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COMMITTEE AGAINST TORTURE
Twenty-second session
(26 April-14 May 1999)

VIEWS

Communication No. 112/1998

Submitted by:	H.D. [name deleted] [represented by counsel]
Alleged victim:	The author
State party:	Switzerland
Date of communication:	4 June 1998
Date of adoption of views:	30 April 1999

[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

TWENTY-SECOND SESSION

concerning

Communication No. 112/1998

Submitted by: H.D. [name deleted]
[represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 4 June 1998

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

Meeting on 30 April 1999,

Having concluded its consideration of communication No. 112/1998, 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 H.D., a Turkish citizen of Kurdish origin who was born in 1960. He has been refused refugee status in Switzerland and is threatened with being returned to Turkey with his wife and two children. He states that his return to Turkey would be in contradiction with Switzerland's obligations under article 3 of the Convention. He is represented by counsel.

The facts as presented by the author

2.1 The author is from the Pazarcik region of Turkey. He states that he was a supporter of the illegal PKK party as a student, but did not participate in specific activities apart from providing food and clothing to friends who were involved with the PKK. He says that one of his cousins, an active PKK member who had been imprisoned from September 1990 to April 1991, came to stay with him and his family after his release. On 14 and 15 May 1991, members of the security forces came to search for his cousin in his home. Not finding him, they arrested the author on 15 May and took him first to Pazarcik police

station, where he was beaten, and later to Maras, where he was questioned about his cousin's whereabouts and activities. He states that he was detained until 28 May 1991 and that he was tortured, in particular with electric shocks. He was released with the explanation that his cousin had been found.

2.2 On returning to Pazarcik, he learned that his cousin had been killed by the security forces. In the hospital he saw the body, which had been disfigured and mutilated. In the cemetery he tried to take a photo of the body, but an unknown person who, he believes, was connected with the security forces prevented him from doing so by throwing his camera on to the ground. On 5 June 1991, he was again arrested for a day. He was told that the security forces were aware of his support for the PKK, and was threatened with death if he refused to cooperate with the information service and denounce members of the PKK. Feeling that his life was in danger, he decided to leave the country and travelled to Istanbul on 14 July 1991.

2.3 On the day of his departure for Istanbul, persons in civilian clothes came to his home and asked his wife where he was. She told them that he was at work and was thereupon insulted and accused of supporting terrorists. She was then taken to the police station, where she was held for several hours and slapped. On 13 August 1991 she joined her husband in Istanbul.

2.4 The author arrived in Switzerland with his family on 20 August 1991 and immediately applied for asylum. The Federal Office for Refugees (ODR) rejected his application on 21 April 1992. On 17 January 1996, the Appeal Commission on Asylum Matters (CRA) rejected his appeal. The author submitted a request for review of the CRA decision, which was also rejected on 12 August 1996. Two requests for reconsideration were submitted to the ODR, which rejected them - on 5 September 1996 and 1 May 1998. Finally, on 19 May 1998, the CRA rejected the appeal against those decisions.

2.5 Counsel states that the author's flight would be largely inexplicable had it not been for the torture he had suffered and the pressure brought to bear on him to collaborate with the secret services. It should be borne in mind that his wife had been seven months pregnant when she left and the author had been financially well off in Turkey. A psychiatrist had found that the author was suffering from post-traumatic stress disorder caused mainly by his experiences prior to his arrival in Switzerland. Furthermore, the author and his family had lived illegally in Switzerland for more than two years, which had seriously undermined his psychological health. Had it not been for the certainty of being tortured in Turkey if he went back, his illegal stay in Switzerland remained unaccountable.

The merits of the complaint

3. In view of the reasons which prompted his departure from Turkey and the existence of a consistent pattern of flagrant persecution of Kurdish separatists by the Turkish authorities, the author states that his return to Turkey would constitute a violation of article 3 of the Convention, since there are substantial grounds for believing that he would be at risk of being subjected to torture upon his return.

The State party's observations on the admissibility and merits of the communication

4.1 In a letter of 19 August 1998, the State party informed the Committee that it had been unable to accede to the Committee's invitation of 23 June 1998, pursuant to article 108, paragraph 9, of its rules of procedure, not to expel or return the author to Turkey since he and his family had been missing since 15 September 1996. On 27 November 1998, the State party informed the Committee that the author and his family had reappeared and that the ODR had requested the immigration authorities of the Canton of Berne not to enforce the return while the present communication was pending before the Committee. The State party also indicated that it did not contest the admissibility of the communication.

4.2 As to substance, the State party notes that the author has, in his communication to the Committee, recapitulated the arguments he adduced in support of his application for asylum. In the latter he had stated that he had given financial support to active members of the PKK. In addition, he had provided them with food and clothing. He stated that he had been arrested for the first time in 1977 and that, in 1982, he had been put under pressure to cooperate with the Turkish information service. He claims that his return to Turkey would expose him to the risk of rearrest and torture (known as “deliberate persecution”).

4.3 According to the State party, the statements made by the author at his hearings before the ODR on 30 August and 2 December 1991 contained factual inconsistencies and contradictions. The private medical examination of 31 January 1998 - six and a half years after the deposit of his application for asylum - did not prove that the post-traumatic disorders had originated at a time prior to his departure from his country. Even if the author had been subjected to torture, the Swiss authorities considered that he would not be in danger of being subjected to “deliberate persecution” on his return to Turkey in view of, inter alia, the information obtained by the Swiss embassy in Ankara that the author was not wanted by the police and was not forbidden to hold a passport.

4.4 The competent Swiss authorities mentioned the lack of credibility of the author's statement that he had been tortured during his detention from 15 to 28 May 1991. In support of his communication, the author states, as he had previously done before the Swiss authorities, that on 15 May 1991 the security forces had come to his home looking for his cousin N.D. When they did not find his cousin, they allegedly took him to Pazarcik police station and then to Kahramanmaras, where they tortured him. During his hearing before the immigration authorities on 2 December 1991, the author stated that he had been beaten with rubber truncheons while blindfolded and with his hands bound. He had also allegedly been subjected to electric shocks. When questioned on this point, he had claimed that the electric wire had been attached to his toes and that his whole body had shaken. He had been able to describe in detail the appliance from which the electric shocks originated: “There was a sort of grip which they attached to my toes. There was also an appliance like a battery which they plugged in”. The ODR and CRA had noted certain inconsistencies in the author's account. He had allegedly been blindfolded while being taken to the place where he had been tortured, but he had

nevertheless been able to describe in detail the appliance which produced the electric shocks and the way in which it had been used, even though, in his own words, he had been blindfolded during the torture. In his communication, being aware of this contradiction, he claims that he had imagined the physical causes of the pain and had given a very general description of them. In that connection, he maintains that the Swiss authorities have completely ignored the normal functioning of memory. Irrespective of the validity of that objection, it should be recalled that the Swiss authorities had taken account of a large number of other inconsistencies in casting doubt on the author's credibility.

4.5 On 28 May 1991, after the security forces had found his cousin, the author had allegedly been released right away. The CRA had concluded therefrom, in its decision of 17 January 1996, that the Turkish authorities had not been interested in pursuing the author since only N.D. had been of interest to them. In its decision of 21 April 1992, the ODR had considered that the author would not have been released if the Turkish security forces had really suspected him of having supported the PKK. In any event, judicial proceedings would have been initiated against him and he would have been detained for longer than 14 days. In no circumstances would he have been released on the very day when N.D. was found.

4.6 Another point was that the author and his wife had, according to their statements, legally obtained identity cards on 9 July 1991, i.e. after the arrest. That would have been unlikely in the case of a person who was genuinely sought by the Turkish information service since he would have been in danger of again being arrested at that time. In reply to that argument by the ODR, the author had stated in his appeal to the CRA of 10 September 1993 that he had not obtained the identity cards himself, but had obtained them through a certain Mehmet Jeniay, who was allegedly on good terms with the Pazarcik authorities. The CRA considered that that new explanation was irrelevant, in the light of the author's statements at his previous hearings.

4.7 In his application for review of 25 April 1996, the author had transmitted documents (indictment for accepting or soliciting bribes and forgery, judgement concerning Mahmut Yeniay) intended to demonstrate that Mahmut Yeniay (or Mehmet Jeniay), an official in the identity card office in Pazarcik and known for his corruptibility and irregularities when issuing such cards, had indeed issued the identity card in question. In its decision of 12 August 1996, the CRA had noted the following inconsistencies in that connection:

(a) The criminal proceedings against Mahmut Yeniay had been still pending at the time when the identity cards were issued. It is difficult to imagine that he might still have been able to issue such documents in complete freedom, especially since he had been imprisoned for one month shortly before;

(b) On the identity card submitted to the ODR, the name of the issuing official is not that of Mahmut Yeniay;

(c) In the present communication the author reaffirms what he stated at his first hearing, namely that he had obtained his identity card legally, whereas in his appeals within Switzerland he has endeavoured to demonstrate the opposite.

4.8 Other contradictions by the applicant are also apparent:

(a) The author stated in his communication, as he had done to the Swiss authorities, that his cousin had stayed with him after having been released and that he had given food and clothing to PKK members. His wife, on the other hand, stated that, during that same period, her husband had been building a school in a village near Cerit and that often he would not come home for three or four days, or even a week. She stated that she had prepared meals for N.D. and one of her cousins, who was also a member of the PKK. On the basis of those statements, it was probable that N.D. had not stayed in the author's home. There might, however, have been occasional meetings between them.

(b) Reference should also be made to certain contradictions in the author's statements concerning the duration of his detention in Pazarcik following his arrest on 15 May 1991. He had mentioned two days in his statements to the registration centre and four days to the immigration authorities.

(c) The author also contradicted himself in his statements concerning the date of the last arrest, giving 5 June 1991 to the registration centre and in the communication, and 6 June 1991 to the immigration authorities. Furthermore, his wife has never spoken of that arrest.

(d) The author's statements are unconvincing and inconsistent concerning the circumstances of the burial of N.D. In particular, he stated at his first hearing that he had been prevented by an unknown person from photographing the body of N.D., whereas at the second hearing the person preventing him had been a member of the special unit or the information service.

(e) It is unlikely that the author, who had allegedly been threatened with death if he did not cooperate with the information service at the time of his last arrest on 6 June 1991, would have been released after only one day.

(f) It is also unlikely that the author would have waited a further two months before fleeing his country or that he could have been issued, in complete legality, with an identity card before his departure.

(g) In his communication the author maintains that, if he had not really been tortured, he would not have run away with his wife because she had been seven months pregnant at the time of departure. In that connection, the question arises why the author had waited a further two months after his last arrest before fleeing. As time passed, it was becoming more and more difficult to leave the country.

4.9 In the light of the foregoing considerations, the allegations of arrests and persecution suffered by the author appear very doubtful and are not based on any substantial indication worthy of consideration under article 3 of the Convention.

4.10 In his communication the author claims that the post-traumatic disorders from which he is suffering are primarily the result of what he suffered in Turkey. The doctor who examined the author on two occasions, on 16 and 29 January 1998, in the presence of an interpreter, arrived at the following diagnosis: the author is suffering from a post-traumatic disorder; he has other typical symptoms: traumatizing memories, sleep disturbance, fear and panic; he is in need of treatment. The possible causes of his psychological state are described by the expert as follows: "It should be further mentioned that the long period during which the author has hidden in Switzerland has also had a great effect on his condition and has left marks. His reactions during my examination of him demonstrate that the most significant elements derive from the preceding period."

4.11 The ODR and CRA considered that there was nothing to show that the author's disorders resulted from the torture he had allegedly suffered in Turkey in 1991. The CRA noted that the doctor's statement that the causes of the disorders had existed mainly prior to the author's disappearance did not mean that the causes did not date back to a period following the author's departure from his country. As the doctor had noted, living illegally for two years was undoubtedly very stressful for the father of a family and could be a plausible cause for his poor psychological condition. In any event, it is undoubtedly surprising that the author did not report his post-traumatic disorders until 1998, i.e. six and a half years after his arrival in Switzerland, precisely at the time when he was due to be sent back. The State party believes it has thus demonstrated that the medical test should not be regarded as evidence within the meaning of paragraph 8 (c) of the Committee's general comment on the implementation of article 3 of the Convention.

4.12 The author maintains that on his return he would be liable to rearrest and torture since he has allegedly supported relatives sought by the security forces. However, the relatives active within the PKK whom he claims to have supported, namely his cousin N.D. and his wife's cousin, were killed in 1991 and 1992 respectively. It is therefore not clear why the Turkish authorities should still today be interested in persecuting the author. In that connection, it should be recalled that, at the time of his arrest in May 1991, the author was immediately released after the special unit found the body of N.D. On the occasion of his last arrest in June 1991, he was not tortured and was released the same day. From this it may be concluded that the information service, already at that time, no longer had any special interest in pursuing the author. Lastly, it cannot be claimed that the Turkish authorities consider that, after living abroad for more than seven years, the author is still in close contact with relatives active in the PKK in Turkey.

4.13 In its decision of 12 August 1996 the CRA, in accordance with its previous decisions in cases of deliberate persecution, found that threat of persecution was generally limited to a small geographical area and that the individual concerned could avoid the threat of persecution by settling in another region of the country. In addition, the Swiss mission in Ankara had

made inquiries about the author's situation in Turkey and, in November 1992, confirmed that the police had no political file on the author and that he had no criminal record. Nor had his right to hold a passport been revoked. On the contrary he and his wife had obtained passports in 1991 at Kahramanmaras, contrary to what he had said. All these considerations make "deliberate persecution" very implausible.

4.14 Admittedly, to determine whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, the competent authorities must take into account "all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights" (Convention, art. 3 (2)). The Swiss Government does not dispute the fact that the situation in certain regions of south-eastern Turkey is difficult owing to fighting between Turkish security forces and PKK movements. Violent conflicts, however, are concentrated in clearly-defined regions. In previous decisions the CRA has consistently found that deliberate persecution is generally limited to a small geographical area, basically a village or region where the local police act on their own authority. Thus there is generally the possibility of fleeing, in this case to towns or cities in western Turkey, especially as freedom of establishment is guaranteed in Turkey and there are social networks in western Turkey for receiving large numbers of Kurds.

4.15 Thus Kurds do not appear to be at risk in all regions of Turkey today. In the case at hand, therefore, the inquiry should focus on whether the author would be personally at risk if he were to return to Turkey and whether he has a fair and reasonable possibility of settling in certain regions of Turkey. In its decision of 17 January 1996, the CRA found that returning the author to Kahramanmaras, his province of origin, would not be admissible, but that the author - who speaks Turkish well and has a good education, his wife and two children could, on the other hand, be perfectly well expected to begin to lead a decent and worthy life in a region of the country where they would not be at risk. Considering the author's professional experience in different fields and his educational background, it may be assumed that he will have comparatively fewer problems in finding the means to support himself and his family than many other members of the Kurdish people.

4.16 In view of the foregoing, the Swiss Government invites the Committee against Torture to find that the return to Turkey of the author of this communication would not constitute a violation of Switzerland's international commitments under the Convention.

Counsel's comments

5.1 In his comments on the State party's observations, counsel says the fact that the competent authorities have handed down six decisions is no indication that they have delved very deeply into the case. The authorities have at no time noted that the author was suffering from post-traumatic stress disorders due to the events he had experienced in Turkey, nor have they ever thought of consulting a psychiatrist to compensate for their own lack of knowledge in this area.

5.2 The State party denies the conclusions of the medical report, without giving any reasons. The report, however, clearly notes that most of the author's post-traumatic problems stem from a time before he left his country.

5.3 No conclusions concerning torture or political persecution can be drawn from the fact that the Government of Turkey has not confirmed the existence of a political file on the author or that he has a criminal record.

5.4 From 15 to 28 May 1991 the author was in a situation where he was the victim of deliberate persecution, according to the principles established by the Swiss asylum authorities. It is completely contradictory for the Swiss authorities to cast doubt on the author's credibility when he claims to have been arrested and tortured because the Turkish authorities were looking for N.D.

5.5 Counsel holds that it was perfectly reasonable for Mahmut Yeniay to forge a name and issue an identity card for which he had received a bribe. As Yeniay had been released and might even have anticipated the acquittal of 16 July 1991, it was not too dangerous for him to continue to take bribes.

5.6 The author's so-called contradictions are far from sufficient to cast doubt on his credibility. Firstly, they relate not to the torture suffered but to unimportant details. Secondly, the State party gives no consideration to aspects of psychological theory generally used to judge a person's credibility.

5.7 The so-called contradiction mentioned in paragraph 4.8 (c) above concerns not the author but his wife, and the State party's argument is mere speculation. There is nothing to indicate that the State party is correct in assuming that N.D. had probably not stayed in the author's home.

5.8 The so-called contradictions concerning the length of the author's detention in May 1991 and the date of his last detention (paras. 4.8 (b) and (c)) in fact confirm the author's credibility since a person with the author's education would be capable of devising a consistent story even if he had not been arrested.

5.9 The fourth so-called contradiction (para. 4.8 (d)) is not a contradiction at all, as the author did not know the identity of the person he suspected of being a member of the information services. Even the ODR concluded that the author's statements on this point were credible (CRA decision of 17 January 1996).

5.10 The fifth so-called contradiction, concerning the death threats (para. 4.8 (e)) is also not a contradiction. Death threats are used to intimidate people and as a measure of political persecution. They must be taken seriously in a country where the security services cause dozens of persons to disappear every year, primarily in connection with Kurdish separatism.

5.11 Finally, with regard to the sixth and seventh so-called contradictions (paras. 4.8 (f) and (g)) counsel points out that the author did not wait two months before leaving his country, but in fact used that time to prepare for his departure. A decision to leave one's country is not one to be taken lightly, quite the contrary.

5.12 Counsel submits that the Swiss authorities have not at any time examined the author's statements in the light of psychological criteria, in particular regarding the effects of torture on the author. The author informed the ODR on 30 August 1991 that he had been tortured. At no point since then have the Swiss authorities attempted to verify that information by consulting a psychiatrist. They alone are responsible for this omission. The fact that the author preferred to live illegally for two years rather than return to Turkey is proof of his fear of being persecuted and tortured again. His fear is based on the following: (a) the existence of a pattern of gross, flagrant and mass violations of human rights in Turkey today; (b) his credible statements, corroborated by a medical test, that he has been tortured and that the effects of the torture still exist; (c) there are no flagrant contradictions in his statements to the Swiss authorities; (d) he took part in political activities in support of Kurdish separatism, which he made clear to the Turkish authorities by burying N.D.

5.13 Counsel has sent the Committee a letter (undated and unsigned) which he says he received from the author: in it the author casts doubt on the competence of the interpreter present at a hearing with the Swiss authorities. The author also states that any deficiencies in his statements were due to his psychological state. He had been very close to his cousin N.D., and had been deeply shaken by his death and the manner in which he died. The author had had to dig the grave himself because the other members of his family and the undertaker's staff had been afraid to do so. Relations between one member of a family and the PKK are sufficient to place the entire family in danger. The author also notes in the letter that it is not difficult to obtain identity papers by paying someone, which he did.

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 that the State party has not contested the admissibility of the communication. It therefore considers that there is no reason why the communication should not be declared admissible. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately 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 the State party 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. 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. Other 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 might not be subjected to torture in his or her specific circumstances.

6.4 In the present instance, the Committee notes that the State party draws attention to inconsistencies and contradictions in the author's account, casting doubt on the truthfulness of his allegations. The Committee considers, however, that even in the presence of lingering doubts as to the truthfulness of the facts presented by the author of a communication, it must satisfy itself that the applicant's security will not be jeopardized. It is not necessary, for the Committee to be so satisfied, that all the facts related by the author should be proved: it is enough if the Committee consiers them sufficiently well attested and credible.

6.5 From the information submitted by the author, the Committee observes that the events that prompted his departure from Turkey date back to 1991, and seem to be particularly linked to his relations with members of his family who belong to the PKK. The apparent object of arresting the author in 1991 was, on the first occasion, to force him to disclose his cousin's whereabuts, and on the second occasion, to force him to collaborate with the security forces. On the other hand, the question of a prosecution against him on specific charges has never arisen. Furthermore, there is nothing to suggest that he has collaborated with PKK members in any way since leaving Turkey in 1991, or that he or members of his family have been sought or intimidated by the Turkish authorities. In the circumstances, the Committee considers that the author has not furnished sufficient evidence to support his fears of being arrested and tortured upon his return.

6.6 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Turkey, but recalls 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 the light of the foregoing, the Committee deems that such a risk has not been established.

6.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's decision to return the author to Turkey does not constitute a breach of article 3 of the Convention.

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