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COMMITTEE AGAINST TORTURE
Twenty-first session
(9-20 November 1998)

VIEWS

Communication No. 101/1997

Submitted by:	Halil Haydin [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	7 December 1997
Date of adoption of views:	20 November 1998

[See annex]

* Made public by decision of the Committee against Torture.

Annex

VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22, PARAGRAPH 7, OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- TWENTY-FIRST SESSION -

concerning

Communication No. 101/1997

Submitted by: Halil Haydin
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 7 December 1997

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

Meeting on 20 November 1998,

Having concluded its consideration of communication No. 101/1997, 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. The author of the communication is Mr. Halil Haydin, a Turkish national currently residing in Sweden, where he is seeking refugee status. He claims that his forced return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

The facts as presented by the author

2.1. The author is a Turkish national of Kurdish ethnic origin from Bagdered, close to Adiyaman, in the south-eastern part of Turkey. He states that his father and brother were active sympathizers of the PKK (Partya Karkeren Kurdistan) and that in 1984 his father was sentenced to two years' imprisonment by a military court for his political activities. The author himself began to support the organization actively in 1985. He started by giving food and shelter to members of the PKK, but eventually also handed out propaganda leaflets in his and surrounding villages.

2.2. In 1985 the author was arrested together with his brother and kept in detention without a trial in Pram Palace prison, Adiyaman, for a period of 40 days, during which he was subjected to torture. He was beaten with fists, truncheons and other objects on his back, lower legs, face and the soles of his feet. He also received electric shocks.

2.3. After his release the author continued his political activities, of which he claims the Turkish authorities were aware. Whenever there was a clash between the PKK and Turkish police or military near the author's village he was arrested, kept in detention, interrogated for a couple of hours and then released. He was beaten and insulted in order to force him to cooperate with the Turkish authorities and to reveal names of PKK sympathizers. Following one of those clashes between the PKK and the security forces in March 1990 in a neighbouring village, the author was informed that his name had been revealed to the authorities. He then fled, together with his father, his brother and other inhabitants of his village, to the mountains. From there, he received help from the PKK to flee the country. He arrived in Sweden via Romania, where he stayed for one and a half months.

2.4. The author arrived in Sweden on 7 July 1990 and immediately applied for asylum. On 20 June 1991 the National Immigration Board rejected his application. His appeal was subsequently rejected by the Aliens Appeal Board on 1 December 1992. A so-called “new application” was turned down by the Aliens Appeal Board on 23 November 1994, and two further “new applications” were rejected on 29 April 1996 and 15 November 1996, respectively.

2.5. The author went into hiding and in December 1996, the immigration authorities' decision to expel the author could no longer be enforced due to the statute of limitation. A new asylum procedure was then initiated. On 2 October 1997, the National Immigration Board rejected the author’s new request for asylum. His appeal was subsequently rejected by the Aliens Appeal Board on 27 November 1997. Another “new application” was turned down on 19 December 1997.

The complaint

3.1. In view of his political activities, the author claims that there exist substantial grounds to believe that he would be subjected to torture if he were to be returned to Turkey. His forced return would therefore constitute a violation by Sweden of article 3 of the Convention against Torture.

3.2. Counsel provides a medical report from the Center for Torture and Trauma Survivors in Stockholm indicating that the author suffers from a post-traumatic stress disorder (PTSD). He states that the report neither confirms nor denies that the author has been subjected to physical torture. However, the medical experts underline that the forms of torture which the author claims he was subjected to do not necessarily leave physical marks.

3.3. In support of the author’s claim, reference is made to a letter from the UNHCR Regional Office in Stockholm in which it is stated that it is essential to find out whether Turkish asylum-seekers who are returned would be at risk

of being suspected of connection to or sympathy with the PKK. If this was found to be the case, they should not be considered as having been able to avail themselves of an internal flight alternative.

The State party's observations

4.1. By submission of 20 February 1998, the State party informs the Committee that, following the Committee's request under rule 108, paragraph 9, of its rules of procedure, the National Immigration Board decided to stay the expulsion order against the author while his communication is under consideration by the Committee.

4.2. As regards the domestic procedure, the State party indicates that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act, as amended on 1 January 1997. There are normally two bodies dealing with applications for refugee status: the National Board of Immigration and the Aliens Appeal Board. In exceptional cases, an application can be referred to the Government by either of the boards; the Government has no jurisdiction of its own in cases not referred to it by either of the boards. Decisions to refer a case to the Government are taken by the boards independently. The State party explains that the Swedish Constitution prohibits any interference by the Government, the Parliament or any other public authority in the decision-making of an administrative authority in a particular case. According to the State party, the National Board of Immigration and the Aliens Appeal Board enjoy the same independence as a court of law in this respect.

4.3. The Aliens Act was amended on 10 January 1997. According to the amended Act (chap. 3, sect. 4, in conjunction with sect. 3), an alien is entitled to a residence permit if he or she has a well-founded fear of being subjected to the death penalty or to corporal punishment or to torture or other inhuman or degrading treatment or punishment. Under chapter 2, section 5 (b), of the Act, an alien who is refused entry can reapply for a residence permit if the application is based on circumstances which have not previously been examined, and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision to refuse entry to or expel the alien. New circumstances cannot be assessed by the administrative authorities ex officio, but only upon application.

4.4. Chapter 8, section 1, of the Act, which corresponds to article 3 of the Convention against Torture, as amended, now provides that an alien, who has been refused entry or who has been ordered expelled may never be sent to a country where there are "reasonable grounds" (previously "firm reasons") to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (text in italics added), nor to a country where he is not protected from being sent on to a country where he would be in such danger.

4.5. As to the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international body of international investigation or settlement. The State

party explains that the author can at any time lodge a new application for re-examination of his case to the Aliens Appeal Board, based on new factual circumstances. Finally, the State party contends that the communication is inadmissible as incompatible with the provisions of the Convention.

4.6. As to merits of the communication, the State party refers to the Committee's jurisprudence in the cases of Mutombo v. Switzerland [1] and Ernest Gorki Tania Paez v. Sweden, [2] and the criteria established by the Committee: first, that a person must personally be at risk of being subjected to torture and second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.7. The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual being subjected to torture if returned must be a foreseeable and necessary consequence. The State party recalls that the mere possibility that a person will be subjected to torture in his or her country of origin is not sufficient to prohibit his or her return on the ground of incompatibility with article 3 of the Convention.

4.8. The State party states that it is aware of the serious human rights problems occurring in Turkey, in particular in the south-eastern part of the country. It is a well-known fact that arbitrary arrests, demolitions of whole villages and torture are used in the fight against Kurdish separatists. However, in the State party's view, the situation is not so serious that it constitutes a general obstacle to the deportation of Turkish citizens of Kurdish origin to Turkey. A large part of the population consists of persons of Kurdish origin. While many of them live in the south-eastern part of Turkey, others are scattered throughout other parts of the country where they are completely integrated into the Turkish society in general. It should be stressed that, according to current practice, if an expulsion order is carried out with respect to a Turkish citizen of Kurdish origin, he or she will not be deported from Sweden to the Kurdish areas against his or her will, but to Istanbul or Ankara.

4.9. As regards its assessment of whether or not the author would be personally at risk of being subjected to torture, the State party relies on the evaluation of the facts and evidence made by the National Immigration Board and the Aliens Appeal Board. The facts and circumstances invoked by the author have been examined twice by the National Immigration Board and six times by the Aliens Appeal Board. The Swedish authorities have not considered credible the information which the author has provided about his political activities and about the torture and ill-treatment which he claims to have undergone. When re-examining the facts in the second set of proceedings, the official responsible for the case at the National Immigration Board heard the author in person and was able to make an assessment of the reliability of the information which he submitted orally.

4.10. There are a number of elements in the author’s story which give rise to doubts. Firstly, the author has continuously reiterated that his political activities were always known to the Turkish authorities. Still, the author was never brought to trial and was released each time he was apprehended. If the applicant's story in this respect was true, more severe actions on the part of the Turkish authorities would be expected.

4.11. The author's credibility is further diminished by the fact that he has not been able to produce a consistent version of the events leading to his flight from Turkey. In his statement made on 14 September 1990, the author claimed that he had regularly brought PKK leaflets from the Syrian Arab Republic. During the second set of proceedings, this information was changed to the effect that guerilla agents came to the village and left posters. Finally, in the author’s submission to the National Immigration Board on 8 June 1997, he claimed that the leaflets/posters were either fetched in Syria or brought to his home.

4.12. Further, the author had also given two completely different versions of how the military authorities discovered his activities. In 1990 he claimed that one of the injured guerillas had informed the military authorities of his activities for the PKK. However, before the National Immigration Board in 1997 he stated that three guerillas had been killed in a clash outside his native village and that the military authorities suspected the villagers and the village elder of helping the PKK. Then he stated that the village elder had told him that the military authorities had found documents on the dead bodies with the names of contacts in the village and that he believed that the author’s name was among them. In view of the current situation of armed conflict in which the PKK is involved in the south-eastern part of Turkey, it is questionable whether a PKK member would take the risk of carrying on his person a list of names of sympathizers.

4.13. The Government does not question the fact that the author exhibited certain symptoms of PTSD. He also suffers from depression, panic, feelings of aggression and suicidal ideas. However, the later symptoms stem from his insecure refugee situation and the fact that he has been staying illegally in Sweden for six years. The medical examinations that have been undertaken have found no physical evidence to confirm that he had previously been subjected to torture. In this context it should also be noticed that in 1991 he claimed that his molars had been knocked out during torture, while in the forensic reports from 1997 it is recorded that the teeth were pulled by the village barber because of toothache.

4.14. The Government states that the author has not made it credible that he has been engaged in political activities that would make him of interest to the Turkish authorities. He has not substantiated that he had been arrested and undergone torture or other forms of ill-treatment. The Government shares the view of UNHCR and the Aliens Appeal Board that no internal place of refuge is available for persons who risk being suspected of being active in or sympathizers of the PKK. However, since the author has not substantiated that he would run any particular risk of being detained and tortured, the Government is of the opinion that if the author wishes to avoid the disturbances that undoubtedly characterize the south-east he has the possibility of staying in another part of the country.

4.15. The State party concludes that, in the circumstances of the present case, the author's return to Turkey would not have the foreseeable and necessary consequence of exposing him to a real risk of torture. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1. Regarding the question of admissibility, counsel points out, in her submission dated 12 May 1998, that the procedure for re-examining a case provided for in chapter 2, section 5 (b), of the Aliens Act requires that new circumstances be presented to the Aliens Appeal Board. In the present case there are no new circumstances. Therefore, all domestic remedies have been exhausted.

5.2. Counsel maintains that the Swedish Government has not evaluated the risk the author would face if he were to be expelled to Turkey, but has focused merely on his credibility. Counsel acknowledges that the author has on different occasions given the authorities an inconsistent account of his political activities and his flight; but these inconsistencies are not material and should be viewed in the light of the fact that the author suffers from PTSD. In this context counsel refers to the Committee's jurisprudence in the cases of Pauline Muzonzo Paku Kisoki v. Sweden and Kaveh Yaragh Tala v. Sweden where it is stated that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims". Counsel reiterates that the author is suffering from PTSD. She states that when asked why he had given different answers to the National Immigration Board in 1997 and during the initial investigative procedure in 1990, the author cried out that although he knew it was important to repeat what he had said almost seven years before, he simply couldn't remember.

5.3. Concerning the inconsistencies, counsel further states that they are not of the magnitude that the State party claims. She states that the author has in fact not given two completely different versions of how the military discovered his activities, since the core elements are the same. Further, counsel draws the attention of the Committee to the fact that the question of how exactly the author's activities were discovered by the military in March 1990 is not really an issue, since by that time the author had already been harassed by the Turkish authorities for several years.

5.4. Counsel further refers to the Swedish Government's remark that no physical medical evidence had been produced to indicate that the author had been subjected to torture. She states that according to the specialists at the Center for Torture and Trauma Survivors in Stockholm it is not surprising that there are no physical traces on the author's body, since the forms of torture to which the author was subjected do not necessarily leave marks.

5.5. Counsel concludes that the author has presented sufficient evidence that he was politically active in the PKK and that he is well known to the Turkish authorities; that he has been detained, tortured and ill-treated because of his political activities; and finally that the human rights situation in

Turkey is such that the group most likely to be exposed to harassment, prosecution and persecution are Kurds suspected of being connected to or being sympathizers of the PKK. She therefore claims that the author's return to Turkey would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured.

5.6. On 29 October 1998, counsel submitted further information to the Committee, indicating that according to a Kurdish solidarity association based in Sweden, of which the author has been a member since 1996, the author is wanted by the Turkish police and the Turkish security service. It is further claimed that the author's family in Turkey has been questioned by the police on three occasions during the past six months about the whereabouts of the author. With respect to this additional information the State party states, in a letter sent to the Committee on 16 November 1998, that it has not altered its position regarding the admissibility and merits of the communication, as described above.

Issues and proceedings before the Committee

6.1. 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 examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all available domestic remedies have been exhausted, in view of the fact that no new circumstances exist on the basis of which the author could file a new application with the Aliens Appeal Board. The Committee finds that no further obstacles to the admissibility of the communication exist.

6.2. The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of Sweden 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 would be in danger of being subjected to torture.

6.3. The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she 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; specific grounds must exist that indicate 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.

6.4. The Committee is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country. In this context, the Committee further notes that the Government has stated that it shares the view of UNHCR, i.e. that no place of refuge is available within the country for persons who risk being suspected of being active in or sympathizers of the PKK.

6.5. The Committee recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. The Committee wishes to point out that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3 which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.6. The Committee notes the medical evidence provided by the author. The Committee notes in particular that the author suffers from a post-traumatic stress disorder and that this has to be taken into account when assessing the author's presentation of the facts. The Committee notes that the author's medical condition indicates that the author has in fact been subjected to torture in the past.

6.7. In the author's case, the Committee considers that the author's family background, his political activities and affiliation with the PKK, his history of detention and torture, as well as indications that the author is at present wanted by Turkish authorities, should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee notes that the State party has pointed to contradictions and inconsistencies in the author's story and further notes the author's explanations for such inconsistencies. The Committee considers that complete accuracy is seldom to be expected by victims of torture, especially when the victim suffers from post-traumatic stress syndrome; it also notes that the principle of strict accuracy does not necessarily apply when the inconsistencies are of a material nature. In the present case, the Committee considers that the presentation of facts by the author does not raise significant doubts as to the trustworthiness of the general veracity of his claims.

6.8. In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Turkey.

6.9. In the light of the above, the Committee is of the view that the State party has an obligation to refrain from forcibly returning the author to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.

[Done in English, French, Russian and Spanish, English being the original.]

Notes

1.Communication No. 13/1993 (CAT/C/12/D/13/1993), Views adopted on 27 April 1994.

2.Communication No. 39/1996 (CAT/C/18/39/1996), Views adopted on 7 May 1997.

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