, the State party does not subscribe to the petitioner's presentation of the facts. Even if deemed credible, the State party considers that the petitioner has still not made sufficiently clear that he runs the risk of being arrested or tortured if returned to Iran. It states that it is obvious that the petitioner was never in any leading position in the opposition against the regime and not even a member of Komala, and he has not claimed to have been registered by the authorities on account of his political sympathies, but rather stated that he was not an object of interest to the authorities until the demonstrations in February 1999.

6.12 The State party concludes that the petitioner has failed to substantiate his claim that he would run a personal, real and foreseeable risk of being tortured if returned to Iran, and that an expulsion order therefore would not violate article 3 of the Convention.

The petitioner's comments to the State party's observations

7.1 With regard to the State party's observation that the petitioner said he was identified in the demonstration by a helicopter, counsel points out that the petitioner meant to say that he could have

been identified by helicopter or in another way.

7.2 Furthermore, counsel claims that the petitioner stated that only his brother was active in the Kurdish political organization. When the petitioner in his submission to the Committee stated that his family had been politically active for many years, he meant that his family had been attributed a political role because of his and his brother's political activities. He also points out that the information received about his father's and brother's detention came from his mother, through a friend, since the petitioner has not been able to be in direct contact with his family.

7.3 Counsel claims that the State party does not apply the same criteria when considering an application for asylum as the Committee. He contends that the State party often disregards documents provided by the complainant, such as medical reports. With regard to the State party's allegation that the petitioner has not fulfilled his obligation to provide documented information, counsel states that the State party rarely give value to such evidence, and he finds it awkward that the State party in this particular case bases its rejection upon the lack of such evidence. Furthermore, it has been impossible to trace documentation concerning the petitioner's imprisonment in 1994 or that of his brother and father in February 1999. Counsel points out that the petitioner left Iran in a hurry and was therefore unable to collect any documents.

7.4 Counsel explains that the failure to mention the petitioner's mental health problems at an earlier stage is explainable by the fact that the petitioner did not know what information to provide. It is pointed out that the petitioner has only a basic education.

7.5 Regarding the State party's allegation that the petitioner stated that he was one of the organizers of the demonstrations in Sanandaj, counsel points out that once the petitioner realized that the State party had misunderstood the level of his participation at the demonstrations, he provided clarifications.

7.6 In general, counsel points out that misunderstandings often occur during interviews with asylum applicants, due to the fact that the applicants are exhausted from long journeys and traumatic experiences and are terrified by authorities.

Further observations by the State party

8.1 The State party submitted further observations regarding the merits of the case on 2 October 2001. The State party objects to counsel's statement that it would be futile to submit documents to the Swedish authorities. It stresses that the Swedish migration authorities examine as thoroughly as possible every case put before them, including any piece of evidence submitted.

8.2 The State party notes that the petitioner has based his application on the alleged arrest of his father and brother, although he has not been able to contact either of them, nor procure documents with regard to them. The State party considers that the petitioner should at least be able to explain when he last heard from his family, what efforts he has made to contact them and why he has not succeeded. Furthermore, the State party refers to *K.M. v. Switzerland*, communication No. 109/1998, and contends that there is nothing to suggest that members of the petitioner's family have been

intimidated since his brother and father were released in mid-1999.

8.3 With regard to the petitioner's credibility, the State party explains that at both hearings with the Swedish Immigration Board, the petitioner stated that he understood the interpreter. At the second hearing, which took place a month after the petitioner arrived in Sweden, the notes from the hearing were read out and translated for the petitioner who did not object to the content. When asked about his health condition, the petitioner answered that he was well. The State party stresses that the petitioner at neither of the two meetings with the Swedish Immigration Board mentioned the after-effects of the torture he allegedly was subject to in 1994.

Further comments by the petitioner

9.1 On 25 October 2001, counsel submitted further comments to the State party's observations of 2 October 2001. In relation to the State party's argument that the author should have provided documentation for his claim, counsel submits that it is risky and therefore difficult to have documents sent from Iran.

9.2 With regard to the State party's argument that nothing in the case suggests that the petitioner's family has been intimidated after mid-1999, counsel contends that Iranian authorities searched for the petitioner after his participation in the demonstrations in 1999, but that they probably stopped searching because they realized that the petitioner had left Iran. However, the fact that the petitioner has not received information about harassment of his family after 1999 does not imply that the authorities are not still interested in him.

9.3 Counsel also refers to a 2000 report by Ms. Gitte Stedt at the Psychological Department of the University of Stockholm which criticizes the asylum interview procedure followed by the Swedish Migration Board. In particular, the report alleges that the Board officials fail to establish relations of trust with the applicants and, since questions are complex, misunderstandings ensue.

Decision concerning admissibility and examination of the merits

10. 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 international investigation or settlement procedure. The Committee notes that the State party has not raised any objection to the admissibility of the communication (cf. State party's observations dated 20 March 2001). The Committee therefore finds that no obstacle to the admissibility of the communication exists and proceeds with the examination of the merits of the communication.

11. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture if he returned to Iran. 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. In other words, the existence

of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of the paragraph.

12. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his country; additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

13. In the present case, therefore, the Committee has to determine whether the expulsion of the petitioner to Iran would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

14. The State party has pointed to inconsistencies and contradictions in the petitioner's statements which in its opinion cast doubt on the veracity of his allegations. Even assuming, however, the truth of the petitioner's statements regarding his past experience of detention in Iran, the Committee considers, on the basis of the information provided, that the political activities that the petitioner claims to have carried out prior to and during the demonstrations in February 1999 are not of such a nature as to lead to the conclusion that he risks being tortured upon his return. This view is further supported by the fact that the petitioner was not the object of interest by Iranian authorities after he was released from detention in 1994, assuming that this occurred, and until the demonstrations in February 1999.

15. On the basis of the above considerations, the Committee considers that the petitioner of the communication has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran.

16. 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 the petitioner to Iran would not constitute a breach of article 3 of the Convention.