



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

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COMMITTEE AGAINST TORTURE
Twentieth session
(4 - 22 May 1998)

VIEWS

Communication No. 89/1997

Submitted by: Ali Falakaflaki
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 3 September 1997

Date of adoption of views: 8 May 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 - TWENTIETH SESSION

concerning

Communication No. 89/1997

Submitted by: Ali Falakaflaki
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 3 September 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 8 May 1998,

Having concluded its consideration of communication No. 89/1997, 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. Ali Falakaflaki, an Iranian citizen born on 16 December 1969, currently residing in Sweden, where he is seeking asylum. He claims that his forced return to Iran would constitute a violation by Sweden of article 3 of the Convention against Torture. Mr. Ali Falakaflaki is represented by counsel.

Facts as presented by the author

2.1. The author states that he belongs to a politically active family and that his father became a local communist leader for the Tudeh Party already in 1963. After having been subject to imprisonment and persecution due to his political activities, the father went into hiding in 1989, entrusting the author with the hiding of certain documents. Following his father's disappearance, the family's house was raided on numerous occasions by Pasdaran, the Revolutionary Guards, and as a result the author's mother fled to Sweden to join her youngest daughter. She was subsequently granted a residence permit on grounds of family reunion.

2.2. In 1989, the author became a member of Nehzat Azadi (Freedom Movement), a liberal nationalist movement aiming at a modernistic interpretation of Islam. The author explains that this movement was previously officially tolerated by the regime but nevertheless its members were subjected to various forms of harassment. In 1990/91 the movement eventually was declared illegal by the Government. The author soon was entrusted the leadership of a group of 30 members divided into subgroups responsible for the production and distributions of flyers and leaflets. In addition, as the leader of the group, it was the author's responsibility to recruit new members to the organization. The author explains that this was dangerous work and that once the Pasdaran caught one of the subgroups when it was distributing flyers. One of the members was immediately shot dead and the others managed to escape.

2.3. In 1991, the author was suspended from university for not following Islamic rules. The author states that he thinks that the university had found out about him trying to recruit new members at university and that he had been arrested several times by Pasdaran for having participated in meetings arranged by the party. The leadership of the Freedom Movement sometimes arranged meetings with 25-30 participants, discussing policy, ideology and field work. These meetings were often raided by the Pasdaran and according to the author he was arrested and detained approximately 30 times during such raids, but he was always let go due to lack of evidence.

2.4. After a while, the author became dissatisfied with the party's cautious attitude and together with his closest superior and his group he started to work in the direction of a more radical policy. During a meeting on 23 October 1993, where a new and radical text for a flyer was discussed, the Pasdaran entered and they were all arrested. The author and his colleagues were brought to the Evin prison for interrogation. During the questioning, the author was told that his closest superior had been found with the text of the flyer in his possession and had been executed. The author was questioned about his own role in the Freedom Movement and about his father's whereabouts. The author was allegedly tortured during interrogation. He states that he was severely beaten and first kept in a one square metre cell before he was brought to a cell which he shared with five other prisoners. His ribs were broken, his back was hurt and one of his fingernails was pulled out. The author was furthermore subjected to a fake execution. Together with two of his cell mates he was brought before an execution squad. The two other prisoners were executed, while only fake bullets were used on the author. After a month the author was released without trial, but with the warning that he would be executed if ever involving himself in political activities again. The author states that he believes that his release was due to the fact that he had not made any confessions and that the authorities would instead watch him in the hope that he would eventually lead them to his father and other members of the group.

2.5. In the time immediately following his release the author refrained from any political activities, but eventually started writing flyers about the conditions in the Evin prison. When he learned that the police had found out about his activities and that members of his group had been arrested he decided to leave the country. The author still had a passport and managed to prolong it by using bribes. An exit permit was obtained with the help of a contact in the Justice Department.

2.6. The author arrived in Sweden on 6 February 1995 and joined his family. He requested asylum on 23 February 1995. On 21 April 1995, the Swedish Board of Immigration rejected the author's application for asylum. His appeal was subsequently rejected by the Aliens Appeal Board on 7 February 1996. A new application was rejected by the Aliens Appeal Board on 27 March 1996, and a further new application, based on the author's political activities in Sweden, was rejected on 24 February 1997. The author submitted a fourth application, based on medical evidence from the Center for Torture and Trauma Survivors in Stockholm, an application which was rejected on 27 July 1997.

2.7. Upon arrival in Sweden, the author contacted Iranian exile organizations and joined the Iranian Socialdemocratic Movement. In Sweden, the author has participated in meetings and demonstrations and publicly expressed critical opinions about the Iranian Government. He is further responsible for the publication of the organization's newspaper. The author also states that he continued his work by sending political materials to Iran through what he considered being a safe communication channel, involving his sister and a friend. According to the author, both the friend and the sister were arrested by the Pasdaran. At the time of the submission of the communication the sister was still held in prison.

The complaint

3.1. The author's counsel argues that, given the absolute prohibition to expel a person to a country where he risks to be subjected to torture, and given that, if the author's story is true, there is reasonable ground to believe that he would be in danger of being subjected to such treatment upon return, he should only be returned to Iran if it is beyond reasonable doubt that the author's claim is false. Otherwise, according to counsel, the asylum seeker should be given the benefit of the doubt, not least since there exists a consistent pattern of gross and massive violations of human rights in Iran.

3.2. The author claims that a real risk exists that he would be subjected to torture or that his security would be endangered if he were to be returned to his country. He further recalls that he comes from a politically active family and has been detained and tortured because of his active work for the Freedom Movement, a liberal nationalist party declared illegal and in violation of the Constitution by the Government in 1990/91. It is well-known that members of political opposition aiming at overthrowing the Government are severely persecuted. In this context, the author refers to, among others, reports by the United Nations Special Representative of the Commission on Human Rights to Iran, which attest to a continuing violation of all basic rights.

3.3. Counsel recalls that the presented forensic medical report prepared by the Center for Torture and Trauma Survivors in Stockholm shows that the findings are in complete consistency with the author's claims of torture and ill-treatment. Furthermore, according to the medical report, the author is suffering from a Post Traumatic Stress Disorder.

State party's observations

4.1. By submission of 28 November 1997, the State party informs the Committee that, following its request under rule 108, paragraph 9, the Swedish Immigration Board has 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 explains 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. For the determination of refugee status there are normally two instances, the Swedish Board of Immigration and the Aliens Appeal Board. In exceptional cases, an application is referred to the Government by either of the two boards. In this context, the State party explains that the Government has no jurisdiction of its own in cases not referred to it by either of the boards. Decisions to refer a given case to the Government are taken by the boards independently. The State party clarifies 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 Swedish Board of Immigration and the Aliens Appeal Board enjoy the same independence as a court of law in this respect.

4.3. As of January 1997, the Aliens Act has been amended. According to the amended Act (chapter 3, section 4, in conjunction with section 3), an alien is entitled to a residence permit if he or she experiences 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 in the case 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 on refusal of entry or expulsion. 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, has been amended and now provides that an alien, who has been refused entry or who shall be 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 instance 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 being 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. Switzerland¹ and Ernesto Gorkei Tapia 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 of being subject to torture if returned must be a *foreseeable and necessary consequence*. The State party recalls that the mere possibility that a person be subjected to torture in his or her country of origin does not suffice to prohibit his or her return for being incompatible with article 3 of the Convention.

4.8. The State party states that it is aware that Iran is reported to be a major violator of human rights and that there is no indication of improvement. It leaves it to the Committee to determine whether the situation in Iran amounts to a consistent pattern of gross, flagrant or mass violations of human rights.

4.9. As regards its assessment of whether or not the author would be personally at risk of being subjected to torture when returned to Iran, the State party relies on the evaluation of the facts and evidence made by the Swedish Board of Immigration and the Aliens Appeal Board. In its decision of 21 April 1995, the Swedish Board of Immigration found that the elements provided by the author gave occasion to doubt the credibility of the author. The Aliens Appeal Board, in its decision of 7 February 1996, also found that the circumstances invoked by the author during the appeal were not trustworthy.

4.10. On 27 March 1996, the Aliens Appeal Board rejected a new application for a residence permit by the author, based on the fact that he has been politically active since his arrival in Sweden and further invoking humanitarian reasons due to his mother's state of health. The application was turned down by the Aliens Appeal Board, since the circumstances invoked by the author had already been reviewed in the previous decision. A second new application was rejected by the Aliens Appeal Board on 24 February 1997, in which the author stated that he had distributed political material into Iran after his arrival in Sweden. The correspondence which had gone via his sister and another contact, had allegedly been traced back to him by the Iranian

authorities and his sister had subsequently been interrogated and imprisoned. The application was turned down by the Board, noting that in the light of the Board's knowledge of anti-governmental activities in Iran and distribution of politically sensitive material in Iran, it was not deemed credible that the author would expose himself and his sister of such a risk by using a personal communication route for distribution of the mentioned materials into Iran.

4.11. Finally, on 25 July 1997, the Aliens Appeal Board examined a third new application lodged by the author, where he invoked an examination report by the Center for Torture and Trauma Survivors according to which the author without any doubt had been subjected to torture and according to which there was good concordance between the forensic medical investigation; the patient's allegations and the very clinical picture of PTSD found at the investigation. The application was turned down by the Board, since the matter of the author's imprisonment and his alleged torture in that connection had previously been reviewed by the Board. Already in its initial decision of 7 February 1996 the Aliens Appeal Board stated that "(i)n view of the author's lack of credibility in the above-mentioned respect, the Board does not consider that it has cause to give credence to his statement that his injuries occurred as a result of physical abuse or torture".

4.12. The State party draws the attention of the Committee to the main elements in the author's story which give rise to doubts as to the credibility of the author. Firstly, the author travelled to Sweden from Iran with a genuine and valid passport. Taking into account that, after his arrest by the Iranian authorities, the author was released after a month without facing trial, and that his father's political activities were already known by the authorities at the time of the author's arrest, the Swedish Board of Immigration and the Aliens Appeal Board questioned the author's credibility as to the statement that bribes were used to enable him to leave Iran. Subsequently, there is no reason to believe that the author is of particular interest to the Iranian authorities. Secondly, in his appeal to the Aliens Appeals Board, the author invoked, among others, internal correspondence between Iranian authorities regarding a warrant of his arrest. The State party submits that the author has not been able to give any reasonable explanation as to how he was able to acquire original documents which were clearly intended for internal purposes. Further, there is nothing to support the author's claim that he has distributed politically sensitive material to Iran. Finally, it should be noted that the author did not request asylum until almost two weeks after his arrival in Sweden, thus indicating that he is not in any immediate need of protection.

4.13. The State party concludes that, in the circumstances of the present case, the author's return to Iran 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. In her comments on the State party's submission, counsel for the author draws the attention to the Committee to the fact that the author has already lodged three so-called new applications with the Aliens Appeal Board. There

are no longer any new circumstances to be presented, which is a prerequisite for the Aliens Appeal Board to examine a new application. All domestic remedies have thus been exhausted.

5.2. In the instant case, counsel recalls, the Swedish immigration authorities have not directly questioned the fact that the author has been politically involved with the Freedom Movement in Iran and that he was imprisoned for one month without trial, nor do they seem to question his father's political background. The Swedish authorities build their decisions entirely on the basis of an arbitrary assessment of the general trustworthiness of the authors. According to counsel, the arguments used by the authorities to turn down the author's claim for asylum are stereotyped and found in almost every rejection decision. Any inconsistencies or contradictions found in the author's story are thereafter used to support the authorities a priori judgement that the author is not credible, although complete accuracy is seldom to be expected by victims of torture.

5.3. Counsel points out that the main argument of the immigration authorities is that the author is not trustworthy because he has: (a) left Iran with a valid passport; (b) obtained a legal exit visa; and (c) legally extended the validity of his passport. She also points out that the author has given a credible and consistent explanation of how he used bribes and the influence of a personal contact in the security force in order to be able to leave with a valid passport. The explanation was rejected by the immigration authorities as not credible, although a report from a visit to Iran made in 1993 by representatives from the Aliens Appeal Board³ shows that, according to the Iranian lawyer normally engaged by the Swedish Embassy in Tehran, it is difficult but nevertheless possible to bribe yourself out of Iran, in the way suggested by the author.

5.4. Counsel further contends that the author has presented reasonable explanations as to how he was able to acquire original documents (a copy of a detention order) intended for internal communication between the Iranian authorities. According to the author he contacted friends in Iran who managed to get the document in question by bribes, and the information thus provided by the author corresponds with information previously given by the Iranian lawyer entrusted by the Swedish Embassy in Tehran. The author has further also given a detailed account of the communication route used in order to distribute politically sensitive material to Iran.

5.5. Counsel concludes that the author has presented sufficient evidence that he was politically active in Nezat Azadi (the Freedom Movement) in Iran and is well known to the Iranian authorities; that he has been detained, tortured and ill-treated due to his political activities; that he has also been politically active against the Iranian regime after his arrival in Sweden and finally that the human rights situation in Iran is deplorable and that political activists are in great danger of persecution. She therefore claims that the author's return to Iran would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured.

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 also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits of the communication.

6.2. The issue before the Committee is whether the forced return of the author to Iran 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 Iran. 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 has noted the State party's assertion that its authorities apply practically the same test as prescribed by article 3 of the Convention when determining whether or not a person can be deported. The Committee, however, notes that the text of the decisions taken by the Swedish Board of Immigration (21 April 1995) and the Aliens Appeal Board (7 February 1996, 27 March 1996, 24 February 1997 and 27 July 1997) does not show that the test as required by article 3 of the Convention (and as reflected in chapter 8, section 1, of the 1989 Aliens Act as amended) was in fact applied in the author's case.

6.5. In the author's case, the Committee considers that the author's family background, his political affiliation with the Freedom Movement and activities, his history of detention and torture, should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to circumstances in the author's

story which raise doubt about the credibility of the author, but the Committee considers that the presentation of the facts by the author do not raise significant doubts as to the trustworthiness of the general veracity of his claims. In this context the Committee especially refers to the existence of medical evidence demonstrating that the author suffers from Post Traumatic Stress Disorder and supporting the author's claim that he has previously been tortured while in detention.

6.6. The Committee is aware of the serious human rights situation in Iran, as reported inter alia to the United Nations Commission on Human Rights by the Commission's Special Representative on the situation of human rights in the Islamic Republic of Iran. The Committee notes the concern expressed by the Commission, in particular in respect of the high number of executions, instances of torture and cruel, inhuman or degrading treatment or punishment.

6.7. 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 Iran.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to Iran, or to any other country where he runs a real risk of being expelled or returned to Iran.

[Adopted in English, French, Russian and Spanish, the English text being the original version]

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.

3. The delegation preparing the report included the Director-General of the Aliens Appeal Board at the time, as well as counsel in the present case who was at the time working for the immigration authorities.
