

Kaveh Yaragh Tala v. Sweden, Committee against Torture, Communication No. 43/1996, U.N. Doc. CAT/C/17/D/43/1996 (1996).

Views of the Committee against Torture under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

- Seventeenth session -

concerning

Communication No. 43/1996 *

Submitted by: Mr. Kaveh Yaragh Tala [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 7 March 1996 (initial submission)

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

Meeting on 15 November 1996,

Having concluded its consideration of communication No. 43/1996, 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 the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Mr. Kaveh Yaragh Tala, an Iranian citizen born on 18 August 1969, currently residing in Sweden. He claims that his return to Iran would constitute a violation of article 3 of the Convention against Torture by Sweden. He is represented by counsel.

Facts as presented by the author

2.1 The author states that he became politically aware in the summer of 1985, and through a friend of the family started to become involved with the People's Mujahedin Organization of Iran. He took part in activities like painting slogans and distributing leaflets late at nights. From September 1986 on, he also acted as a contact between the friend and two army officers. At the end of 1986, he began listening to PMOI broadcasts in order to write down messages to certain codes and to hand them to a contact person.

2.2 In February 1987, the author was forced to do his military service. He was assigned to the maintenance section of the Revolutionary Guards headquarters. After some time he began to deliver information like transport routes for ammunition and armaments, location of ammunition and underground storages, etcetera, to the PMOI. The author also stole and delivered to the PMOI some 20 blank passes, with which vehicles could move around freely without being checked at check points.

2.3 In March 1989, the author was stopped when leaving the quarters and found with two blank passes on him. He was arrested, beaten and kicked, and brought to the underground prison No. 59 of the security service of the Revolutionary Guards. There he stayed for three and a half months, during which period he was interrogated about 25 times. During each interrogation he was maltreated and tortured. During the last interrogation, he was told to lie down on his stomach and then felt a hot metal object against his thighs before he passed out. When his wounds became infected, he was brought to Khatam-al-anbia hospital, where he stayed under guard for four weeks.

2.4 After being released from hospital he was moved to prison No. 66 of the Revolutionary Guards. There he managed to get a message out to his parents and on 11 August 1989 he was released awaiting trial. Apparently, his father had bribed the man in charge into accepting the registration papers of the family house as bail; the author adds that normally political prisoners are not released on bail. The author had to report at the prison every third day.

2.5 After about a week, he received a message from his contact in PMOI which he interpreted as a warning. He went into hiding in Shiraz and later in Boosher. After about six months he contacted his brother-in-law through a friend and learned that he was wanted by the Revolutionary Guards, that they had searched the family house and arrested his parents for questioning. Apparently, the Revolutionary

Guards also found some secret material that the author had hidden, and arrested his contact man. The author then decided to leave the country, contacted a smuggler, and, at the end of June 1990, left from Bandar Abbas by boat to Dubai and from there by plane to Stockholm, via Amsterdam and Copenhagen.

3.1 The author arrived in Sweden on 7 July 1990 and requested asylum. He was briefly interrogated by the police. On 3 September 1990, the author was again interrogated by the police, at which occasion he told them about his activities for the PMOI, but not about the torture and maltreatment, and the circumstances of his release. On 26 November 1990, the Immigration Board decided to refuse the author's application for asylum and ordered his expulsion from Sweden, because of the contradictions in his statements.

3.2 During the appeal, the author applied to the Government for a change of counsel, because of unsatisfactory cooperation. This was granted on 19 March 1991. According to the author, the new counsel was the first one who really listened to him. In his plea, he gives the true story of the author, including the torture, and he presented a doctor's certificate. Nevertheless, the Aliens Appeal Board rejected the author's appeal on 3 July 1992. The Board acknowledged that the author had now given a full and consistent description of his political activities, detention and torture, but considered that he lacked credibility, since he changed his story regarding his route to Sweden, the passport used and his arrest and military service.

3.3 The author's new application to the Immigration Board, explaining how the contradictions had resulted from misunderstandings with his first counsel, and submitting a new medical certificate, was rejected on 1 October 1992, since the Board considered that he had not invoked any new circumstances.

3.4 On 10 August 1995, the author submitted a new application to the Aliens Appeal Board. New evidence was presented, such as a certificate from Mujahedin Sweden that the author had been a Mujahedin activist and medical evidence from the Centre for Torture and Trauma Survivors in Stockholm, testifying that the scars and marks on the author's body are in conformity with his allegations of torture, and that the author suffers from Post Traumatic Stress Disorder. The Aliens Appeal Board rejected the application on 25 August 1995, reasoning that the author had to a large extent invoked circumstances that already had been considered. The Board pointed out inconsistencies in the author's explanations on how the injuries from torture had been caused. According to the Board, the author's scars and marks did not show that the author had been tortured in prison. With this decision, counsel argues, all domestic remedies have been exhausted.

The complaint

4.1 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, he will without doubt be subjected to torture upon his return, he should only be returned to Iran if it is beyond reasonable doubt that the author's claim is false. In this context, counsel explains that the Swedish authorities expect an applicant to give the full story of his claim the day he arrives in Sweden. Counsel states that this demand is not justified for persons who flee persecution, who for years have been living in a climate of distrust. Asylum seekers, counsel states, behave initially in an irrational and inadequate way, do not trust anybody and are only ready to tell their true and complete story after having been in the country for some time. Counsel considers therefore absurd the Government's opinion that since the person has had his chance at the beginning, whatever he invokes later on is not trustworthy, and argues that in some cases new statements have to be accepted as trustworthy in spite of the fact that the story has been incoherent, inconsistent and contradictory in the beginning.

4.2 In the instant case, counsel acknowledges that inconsistencies in the author's story exist. Nevertheless, she points out that in his very first interview with the police he already gave the core of his story, namely that he was afraid of being arrested by the Revolutionary Guards because he had cooperated with persons suspected to be opponents. Since his first counsel did not gain the author's confidence, the inconsistencies continued. Only later, the author understood he should tell the complete story, and he was able to do so once he found counsel in whom he could trust.

4.3 Counsel recalls that the medical findings confirm the author's story that he has been tortured, but that the Appeal Board, although not denying the existence of the scars, concluded that they were not caused by torture in prison. Counsel points out that the author's injuries are not of the kind that one could receive in an accident, and is at a loss as to how the Appeal Board thinks they have been

inflicted. Counsel acknowledges that, without a credible eyewitness or a video recording of the torture, it is impossible to establish with full certainty that scars and marks on a person's body are indeed a result of torture, but argues that the judgment thereof should be entrusted to medical experts, not to persons who have no qualifications to judge medical findings.

4.4 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 recalls that he has been working for the Mujahedin, the opposition group most hated and feared in Iran. According to reports the mere possession of a Mujahedin leaflet is sufficient reason for arrest and persecution. From 1987 to 1989 he has been leaking classified information to the Mujahedin. Although the authorities suspected this, they did not have enough proof at the time they detained him. However, by the time he left the country, the Revolutionary Guards had searched his home and found all the proof they wanted. If the author is forcibly returned to Iran without passport, he will be arrested to establish his identity and to check his record. Then his political background will be revealed and his life will be in danger.

4.5 In this context, the author claims that a consistent pattern of gross and massive violations of human rights exists in Iran, which according to article 3, paragraph 2, of the Convention should be taken into account by a State party when deciding on expulsion. The author refers to reports by the UN Special Representative of the Commission on Human Rights, which attest to a continuing violation of all basic human rights.

State party's submission and counsel's comments

5.1 By submission of 30 May 1996, the State party informs the Committee that, following its request under rule 108, paragraph 9, the National Immigration Board has decided to stay the expulsion order against the author.

5.2 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. For the determination of refugee status there are normally two instances, the Swedish Immigration Board and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government by either of the two boards. Chapter 8, section 1, of the Act corresponds with article 3 of the Convention against Torture and states that an alien, who has been refused entry or who shall be expelled, may never be sent to a country where there is firm reason to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from being sent on to a country where he would be in such danger. Further, under chapter 2, section 5, subsection 3, of the Act, an alien, who is to be refused entry or expelled, can apply 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.

5.3 As to the facts of the instant case, the State party explains that the author arrived in Sweden on 7 July 1990 and applied for asylum when interrogated by the police. He had no passport and his identity was unclear. He stated that he had not been politically active but that he had carried out propaganda for the royalists when fulfilling his military service. He also said that he had travelled from Iran through Turkey to Sweden. The day after his arrival, a letter was found at the airport addressed to the author at a Swiss address, containing a false Spanish passport with the author's photograph in it. When questioned, the author stated that it could have been the passport used for him by the person who helped him to get to Stockholm. The person and he were allegedly separated at the airport in Copenhagen. No further explanations were given by the author about the Swiss address.

5.4 Since then, the State party submits, the author's invoked grounds for political asylum have changed considerably. The State party submits that his statements at different points in time have been inconsistent and contradictory. Furthermore, it was not until his appeal that he made any statements regarding having been tortured. The State party emphasizes that all interrogations took place with an interpreter in the author's own mother tongue.

6. The State party argues that the communication is inadmissible for being incompatible with the provisions of the Convention. It also contends that an argument can be made that domestic remedies have only been exhausted once the expulsion order has been carried out.

7.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the case of *Mutombo v. Switzerland* 1, 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.

7.2 The State party refers to its own legislation which reflects the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. 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 as being incompatible with article 3 of the Convention.

7.3 The State party 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 for the Committee to determine whether the situation in Iran amounts to a consistent pattern of gross, flagrant or mass violations of human rights.

7.4 As regards its assessment 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 its immigration board and the appeals board. The National Immigration Board, in its decision of 26 November 1990, found that the elements provided by the author were inconsistent and therefore not trustworthy. The Aliens Appeal Board, on 3 July 1992, also found that the circumstances invoked by the author at the appeal were not trustworthy. It noted that the author had changed his story several times and that he now for the first time alleged that he had been tortured.

7.5 On 11 August 1995, the author filed an additional new application with the Aliens Appeal Board. In support he invoked a certificate from Mujahedin's Sympathizers Association (MSA), a copy of an alleged notice obliging him to report and an examination report by the Center for Tortured and Traumatized (CTD). At the hearing, the author stated that he ceased to cooperate with the MSA because it had collaborators in its organisation. The Appeal Board, after having made an overall assessment of the author's statements, found that he was not trustworthy in his claim for a right to asylum.

7.6 As regards the medical evidence, the Board noted that the author had given contradictory statements as to how the injuries were caused, whether by a hot metal object or by a gas burner, whether by a key or a knife. The Board concluded that "against the background that Yaragh Tala on several occasions has given very detailed and exhaustive statements regarding the torture he claims to have been exposed to, the contradictory statements may, in the board's opinion, indicate that the injuries have been caused in another way than he has stated. Although the injuries per se are documented, they do not in the Board's opinion show that Yaragh Tala has been tortured when in detention."

7.7 The State party submits that on the basis of the above mentioned decisions, it has concluded that the author is of no interest to the military or police authorities in Iran and that the facts he has invoked do not substantiate his assertion that he has been exposed to torture and that he risks torture upon his return to Iran.

7.8 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 or torture. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

8.1 In her comments on the State party's submission, counsel for the author takes issue with the State party's suggestion that domestic remedies are not exhausted until the author has actually been deported. She states that it would then be too late to seek any effective remedy. She further argues that the elements provided by the author make his communication compatible with the provisions of the Convention.

8.2 Counsel points out that the Aliens Appeal Board apparently had some hesitations as to the author's political background and requested the Swedish embassy in Teheran to verify the facts as presented by the author, including the sketches he had made of the Revolutionary Guards' headquarters. In its reply, the embassy refused to judge the personal trustworthiness of the author but confirmed that it might well be possible to bribe oneself out of prison even in political cases. Counsel argues where the Appeals Board had real doubts about the author's expulsion, he should have benefitted from these, especially since at the appeal he had presented a credible, consistent, detailed and thorough description of his asylum claim. It is argued that the authorities have used the untrue statements given by the author in the beginning to completely disqualify him for asylum in Sweden regardless of what he later presented, contrary to UNHCR's handbook article 199, which states that untrue statements by

themselves are not a reason for refusal of refugee status, and that it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

8.3 Counsel further refers to article 198 of the Handbook, that persons who have been persecuted may be afraid to give a full account to the authorities. Counsel acknowledges that the author's case depends completely on his credibility. He gave untrue statements and his statements were also contradictory and inconsistent. She states that only the human and psychological factor might explain his conduct. "A man fleeing from a cruel and relentless regime against which he has been fighting and which had subjected him to cruel torture cannot be expected to behave in a rational way once he has managed to escape from his tormentors. It will take time for him to collect himself enough to understand that he is spoiling his right for protection and that he must come up with his complete and true story."

8.4 Counsel contends that in spite of the initial doubts regarding the author's trustworthiness, he has thereafter presented a credible, consistent, thorough and detailed description. Considering his history of torture and persecution, counsel argues that his initial failure is explainable and excusable.

8.5 Counsel concludes that the return of the author 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

9. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all domestic remedies available to the author have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

10.1 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Tala 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; additional grounds must exist to show 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.

10.2 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 Immigration Board (26 November 1990) and the Aliens Appeal Board (3 July 1992 and 25 August 1995) in the author's case 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) was in fact applied to the author's case.

10.3 In the instant case, the Committee considers that the author's political affiliation with the People's Mujahedin Organization 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 contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that the inconsistencies as exist in the author's presentation of the facts do not raise doubts about the general veracity of his claims, especially since it has been demonstrated that the author suffers from Post Traumatic Stress Disorder. Further, the Committee has noted from the medical evidence that the scars on the author's thighs could only have been caused by a burn and that this burn could only have been inflicted intentionally by another person than the author himself.

10.4 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.

10.5 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.

11. 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. Kaveh Yaragh Tala 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.]