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COMMITTEE AGAINST TORTURE
Twenty-first session
(9-20 November 1998)

VIEWS

Communication No. 97/1997

Submitted by:	Orhan Ayas [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	26 November 1997
Date of adoption of views:	12 November 1998

[See annex]

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* Made public by decision of the Committee against Torture.

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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 - TWENTY-FIRST SESSION

concerning

Communication No. 97/1997

Submitted by:	Orhan Ayas [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	12 November 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 12 November 1998,

Having concluded its consideration of communication No. 97/1997, 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, her counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Orhan Ayas, a Turkish citizen born in 1973, currently residing in Sweden where he is seeking asylum. He claims that his forced return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

Facts as presented by the author

2.1 The author is a Kurd born and raised in Midyat, south-east Turkey. His family has been known to the Turkish authorities for a long time because several family members and friends have been involved in the activities of the PKK (Partya Karkeren Kurdistan, Kurdistan Workers Party). They also owned two cafes which were meeting places for PKK sympathizers. As a result, members of the family have frequently been subjected to arrest and interrogation. The frequency as well as the gravity of the intimidation increased in the late 1980s, after one of the author's brothers fled the country because of his political activities. In 1991, when the author was 18, he was arrested three times by the military police and interrogated,

inter alia, about his brother's activities abroad. On these occasions, the author states that he was blindfolded and subjected to different methods of torture such as beatings, being hung by his arms, hit on the soles of the feet, hosed with high-pressure ice cold water and deprived of food. He also says that he still has scars from this treatment. In 1991 he left Midyat and went to Antalya, where he shared an appartment with four members of the PKK.

2.2 In July 1992 he was arrested by the police, together with some Kurdish friends, and kept in detention for two days during which he was interrogated about his activities in Antalya and beaten. He was also pushed down stairs as a result of which he injured one of his eyes. In August 1992 he participated in the organization of a non-authorized Kurdish festival. Two of the organizers were arrested and subsequently sentenced to prison terms. As the police were looking for him, the author fled to Istanbul where he went into hiding until he managed to leave the country.

2.3 The author arrived in Sweden in February 1993 and applied for asylum. On 28 March 1994 the Swedish Immigration Board rejected the application on the grounds that the information submitted lacked credibility. The Board gave the following reasons for its assessment: (a) The author had destroyed his passport and refused to reveal in what name and for what nationality it had been issued; (b) he had not left Turkey immediately after the event that he claimed had led to his flight; (c) he had failed to make a convincing case that the authorities were interested in him, since he had stated that he was not himself politically active.

2.4 The author appealed to the Aliens Appeal Board claiming that he was afraid that the persons who had assisted him to flee could be in trouble if he revealed any information about the passport. For that reason he had decided to follow their instructions and destroyed it. He reiterated that immediately after the arrest of his two friends he had gone into hiding until his family could arrange for his flight from Turkey. He also stated that in September 1993 one of his brothers was arrested and sentenced to 15 years' imprisonment for his activities with the PKK. The author was informed by his family that, in that context, the police had searched for him at his home in Midyat and beaten his father and younger brother. In support of his claim the author submitted a newspaper article regarding the incident in which his brother was arrested. He also submitted a transcript of a court hearing concerning the friends who had been arrested during the festival.

2.5 On 2 January 1995 the Aliens Appeal Board rejected the appeal for lack of credibility, in view of the fact that the author had waited two days before he applied for asylum and that he destroyed the passport with which he had arrived in Sweden. Moreover, the Board stated that the transcript of the court hearing did not confirm that the author had been politically active.

2.6 The author submitted a new application in which he disclosed, for the first time, that he himself had actively supported the PKK. He explained that his relatives had strongly advised him not to reveal any connection with the PKK because of the risk of being considered a “terrorist” by the Swedish authorities. The author also submitted the verdict of a military court which showed that in 1993 he had been sentenced in absentia to five years’

imprisonment for his activities and affiliation with the PKK. He had been sent the verdict by his father in Turkey. On 7 March 1995 the Aliens Appeals Board rejected the new application. The Board found that the author's explanation of why he had not revealed his affiliation with the PKK at an earlier stage was not credible and questioned the authenticity of the verdict of the military court.

2.7 The author filed a second new application in which he requested that the Board clarify its grounds for challenging the authenticity of the verdict. This application was also turned down. The Board pointed out that military tribunals no longer handled that type of case in Turkey and noted that the stamps on the document were inconsistent with Turkish law.

2.8 The author changed counsel and filed a third new application based on the medical examinations performed by a psychiatrist and a forensic expert from the Centre for Torture and Trauma Survivors (CTD) at the Karolinska University Hospital in Stockholm. The medical reports indicated, inter alia, that the author suffers from post-traumatic stress syndrome which can be attributed to his having been tortured and that the claim of torture appeared to be entirely credible. The author also submitted a transcript of the Security Court decision in which his brother was sentenced to 15 years' imprisonment for his connections with the PKK. One of the accused before the court disclosed that the author, who was mentioned by name, had participated in an unlawful fund-raising transaction for the PKK. The author also pointed out that the verdict of the military court had been handed down in 1993, at a time when the military courts were still competent in such cases. This new application was rejected on 1 September 1997 on the grounds that the author lacked credibility. As for the medical evidence, the Board considered it insufficient to conclude that the author's injuries had been caused by torture.

The complaint

3.1 The author's counsel argues that the Swedish authorities have based their decisions not to grant asylum on their assessment that the author lacks credibility; however, they have overlooked the factors explaining his behaviour and attitude. For instance, he was only 20 years old when he arrived in Sweden. Prior to his arrival he had lived a long time under severe stress and had a well-founded fear of persecution. In this context, he was instructed by the persons who assisted him to flee to destroy the passport with which he arrived and not to reveal the name on the passport. It could not be expected that, at this point, he would be in a position to understand the weight the Swedish authorities would attach to these circumstances. He applied for asylum on the second day after his arrival, which can hardly be considered a significant delay. His relatives strongly advised him not to reveal any personal link with the PKK because of the risk of being considered a terrorist by the Swedish authorities. During the initial interview the author explained the basic elements that had provoked his flight to Sweden. These are not inconsistent with his subsequent amendments.

3.2 Contrary to article 3, paragraph 2, of the Convention, the Swedish authorities have not taken into account all relevant circumstances in their assessment of a future risk of torture. They have, moreover, attached

unreasonable weight to circumstances which they consider reduce the credibility of the author's story as opposed to the substantial grounds submitted in support of his claim. The circumstances in the case, including the existence of a consistent pattern of gross violations of human rights in Turkey and the fact that the author is a victim of torture, clearly show that his return to Turkey would expose him to a particular risk of being subjected to torture again.

State party's observations

4.1 On 26 November 1997 the Committee, acting through its Special Rapporteur for new communications, transmitted the communication to the State party for comments and requested the State party not to expel the author to Turkey while his communication is under consideration by the Committee. In its submission to the Committee the State party indicates that, following the Committee's request, the Swedish Immigration Board decided to stay the enforcement of the expulsion order until further notice, pending the Committee's final decision on the matter.

4.2 With respect to the admissibility of the communication, the State party submits that, in accordance with the Aliens Act, a new request for a residence permit may be lodged with the Aliens Appeals Board at any time, provided that new circumstances likely to call for a different decision are raised. Moreover, on the basis of its arguments on the merits, the State party maintains that the communication is incompatible with the provisions of the Convention and should therefore be considered inadmissible.

4.3 As for the merits of the communication, the State party contends that, in determining whether the forced return of the author would constitute a breach of article 3 of the Convention, the following issues should be examined: (a) The general situation of human rights in Turkey; (b) the author's personal risk of being subjected to torture in Turkey; and (c) the foreseeable and necessary consequences of his return to Turkey.

4.4 With respect to the general situation of human rights in Turkey the State party submits, as a well-known fact, that arbitrary arrests, demolition of villages and torture are used in the fight against the Kurdish separatists. In its view, however, the situation is not so serious that it constitutes a general obstacle to the deportation of Turkish citizens of Kurdish origin. A large part of the Turkish population consists of persons of Kurdish origin. While many of them live in the south-east they are presently scattered all over the country where they are completely integrated into Turkish society in general. If an expulsion order is carried out with respect to a Turkish citizen of Kurdish origin, he or she will not be deported from Sweden to the Kurdish areas against his or her will, but to Istanbul or Ankara.

4.5 The Swedish authorities have clearly found no substantial grounds for believing that the author would be at risk of being subjected to torture upon his return to Turkey. They have not considered that the information about the author's political activities and torture is credible. Indeed, there are a number of elements in the author's story which give rise to doubts. In the initial investigation, following the first request for asylum, the author clearly stated that neither he nor his family had been engaged in political

activities. He also informed the authorities concerned that he did not leave Turkey immediately after the event that led to his flight from the country and that he had no documents on entry because he had destroyed them after his arrival in Sweden. Owing to these circumstances, the immigration authorities concluded that he had not made it credible that he was of interest to the Turkish authorities.

4.6 In a new submission the author claimed that he had been a member of the PKK engaged in political activities. This new claim, however, was not considered to be credible, nor was the explanation of why he had not revealed the information at an earlier stage of the proceedings. The authorities also questioned the authenticity of the document submitted by the author which he claimed showed that he had been sentenced to five years' imprisonment for political activities.

4.7 Furthermore, in his third new application to the Aliens Appeal Board the author claimed that his whole family was known to be opposed to the regime in Turkey and submitted a copy of a judgement pronounced on 31 August 1995 by a security court in Izmir by which one of his brothers was sentenced to 15 years' imprisonment for his connections with the PKK. He himself was mentioned in the judgement.

4.8 Information provided by the Swedish Embassy in Ankara, according to which tampering with the copy of the judgement cannot be ruled out, further undermines the author's general credibility. In a copy names and words can be deleted and replaced without detection. The author could easily have obtained and submitted an original or a duly authenticated copy of the judgement. Moreover, the author is not mentioned among the suspects, the condemned or the acquitted in the judgement, which means that he was not even prosecuted.

4.9 The medical reports fail to give sufficient support to the claim that the author's injuries were caused in the manner described by him. One of the doctors indicated in his written statement that the author was subjected to torture in 1987. However, the author himself did not assert this. No physical evidence has been found to confirm torture and it has not been possible with any certainty to connect any of the injuries to the alleged torture. It should also be noted that the author did not produce any medical evidence and did not undergo any medical examination until a late stage in the proceedings.

4.10 To sum up, the author has not substantiated his allegation that he would run a particular personal risk of being detained and tortured if he were to return to Turkey. If he wishes to avoid the disturbances that undoubtedly characterize the south-east region, he has the possibility of staying in another part of the country.

4.11 On the basis of the foregoing, the State party contends that the information which the author has provided does not demonstrate that the risk of being detained or tortured is a foreseeable and necessary consequence of his return to Turkey. An enforcement of the expulsion order to Turkey would therefore, in the present circumstances, not constitute a violation of article 3 of the Convention. Furthermore, as a consequence of the fact that

the author's claims lack the substantiation that is necessary in order to render the communication compatible with article 22 of the Convention, the present communication should be considered inadmissible.

Counsel's comments

5.1 In his comments on the State party's submission, counsel refers to the question of exhaustion of domestic remedies and states that there are no new circumstances that could justify filing a new application in accordance with the Aliens Act. All remedies, therefore, have been exhausted.

5.2 Counsel also refers to the statement that the author, if deported, would not be returned to south-east Turkey. In this regard it should be emphasized that persons suspected of affiliation to the PKK have no alternative but to flee abroad; the author faces a substantial risk of being subjected to torture anywhere in the country, regardless of which city he might be returned to. Moreover, any involvement with the PKK is considered as a very serious crime.

5.3 With respect to the changes made by the author when telling his story to the immigration authorities, counsel reiterates that the author did conceal facts during the initial interview. However, he provided a rational explanation as to why he did so. In addition, he gave an account of the main elements of his story and was able to provide evidence that the majority of his amendments were true. In view of the medical evidence substantiating that he has been tortured, those changes should not have a decisive effect on the author's general credibility.

5.4 The State party refers to a report by the Swedish Embassy in Ankara concerning the judgement pronounced by the Security Court in 1995 and concludes that tampering with the document cannot be excluded. The State party concludes this to mean that the document may have been altered; however, the opposite conclusion could equally be valid. To support its conclusion of possible tampering the Embassy states, inter alia, that the middle name of the author (i.e. Yusef) was not mentioned. It should be noted, however, that "Yusef" is the name of the author's father, as indicated in his identity document, and has incorrectly been attributed to the author by the Swedish authorities. The author does not have a middle name. It is also argued that the author's name is only mentioned once in the verdict and that he was not one of the prosecuted. It should be recalled, however, that this is a summary verdict concerning several defendants and that the author had already fled the country when it was issued. The verdict did not involve any persons who had not already been arrested. The action attributed to the author in the court decision falls under the anti-terrorist legislation and confirms, therefore, that the Turkish authorities would have an interest in him.

5.5 The State party stresses that the author did not request asylum immediately after his arrival. However, it has not given any explanation as to why this circumstance should affect the credibility of the author.

5.6 With respect to the assertion in one of the medical reports that the author had been tortured in 1987, counsel provides a copy of a written statement made by the psychiatrist on 13 May 1998 acknowledging that this was his mistake. Counsel also contends that the State party never sought an

expert review of the medical reports nor contacted the Centre for Torture and Trauma Survivors. This, however, should have been the logical thing to do in view of the doubts the authorities had expressed regarding the author's credibility.

5.7 In one of the applications the author requested that, if the Appeal Board had doubts as to the credibility of the information submitted, it should allow the author an oral hearing. The Board rejected the request without submitting any reasons. According to the Aliens Act such a hearing is mandatory upon request, unless it would be immaterial for the outcome of the case. Given that the Board's rejection was based on the author's credibility, it is difficult to understand how an oral hearing could be considered "immaterial for the outcome of the case".

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 is further of the opinion 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 with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Turkey 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 subjected to torture upon return to Turkey. 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. 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 indicating 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 is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country.

6.5 It is not in dispute that the author comes from a politically active family. Moreover, the Committee considers the explanations regarding his own political activities as credible and consistent with the findings of the medical reports according to which he suffers from post-traumatic stress syndrome and his scars are in conformity with the alleged causes. Although the author changed his first version of the facts he gave a logical explanation of his reasons for having done so. Hence, the Committee has not found inconsistencies that would challenge the general veracity of his claim.

6.6 In the circumstances the Committee considers that, given the human rights situation in Turkey, the author's political affiliation and activities with the PKK as well as his history of detention and torture constitute substantial grounds for believing that he would be at risk of being arrested and subjected to torture if returned to Turkey.

7. In the light of the above, the Committee is of the view that the State party has an obligation, in conformity with article 3 of the Convention, to refrain from forcibly returning the author to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.

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