



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 816/2017*, **

Communication submitted by:

X, Y and others

Alleged victims:

The complainants

State party:

Sweden

Date of complaint:

23 March 2017

Document references:

Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 24 March 2017 (not issued in document form)

Date of present decision:

2 August 2019

Subject matter:

Deportation from Sweden to Egypt

Substantive issues:

Risk of torture and ill-treatment

Procedural issues:

Level of substantiation of claims

Article of the Convention:

3

1.1 The complainants are X and Y, a married couple who are both Egyptian nationals. They submit the complaint on their own behalf and on behalf of their five minor children. They claim that the State party would violate their rights under article 3 of the Convention if it removed them to Egypt. The complainants are not represented by counsel.

1.2 On 24 March 2017, acting through its Rapporteur on new complaints and interim measures, the Committee decided to issue a request for interim measures under rule 114 (1) of its rules of procedure and requested the State party not to deport the complainants to Egypt while the communication was being considered by the Committee.

The facts as presented by the complainants

2.1 The complainants resided in the United Arab Emirates during the protests that took place in Egypt in June 2013 which resulted in the overthrow of then President Mohamed Morsi, the leader of the Muslim Brotherhood. The male complainant had supported Mr. Morsi during the 2012 presidential elections in Egypt.

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

** The following members of the Committee participated in the examination of the communication:
Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



2.2 In his work as a consultant, the male complainant signed an agreement with a company owned by the Muslim Brotherhood and whose board members included four ministers of the Muslim Brotherhood-led Government. The complainant's aim was to support and aid that Government. In accordance with the agreement, he coordinated joint projects with senior officials of the Brotherhood, including the Minister of Planning and International Cooperation and the Minister for Higher Education.

2.3 In July 2013, a military coup took place in Egypt, as a result of which President Morsi was arrested along with a number of ministers, while others fled the country. The male complainant, who was living and working in the United Arab Emirates together with his family at the time, was informed that his residence and work permit had been withdrawn due to his links to the Muslim Brotherhood.

2.4 Fearing the treatment that supporters of former President Morsi and of the Muslim Brotherhood were experiencing in Egypt, such as being subjected to extrajudicial killings and torture, together with the fact that the new Egyptian Government had declared the Brotherhood an illegal organization and given that he was considered to be a Morsi supporter by the Egyptian authorities, he and his family fled to Sweden and applied for asylum there.

2.5 On 5 August 2016, the Swedish Migration Agency rejected the complainants' application for asylum. The Agency noted that the family had stated that they were at risk of being subjected to persecution, torture and other abuses by the military regime upon return to Egypt because of the male complainant's connection to the Muslim Brotherhood. It noted that the male complainant had lived outside Egypt since 1996, that the female complainant had lived outside Egypt since 2000 and that their children were born in the United Arab Emirates. The family had travelled to Egypt a number of times on holiday. According to stamps in their passports, the last time the family left Egypt was in early 2015, while the male complainant was in Egypt for four days in October 2015 to obtain a new passport. The Agency did not question that people connected with the Brotherhood had been arrested by the Egyptian regime, but found that the complainants did not have profiles that would indicate that they would be at risk if returned to Egypt.

2.6 The complainants appealed the decision of the Migration Agency to the Migration Court. In the appeal, they reiterated that the family would be at risk because of the male complainant's collaboration and work with senior officials of the Muslim Brotherhood. The complainants would therefore be considered by the Egyptian authorities as supporters of the group and would be at risk of being subjected to torture if deported. The complainants further reiterated that their residence permits in the United Arab Emirates had been revoked due to their links to the Brotherhood, and they claimed that the Migration Agency had failed to properly assess the extent of the male complainant's links to the Brotherhood. In the appeal, the complainants also argued that the Agency had erred in not translating two documents submitted by them in Arabic, namely an agreement signed between the male complainant and the Egyptian Minister of Education and a newspaper article dated 8 August 2012 in which the company with which the male complainant had a business arrangement was associated with the Brotherhood. The complainants further noted that, at the time of their appeal, more than 50,000 supporters of the Brotherhood had been arrested. They argued that the male complainant's collaboration with the Brotherhood was sufficient to deem them supporters of the group. The complainants further claimed that the decision of the Migration Agency contained inaccuracies. Concerning the visits to Egypt in 2015, they noted that in early 2015 they had had a short layover at Cairo international airport of only a few hours before taking a flight to the United Arab Emirates. In October 2015, after having been expelled from the United Arab Emirates to Egypt, the male complainant stayed four days in hiding before leaving for Sweden. They claim that the aim of his stay in Egypt was not to obtain a new passport. The decision of the Migration Agency was upheld by the Migration Court and the Migration Court of Appeal on 22 December 2016 and 22 March 2017, respectively. The complainants argue that the State party authorities erred in finding that they did not have a profile that would indicate that they would be of interest to the Egyptian authorities or considered to be political opponents. They argue that it is not likely that the Muslim Brotherhood, for ideological, religious and, partially, security reasons, would engage in business relationships with persons who are not considered to be among

their followers. In that regard, the complainants recall that the Brotherhood was considered a terrorist organization under the previous regime of President Mubarak.

2.7 The complainants further argue that the decision to deport them to Egypt violated their right to a fair procedure as the procedures were in contradiction with domestic legislation, namely the Aliens Act (2005), the Swedish Language Act (2009) and the Administrative Procedures Act (1986), as well as with the European Parliament and Council Directive No. 2011/95/EU of 13 December 2011. The complainants note that they submitted supporting documents to the Migration Agency which substantiated their support of the Muslim Brotherhood-led Government. They also submitted country reports about the human rights situation in Egypt following the military coup in 2013. The complainants claim that some of those documents were not translated from Arabic while other documents were not considered by the Agency.

2.8 The complainants further note that they requested that an oral hearing be held before the Migration Court so that they could demonstrate the failures of the Migration Agency in processing their application for asylum. This request was denied. The complainants argue that the denial was not justified and violated article 5 of the Swedish Aliens Act.

2.9 The complainants also argue that the Migration Agency failed to undertake a correct assessment of the situation in Egypt and to study the many country reports available which provided detailed information on the human rights violations occurring in Egypt. It only referred partially to two reports dated January 2015 and July 2016, despite the availability of more comprehensive and recent reports. They claim that the State party authorities did not consider the consistent pattern of flagrant and mass violations of human rights in Egypt.

The complaint

3. The complainants claim that if they are deported to Egypt they would face a real, foreseeable and personal risk of being detained, tortured and killed by the Egyptian authorities, as perceived members and supporters of former President Morsi and of the Muslim Brotherhood.

State party's observations on admissibility and the merits

4.1 On 5 September 2017, the State party submitted its observations on admissibility and the merits of the communication. It submits that the communication should be declared inadmissible for failure to substantiate the claims for purposes of admissibility.

4.2 The State party notes that the female complainant arrived in Sweden on 23 July 2015 with her children and that they applied for asylum on 24 July 2015. The male complainant arrived in Sweden on 24 October 2015 and applied for asylum on 29 October 2015. The Migration Agency rejected the complainants' applications on 5 August 2016.

4.3 The Migration Agency held two interviews with the complainants during the asylum procedure. Through their public counsel, the complainants were invited to review and submit written observations on the minutes of the conducted interviews and to make written submissions thereon. The State party argues that the complainants therefore have had opportunities to explain the relevant facts and circumstances in support of their claims and to argue their case, orally as well as in writing, before the Migration Agency and in writing before the Migration Court. It submits that the State party authorities conducted a thorough examination of the complainants' case and based the assessments of the complainants' cited need for protection on their oral accounts, as well as the evidence cited by them. It submits that there is no reason to conclude that the rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice.

4.4 The State party notes that the complainants have stated that due to the male complainant's business-related contacts with the Muslim Brotherhood when he worked in the United Arab Emirates, the Egyptian authorities would consider him to be an opponent of the regime and that therefore all of the complainants risk being subjected to treatment in violation of article 3 of the Convention if returned to Egypt. The State party notes that, according to country of origin information, many high-ranking leaders of the Brotherhood have been arrested and supporters have been imprisoned. It notes that it does not therefore

question that supporters of the Brotherhood in Egypt can risk treatment constituting grounds for international protection. It notes that the Migration Agency and the Migration Court accepted the male complainant's assertion that he worked as an engineer for a company in the United Arab Emirates. It argues that the fact that his residence permit in the United Arab Emirates ended in 2015 does not mean per se that he and his family would risk treatment constituting grounds for protection in Egypt. It notes that no evidence has been submitted to indicate that the residence and work permits in the United Arab Emirates were withdrawn because the male complainant had connections to a company linked to the Brotherhood. The State party further notes that the Migration Court did not question the fact that the company with which the male complainant was contracted belonged to high-ranking representatives of the Brotherhood. The Migration Court found, however, that this business agreement could not per se be regarded as an expression of support for the Brotherhood, and it found that the complainants' cited grounds for asylum were insufficient to consider them to be in need of protection. The State party argues that it has therefore not been substantiated that the Egyptian authorities would, on the basis of the male complainant's previous work, have any particular interest in him or his family, or that he would be considered to be an opponent of the Egyptian authorities.

Complainants' comments on the State party's observations

5.1 On 31 January 2018, the complainants submitted their comments on the State party's observations. They maintain that the communication is admissible. They reiterate their claim that the State party authorities failed to consider documents submitted by them in support of their claims and failed to translate the said documents from Arabic to Swedish. They argue that the State party authorities failed to make a proper assessment of the family's situation.

5.2 The complainants argue that the State party erred in concluding that the contractual business agreements the male complainant had with a Muslim Brotherhood-owned company could not be regarded as an expression of support for the Brotherhood. They note that the male complainant's relation to the Brotherhood is not purely of a business nature. He supported the Brotherhood and its Government, as demonstrated by his involvement in political projects for the development of Egypt with senior officials of the Brotherhood. The complainants claim that the Egyptian authorities consider anyone who has links to the Brotherhood to be a supporter of the group. They argue that the State party not only failed to present a definition of who is a supporter of the Brotherhood, but also disregarded the complainants' definition of such a supporter.

5.3 The complainants reiterate their claim that the revocation of their residence permits by the authorities of the United Arab Emirates was due to the male complainant's links to the Muslim Brotherhood. They argue that this was not stated in writing by the authorities in order to avoid complaints.

5.4 The complainants refer to the Committee's conclusions and recommendations addressed to Egypt under its recent inquiry procedure on Egypt.¹ They note that the Committee found that torture is systematically practised in Egypt by various State agencies, particularly frequently following arbitrary arrests, that it is often carried out in order to obtain a confession or to punish and threaten political dissidents and that perpetrators of torture almost universally enjoy impunity. They argue that these concerns were disregarded by the State party in its assessment of the human rights situation in Egypt.

State party's additional observations

6.1 On 1 February 2019, the State party submitted its additional observations on admissibility and the merits of the complaint. It refers to its observations of 5 September 2017 and reiterates its position that the complaint should be declared inadmissible for failure to substantiate the claims for purposes of admissibility and, in any event, that the complainants have failed to present an arguable case establishing that they run a foreseeable, present, personal and real risk of being subjected to torture upon return to Egypt.

¹ A/72/44, paras. 58–71.

6.2 The State party notes the complainants' claims that the domestic authorities did not make a proper assessment of their case as they did not translate supporting documents submitted by them during the domestic proceedings. It emphasizes that in assessing the complainants' cited need for international protection, the domestic authorities based their assessment on the oral and written information submitted by the complainants, as well as the evidence submitted by them. As regards the extracts from the Internet submitted by the male complainant during the national asylum process, the domestic authorities noted that these documents were not about him as an individual but merely described the general situation in Egypt. Thus, a translation of the documents was not considered to be necessary. As concerns the rest of the documents referred to by the complainants to substantiate that supporters of the Muslim Brotherhood in Egypt may risk treatment constituting grounds for protection, the State party notes that this was not a circumstance that was questioned by the domestic migration authorities and there was thus no need to translate the documents submitted for this purpose. It further notes that the domestic authorities accepted that the male complainant had the business relations that he claimed to have had and that the company he was contracted to belonged to high-ranking representatives of the Brotherhood. Since these were facts that were not being questioned, there was no reason to translate documents submitted to substantiate this claim. The State party notes that the domestic authorities found that what had been stated during the asylum process could not be considered sufficient to conclude that, in view of the male complainant's previous position, the Egyptian authorities would have any particular interest in him or his family or that, for the same reason, he had been attributed a political affiliation that would render the family in need of international protection.

6.3 The State party notes the complainants' claim that their rights were violated as their request for a hearing before the Migration Court was denied by the Court. It notes that pursuant to the Aliens Act, the legal procedure in the migration courts and the Migration Court of Appeal is done in writing. Oral proceedings may be conducted if it can be assumed to be advantageous for the investigation or to promote a rapid resolution. The aim of the oral hearing is, however, to supplement the written proceedings. If the outcome of the case is dependent on the veracity of the information provided by an applicant, there are very limited reasons for not holding an oral hearing. The State party notes that in the complainants' case, the Migration Court found that the complainants' cited grounds for asylum could not be deemed sufficient to conclude that the complainants were in need of international protection if returned to Egypt; hence, an oral hearing was deemed unnecessary.

6.4 The State party further refers to a country report on Egypt according to which the Egyptian authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the Muslim Brotherhood given the size and variety of its membership and support base.² It notes that, according to the report, evidence does not establish that merely being a member or a supporter of the Brotherhood or being perceived to support the Brotherhood will place a person at risk of persecution or serious harm.³

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the

² United Kingdom of Great Britain and Northern Ireland, Home Office, "Country policy and information note: Egypt: Muslim Brotherhood", 1 July 2017.

³ Ibid.

present case, the State party has not contested that the complainants have exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee notes that the State party has contested the admissibility of the complaint on the grounds that the complainants' claims are manifestly unfounded. In the light of the information on file and the arguments presented by the parties, the Committee considers that, for purpose of admissibility, the complainants have sufficiently substantiated their claims, which raise substantive issues under the Convention.

7.4 As the Committee finds no further obstacles to admissibility, it declares the complaint submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

8.2 In the present case, the issue before the Committee is whether the return of the complainants to Egypt would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refoulé") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 In the present case, the Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to Egypt. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.⁴

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real" (para. 11). Indications of personal risk may include, but are not limited to: the complainant's ethnic background; political affiliation or political activities of the complainant or the complainant's family members; arrest and/or detention without guarantee of a fair treatment and trial; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and religious affiliation (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38). The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings, as it can make a free assessment of the information available to it

⁴ See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

8.6 In the present case, the Committee notes the complainants' claims that, as perceived members and supporters of the Muslim Brotherhood, they would risk being subjected to treatment contrary to article 3 of the Convention by the Egyptian authorities if returned to Egypt because of the male complainant's business arrangements with and links to a company owned by senior members of the Brotherhood. It notes their claims that the Egyptian authorities consider anyone who has links to the Brotherhood to be a supporter of that group. The Committee further notes that the Migration Court did not question that the male complainant had a business arrangement with a company belonging to high-ranking representatives of the Brotherhood. It notes the State party's argument that this business arrangement could not, *per se*, be regarded as an expression of support for the Brotherhood, especially in view of the complainants' long stay abroad. The Committee further notes the State party's argument that the complainants have therefore not substantiated that the Egyptian authorities would, on the basis of the male complainant's previous work, have any particular interest in him or his family or that they would be considered to be opponents of the Egyptian authorities.

8.7 The Committee recalls its findings in the proceedings of its inquiry on Egypt, in which it concluded that torture was a systematic practice in Egypt and appeared to occur particularly frequently following arbitrary arrests, where it was often carried out to obtain a confession or to punish and threaten political dissidents.⁵ It further notes that according to country reports, the Muslim Brotherhood has been legally designated as a terrorist organization in Egypt.⁶ It notes that large numbers of members and supporters of the Brotherhood were arrested following the military coup, with some 22,000 persons arrested by security forces in 2013 and 2014 and a further 12,000 persons arrested in 2015, including students, academics, engineers and medical professionals, most of them Brotherhood members and supporters of Mohamed Morsi; some rights groups estimated in 2017 that as many as 60,000 people had been detained for political reasons since July 2013.⁷ The Committee further notes that according to country reports security forces continued to arrest hundreds of people based on their membership or perceived membership of the Brotherhood in 2017 and 2018.⁸ Torture and other ill-treatment remained routine in official places of detention and was systematic in detention centres run by the National Security Agency.⁹

8.8 Based on country reports, the Committee therefore notes that persons considered as supporters of the Muslim Brotherhood may be at risk of treatment contrary to article 3 in Egypt. In the present case, the Committee notes, however, that the complainants have not claimed to be members of the Brotherhood or to have been politically active in support of the group. It further notes that the complainants have not lived in Egypt for the past 20 years and that their only link to the Brotherhood is the male complainant's previous business arrangements with a company owned by senior members of the Brotherhood. The Committee notes that the complainants have not claimed that they were working for this company in Egypt, and it notes that any project the male complainant may have been working on were executed outside Egypt. It further notes that the complainants have not explained how the Egyptian authorities would have been made aware of the business relationship in question. The Committee also notes that the complainants have not provided any further specific information or evidence that would indicate that the Egyptian authorities have instituted any criminal proceedings against the complainants or otherwise

⁵ A/72/44, para. 69.

⁶ United States of America Department of State, "2016 country reports on human rights practices: Egypt".

⁷ Amnesty International, "Egypt: officially, you do not exist: disappeared and tortured in the name of counter-terrorism", July 2016.

⁸ See Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights* (London, 2018).

⁹ Ibid. See also United States Department of State, "2018 country reports on human rights practices: Egypt".

looked for them, in which connection they could face a real, personal and foreseeable risk of torture or ill-treatment if removed to Egypt.

8.9 The Committee notes the complainants' claims that the domestic authorities failed to provide them with fair proceedings in assessing their applications for asylum as the authorities did not translate two documents submitted by them in support of their claim that the male complainant had a business arrangement with a company owned by senior members of the Muslim Brotherhood, and by not conducting an oral hearing before the Migration Court in support of the said claim. The Committee notes, however, that the Migration Court did not question the fact that the male complainant had had such a business arrangement and that this was the reason for its denial of the request for translation of the documents. It further notes that the complainants were interviewed in the proceedings at first instance and were invited to review and submit written observations on the minutes of the conducted interviews. It also notes that the domestic asylum authorities examined all claims presented by the complainants in their assessment of their applications for asylum. The Committee therefore finds that the complainants have not substantiated their claim that they were denied fair proceedings in the State party or that the domestic proceedings were arbitrary or amounted to a denial of justice. The Committee is therefore of the opinion that the complainants have failed to substantiate their claim that their removal to Egypt could expose them to treatment contrary to article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainants' removal to Egypt would not constitute a violation of article 3 of the Convention.
