



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

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COMMITTEE AGAINST TORTURE
Twenty-second session
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VIEWS

Communication No. 104/1998

Submitted by: M.B.B. (Name withheld)
Alleged victim: The author
State party: Sweden
Date of communication: 12 December 1997
Date of adoption of views: 5 May 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. 104/1998

Submitted by: M.B.B. (name withheld)
Alleged victim: The author
State party: Sweden
Date of communication: 12 December 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 5 May 1999,

Having concluded its consideration of communication No. 104/1998, 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 and the State party,

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

1. The author of the communication is M.B.B., an Iranian national born in 1965, at present seeking asylum in Sweden. He claims that he risks being tortured and executed if he is forced to return to Iran. No article of the Convention is specifically invoked in the communication. The author is not represented by counsel.

Facts as presented by the author

2.1 The author states that his father is an orthodox Iranian Muslim and a supporter of the Iranian regime. Through his influence the author was drafted by the Iranian Revolutionary Guards (Pasdaran) and fought for three years in the front lines. While working as a revolutionary guard, the author also had a normal civil job as a mechanic in Isfahan, in order to conceal his involvement with the Pasdaran from his family. He was issued with an identity card as a member of the National Guard.

2.2 The author states that his situation became very difficult when he refused to perform certain tasks assigned to him. For that reason he decided to leave for Sweden, where his mother and stepfather were living. He left the country on a valid passport, which he obtained by paying a large amount of money, and a tourist visa that his stepfather helped him to obtain. He arrived in Sweden on 26 October 1995 in poor psychological condition. On 10 January 1996 he applied for asylum. His application was dismissed by the Swedish Board of Immigration on 5 September 1996. The Aliens Appeal Board turned down his appeal on 21 April 1997.

2.3 In June 1996, the author converted to Christianity. Members of his family who are still living in Iran informed him that the Pasdaran had issued a warrant of arrest and that the Supreme Court of Iran had issued an order of execution against him.

The complaint

3.1 In view of his past involvement with the Pasdaran and his conversion to Christianity the author fears that he will be subjected to torture and executed upon his return to Iran.

State party's observations

4.1 On 19 January 1998 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 or deport the author to Iran while his communication was under consideration by the Committee. In a submission on 29 June 1998 the State party informed the Committee that, on 21 January 1998, the Swedish Immigration Board had decided to stay the enforcement of the expulsion 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 states that it is not aware of the present matter having been or being the object of any other procedure of international investigation or settlement. It also states that chapter 2, section 5 (b), of the Aliens Act provides for a re-examination of the permit issue. A new request for a residence permit may be lodged with the Aliens Appeals Board at any time. Such a request must always be considered by the Board, provided that there are new circumstances that could call for a different decision. Finally, the State party, with reference to its submission on the merits, maintains that the communication should be considered inadmissible as being incompatible with the provisions of the Convention.

4.3 As for the merits, the State party provides the following information and assessment.

4.4 The author submitted an application for residence and a work permit to the Swedish Embassy in Tehran on 18 May 1995. On that occasion he indicated that he was a "retired National Pasdar Guard". He entered Sweden on 26 October 1995 on a visa valid for 90 days and travelled with a valid Iranian passport. He did not apply for asylum until 10 January 1996. His spouse and three children remain in Iran.

4.5 During the initial investigation following the author's first request for asylum he stated that he had worked at a "Sepah-Pasdarán" and his duties were to spy on the anti-revolutionary forces in Iranian Kurdistan. In the course of his work he was given training in methods of torture, and he mistreated people. He also took part in executing people without trial. Since he was not considered mentally strong enough to carry out torture he was ordered to obtain information about opponents of the regime and to hand it over to the authorities. He also stated that he had not been able to tell his spouse and children about his work and that he left Iran because he could not bear his work any longer. Since members of the military are not allowed to have passports legally, he obtained one through bribery. He did not know anything about an exit permit. He converted to Christianity on 23 July 1996. Finally, he said that if he returned to Iran he would be in danger of execution.

4.6 On 5 September 1996 the National Immigration Board rejected the author's application for asylum. The Board noted that he had travelled from Iran on a valid Iranian passport and exit permit, which means that at the time of his departure he was not of particular interest to the Iranian authorities. The Board considered that this fact was further supported by the author's earlier application for a residence permit, in which he had stated that he no longer worked for the Pasdarán. The Board found it extremely unlikely that he would be allowed to leave Iran if, at that point in time, he was active in the military service in the way he described. The information on how he bribed a person at the airport at the time of his departure was deemed not to be credible.

4.7 Moreover, the Board pointed out that the author waited over two months before applying for asylum, which is an indication that he did not regard his situation in his home country as particularly serious. Consequently, the Board did not find his claim that he runs the risk of arousing the authorities' special interest on his return to Iran to be credible. The Board concluded that there were no reasons to believe that by returning to his home country, the author would risk exposure to the kind of persecution or harassment that would constitute grounds for asylum. The Board did not find any other reason for granting a residence permit. It considered that the kind of activities that the author said he took part in in Iran, inter alia executing people without trial, are crimes against humanity as referred to in article 1 F of the 1951 Convention relating to the Status of Refugees. Regardless of any judgement about his credibility, such a circumstance is sufficient reason to refuse asylum, in accordance with the 1951 Convention.

4.8 In his appeal to the Aliens Appeals Board the author maintained that he had been a so-called special agent. He submitted copies of two identity cards to the police in Boras in January 1996. One of the cards, which was issued by a competent authority, shows that he had terminated his service as a special agent, although in fact he had not. The second card shows that he was still employed and active as a special agent. This card was exclusively intended for national use. He further stated that in Iran people who have opposed the regime, been drug traffickers or carried on other undesired activities may be "got rid of" without a trial and that he used to receive orders from his superiors that a certain undesired person should disappear. From 1988 to 1992, he was part of a group within Sepha which carried out activities in that

context in Kurdistan and Khozestan. During the years 1992-1996 he underwent further training at a school of torture. However, he did not himself inflict torture on prisoners but only had to "watch". On some 40 occasions he executed punishment in the form of whipping. By means of substantial bribes to a member of Sepha, he was able to leave Iran with a valid passport despite the fact that he was not entitled to leave the country.

4.9 The author further contended that the assertion in the decision of the National Immigration Board that he had retired was not correct, since he was too young to retire. He had waited for two months before applying for asylum after his arrival in Sweden because he was very depressed. However, he contacted the police as soon as he began to feel better. For many years he had felt a strong attraction to Christianity. In Sweden he attended tuition at St. Andrews Church in Gothenburg and converted to Christianity on 23 June 1996. If it should come to the knowledge of the Iranian authorities that he had converted to Christianity, it would mean certain death. He is very concerned about his children and his spouse since he does not know what their situation in Iran is. The family may be punished because of his desertion.

4.10 On 21 April 1997 the Aliens Appeals Board turned down his appeal. The Board stated that it could be seen from the author's passport that he underwent the usual passport control in Tehran airport, which meant that he was not of particular interest to the authorities at the time of his departure from Iran. The Board also noted that persons who leave from Tehran airport undergo strict controls. The claim that he was only able to leave Iran with the aid of bribes was therefore not deemed reasonable. At the same time the Board did not find the claim that he was active within the armed forces and therefore under a prohibition to travel at the time of his departure to be credible.

4.11 The Board also pointed out that the author waited for more than two months after entering Sweden before applying for asylum which suggests that he did not feel a great need for protection when he arrived. Regarding his conversion, the Board considered that a convert does not run any significant risk of harassment by the authorities as a result.

4.12 On 30 October 1997 the Aliens Appeals Board examined a new application for asylum filed by the author, with which he submitted a document, dated 11 June 1996, which he claimed had recently been given to him by an acquaintance and had been obtained through bribes. He asserted, inter alia, that the document had been drawn up by a "prosecutor at the revolutionary court centre in Iran" and proved that the author was wanted in Iran. This was a later development since he was clearly not wanted by the police when he left Iran.

4.13 The author subsequently submitted a copy of a judgement dated 15 July 1996 which he claimed had been drawn up by Iran's supreme military tribunal. He stated that the crimes he is guilty of are that he left his position as a security officer in Sepah, joined groups that oppose Islam, endangered the security of the State and unlawfully left the country. He stated that he had received the document in question by post from Iran.

4.14 On 10 July 1997, the Board decided to stay the enforcement of the refusal of entry decision. It then made arrangements for an investigation of the judgement through the Swedish Embassy in Tehran.

4.15 In a statement dated 4 September 1997, the Embassy concluded that the judgement and the document from the prosecution authority were clear forgeries. After having been informed of the Embassy's communication, the author wrote to the Board insisting that he had given truthful information that he was not aware that the documents were not genuine. He also insisted that he risked capital punishment if he returns to Iran.

4.16 In its decision of 30 October 1997 the Board did not find cause to make any other assessment than the one which was presented in the Embassy's communication. In an overall assessment of the material presented together with what had previously emerged in the case, the Board found that the circumstances did not confirm that the author was in need of protection under the Aliens Act. Furthermore, the Board did not find grounds to consider that an enforcement of the expulsion would be contrary to humanitarian requirements. It therefore rejected the new application.

4.17 The State party argues that in determining whether article 3 of the Convention applies in a particular case the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in and of itself determinative; (b) the individual concerned must be personally at risk of being subjected to torture in the country to which he would be returning; and (c) "substantial grounds" in article 3 (1) means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence".

4.18 The State party is aware that the Government of the Islamic Republic of Iran is reported to be a major abuser of human rights. It leaves it to the Committee to decide whether there exists at present a consistent pattern of gross, flagrant or mass violations of human rights in the country.

4.19 Regarding the personal risk of being subjected to torture in Iran the State party contends that several provisions in the Aliens Act reflect almost exactly the principle laid down in article 3 of the Convention. In applying article 3 therefore the Committee is carrying out virtually the same test as the Swedish authorities. In making this test it should be taken into account that a mere possibility of torture cannot in itself be sufficient to constitute a violation of article 3 of the Convention. The risk must be substantiated with regard to the circumstances and the asylum-seeker's personal conditions insofar as they can be objectively certified.

4.20 In the present case 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 Iran. The State party shares the assessment made by the Swedish authorities in this respect and would like to point out certain circumstances which are considered to be of special importance in this context.

4.21 Firstly, the author travelled from Iran on a valid Iranian passport and with an exit permit. It may be seen from the author's passport that he underwent the usual passport control in connection with his departure from Tehran airport. In the light of the Government's knowledge of departure controls at Tehran airport, this means that he was not of particular interest to the authorities at the time of his departure. This conclusion is further supported by the author's earlier application for a residence permit in which he had stated that he no longer worked for the "Pasdaran". It is extremely unlikely that he would be allowed to leave Iran if at that point he was active in the military service in the way he described. Special permission issued by the Iranian authority concerned is required for military personnel to leave Iran. Thus, the claim that he was active within the armed forces and therefore under a prohibition to travel at the time of his departure are not credible. These circumstances conflict with the assertion that the author is of particular interest to the Iranian authorities.

4.22 Finally, the communication from the Embassy of Sweden in Tehran clearly shows that the document submitted by the author in the form of a judgement by Iran's supreme court and a search warrant from the prosecution authorities were manifest forgeries. This too gives cause for doubt and undermines the author's general credibility. Moreover, the author waited over two months before applying for asylum which indicates that he did not regard his situation in his home country as particularly serious. Nothing in this matter supports the author's claim that he would be at risk of being subjected to torture or other form of ill-treatment upon his return to Iran.

4.23 Finally, the information which the author has provided about what happened to him in Iran and in other respects does not demonstrate that the risk of detention or torture is a foreseeable and necessary consequence of his return to Iran.

4.24 The State party thus maintains that in the present case substantial grounds do not exist for believing that the author would be in danger of being subjected to torture. An enforcement of the expulsion order to Iran would therefore, in the present circumstances, not constitute a violation of article 3 of the Convention.

Author's comments

5.1 In his comments on the State party's submission the author claims that he never said that he was a "retired National Pasdar Guard" and that the misunderstanding may be due to a poor translation. He insists that he is a Pasdar Guard, as the identity card he gave to the Swedish immigration authorities attests.

5.2 Before the tourist visa was granted his sponsor in Sweden had explained to the Swedish authorities that the author wanted to leave Iran because he was a member of the Pasdar Guard and wished to convert to Christianity. Therefore, the immigration authorities knew that the author was coming to Sweden for permanent residence. Moreover, the State party itself has acknowledged that the author had submitted an application for residence and a work permit to the Swedish Embassy in Tehran on 18 May 1995. The delay in

applying for asylum, once he was in Sweden, was due to serious illness. The police officer in Boras who interviewed him noticed that he was seriously ill.

5.3 The author denies having said to the immigration authorities that he had whipped, inflicted other kinds of ill-treatment on or participated in extrajudicial executions of people and states that he left Iran precisely because he did not want to commit criminal acts. He claims that the misunderstanding on this issue was also due to a poor translation.

5.4 The State party states that the author submitted copies of two identity cards to the police in Boras. The author contends, however, that he submitted the originals, not copies, and that these cards were undeniable evidence that he was a member of the Sepah Pasdar Guard until he left the country. It is also undeniable that if a member of the Pasdar Guard flees the country he will be punished with death, even if he remains outside Iran.

5.5 The author contests the State party's statement that persons converting from Islam to Christianity are not at risk in Iran and states that some converts have even been executed recently. He also complains about the Swedish authorities having informed the Iranian authorities about his application for asylum, since that would expose him to further risk.

5.6 With respect to the observation by the State party that an Iranian citizen has to pass strict controls at Tehran airport, the author argues that this is true only if the person has been reported as suspicious. A Pasdar Guard may, on the contrary, enjoy certain privileges at the airport.

5.7 With respect to the documents found to be forgeries, the author argues that he himself is not sure that these documents are authentic but that he cannot be held responsible for authenticity of documents he has received from Iran. He further complains about the Swedish authorities having informed the Iranian authorities that the documents were false and had been obtained through bribes.

5.8 In a further submission the author informed the Committee that on 16 December 1998 he filed another appeal with the immigration authorities that was also rejected.

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 Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected 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. 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 In the case under consideration the Committee notes the statement of the National Immigration Board that the author was not entitled to asylum in accordance with the Convention relating to the Status of Refugees in view of the fact that he had admitted having committed the kind of crimes referred to in article 1 F of the said Convention. The Committee recalls, however, that unlike the provisions of the above Convention, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes. On the other hand, the legal status of the individual concerned in the country where he/she is allowed to stay is not relevant for the Committee.

6.5 The Committee further notes the State party's argument that "substantial grounds" in article 3, paragraph 1, of the Convention means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence". In this respect the Committee recalls its previous jurisprudence ^{1/} that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3 which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, 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" (A/53/44, annex IX, para. 6).

^{1/} Communication No. 101/1997 (CAT/C/21/D/101/1997), Views adopted on 20 November 1998.

6.6 In the present case the Committee notes that the author has provided it with an account of his activities in Iran which differs in many respects from the one he provided to the Swedish authorities. In the Committee's view, the important disparities cannot fully be explained by "poor translations", as suggested by the author, and raise doubts about his credibility. The author's credibility is further undermined by the fact that he provided the Swedish authorities with copies of an arrest warrant issued by a prosecutor and a judgement drawn up by the supreme military tribunal of Iran which turned out to be forgeries. In these circumstances the Committee finds that the author has not substantiated his claims that he is at risk of being tortured if he returns to Iran.

6.7 The Committee further notes that the author has also failed to substantiate his claim that deserters from the Pasdaran who leave the country, as well as converts to Christianity, in general face a risk of being subjected to torture, especially if, in the case of the latter, they are not prominent members of the Christian community.

6.8 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Iran, 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.

6.9 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if he is sent back to Iran.

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 decision of the State party to return the author to Iran does not constitute a breach of article 3 of the Convention.

[Text adopted in English (original version) and translated into French, Russian and Spanish.]
