

Distr.
RESTRICTED*

CAT/C/37/D/286/2006
22 November 2006

Original: ENGLISH

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

DECISION

Communication No. 286/2006

<u>Submitted by:</u>	M. R. A. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	17 January 2006
<u>Date of present decision:</u>	17 November 2006

Subject matter: deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issues: none

Substantive issues: risk of torture on deportation

Articles 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. 286/2006

Submitted by: M. R. A. (represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 17 January 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 complaint No. 286/2006, submitted to the Committee against Torture on behalf of M. R. A. 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 complainant, his counsel and the State party,

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

1.1 The complainant is M. R. A., an Iraqi citizen born in 1960, currently awaiting deportation from Sweden to Iraq. He claims that his deportation to Iraq would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

1.2 By Note Verbale of 17 January 2006, the Committee transmitted the complaint to the State party, together with a request under rule 108, paragraph 1, of the Committee's Rules of Procedure, not to expel the complainant to Iraq pending the Committee's consideration of his complaint.

Facts as presented by the complainant

2.1 In 1995, the complainant, who is Shia-Muslim, left Iraq for Lebanon, allegedly because of problems he had in Iraq in relation to his family members' political involvement. In September 1995, he was recognised as a refugee by UNHCR in Lebanon. Due to the difficult situation for refugees in Lebanon, he left the country by boat in 1997 together with other

Iraqis, but the boat capsized. The complainant, who was collected by Israelis, applied for asylum in Israel and sought Israeli protection against being returned to Iraq.

2.2 The complainant's enemies in Iraq, including his former wife and her new husband, informed the media in Iraq that he had sought asylum in Israel. According to the complainant, this fact was spread in Iraq and he was accused of having converted to Judaism. Counsel indicates that the situation of Jews, and of anyone who is seen to collaborate with Judaism, is difficult in Iraq. To illustrate this point, she refers to a fatwa issued in June 2003 according to which every Jew who buys land or a house in Iraq must be executed and it is forbidden for all Iraqis to sell land or houses to people who might be Jewish. While the complainant initially claimed that a fatwa had been issued against him, counsel submits a copy of the fatwa, and refers to correspondence with Professor H. from Lunds University. According to him, that fatwa is probably taken from a book of fatwas written by a Shiaa religious authority and is not specifically issued against the complainant. The fatwa allows anyone to kill people who collaborate with Jews or who have abandoned the Islamic religion. According to professor H., the complainant's life is probably at great risk because many people in Iraq believe that he has abandoned Islam. The complainant submits a letter from the President of the Swedish Muslim Association confirming that a mere rumour that a person has converted to Judaism is sufficient to put that person's life at risk, and recommending the Swedish authorities not to deport the complainant to Iraq.

2.3 The complainant claims that the situation in Iraq remains extremely violent and instable. Due to the chaotic situation there, it is unlikely that he can get protection from the authorities.

The complaint

3. The complainant claims that his deportation to Iraq would constitute a violation of article 3 of the Convention, as he has a strong fear of being punished with death or being tortured or exposed to inhuman or degrading treatment because of the general situation in Iraq, the fatwa, and the fact that he applied for asylum in Israel and has been accused of having collaborated with Judaism.

State party's observations on the admissibility and the merits

4.1 On 5 July 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party indicates that the complainant entered Sweden on 20 September 1999 and applied for asylum on 23 September 1999. He has provided conflicting information at different stages of the asylum proceedings.

4.2 During his initial interview held upon arrival, he stated that he belonged to an oppressed family in Iraq, and that following the Intifada, both he and two of his brothers were wanted by the police. After his brothers left the country, he became a wanted person because his brothers were considered as traitors. He left Iraq in 1995 and went to Lebanon, where he temporarily received refugee status. In 1997, he left Beirut on a boat, but the boat went astray and ended up in Israel, from where he was expelled to Lebanon. In reply to a direct question from the interviewer, the complainant stated that he had not been politically active and had not been a member of any political party. He added that he had been detained from January to November 1983 and had been accused of not informing the authorities about the relatives' membership in a political party. During the interrogations while in detention, he was battered by the Iraqi police.

4.3 In an interview on 17 November 1999, the author added that he had joined the INC (Iraqi National Congress) in 1992 and that he had been involved in the attempts to form a new government in Salahaddin. On 10 May 2000, the Immigration Board rejected the complainant's application for asylum and ordered that he should be expelled to the Netherlands in accordance with the Dublin Convention¹. It stated that the author had provided false or contradictory information concerning his travel route to Sweden, that he had absconded from the asylum proceedings in the Netherlands, and that he had omitted to inform the Board of these proceedings.

4.4 On 20 June 2000, the complainant was arrested by the Swedish police, as he was suspected of smuggling heroin and aggravated drug offence. By a judgment of 7 March 2001 of the District Court of Norrköping, the author was convicted as charged. Fourteen other men were also convicted in this context. The Court considered the complainant and two of his brothers to be the leading organisers of systematic criminal activities involving smuggling, sale and re-sale of heroin². He was sentenced to eight years imprisonment and the Court ordered his expulsion from Sweden with a permanent prohibition to return. When determining the length of imprisonment, the Court took into consideration the inconvenience the expulsion would cause him. Because the Immigration Board had considered that he could be expelled to the Netherlands, no assessment was made with respect to a potential expulsion to Iraq. In a judgment of 8 June 2001, the Göta Court of Appeal upheld the author's conviction and sentence. On 9 July 2001, the Supreme Court denied the author leave to appeal.

4.5 On 25 March 2003, the complainant requested the Government to cancel the expulsion order, on the grounds that absolute impediments under chapter 8, section 1, of the Aliens Act³, were at hand. He stated that he had received information that he would not be granted entry to the Netherlands and that he would therefore be expelled to Iraq, where he would face death penalty, because he was involved in a family feud. On 17 July 2003, the Government rejected his request for cancellation of the expulsion order, as it found no impediments against enforcement of the expulsion order.

4.6 On 7 December 2004, the author lodged a new application for asylum and a residence permit. An in-depth interview was held with the author on 1 December 2004, in the presence of counsel. He stated *inter alia* that when he left Lebanon by boat in 1997, he had been discovered by Israeli ships and taken to Israel for interrogations. He claimed that he would be regarded as an Israeli spy by the Iraqi authorities and that it is generally believed in Iraq that he has converted to Judaism. According to Islamic laws, followers of Judaism shall be

¹ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

² The Court also noted that the availability of heroin in Norrköping had increased and the prices had decreased after the complainant's organization had been established, and that the availability of heroin had decreased and the prices increased after the arrest of the complainant and his accomplices.

³ According to Chapter 8, section 1, of the 1989 Aliens Act (in force at the time the complainant's case was considered), there was an absolute impediment against expelling an alien to a country where there were reasonable grounds to believe that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment. A risk of persecution would also generally constitute an impediment against enforcing an expulsion decision.

sentenced to death and executed. The complainant himself does not regard Jews as human beings. A fatwa was issued against him, which allowed his wife to divorce him without his permission.

4.7 On 19 January 2005, the Migration Board rejected the author's application for asylum and a residence permit. The Board stated that the situation in Iraq was not such that there was a general need for protection or that there was reason to grant residence permits on humanitarian or other grounds. It considered that there was no oppression or persecution of citizens by the central governmental authorities after the fall of the former totalitarian regime. The Board also found it unlikely that incidents which had taken place nearly ten years earlier would be associated with the author or attract any interest from people in general or religious communions in Iraq. The Board considered that the complainant would be able to turn to local authorities for protection if needed and concluded that he was not in need of protection in Sweden. The Aliens Appeals Board, after assessing the general situation in Iraq and the author's particular situation, upheld the decision on 5 September 2005.

4.8 On 13 October 2005 the complainant again requested the Government to cancel the expulsion order issued by the District Court of Norrköping and the Göta Court of Appeal. On 10 November 2005, his request was rejected. On 21 October 2005, the author was conditionally released from penitentiary detention, but was taken into detention awaiting his expulsion to Iraq. Steps were taken to carry out the expulsion on 17 January 2006.

4.9 Further to the Committee's request for interim measures under Rule 108 of the Committee's Rules of Procedure, the Minister decided to stay the enforcement of the expulsion order pending the Committee's consideration of the case. The complainant remained in detention due to his personal circumstances and to the risk that he would go into hiding or engage in criminal activities in Sweden if released. The complainant challenged the decision of the Minister of Justice to keep him in detention but the Administrative Supreme Court upheld the decision on 27 March 2006. A new application for asylum under the temporary wording of the 1989 Aliens Act was also rejected without having been considered on the merits.

4.10 On the admissibility, the State party indicates that it is not aware of the present matter having been submitted to another procedure of international investigation or settlement. It also acknowledges that domestic remedies have been exhausted in this case. Finally it argues that the claim that the complainant is at risk of being treated, upon return to Iraq, in a manner that would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention.

4.11 On the merits, the State party contends that the communication reveals no violation of the Convention. The State party refers to the Committee's jurisprudence⁴ that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.

⁴ Communication No.213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3

4.12 The State party recognises that the general political and security situation in Iraq remains unstable in large parts of the country and that much reconstruction is still needed. The central and western Sunni-dominated areas, including Baghdad, are those most affected by violence, but southern Iraq and the region around Basra are also insecure. Violence between Iraqis with sectarian overtones has increased. However northern Iraq is regarded as relatively secure. The general elections that were held on 15 December 2005 moved the political process in Iraq into a new phase, and Iraq has now a democratically elected government with a four-year mandate. Iraq has ratified several human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

4.13 The State party concludes that the situation in Iraq is such that there is no need for protection as defined in the 1989 Aliens Act or that the situation is such that there is reason to grant residence permits on humanitarian or other grounds. This applies in particular to the areas in northern Iraq that have been under Kurdish control since 1991. Moreover, many Iraqis have voluntarily returned to their country of origin after the fall of Saddam Hussein's regime.

4.14 As to the *personal risk* of torture, the State party draws the Committee's attention to the fact that several provisions of the 1989 Aliens Act reflect the same principle as the one laid down in article 3, paragraph 1, of the Convention, in particular Chapter 8, section 1, of the Act.⁵ It refers to the Committee's jurisprudence⁶ 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. In addition, it is for the author to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable⁷.

4.15 The State party understands the communication to be founded primarily on the claim that the complainant risks being arrested, tortured and executed upon return to Iraq as a consequence of the incidents which allegedly took place in 1997 in Israel and Lebanon. The State party recalls that the complainant's account of the incidents in 1997 have been the subject of assessments by the Migration Board in 2004 and by the Aliens Appeals Board in 2005. Moreover, the issue of impediments to expulsion has been assessed by the Government in 2003 and 2005. On both occasions the Government found that there were no impediments to expulsion. All those authorities have come to the conclusion that the complainant would *not* be at risk of being subjected to torture if he were expelled to Iraq.

4.16 The State party claims that the complainant's return to the State party would not entail a violation of article 3 of the Convention. It submits that it is unlikely that an alleged incident which took place nearly ten years ago would be associated with the author or attract any interest in Iraq. If the complainant would experience problems in southern Iraq, he would have the possibility of going to northern Iraq, where he lived before he left his country.

⁵ See footnote 3 above.

⁶ Communication No.103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

⁷ Communication No.103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.4, and Communication No.150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para.6.4.

4.17 In addition, the State party submits that there are serious doubts about the complainant's general veracity. His account of the events contains a number of inconsistencies and shortcomings. Although the State party is aware of the Committee's view that complete accuracy can seldom be expected from victims of alleged torture, it considers that the inconsistencies must be held against him in an assessment of his credibility. The State party refers to the complainant's contradictory or false information concerning his travel route to Sweden, and to his absconding from, and omission to inform the Swedish authorities of, the asylum proceedings in the Netherlands. When he was confronted with this information, he admitted that he had applied for asylum there, but opposed being expelled to that country. The complainant also submitted contradictory information concerning his wife and divorce.

4.18 The State party submits that the complainant has not provided any substantial evidence as to the events in 1997, or of his claim that he is widely known to the Iraqi people or the religious communions in Iraq. He has not presented any tangible evidence that a fatwa has been issued against him. The lack of evidence should be noted in view of the fact that during the asylum proceedings the complainant provided clearly conflicting information on essential aspects. In addition, it refers to counsel's submission and Professor H.'s statement that the fatwa is not specifically issued against the complainant.

4.19 The State party argues that the complainant has a weak link to the Swedish society and that he stayed in Sweden as an asylum seeker for a period of only nine months before being arrested and convicted for smuggling of heroine and aggravated drug crimes to eight years imprisonment. According to a taped telephone conversation between the author and his mother invoked by the prosecutor as evidence in Göta Court of Appeal, the main purpose of his stay in Sweden was "business".

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 On 28 July 2006, counsel commented on the State party's observations. On the admissibility, counsel refutes the State party's claim that the communication fails to rise to the basic level of substantiation required for purposes of admissibility. She refers to UNHCR's earlier refugee statement and the letters from Professor H. and the President of the Swedish Muslim Association. She maintains that there is a great risk that the complainant will be tortured or even killed if forcibly returned to Iraq and claims that the communication is admissible.

5.2 On the merits, counsel refutes the State party's argument that an incident which took place ten years ago would not be of interest of the people in general or from religious communions in Iraq. She refers to Professor H.'s and the President of the Swedish Muslim Association's conclusions.

5.3 On the complainant's credibility, counsel submits that many asylum seekers fail to disclose their travel route, for various reasons. She submits that this does not however mean that the asylum seeker is untrustworthy. She invokes the principle on the benefit of the doubt and refers to UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (paras. 203 to 205)⁸. She adds that the complainant's statement is coherent and plausible and

⁸ (2) Benefit of the doubt

203. After the applicant has made a genuine effort to substantiate his story there may still be a

does not run counter to generally known facts. It is a fact that he and others were on Israeli television and that a fatwa can and probably will be used against him.

5.4 On the State party's contention of lack of evidence, counsel refers to UNHCR's handbook⁹, according to which it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. The complainant immediately informed the Swedish authorities of the 1997 events and the consequences they may have on him. Counsel refers to Professor H.'s correspondence, where he stated that on the basis of the facts relating to the complainant, he could not provide a confident assessment of the risks that he may face if forcibly returned to Iraq. However, he indicated that due to the fatwa and the complainant's time in Israel, he could be in danger if returned.

5.5 Counsel criticises the State party's reference to the taped telephone conversation, which was quoted out of its context. The complainant's link to Sweden is not weak. His mother, brother and sister live here, while he has no relatives left in Iraq.

5.6 Counsel argues that the complainant has committed a crime and has been sentenced to 8 years imprisonment. He has served his time and according to a Swedish concept of justice,

lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

(3) Summary

205. The process of ascertaining and evaluating the facts can therefore be summarized as follows:

(a) The applicant should:

- (i) Tell the truth and assist the examiner to the full in establishing the facts of his case.
- (ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence.
- (iii) Supply all pertinent information concerning himself and his past experience in as much detail as is necessary to enable the examiner to establish the relevant facts. He should be asked to give a coherent explanation of all the reasons invoked in support of his application for refugee status and he should answer any questions put to him.

(b) The examiner should:

- (i) Ensure that the applicant presents his case as fully as possible and with all available evidence.
- (ii) Assess the applicant's credibility and evaluate the evidence (if necessary giving the applicant the benefit of the doubt), in order to establish the objective and the subjective elements of the case.
- (iii) Relate these elements to the relevant criteria of the 1951 Convention, in order to arrive at a correct conclusion as to the applicant's refugee status.

⁹ See above.

a person who has served his punishment is free of guilt. He was also sentenced to expulsion. However, the complainant was to be expelled to the Netherlands, not to Iraq.

5.7 Counsel contends that the situation in Iraq remains extremely violent and instable. Different kinds of sabotages occur every day and different groups are fighting concerning the new regime and there are still violent demonstrations on the foreign military presence in the country. 100 Iraqi citizens are killed every day and at the date of counsel's comments, over 6.000 civilians had been killed the previous two months. Due to the well-known chaotic situation in Iraq, it is unlikely that the complainant can be given protection in Iraq.

5.8 On the State party's contention that the complainant could live in Kurdistan, counsel submits that the complainant is originally from Al Quasem, 100 kilometres outside Bagdad. Because of harassments he was subjected to due to his family's political involvement, he moved to the northern parts of Iraq during the period of 1992-1995. While living there he was accused of being a spy and was even arrested by the Kurds. The situation in Kurdistan for a Shiaa Arab is not better than in the rest of Iraq. Arabs are given a three months residence permit and thereafter have to report to the police. After the invasion thousands of families have been forcibly deported from Kurdistan.

Issues and proceedings before the Committee

6. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee further notes that the State party does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies and that the complainant has sufficiently substantiated his allegations for purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether the complainant's removal to Iraq would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Iraq, the Committee must take account of all relevant considerations, 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. 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.

7.4. The Committee recalls its general comment on the implementation of article 3, 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"¹⁰.

7.5 In the present case, the Committee observes that the complainant's allegations that he would risk being tortured if returned to Iraq rely on the fact that he applied for asylum in Israel in 1997, that he has been accused of having converted to or collaborated with Judaism, and on the general situation in Iraq. The Committee notes the State party's allegations that the complainant has failed to produce evidence as to the events in 1997, as to his claim that he is widely known to the Iraqi people or the religious communions in Iraq. The Committee notes in particular that the complainant has not converted to Judaism and that there is no indication as to who accused him of having done so, nor any evidence that he is believed in Iraq to have done so, or to have applied for asylum in Israel.

7.6 The Committee has taken note of the complainant's argument that he was sentenced to expulsion to the Netherlands and not to Iraq. The Committee observes however, and is satisfied, that during the asylum proceedings, the Swedish authorities assessed the consequences of a removal to Iraq.

7.7 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Iraq would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

8. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Iraq does not reveal a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

¹⁰ A/53/44, annex IX, para. 6.