



**Convention against Torture and
Other Cruel, Inhuman or
Degrading Treatment or
Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-first session
10 –21 November 2003)

DECISION

Communication No 203/2002

<u>Submitted by:</u>	Mr. A. R. (represented by counsel, Mr. R Himja)
<u>Alleged victim:</u>	The complainant
<u>State Party:</u>	The Netherlands
<u>Date of complaint:</u>	14 March 2002
<u>Date of present decision:</u>	14 November 2003

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22
OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-first session

Concerning

Communication No 203/2002

<u>Submitted by:</u>	Mr. A. R. (represented by counsel, Mr. R Himja)
<u>Alleged victim:</u>	The complainant
<u>State Party:</u>	The Netherlands
<u>Date of complaint:</u>	14 March 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 14 November 2003,

Having concluded its consideration of complaint No. 203/2002, submitted to the Committee against Torture by Mr. A. R. 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 complaint, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Mr. A. R., an Iranian national, born on 30 June 1966, currently residing in the Netherlands and awaiting deportation to Iran. He claims that his forcible return to Iran 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 22 March 2002 the Committee transmitted the complaint to the State party for comments.

Facts as submitted by the complainant

2.1 Counsel submits that, after the Iranian revolution in 1979, the complainant became associated with a political party, the Fedayeen Khalg-Iran. He became active in the organization whilst in secondary school. In January 1983 he was arrested on suspicion of distributing illegal pamphlets and causing disorder, and was detained for 25 days. During this time, he alleges that he was severely beaten. Upon release he was removed from his school.

2.2 The complainant continued his political activities. These consisted of handing out illegal pamphlets and attending illegal gatherings. He was arrested again in July 1983, and brought before a Revolutionary Court, which sentenced him to two years imprisonment. During his first two weeks in prison he was interrogated, tortured and maltreated. He was twice taken out for a mock execution, for which he was blindfolded and put against a wall, with shots being fired. He was then kept in solitary confinement for a month and a half. At the end of his term of imprisonment, the complainant was required to sign a statement that he would not engage in political activities, on pain of death.

2.3 After his release, the complainant was required to carry out his military service, during which time he claims he was discriminated against, in that he had to perform dangerous tasks at the front. After completing his military service, he took up tertiary studies at a private university, as he was not permitted to study at a regular university, and then obtained employment. In 1989 he resumed his political activities with a group of people associated with the Fedayeen-e-Khalg. The group distributed pamphlets and a political periodical, wrote slogans on walls, and collected financial aid for families of political detainees.

2.4 On the evening of 30 April 1994, the group distributed pamphlets and wrote slogans in certain areas of Tehran. The following morning, the complainant noticed that some of the slogans were unfinished, and learned that two members of the group had not notified them that they had finished work. Fearing that the activities of his group had been detected, the complainant fled Tehran. He later learned that officials had searched his apartment and taken away his belongings, including illegal pamphlets and other political material. He also learned that his father had been detained and interrogated by officials, and released on condition that he keep the authorities informed about the complainant's whereabouts. The complainant fled Iran on 21 June 1994.

2.5 After arriving in the Netherlands, the complainant became involved in a number of political activities, including co-founding an organization called Nabard, an organization of Iranian refugees which comments on the human rights situation in Iran. He was involved in writing and publishing reports for this group, although his name did not appear in them. Nabard has close connections with a Fedayeen group in France, and opposition groups in Iran. In 1996, the complainant was told by his brother, who had obtained asylum in Sweden, that a letter from the complainant to his father had been intercepted by the authorities, and that his father had been detained for not apprising the authorities about receiving the letter.

2.6 On 14 July 1994 the complainant applied for asylum in the Netherlands. His application was rejected by the State Secretary of the Department of Justice on 30 August

1994. An internal review of this decision, requested by the complainant, confirmed the original decision, and a subsequent appeal to the District Court in the Hague was dismissed on 11 February 1997. The Court found that the complainant had had no problems with the Iranian authorities between 1985 and 1994, and that there was no objective evidence regarding the supposed arrest of his fellow group members in May 1994.

2.7 On 16 June 1997 the complainant filed a second application for refugee status, this time accompanied by a letter from counsel and Iranian documents said to have been issued by the Revolutionary Prosecutor's Office in May 1994, namely a writ of summons, and a copy of a document allegedly showing that the author's residence had been placed under seal. This application was also rejected, as the Dutch authorities did not consider the Iranian documents to be authentic. An internal review confirmed the original decision, and an appeal to the District Court in the Hague was dismissed on 23 February 2001. The Court found that the first asylum application had been dealt with comprehensively; and agreed that the Iranian documents were not authentic, which cast doubt on the complainant's story. It also found that there was no link between the complainant's political activities in Iran and those subsequently carried out in the Netherlands.

2.8 On 18 February 2002, the Aliens Police advised the complainant that he was required to leave the Netherlands.

The Complaint

3.1 The complainant claims that he fears being subjected to torture if he is returned to Iran by the Dutch authorities, and that his return to Iran would constitute a violation of article 3 of the Convention. He states that he has previously been subjected to torture whilst in custody because of his political activities in Iran, and that, given his subsequent political activities both in Iran and in the Netherlands, he is in danger of being subjected to torture again if returned to Iran. In this regard he also refers to the general human rights situation in Iran, particularly reports of torture.

3.2 The complainant argues the Dutch authorities were wrong to conclude that he had no difficulties with the Iranian authorities between 1985 and 1994, and that there was no link between his political activities in Iran and those in the Netherlands. He claims that his first asylum application was not properly dealt with by the Dutch authorities.

The State party's observations on admissibility and merits

4.1 By note dated 6 May 2002, the State party informed the Committee that it does not object to the admissibility of the complaint; its observations on the merits of the complaint were transmitted by note of 23 September 2002.

4.2 The State party contends that the complainant's return would not violate its obligations under article 3 of the Convention. It provides a detailed description of the legal processes by which an application for refugee status in the Netherlands may be made, and how administrative and judicial appeals may be prosecuted. The relevant legislative framework for the admission and expulsion of aliens is set out in the Aliens Act of 1965, as well as related enactments and regulations. Asylum seekers are interviewed twice by the authorities, and on the second occasion the focus is on the

person's reasons for leaving their country of origin. Legal counsel may be present during the interviews. The asylum seeker receives a copy of a report made after the interviews, and has two days to submit corrections or additions to the report. A decision is then made by an official of the Immigration and Naturalisation Service (IND) on behalf of the State Secretary for Justice. If an application is denied, the applicant may lodge an objection. If a prima facie case of fear of persecution is demonstrated, an Advisory Committee will review the decision at first instance, and interview the applicant. A representative of UNHCR is invited to attend the interview, and to make UNHCR's views known. A recommendation is made to the State Secretary for Justice, who decides the matter. If the objection is dismissed, an appeal can be lodged with the District Court. No further appeal is possible.

4.3 The State party attests that its Ministry of Foreign Affairs periodically issues country reports on the situation in countries of origin to assist the IND in its assessment of asylum applications. From 1994 to early in 1995, based on a country report prepared in 1991 from which it appeared that the human rights situation in Iran was alarming, Iranian asylum seekers were eligible for provisional residence permits. This process then ceased, following an updated country report which indicated that the overall situation in Iran had improved.

4.4 In relation to the petitioner's personal circumstances, the State party summarizes the details provided by the complainant to the IND during the first and second interviews of each of his two applications for refugee status, and of the relevant administrative and judicial proceedings. In particular, it notes that the Iranian documents submitted by the complainant were thoroughly investigated by the Ministry of Foreign Affairs and not found to be authentic.

4.5 The State party notes that, in relation to a complaint concerning article 3, the Committee must decide whether there are specific grounds indicating that the individual concerned would be personally at risk of torture if returned to their country.¹ Substantial grounds in this regard require more than a mere possibility of torture, but do not need to be such that torture is highly likely to occur.² It contends that the general human rights situation in Iran is not such that any person being returned to Iran would be in danger of torture. In relation to the complainant, it notes first that his support for the banned political organization Fedayeen is not itself sufficient reason to assume that he would be tortured upon return; thus, recent country reports record no recent cases of convictions of Fedayeen members. Secondly, following the complainant's release from prison in 1985, he had no significant difficulties with the Iranian authorities, and apparently did not see himself as being at risk, as he remained in the country until 1994. The State party notes that, following his release from prison, the complainant served normally in the armed forces, suggesting that he was not the object of any suspicion on the part of the authorities. It states that the problems the complainant refers to following his release from prison were comparatively minor.

¹ The state party refers to the Committee's jurisprudence in complaint no 91/1997, *A v Netherlands*, 13 November 1998, and in complaint no 94/1997, *K.N. v Switzerland*, 20 May 1998.

² The State party refers to the views of the Committee concerning complaint 28/1995, *E.A. v Switzerland*, 10 November 1997, and to the Committee's general comment on the implementation of article 3.

4.6 In relation to his activities in May 1994, the State party notes that the complainant provided no concrete evidence that any of his fellow group members were arrested. Similarly, there is no objective evidence attesting to the complainant's father being arrested – the only evidence comes from family sources.

4.7 The State party contends that the complainant's political activities in the Netherlands do not place him at any personal risk of being tortured upon return to Iran, because there is neither any claim nor any evidence that the Iranian authorities are aware of his activities in the Netherlands.

4.8 Finally, the State party denies that the complainant was not given sufficient opportunity to tell his story during his first asylum application. His second application simply contained a more detailed account of events, not a different account. In any event new material, such as the documents produced by the complainant, were properly investigated and considered by the authorities. In this regard, the Iranian documents were found to be inauthentic, on the basis that they did not conform to standard formatting practices for such documents in Iran.

4.9 In the State party's opinion, there is no basis for believing that the complainant runs a foreseeable, real and personal risk of being subjected to torture upon his return to Iran, and that the expulsion of the author from the Netherlands to Iran would not violate article 3 of the Convention.

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

5.1 In his comments on the State party's observations, dated 2 January 2003, the complainant states that neither of his applications was reviewed by the Advisory Committee referred to in the State party's observations. To him, the tone of the government's 2001 country report on Iran was not similar to those of previous years, but was in fact very negative. He rejects the relevance of the State party not having any record of recent convictions of Fedayeen members, and submits that it should not be concluded from this that those involved in Fedayeen activities do not risk serious consequences. He states that the activities of the group are illegal in Iran, and are therefore difficult to detect and prosecute.

5.2 The complainant reiterates that he did experience problems between 1985 and 1994, and that this constitutes evidence that the Iranian authorities continue to view him with suspicion.

5.3 The complainant's response is accompanied by a letter of support from Amnesty International. This sets out details about the Iranian penal code, the consequence of carrying out activities for banned opposition organizations, and details of the alleged deficiencies in the administration of justice in Iran. It cites examples of executions and torture of members of opposition political movements in Iran in recent years, although no recent cases of Fedayeen members being subjected to this treatment. The letter emphasizes that the complainant's release from prison in 1985 was conditional on him not engaging in further political activity, and that he was told he would receive the death penalty if he did not comply. It further states that the Iranian documents tendered by the complainant, and which were not considered authentic by the State party, were reviewed by an expert on Iranian legal documents, who attested to their authenticity. It also

contends that the complainant's political activities in both Iran and the Netherlands have been significant, and that in the Netherlands his name has appeared in domestic media on several occasions; the complainant should not be expected to prove that his activities in the Netherlands are known to the Iranian authorities.

The State party's additional observations

6.1 By note dated 14 April 2003 the State Party provided the Committee with additional observations. It states that there is no evidence that the complainant faces a personal risk of torture if returned to Iran, and that his arguments are based on mere speculation and suspicion. It reiterates that, based on the evidence, the complainant did not play a leading role in the Fedayeen-e-Khalg, and that he did not experience significant difficulties in Iran after 1985. It recalls that the complainant's proceedings before the Dutch immigration and judicial authorities have lasted 7 years, and that the courts twice upheld the lawfulness of the relevant authority's actions.

6.2 The State party refers to the Committee's case law in communication no 204/2002, *HKH v Sweden*, 28 November 2002, where the Committee noted that, in order for a violation of article 3 of the Convention to occur, 'additional grounds must be adduced to show that the individual concerned would be personally at risk.'

6.3 In relation to the authenticity of the Iranian documents, reviewed by an expert on the complainant's behalf, the State party notes that the documents cited by the expert bore different dates to those tendered by the complainant and that the name of the person to whom the documents referred had been deleted. It also submits that it took into account the general situation in Iran in considering what personal risk might be run by the author upon his return to Iran.

Issues before the Committee

7.1 Before considering any claims 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 considered under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

7.2 The Committee must determine whether the forced return of the complainant to Iran would violate the State party's obligations under article 3, paragraph 1 of the Convention not to expel or return (*'refouler'*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subject to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim is to establish whether the individual concerned would be at personal risk of torture in the country to which he or she would be returned. In accordance with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violation of human rights

in a country does not of itself constitute sufficient grounds for determining whether the person in question would be at risk of being subject to torture upon return to that country. Nor does the absence of such a situation mean that a person cannot be considered in danger of being subjected to torture.

7.3 The Committee recalls its General Comment on article 3, which states that the Committee is to assess whether there are ‘substantial grounds for believing that the author would be in danger of torture’ if returned, and that the risk of torture ‘must be assessed on grounds that go beyond mere theory or suspicion’. The risk need not be ‘highly probable’, but it must be ‘personal and present’.³ In this regard, in previous decisions, the Committee has determined that the risk of torture must be ‘foreseeable, real and personal.’⁴

7.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned previously by the Iranian authorities, because of his involvement with the Fedayeen Khalg-Iran. This is not contested by the State party. However, the alleged acts of torture occurred in 1983, some 20 years ago. The Committee notes that, in accordance with its General Comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the *recent* past.⁵ This cannot be said to be the case in the author’s complaint.

7.5 The Committee’s General Comment also directs the inquiry at whether the author of the communication has engaged in any political or other activity within or outside the State concerned which appear to make him or her ‘particularly vulnerable’ to the risk of torture.⁶ In the current case, the complainant contends that he signed a form upon his release, to the effect that he would not engage in further political activities, and that he was harassed by the authorities after his release. He claims that, despite this, he did continue to engage in political activities in Iran, that he had good reason to flee Iran in 1994, and that he has continued his political activities in the Netherlands, of which the Iranian authorities might be aware.. The complainant further alleges that he submitted to the authorities Iranian documents, issued by the Revolutionary Prosecutor’s Office, which attest to the Iranian authorities’ interest in him and the dangers confronting him in Iran.

7.6 The Committee notes that the complainant’s arguments, and his evidence to support them, have all been considered by the State party’s courts. The Committee recalls its jurisprudence to the effect that it is not an appellate, quasi-judicial or administrative body. Consistent with its General Comment, whilst the Committee has the power of free assessment of the facts arising in the circumstances of each case, it must give considerable weight to findings of fact made by the organs of the State party. In this case, the Committee cannot determine that the State party’s review of the complainant’s case was deficient in this respect. On the basis of the above, the Committee considers that the

³ General Comment No1, Sixteenth Session (1996).

⁴ Views of the Committee on Communication no 204/2002, H.K.H. v Sweden, 28 November 2002.

⁵ Paragraph 8(b).

⁶ Paragraph 8(e).

complainant has not substantiated that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

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, concludes that the removal of the complainant to Iran would not constitute a breach 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.]