



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

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COMMITTEE AGAINST TORTURE
Thirty-seventh session
(6-24 November 2006)

DECISION

Communication No. 251/2004

Submitted by: A.A. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 19 July 2004 (initial submission)

Date of present decision: 17 November 2006

Subject matter: Expulsion of complainant to his country of origin, where he is likely to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

Substantive issue: Risk of torture if complainant is expelled to his country of origin

Procedural issue: None

Article of the Convention: 3

[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-seventh session

concerning

Communication No. 251/2004

Submitted by: A.A. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 19 July 2004 (initial submission)

Date of present decision: 17 November 2006

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

Meeting on 17 November 2006,

Having concluded its consideration of communication No. 251/2004, submitted by A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture:

1. The complainant, Mr. A.A., an Iranian national born in 1973, is the subject of an expulsion decision by Switzerland. Although he does not refer to any particular article of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, his allegations appear to raise issues under article 3 of the Convention. He is not represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

The facts as submitted by the complainant

2.1 According to the complainant, although he did not engage in any political activities in the Islamic Republic of Iran, he was repeatedly persecuted by the Iranian authorities because his family had been politically active against the regime of Ayatollah Khomeini, particularly

through its support for the People's Mujahedin. In 1990, he and his cousin, as members of a family of political prisoners, conferred with the representative of the United Nations Commission on Human Rights during that representative's visit to the Islamic Republic of Iran. In April/May 1991, the complainant was detained for distributing tracts. He then spent two years in prison, where he was handcuffed and blindfolded and was "ill-treated with a razor blade".¹ His cousin was assassinated by the regime in place at the time.

2.2 The applicant states that, in 1993, he left prison and then performed his compulsory military service, until 1995. However, the Revolutionary Courts continued to harass him and summoned him on several occasions because of political activities conducted by members of his family. He adds that, during his military service, he was assigned to the political ideology section.

2.3 According to the complainant, on 15 February 1996, he obtained a passport and, a few days later, went to the border crossing of Sero with a view to entering Turkey. In the course of the customs formalities, the officials informed him that there were certain irregularities in his passport and that he was forbidden to leave the country.

2.4 The complainant thereupon returned to Tehran and, in early April 1996, was summoned to appear before the Revolutionary Court, where he was questioned about his military service, the reasons for his attempted departure from the country, his background and the members of his family.

2.5 On 21 May 1996, in response to a further summons from this Court, he was sentenced to six months' imprisonment, suspended for two years, 60 lashes and posting of a property bond for a three-year period.

2.6 On 17 July 1996, he made a third appearance in court, accompanied by his father, who had to furnish security. After this third hearing, the author was sentenced to three months' imprisonment and 60 lashes, as well as payment of a fine. His father had to testify in writing that he was not involved in any political activity in order to avoid his house being confiscated. The complainant was subsequently placed under close surveillance, with the authorities constantly attempting to pin new offences on him.

2.7 On 30 September 1999, the complainant left his country hidden in a container aboard a truck. He arrived in Switzerland in July 2000, and there joined other Iranian citizens struggling against the regime currently in power in the Islamic Republic of Iran. He participated in demonstrations organized by Iranian refugees. These activities in Switzerland were known to the Iranian authorities.

¹ According to a medical report by the Cantonal Psychiatric Service (KPD) of Basle, dated 1 July 2004, the author "suffered from a dissociative, trance-like condition, as a result of being subjected to sexual abuse during childhood, exacerbated by the fact that he had been ill-treated and had spent two years in prison". The report found that the author was severely traumatized and that his expulsion would entail a behavioural risk.

2.8 By decision of 10 July 2000, the complainant's application for asylum was rejected by the Federal Office for Refugees (ODR) - now the Federal Office for Migration (ODM) - which concluded that his allegations were inconsistent and that he had a low political profile, and ordered his expulsion from Swiss territory.

2.9 On 10 June 2004, the Swiss Asylum Review Board (CRA) rejected the complainant's appeal, considering that his statements contained many factual inconsistencies and contradictions and that his presentation of the facts was not credible. The Board therefore upheld the decision of the Federal Office for Refugees, ordering the complainant's return under threat of expulsion.

The complaint

3.1 The complainant states that the Swiss asylum authorities were wrong to consider that his allegations lacked credibility, since there are substantial grounds for believing that he would be subjected to torture if he were sent back to his country of origin, which would constitute a breach of article 3 of the Convention by Switzerland. He notes that he was detained and tortured in the Islamic Republic of Iran and that his cousin was assassinated by the regime of Ayatollah Khomeini because of his family's involvement in political activities directed against the regime at that time.

3.2 The complainant further states that his participation in political demonstrations and events abroad, as well as his illegal escape from the Islamic Republic of Iran, are decisive factors supporting suspension of his expulsion.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 6 September 2004, the State party declared that it did not contest the admissibility of the complaint and that it would pronounce on the merits. On 19 January 2005, the State party submitted observations on the merits. After recalling the Committee's jurisprudence and its general comment No. 1 on the implementation of article 3, the State party endorsed the grounds cited by the Asylum Review Board substantiating its decision to reject the complainant's application for asylum and upholding his expulsion. It recalled the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".

4.2 The State party observes that the complainant adduces no relevant new evidence that would enable him to challenge the Asylum Review Board's decision of 10 June 2004. It notes the factual inconsistencies and contradictions in the complainant's statements, emphasized by the domestic asylum bodies. For instance, the complainant alleges that he was ill-treated in prison between 1991 and 1993 but that, after being released, he nevertheless performed his military service in the army's political ideology section. Since the selection procedures for this section are known to be stringent, it is not credible that he should have performed his military service there, in view of his prior imprisonment and his family's alleged political activities. His explanation that confusion occurred because of an error in transcribing his surname is not convincing.

4.3 After the complainant's first attempt to leave the country, proceedings were allegedly instituted against him in the Revolutionary Court of Tehran. Contrary to what he claims, however, the documents produced do not show that any penalty was imposed on him beyond the obligation to post a property bond. Moreover, these documents contain no precise indication concerning the grounds for the sentence said to have been handed down against the complainant by the Revolutionary Court. The internal bodies therefore concluded that grounds other than that of having concealed his detention from the military authorities were decisive in the complainant's alleged sentencing.

4.4 At each of the three hearings during the asylum procedure, the complainant gave a different version of the main reasons why he had left the Islamic Republic of Iran. Challenged about these discrepancies, he was unable to offer a plausible explanation. During the first phase of the procedure, the complainant claimed that his escape from the country was due essentially to the harassment to which he was subjected by the basiji, as well as to the political activities of some members of his family. In a later phase of the procedure, on the other hand, he claimed that his escape resulted from the assassination of a member of the basiji, the very people who had allegedly been harassing him.

4.5 The complainant's allegations concerning the ill-treatment to which he was subjected and his assignment to the army's political ideology section are not credible either. The explanation provided (confusion resulting from an error in the transcription of his surname) is unconvincing - particularly in view of the allegation that the complainant, who reportedly received his passport after the completion of his military service, was named on a list of persons forbidden to leave the country, a ban which was brought up against him at the border crossing. In the circumstances, spelling errors or the inclusion of the author's name in such a list should have constituted an obstacle to issuing the passport in the first place.

4.6 The State party says it does not know whether the fact of leaving his country of origin illegally would expose the complainant to the risk of being arrested on his return. It refers to the Committee's jurisprudence whereby the Convention affords no protection to complainants who merely invoke a fear of being arrested on their return.

4.7 As to the complainant's physical and psychological problems, the State party considers them to be connected with the sexual abuse to which he claims to have been subjected during childhood.

4.8 As regards the complainant's political activities in the Islamic Republic of Iran, the State party considers them to be very limited: they involve participation in a meeting with a United Nations representative in 1990 and distribution of tracts with his cousin in Semnan in 1991. Concerning the complainant's political activities in Switzerland, the State party notes that the Asylum Review Board examined in detail the question of whether a risk existed on that account and found that the evidence adduced by the complainant did not support a conclusion that the Iranian authorities were informed of these activities of his in Switzerland. It argues that the Iranian authorities focus primarily on persons presenting a particular profile by reason of

activities going beyond normal conduct or representing a danger to the Iranian regime. The documents produced by the complainant do not show that he developed such a profile through his activities in Switzerland. The State party does not know of cases in which the Iranian authorities have brought proceedings against persons engaging in activities comparable to those of the complainant.

4.9 The State party concludes that there is nothing to indicate the existence of substantial grounds for fearing that the complainant would be exposed to a concrete and personal risk of torture on his return to the Islamic Republic of Iran.

Supplementary information from the complainant

5. In a letter of 25 April 2005, the complainant informed the Committee that, following the submission of an application for reconsideration on the basis of additional documents, the Federal Office for Migration was reconsidering his case.

Additional comments by the State party

6.1 On 9 May 2005, the State party in turn informed the Committee that the complainant had submitted an application for reconsideration to the Federal Office for Migration on 15 September 2004, and invited the Committee to suspend examination of the communication pending a ruling under the procedure.

6.2 On 9 May 2006, the State party informed the Committee that the Federal Office for Migration had rejected the application for reconsideration by decision of 28 December 2005. This decision was upheld by the Asylum Review Board on 24 April 2006. The State party noted that its request for suspension had become redundant and stated that it maintained its conclusions of 19 January 2005.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Committee 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. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not contested admissibility. The Committee therefore considers that the complaint is admissible and proceeds to examine it on its merits.

7.2 The Committee must establish whether the return of the complainant to the Islamic Republic of Iran would constitute a breach of the State party's obligation, under article 3 of the Convention, not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 In order to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he were returned to the Islamic Republic of Iran, the Committee must take account of all factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. Accordingly, the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds 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 considered at risk of being subjected to torture in specific circumstances.

7.4 The Committee recalls its general comment on the implementation of article 3, in which it states that 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).

7.5 In the present case, the Committee notes that the complainant’s claim that he would run a risk of being tortured if he returned to the Islamic Republic of Iran is based on the fact that he was allegedly detained and tortured between May 1991 and August or September 1993; was subsequently harassed by the Iranian authorities, mainly because of the political activities of members of his family; and participated in activities in Switzerland directed against the current Iranian regime. In assessing the risk of torture in the present case, the Committee takes note of the complainant’s allegation that he was tortured during his detention in the Islamic Republic of Iran and of the State party’s view that this allegation lacks credibility.

7.6 The Committee also takes note of the complainant’s allegations that he was constantly harassed by the Iranian authorities because of his family’s political activities and that he would be at risk of being subjected to torture also on account of his political activities in Switzerland against the Iranian Government. In the Committee’s view, however, the complainant has not demonstrated that his family’s political activities against the regime were of such importance as to still present an interest for the Iranian authorities today, and has not adduced sufficient evidence to establish that his participation in demonstrations organized by Iranian refugees in Switzerland or his illegal escape from the Islamic Republic of Iran are decisive factors permitting the conclusion that he would be at personal risk of being subjected to torture if he returned to that country.

7.7 The Committee therefore considers that, having regard to the time that has elapsed since the events described by the complainant (more than 13 years), as well as the inconsistencies in his presentation, which he has not adequately explained, the information submitted by the complainant, and particularly the fact that he has not engaged in any sustained political activity either in the Islamic Republic of Iran or in Switzerland, is insufficient to support the claim that he would run a serious risk of being subjected to torture if he were returned to the Islamic Republic of Iran at this point in time.

7.8 The Committee concludes that, on the basis of all the information submitted, the complainant has not adduced sufficient evidence for it to consider that he would run a foreseeable, real and personal risk of being subjected to torture if he were returned to his country of origin.

7.9 Accordingly, the Committee, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's decision to return the complainant to the Islamic Republic of Iran would not constitute a breach of article 3 of the Convention.

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